

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JANUARY 7, 2021**

4 Chairman Simpson called the meeting to order at 6:07 pm and read the Governor's Emergency Order
5 #12 that authorizes the Zoning Board to meet electronically: Due to the State of Emergency declared by
6 the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency
7 Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The
8 public has access to contemporaneously listen and participate in this meeting through video
9 conferencing at <https://zoom.us/> with Meeting ID 97995371537 and Passcode 705609, or by telephone
10 by calling (929) 205-6099.

11 A roll call of members present was taken.

12 **MEMBERS PRESENT BY VIDEO:** Aaron Simpson, Chair; Jeffrey Claus, Vice Chair; Jim Lyons; Daniel
13 Schneider; Clayton Platt; Jamie Silverstein, Alternate; Nicole Gage, Zoning Administrator

14 **PRESENT IN THE MEETING ROOM:**

15 **ALSO PRESENT BY VIDEO:** Spotswood (Spec) Bowers; Kelley Brooks – 44 Boston Ave, Somerville, MA /
16 61 Seven Springs Rd; Steve & Pam Wojick – 186 Garnet Hill Rd; Peter & Susan Sidebottom – 196 Garnet
17 Hill Rd; Dave Rosen – architect for the Sidebottoms; Elliott Pratt – 204 Garnet Hill Rd; Tracy Williams –
18 1376A Route 11; Will Davis – Horizons Engineering for the Sidebottoms; Caroline Webber – 30
19 Kellswood Lane; Doug Gamsby – 54 North Rd; Mark Cowdrey – 111 Bradley Lake Rd, Andover, NH;

20 **CASE # ZBA21-01: PARCEL ID: 0107-0001-0000: A SPECIAL EXCEPTION IS REQUESTED FROM ZONING**
21 **ORDINANCE ARTICLE III, SECTION 3.50(I) TO ALLOW A PRE-EXISTING NON-CONFORMING STRUCTURE**
22 **TO UNDERGO VERTICAL EXPANSION OR BE REPLACED WITH A HIGHER STRUCTURE; SDB**
23 **INVESTMENTS, INC; 1373 ROUTE 11.**

24 Spec Bowers, owner of SDB Investments, presented the merits of the case.

25 Mr. Bowers said that he would like to rebuild the "Hickory" building. It is the only duplex building on the
26 property and is building #4 on the property card. The foundation is bad and the building was built badly;
27 he would like to tear the building down and rebuild it. The current building has two stories in the back;
28 he would like to raise the front of the building to also have two stories with a 12-pitch roof. Mr. Bowers
29 continued that he has spoken to NH DES and they have indicated that there will not be a problem to get
30 a Shoreland Permit, which he would do before applying for a Building Permit.

31 Chairman Simpson went over the Board members present by video and asked the other people present
32 by video to identify themselves and their addresses.

33 Tracy Williams, 1376A Route 11, said that she is unclear which building is being discussed and she would
34 like to know where it is for when they look out their windows. Mr. Bowers said that he does not have a

35 photograph showing all of the buildings, however, the one that he would like to do is in the middle of
36 the complex and is most visible from the road. It is the only duplex so it is the only one with two doors.

37 Mr. Platt asked how much higher the proposed building will be than the existing structure. Mr. Bowers
38 said that the back will probably be a foot or two lower as it will be built closer to the ground; the peak
39 will be 10 ft higher, which is the limit according to the Ordinance.

40 Chairman Simpson asked Mr. Bowers to go through the Special Exception criteria.

41 Mr. Bowers said that the proposal meets the criteria because it is a two-family house; it is 23 ft high; the
42 vertical expansion will be 10 ft, which is the limit according to the Ordinance. Chairman Simpson asked
43 and Mr. Bowers said that he does not have a definite plan for the height, he has requested 10 ft because
44 that is what is allowed; 10 ft would be a 12-pitch roof and he would like that but there is no particular
45 need to have 10 ft.

46 Mr. Bowers went over the Special Exception criteria; the existing structure is a house; it is less than 24 ft
47 high; the vertical expansion will be no more than 10 ft; any roof changes will be within the height
48 requirement which is 40 ft.

49 Mr. Schneider said that the Board does not know that the requirements are being met as they do not
50 have the dimensions of the current building or the proposed building. Mr. Bowers said that he provided
51 dimensions of the current building; he would suggest that if there are any questions about the proposed
52 building that there be a condition of granting the Special Exception that the proposed building be no
53 higher than the limits. Mr. Schneider said that he does not see anything in the submitted materials with
54 the dimensions of the existing building. Mr. Bowers said that he stated in the application that the
55 building is 23 ft which makes sense as there are two stories that are 8 ft high each, a few feet of crawl
56 space, and a couple of feet of roof. Chairman Simpson said that he thinks that the Board can make a
57 condition that, before demolition is done, the current height of the existing structure must be verified.

58 Mr. Bowers continued to go over the Special Exception criteria; the Ordinance specifies a maximum
59 height of 40 ft and this building will be considerably less as it will be only 10 ft higher than the existing
60 structure. Chairman Simpson said that he thinks that there is a 25 ft limit to height if the structure is
61 within a setback. Mr. Platt said that he thinks that is only with a reduced side or rear setback. Mr.
62 Bowers said that he thought the same thing as Mr. Platt. Ms. Gage said that this is in the Residential
63 Zone and if the acreage is less than 1.0 acres then the reduced side setback is 10 ft. Mr. Bowers said
64 that the side setback does not matter for this building. Mr. Schneider said that the Board does not know
65 this because there is no plot plan submitted. Mr. Bowers said that the other buildings are his buildings
66 and they are more than 10 ft away. Mr. Platt said that he thinks that the tax map shows this.

67 Mr. Schneider said that he thinks that the application is deficient.

68 Ms. Gage said that there was no site sketch submitted with the application but she can do a shared
69 screen to the Town's online GIS.

70 Ms. Gage asked and Mr. Bowers said that the structure is the third building from the New London town
71 line.

72 Mr. Bowers said that he included an extract of a site plan that zoomed in on this particular building,
73 however, the site plan was a full one that showed the other buildings.

74 Ms. Williams asked and Mr. Bowers said that he will be tearing down the entire building and rebuilding
75 it. Ms. Williams asked and Mr. Bowers said that the peak of the roof will be raised higher than it is now.

76 Mr. Lyons asked if there is anything that Mr. Bowers can show the Board regarding what he is going to
77 build. Mr. Bowers said that he has sketches but they are not finalized yet. Mr. Lyons said that the
78 application suggests that there are two plans under consideration. Mr. Bowers said that he does not
79 know why Mr. Lyons would think that. Mr. Lyons read the notice of the hearing and Chairman Simpson
80 said that is how the Ordinance is written. There was further discussion regarding this matter.

81 Ms. Gage said that the property is in the FEMA Zone AE and asked Mr. Bowers to address that issue. Mr.
82 Bowers said that it is in that Zone. He does not have elevations for the area around the building but it is
83 on the edge of being in the floodplain and may actually be inches above the floodplain. However, if it is
84 within the floodplain he will meet all the requirements to build it as it will be a concrete slab on grade.
85 He thinks that this is something that needs to be addressed during the building permit process, not for
86 the Special Exception process. Ms. Gage said that she concurs with Mr. Bower's observation as it is only
87 when a Variance is requested in the floodplain when there are additional requirements that must be
88 met. If the property is within the floodplain, everything will need to be addressed during the building
89 permit process. There was further discussion regarding this issue.

90 Mr. Lyons asked if the Board has ever approved a Special Exception without a plan or idea of what the
91 new structure will look like. Chairman Simpson said that he cannot answer that but the Board is
92 concerned about the height requirements. Mr. Platt said that Mr. Bowers did submit a sketch of what
93 he wants to do; it is not a design but it does convey the basic intent of what he wants to do.

94 Ms. Williams said that she would be more comfortable seeing a plan of the new structure. She asked if
95 the Special Exception is approved if the proposed structure can deviate from what has been presented.
96 Chairman Simpson said that Mr. Bowers has said that he is going to rebuild the structure in the same
97 footprint but the issue that is before the Board is the height. Chairman Simpson said that it sounds as
98 though Mr. Bowers will build something similar to the building he constructed in New London.

99 Mr. Platt said that the Board cannot consider what the building is going to look like or its design, they
100 only look at the height based on the regulations.

101 Chairman Simpson asked and Mr. Bowers said that the lot is 0.89 acres; he would have thought it was
102 larger and did not know the acreage until Ms. Gage gave it to him. The property is approximately 1000
103 ft long and 50 ft. deep. Chairman Simpson asked and Ms. Gage confirmed that the property is non-
104 conforming in its lot size and the structure is non-conforming.

105 Ms. Bowers said that, as he reads the Ordinance, the maximum structure height allowed is 40 ft and this
106 structure will not be 40 ft. Mr. Schneider asked and Mr. Bowers said that the proposed structure will be
107 10 ft higher than the current structure so it will be 33 ft and when they come up with an architectural
108 plan it could be slightly less.

109 Chairman Simpson asked and Ms. Gage confirmed that Sections 3.40(i) and (h) do apply to the proposed
110 structure. There was further discussion regarding this matter and Mr. Bowers explained how the
111 proposal will meet these sections of the Ordinance.

112 Mr. Schneider asked how the Board is supposed to know where the setbacks are on the property
113 without a plot plan. Mr. Bowers said that there is an extract from a Site Plan which shows the front
114 setback is 55 ft which is less than the normal 75 ft and the rear setback is within the 50 ft setback. The
115 structure is non-conforming as it does not meet current requirements. The side setbacks are far more
116 than 10 ft as there are other buildings that he owns that are next to this building.

117 Chairman Simpson closed the meeting to public comments.

118 Mr. Platt said that he thinks that this is a fairly simple proposal that meets the requirements. Chairman
119 Simpson said that he agrees with Mr. Schneider that he would like to see more information, however,
120 he believes that Mr. Platt is correct. Mr. Schneider said that if this application is approved then there
121 should be a condition that the maximum structure height be no more than 33 ft if the current height is
122 23 ft. Chairman Simpson said that he thinks that there should be a condition that Mr. Bowers provide
123 proof of the height of the existing structure. Ms. Silverstein asked if the Board could ask for an "as built"
124 survey rather than asking for one prior to construction. Chairman Simpson said that he is not asking for
125 a survey, he just wants to have proof of how high the existing is before it is torn down. Ms. Silverstein
126 asked if the criteria for a Special Exception has been met why this needs to be done. Chairman Simpson
127 said that if the existing structure is 22 ft and the new structure is 23 ft then it would violate the
128 Ordinance as the allowance is only 10 ft.

129 **Mr. Platt made a motion to approve Case ZBA21-01: Special Exception to allow a pre-existing non-**
130 **conforming structure to undergo vertical expansion or to be replaced with a higher structure; Parcel**
131 **ID: 0107-0001-0000; 1373 Route 11; with the condition that the height of the existing building be**
132 **certified and that the height of the proposed structure not be more than 10 ft higher than that. Mr.**
133 **Claus seconded the motion. Mr. Schneider made a motion to amend the motion to include that a DES**
134 **Shoreland Permit must be approved and the conditions thereof complied with. Mr. Lyons seconded**
135 **the amendment. The amendment to the motion passed unanimously. A roll call vote was taken on**
136 **the amended motion: Mr. Claus voted yes; Mr. Platt voted yes; Mr. Lyons voted yes; Mr. Schneider**
137 **voted yes; and Chairman Simpson voted yes. The motion passed unanimously.**

138 **CASE #ZBA21-02: PARCEL ID: 0105-0003-0000: A VARIANCE IS REQUESTED FROM ZONING ORDINANCE**
139 **ARTICLE III, SECTION 3.10 TO PERMIT A MAXIMUM HEIGHT OF 26 FT 6 INCHES, WHEREAS NORMALLY**
140 **25 FT IS ALLOWED IN THE REDUCED SIDE OR REAR SETBACK; KELLEY BROOKS / GREENLINE**
141 **PROPERTIES; 61 SEVEN SPRINGS RD.**

CASE #ZBA21-03: PARCEL ID: 0105-0003-0000: A VARIANCE IS REQUESTED FROM ZONING ORDINANCE ARTICLE III, SECTION 3.20 TO PERMIT GREATER THAN 20% SHORELINE IMPERMEABLE AREA IN THE RURAL LANDS ZONE; KELLEY BROOKS / GREENLINE PROPERTIES; 61 SEVEN SPRINGS RD.

CASE #ZBA21-04: PARCEL ID: 0105-0003-0000: A VARIANCE IS REQUESTED FROM ZONING ORDINANCE ARTICLE III, SECTION 3.40(C) TO PERMIT LESS THAN 50 FT SETBACK FROM THE WATER BODY (LEDGE POND) FOR THE NEW STRUCTURE; KELLEY BROOKS / GREENLINE PROPERTIES; 61 SEVEN SPRINGS RD.

Chairman Simpson recused himself from the case. Mr. Platt recused himself from the case.

Mr. Simpson explained that because he and Mr. Platt recused themselves from the case, after appointing Ms. Silverstein as a voting member for this hearing there will still only be four voting members. The applicants can choose to continue with the presentation of the case or ask to postpone the hearing until there are five voting members in order to give more of a chance to get three votes in favor of the Variance requests.

Mr. Schneider made a motion to approve Jamie Silverstein as a voting member for these cases. Mr. Lyons voted yes, Mr. Schneider voted yes, Vice Chair Claus voted yes. The motion passed unanimously.

Kelley Brooks, the owner of the property, and Doug Gamsby, the owner's agent, said that they would like to continue with the presentation of the cases.

Ms. Gage said that she received a letter from the Doolittle family, an abutter at 59 Seven Springs Rd, that is in support of the project which she can email, read it into the record, or screen share with the Board. She also has a rebuttal type memo from Mr. Platt concerning the Flood Zone Ordinance. Vice Chair Claus requested Ms. Gage email both the documents to the Board. Vice Chair Claus asked and Ms. Gage said that she sent a memo to the Board regarding the Variance in the floodplain and Mr. Platt has submitted a memo as well as a copy of a LOMA approval or application. There was further discussion regarding this matter and about the Floodplain Ordinance.

Mr. Gamsby said that Ms. Brooks has owned the property since 2012 and the property is an existing three bedroom house built in approximately 1950 and has 912 sq ft of living space. The house has an enclosed porch and the edge of the house is approximately 25 ft from Ledge Pond; the lot size is approximately 0.42 acres. There are three lots that share one driveway and Mr. Platt has compiled a Boundary Line Agreement plan for the three lots. There is a relatively unclear logging road that is described in the deeds from the 1940s and 50s. The Boundary Line Agreement has been approved by the Town but has not been recorded by the Registry. The LOMA has been submitted to FEMA and they should receive approval for that in late February. The Shoreland application has been submitted (#2020-3234) and is within the 30 day approval process so that should be received at the end of the month. The lot has a three bedroom septic system that was designed and installed in 1993 by Mike Dashner. Mr. Gamsby continued to explain the septic system that meets the current standards for a three bedroom house and is in fair condition because the house is only used seasonally.

177 Mr. Gamsby said that Ledge Pond is unique as it is the only larger body of water that is in the Rural Zone.
178 The Rural Zone has a minimum 3 acre lot size, 50 ft side setbacks, and allows for 25 ft non-conforming
179 side setbacks; the total impermeable lot coverage allowed is 20% and a total of 30% permeable and
180 impermeable lot coverage combined is allowed. Most of the lake front properties in the rest of Town
181 are in the Rural Residential Zone which has a minimum lot size of 1.5 acres, a 25 ft side setback, and a 15
182 ft non-conforming side setback, 25% impervious lot coverage and 40% total lot coverage. This property
183 and approximately 25 other properties along Ledge Pond are in a similar situation where they would fit
184 more into the category in the Rural Residential lake front zone.

185 Mr. Gamsby said that the Variance will not be contrary to the public interest because the existing house
186 is very small and the proposed house will have 1,251 sq ft of living space on the first floor and 735 sq ft
187 of living space on the second floor. The existing house is a single story with a small attic; Ms. Brooks
188 wanted to raise the house a little bit. Mr. Gamsby explained the roof area calculation drawing that he
189 submitted with the application. The entry porch is approximately 11 ft high and the screened porch is
190 approximately 20 ft high so those can be taken out of consideration for the Variance. The middle part of
191 the house is not within a setback so it can be 40 ft. There are two sections of the house that are within
192 the setback that require a Variance and it is only approximately 27% of the entire roof. Ms. Gage asked
193 and Mr. Gamsby confirmed that these roof sections are within the 50 ft side setbacks. Mr. Gamsby said
194 that the Variance is requested because the lot size is non-conforming so there is a reduced side setback
195 and the maximum height allowed in a reduced side setback is 25 ft.

196 Ms. Silverstein asked Mr. Gamsby to explain how there is a hardship for the height Variance. Mr.
197 Gamsby said that Ms. Brooks would like to have a two-story house and she has brought it as low as she
198 can.

199 Vice Chair Claus asked and Mr. Gamsby said that the current house is approximately 18 ft high.

200 Mr. Gamsby said that the proposal is to have a 6 ft crawl space under the main floor of the house for
201 utilities and storage. Vice Chair Claus asked and Mr. Gamsby said that the crawl space will be accessed
202 under the deck.

203 Vice Chair Claus asked and Ms. Gage said that it is up to him if he would like Mr. Gamsby to read
204 through the facts supporting the Variance request. Ms. Gage said that the record is the minutes, the
205 application, the Board's vote, and the Decision Sheet; it is not formally required that the applicant read
206 the application. Mr. Schneider said that reading through the facts supporting the Variance request can
207 take a long time and they were submitted in the application. Vice Chair Claus said that the Board
208 members could ask questions about the different criteria if they have questions; he is trying to save
209 time. Ms. Silverstein asked if the Board could discuss all three Variances at once. Mr. Gamsby asked
210 and Vice Chair Claus said that each Variance request would be voted on separately. Chairman Simpson
211 said that each of the criteria should be addressed at the time of voting if any of the Board members
212 have any issues with anything.

213 Mr. Gamsby said that the next Variance request is to ask for greater than 20% impermeable surface area
214 in the Shoreland. The existing impervious calculations include the house, porch and stairs at 1,130 sq ft,

the driveway and parking areas at 3,485 sq ft, the two sheds at 145 sq ft, the dock and stairs at 90 sq ft, the concrete walk and stairs at 130 sq ft and the concrete path at 225 sq ft for a total of 5,205 sq ft which is 28.4% impervious lot coverage. The proposed impervious area will be 5,290 sq ft for a total lot coverage of 28.9% or an additional 85 sq ft. This is based on the new house, porch and stairs, substantially reducing the driveway and parking, eliminating a shed, reducing the concrete walk, and removing the concrete path. Vice Chair Claus asked and Mr. Gamsby explained that the portion of driveway that is being removed will be converted to lawn / landscaping. Mr. Gamsby further explained this matter and that there are a couple of hemlock trees being removed. Vice Chair Claus asked and Ms. Brooks said that they are reducing the driveway to help reduce the overall impervious surface. Ms. Brooks said that the driveway currently serves three properties so a lot of the impervious area has been there since the 1950s; she is going to reduce her parking area so that the driveways to the other properties do not have to be affected.

Mr. Gamsby said that the third Variance request is for the reduced 50 ft setback from Ledge Pond. The entire house has been moved behind the 50 ft setback but the house cannot be moved back towards the road more because the septic chambers and driveway are located there. They are requesting to have a portion of the proposed deck to be within the 50 ft setback. The total area of the deck is 480 sq ft with 235 sq ft sitting within the existing building footprint, which is allowable by right; a tiny sliver of 70 sq ft of the deck sits behind the 50 ft setback and 175 sq ft of the proposed deck and steps are outside the existing footprint and within the 50 ft setback. Mr. Schneider asked and Ms. Brooks said that 82% of the existing house, or 750 sq ft, is within the setback; they are asking for a Variance for 175 sq ft. Mr. Schneider asked and Ms. Brooks confirmed that the area inside the 50 ft setback has been considerably reduced. Mr. Schneider asked and Mr. Gamsby said that the distance from the proposed deck to the shoreline is 41 ft and the existing house is 25 ft from the shoreline.

Mr. Gamsby said that for the Shoreland Permit they have to show erosion control and stormwater management and that has been done. There will be a small drywell on the easterly side that meets the State's criteria to absorb a half inch of rain an hour; there is also another larger drywell on the westerly side. Mr. Gamsby explained the way the drywell works to the Board.

Mr. Gamsby said that they have added a small section of impervious walkway in order to connect to the existing concrete staircase and to go to the general entry area. They will also remove the rest of the concrete walkway in order to reduce the impervious area. They are trying to keep things concentrated within the parking area and house area and the area where the existing house will be removed will be landscaped with natural non-invasive vegetation.

Vice Chair Claus asked if anyone else has any questions or comments before the Board closes the hearing to public comments.

Ms. Brooks said that she appreciates Mr. Gamsby acting as her agent but she wants to convey that she wants to preserve what is special about Ledge Pond and to move the house away from the pond while regaining the nature that she can. She would just like to build something she can enjoy more throughout the year that is more functional.

253 Mr. Schneider said that regarding the FEMA floodplain, he would recommend that if the Variances do
254 not get approved then it is a moot point and if they are approved then the Board ask Ms. Gage how to
255 address the issue.

256 Ms. Gage said that Ms. Webber has some questions. Ms. Webber said that Mr. Gamsby said that the lot
257 is 0.42 acres and the tax map shows that it is 0.38 acres and asked about the discrepancy. Ms. Webber
258 also asked if the square footage of the dock is included in the impervious coverage calculation. Ms.
259 Brooks said that she had the property surveyed and there was an area that had some discrepancy with
260 the neighbors to the west. They have drawn and had approved a new Boundary Line Agreement that
261 expands the property and the plans reflect the Boundary Line Agreement. Mr. Gamsby said that the
262 portion of the dock that is on land is part of the impervious calculations but the portion of the dock that
263 is on the water is not.

264 Ms. Gage read a letter from an abutter in support of the proposal (see file).

265 Vice Chair Claus closed the meeting to public comments.

266 Vice Chair Claus said that the existing structure is approximately 17 ft or 18 ft and the proposed
267 structure is 26 ft 6 inches which is approximately 18 inches above the maximum allowed in the reduced
268 setbacks.

269 Mr. Schneider said that he thinks that the Variance request from the Ordinance is minimal and
270 reasonable and he feels as though it is within the spirit of the Ordinance.

271 Vice Chair Claus said that he thinks that it was good that Mr. Gamsby pointed out that Ledge Pond is in
272 the Rural Lands District and has much larger setbacks than other waterbodies where the setbacks would
273 be satisfied with this proposal. He agrees that the height request is a minimal increase above the
274 maximum allowed and there is only a portion of the roof that falls into the setbacks.

275 **Mr. Schneider made a motion to approve Case ZBA21-02 for a Variance requested from Zoning**
276 **Ordinance Article III, Section 3.10 to permit a maximum height of 26 ft 6 inches, whereas normally 25**
277 **ft is allowed in the reduced side or rear setback; owner Kelley Brooks; Parcel ID: 0105-0003-0000; 61**
278 **Seven Springs Rd. Vice Chair Claus asked about conditioning the approval for the LOMA and**
279 **Shoreland Permits. Mr. Schneider said that he does not think that the Shoreland Permit applies to**
280 **this Variance request, just the next two. He thinks that the Board should deal with the LOMA after**
281 **they go through the Variances. Chairman Simpson made a point of order as he believes a second to**
282 **the motion must be made before it is discussed. Ms. Silverstein seconded the motion. A roll call vote**
283 **was taken: Mr. Lyons voted yes; Ms. Silverstein voted yes; Mr. Schneider voted yes; and Vice Chair**
284 **Claus voted yes. The motion passed unanimously.**

285 Vice Chair Claus said that the second Variance is regarding the impervious lot coverage. The proposal is
286 to go from 28.4% to 28.9% impervious lot coverage, which is minimal.

287 Mr. Schneider said that the amount of increase to the impervious lot coverage is minimal. Given the lot
288 size and that this is in the Rural Lands District where the assumed acreage is three acres, to make this

289 impermeable limit he thinks it makes the condition of the Ordinance not as applicable to this small of a
290 property. He also believes that there is a hardship that it is unreasonable to apply the 20% standards to
291 a lot this size.

292 Ms. Silverstein said that the applicant is also allowing access to other properties through a shared
293 driveway. Vice Chair Claus agreed that there is impervious coverage there that would not normally be
294 there.

295 Vice Chair Claus said that it is notable that the applicant is reducing the walkway to the dock and the
296 driveway and making a conscious effort to preserve the area. He also thinks that there will need to be
297 conditions put on this motion.

298 **Mr. Schneider made a motion to approve Case ZBA21-03: a Variance is requested from Zoning**
299 **Ordinance Article III, Section 3.20 to permit an Impermeable Area in the Rural Lands Zone of not more**
300 **than 29% where 20% is permitted on the condition that a DES Shoreland Permit is requested and**
301 **approved and the conditions of that DES Permit are adhered to. Ms. Silverstein seconded the motion.**
302 **A roll call vote was taken: Mr. Lyons voted yes; Ms. Silverstein voted yes; Mr. Schneider voted yes;**
303 **and Vice Chair Claus voted yes. The motion passed unanimously.**

304 Vice Chair Claus said that the third Variance is for the structure to be less than 50 ft setback from the
305 waterbody. Looking at some of the numbers, the new structure will be pulled back significantly from
306 where the existing structure is; the current structure is approximately 25 ft from the shoreline and the
307 proposed structure will be approximately 41 ft from the shoreline and the entire primary structure has
308 been pulled out of the setback which has also reduced the impervious surface within the setback.

309 Mr. Lyons said that he thinks that what Vice Chair Claus said is what makes the project good. Mr.
310 Schneider said there is also the reduction of the square footage within the Shoreland. Mr. Lyons agreed
311 that is a critical buffer that the Board looks at and to see an existing structure pull out of it and much of
312 the area changed to pervious is a fine piece of engineering and architecture.

313 Vice Chair Claus agreed that he can appreciate the efforts that have been made to pull the house back.
314 Looking at the hardship, the grade of the site and location of the septic system puts them between a
315 rock and a hardship but they have managed to get the primary structure completely pulled out of the 50
316 ft setback.

317 **Mr. Schneider made a motion to approve Case ZBA21-04: a Variance is requested from Zoning**
318 **Ordinance Article III, Section 3.40(c) to permit a not less than 41.9 ft setback from the waterbody of**
319 **Ledge Pond whereas a 50 ft setback is required subject to the condition that a DES Shoreland Permit is**
320 **applied for and approved and the conditions of that permit are complied with. Ms. Silverstein**
321 **seconded the motion. A roll call vote was taken: Mr. Lyons voted yes; Ms. Silverstein voted yes; Mr.**
322 **Schneider voted yes; and Vice Chair Claus voted yes. The motion passed unanimously.**

323 The Board determined that they need to discuss the FEMA floodplain issue now that the Variances are
324 approved.

Mr. Platt said that he has been on the Board a long time and this has never come up before. He thinks that this is a separate issue dealing with a building permit and he is fairly certain that with all of the hearings they have heard over the years there are many properties that were in the 100 Year Flood Zone.

Mr. Schneider said that he agrees with Mr. Platt, however, in the Floodplain Ordinance, that says "The Zoning Board of Adjustment shall notify the applicant in writing that: the issuance of a Variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and such construction below the base flood level increase risks to life and property. Such notification shall be maintained with a record of all Variance actions". He thinks that the Board should request the Zoning Administrator to notify the applicant about these things. Ms. Gage said that she thinks that this should be conditioned as a statement in the Notice of Decision.

Ms. Gage asked Mr. Schneider said that he does not think that the additional criteria needs to be addressed, as per her memo, because it is not part of the Zoning Ordinance. Ms. Gage asked and the Board confirmed that they just approved three Variances for a building that appears to be in the FEMA floodplain.

Ms. Gage asked and Mr. Platt confirmed that going through a LOMA process takes the structure out of the floodplain. Mr. Platt continued that he has done approximately 20 LOMAs in the past few years, many of them similar to this property, and they have all been approved. Ms. Gage said that she thinks that it is critical that the Board require a LOMA for these Variances because without the LOMA they have not completed the requirements of the Zoning Board to state the other three criteria to get a Variance. These are audited by FEMA on a regular basis and the fact that they are not in the Zoning Ordinance does not matter. There are specific Zoning requirements that are stated in the floodplain ordinance. The Board cannot issue a Variance in the floodplain unless the Board believes that they have presented and met the other three points.

Mr. Platt said that he did state in the letter that it would be acceptable to condition the approvals to meet the Floodplain Ordinance. You can build in a flood zone as long as you are above the base flood location. Ms. Gage said that you cannot build in the flood zone unless the applicant presents the three points that she mentioned in her memo and the Board agrees to grant the Variances in the unique special condition of being in a flood zone. If the LOMA is approved then this does not matter and becomes irrelevant but if FEMA does not give the LOMA it would be invalidated. Mr. Platt said that they could still prove that they are building above the flood zone. Ms. Gage said that the Board cannot grant a Variance if the structure is within the flood zone. Mr. Schneider said that if it is Zoning criteria it should be in the Zoning Ordinance and he believes that if it is not in the Zoning Ordinance the Board cannot address it. Ms. Gage said that she does not think that she can issue a Certificate of Zoning Compliance to build the structure if it did not get a Variance that is properly vetted through the Town's Floodplain Ordinance; she does not think that the Board can ignore the Town's Floodplain Ordinance. Mr. Lyons said that the Board can go back through the approvals and say that they expect the LOMA to be granted but if it is not then the Variances need to be reconsidered. Mr. Schneider said that the

364 simplest thing would be to put a condition on each of the Variances that a LOMA is received. Ms. Gage
365 said that would be acceptable and if the LOMA is not granted the applicants would have to come back
366 before the Board and address building in the floodplain.

367 Vice Chair Claus reopened the meeting to public comments to discuss this issue with the applicant and
368 her representatives.

369 Mr. Gamsby said that he is confident that what they are building is out of the floodplain and they will
370 not have any problems obtaining a LOMA and if it does become an issue they can come back before the
371 Board to address it; they should hear about the LOMA by mid-February. He has done a few LOMAs and
372 it is a confusing process, however, he is 100% certain that they are building 3 ft above the 100-year flood
373 line.

374 Chairman Simpson said that he does not see in the Floodplain Ordinance that it was adopted by the
375 Town, just that it was amended. An Ordinance cannot be adopted by the Board of Selectmen and made
376 part of the Zoning Ordinance, it must be adopted by the Town. He believes that Mr. Schneider is
377 correct, if it is not part of the Zoning Ordinance then it is not something the Zoning Board can enforce.
378 Ms. Gage said that the Town of Sunapee is fortunate enough to participate in the National Flood
379 Insurance Program and is only allowed to do so by having a Floodplain Ordinance in effect. Also, all
380 Floodplain Ordinances in the State have additional criteria if a Variance is to be granted. The Board
381 could be putting the entire Town at risk in their membership in the National Flood Insurance Program
382 and this could be affecting insurance rates for all persons. Ms. Gage asked if the Board is concerned that
383 this is an actual regulation if it has not been adopted. Chairman Simpson said that he is asking if this
384 Ordinance has been adopted by the Town which is how Ordinances become part of Zoning; he does not
385 believe that it is adequate for them to just be adopted by the Board of Selectmen.

386 Ms. Silverstein proposed that the discussion about the Ordinance be outside the hearing. She said that
387 if the Board can make the condition of the LOMA as part of the approval then they can move on.

388 **Mr. Schneider made a motion for Cases ZBA21-02, 21-03, and 21-04, all of which had Variances**
389 **previously approved, for Parcel ID: 0105-0003-0000, 61 Seven Springs Rd, based on subsequent**
390 **discussion that a further condition be added that a Letter of Map Amendment (LOMA) be received**
391 **from FEMA. Mr. Lyons seconded the motion. A roll call vote was taken: Mr. Lyons voted yes; Ms.**
392 **Silverstein voted yes; Mr. Schneider voted yes; and Vice Chair Claus voted yes. The motion passed**
393 **unanimously.**

394 The Board took a brief break. Ms. Silverstein asked and none of the Board members were recusing
395 themselves for the remaining cases so she signed off for the remainder of the hearing.

396 **CASE #ZBA21-05: PARCEL ID: 0122-0023-0000: A VARIANCE IS REQUESTED FROM ZONING ORDINANCE**
397 **ARTICLE III, SECTION 3.10 TO PERMIT A MAXIMUM HEIGHT GREATER THAN THE NORMAL 25 FT**
398 **ALLOWED IN THE REDUCED SIDE SETBACK; PETER & SUSAN SIDEBOTTOM; 196 GARNET HILL RD.**

CASE #ZBA21-06: PARCEL ID: 0122-0023-0000: A VARIANCE IS REQUESTED FROM ZONING ORDINANCE ARTICLE III, SECTION 3.40(C) TO PERMIT LESS THAN 50 FT SETBACK FROM THE WATER BODY (LAKE SUNAPEE) FOR THE NEW STRUCTURE; PETER & SUSAN SIDEBOTTOM; 196 GARNET HILL RD.

Peter and Susan Sidebottom and Dave Rosen and Will Davis presented the merits of the case.

Mrs. Sidebottom explained that they purchased the property in 2016 and they have been primarily using it as a vacation home as they had school aged children. Their youngest child is graduating in May and they would like to build a more permanent home to spend more time there. They love the lake and the community and they are excited about the new house they have designed but are very excited about the storm water management plan as they think the overall property will be greatly improved.

Mr. Sidebottom said that they love the community and they both grew up in small towns so it brings them back to their roots. They look forward to spending more time here and they appreciate the time that Dave Rosen has put in to keep everything very consistent with the property in terms of the way they use the house and the view of the lake.

Mr. Rosen said that they would like to build a new house to replace the existing house and they are asking for two Variances. The house is in compliance in height and the overall setbacks; they are improving and reducing the impervious lot coverage on the property and are doing additional storm water management to capture all of the water from the driveway, roof, etc. They have taken several precautions in the design of the house in order to maintain as many trees that they can. They are protecting the area by keeping the retaining walls to ensure that there is no activity even during construction in the sensitive area.

Mr. Rosen said that the property is in the Rural Residential Zone, which usually requires 1.5 acres and this property is half that size as it is 0.77 acres. They are trying to build the new house roughly in the same area that the existing house is located but shifted a little uphill.

Mr. Rosen said that he submitted two pages of text for each Variance request and he assumes the Board has that but can share a screen to go through the various parts.

Mr. Rosen shared his screen and explained the proposed floor plan to the Board.

Mr. Rosen said that for the height Variance, there is a 16 ft change in the contours from the low point of the property to the high point. They are trying to leave the grade as it is on both sides of the house in order to preserve as many trees as possible. This section that is in the side setback is taller than the 25 ft height that is allowed in the setback. They meet the requirement of the 15 ft setback which is allowed because the property is undersized for the Zone. However, the Ordinance says that they can have a 15 side setback but within the 15 ft to 25 ft setback the height is limited to 25 ft. At the very highest to the very lowest measurement in this area it is 33 ft, however, it is just a small area to the peak. If they had raised the ground level they could have avoided the Variance, however, they chose not to because they wanted to maintain as much of the natural landscape and trees as possible in the side yard.

Chairman Simpson asked and Mr. Rosen confirmed that there has been a survey done of the lot. Chairman Simpson asked and Mr. Rosen said that he believes Mr. Davis already submitted a copy of the existing survey and proposed plan and said that contours are shown. Chairman Simpson said that engineering plans are not surveys. Mr. Davis said that they completed a boundary and topographic survey with the existing conditions. Chairman Simpson asked and Vice Chair Claus said that he thinks that they are referring to the Existing Conditions Plan as the survey. Chairman Simpson said that he does not believe that there is a surveyor's stamp on the plan. Mr. Davis said that they can stamp the plan as it is a boundary survey completed by a licensed land surveyor on staff. He did not see this as a requirement for the application but it can be provided if it is a condition.

Chairman Simpson asked and Mr. Rosen explained the location of where the height Variance is needed from the overhead of the plan. Mr. Schneider asked and Mr. Rosen said that 39 ft 11 inches is the measurement from the lowest grade to the highest part of the house. Mr. Schneider asked and Mr. Rosen explained the different height measurements submitted on the plan for the portion of the proposed house that requires a height Variance; the height at the peak is 32.9 ft. Mr. Schneider asked and Mr. Rosen said that at that point it is a little over 15 ft from the boundary line. Mr. Rosen said that the house meets the 15 ft side setback but the height Variance is needed in the setback area between 15 ft and 25 ft from the property line.

Mr. Schneider asked and Mr. Rosen said that on the application they have the square footage of the footprint of the house at 4,226 sq ft. The usable square footage is approximately 5,900 sq ft with the first floor and second floor of living area. Mr. Schneider said that this is a big house and he would expect the applicants to address why not approving the Variance would be a hardship. Mr. Rosen said that for every Variance there is a balance between individual property rights and community interest and in this case the primary community interest is the lake. In this case, they are requesting two Variances. The height Variance does not really impact the lake except that as they move the house back there is more diagonal view from adjoining properties. Mr. Schneider said that it impacts the neighbors. Mr. Rosen said that a lot of what they are doing is to reduce the impervious lot coverage, to have the storm water management capture all the water, and to keep the existing retaining walls to ensure that even during construction they are not disturbing any of the areas of the property that are directly adjacent to the lake. They are also moving the house 5 ft further from the lake and reducing the amount of house in the area.

Mr. Schneider said that he asked why not approving the height Variance in the side setback is a hardship. Mr. Rosen said that the other thing that they could do is that they could eliminate the need for the Variance by raising the ground level because there is no definition as to if the ground is the existing or the proposed. They elected not to raise the ground level to eliminate the Variance because doing so would further damage the site by taking out the trees on that side. Mr. Schneider asked and Mr. Rosen confirmed that the ground level would need to be raised approximately 7 ft. Mr. Rosen said that they decided to come before the Zoning Board to request a Variance rather than do something that he thinks is more detrimental to the property and in order to save the trees. The property is also half the size of what is required of a new lot in the Rural Residential Zone.

Mr. Rosen said that the other setback is for the setback from the lake. The existing setback is 34 ft and the proposed is 39 ft. They are moving the house away from the lake by approximately 5 ft at its closest point. They are positioning the house essentially centered on the existing footprint in order to reduce the impact on other parts of the property. If they shift the house up hill they end up distorting more of the driveway and trees up toward the road. They felt that it was best to put the proposed house where the existing house is and to not disturb the areas that are shown on the plan as not to be affected.

Mr. Rosen said that for this Variance, regarding unnecessary hardship, the new house is 5 ft farther from the closest point of the lake and the proposed use is reasonable because it is a single-family house consistent with the requirements of the primary use of the Rural Residential Zone.

Mr. Schneider asked why it is not feasible to put the entire house out of the 50 ft Shoreland setback. Mr. Rosen said that it causes more disturbance up hill because they are moving away from where the existing house is located. They are not adversely impacting anything within the 50 ft buffer to the lake but they would be impacting more of the trees and the property and reworking things as they moved it farther uphill. They are putting the basement at the same level as the existing walkout basement so they are not disturbing patios and the retaining walls and other elements of the site. The goal was to preserve as much as they can within the 15 ft setbacks.

Chairman Simpson said that he understands that they want to protect the existing trees and disturb less area but that does not tell him that it is not possible to construct the house out of the 50 ft setback. He would like to have this addressed in a more comprehensive way as to why the house has to be in the setback as a hardship to the property.

Mr. Rosen said that the property is half the size that is required in the Rural Residential Zone. Mr. Schneider said that they should design half the house; the house does not need to be 6,000 sq ft. Mr. Rosen said that there are a number of houses on Garnet Hill Rd that are similarly sized; a chunk of the house is the garage in order to meet some of the parking requirements. The property continues uphill and gets fairly steep. There is probably more disturbance to the property if they move it up hill; the lot also narrows a lot as it goes up hill so there will need to be more alteration of the existing lot. They are trying to be sensitive and keep the trees and the driveway the same as it goes to the road. They are reducing the impervious lot coverage and capturing a lot more of the storm water which is in the community's interest.

Mr. Schneider asked if Mr. Rosen has the square footage of the footprint of the current structure within the Shoreline setback and the proposed structure. Mr. Rosen said that the current structure has 762 sq ft within the Shoreline and the proposed structure will have 717 sq ft.

Mr. Rosen said that the application says owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because the house is properly positioned relative to the side yard setback and for the other Variance, it is 5 ft farther away from the lake. The other houses in the neighborhood are similar and he believes that the house to the left has a

511 setback that is less to the water and the house to the right is setback just a little farther; there is a
512 continuity to the setback. Regarding the side setback, he does not know about the house to the left but
513 the house to the right is similarly sized to this property. Mr. Davis said they did a full boundary survey of
514 the subject parcel, however, they did not survey the abutting buildings. They are taken from aerial
515 photo imagery so they are approximate in their location but are meant to show the relationship
516 between the two properties. Chairman Simpson asked and Mr. Rosen used the online GIS aerial
517 photography to further explain this matter.

518 Chairman Simpson asked what is unique about this lot compared to the other lots as that has to do with
519 hardship. Mr. Rosen said that it is similar to the two properties that are adjacent to it but is then unique
520 as to the waterfrontage of the property, the sizes of the properties, etc. This property has a house
521 already on it and they are trying to work within the location of the existing area. By moving the house
522 back, they feel as though they are doing something appropriate within the context of the adjoining
523 properties. The topography is also different; the house to the left has a steeper grade from the house to
524 the water and the grade is a little more gradual for the house to the right. The unique thing about this
525 property having the house on it relates to not just the contours but to the presence of the house and
526 working within that location it means that the other parts of the property will be disturbed to the same
527 extent that they would be if they moved the house further away.

528 Ms. Gage said that she wants to make sure that there is not an issue with Section 3.40(i) of the Zoning
529 Ordinance and asked if what is being proposed is a four level house within the 50 ft Shoreland buffer
530 with some exterior patios on the outside overlooking the lake at the fourth level. There is a rule that
531 says that the maximum height of any windowsill or roof eaves shall be no more than 30 ft above the
532 grade directly below it and that windows or eaves located in roof appendages such as cupolas or
533 skylights are excluded. Ms. Gage asked and Mr. Rosen said that they are not windows but doors that
534 are compliant with that requirement. If the measurement is taken straight down, the roof eaves are
535 conforming as they have not built dormers out but cut into the roof for exterior decks; the roof eave
536 itself is the dominant roof. Mr. Rosen further explained this matter to the Board and there was
537 additional discussion regarding the roof eave and that the roof above the cutout is higher than 30 ft.

538 Ms. Gage said that the Ordinance does not refer to the sills of doors above 30 ft, only windows. Mr.
539 Rosen said that there are no windows in that location, only doors, and he assumed that it would be the
540 same measurement. Mr. Rosen said that he did not think that he was fully accommodating the
541 Ordinance regarding the eaves.

542 Mr. Platt said that it seems that it would be tight to cut trees and build walls and asked if they would
543 make anything non-conforming for Sunapee or DES's regulations. Mr. Davis said that is another reason
544 that they cannot push the house back because the retaining walls and trees would need to be
545 reconfigured; they are meeting the unaltered state requirement but not by a lot.

546 Mr. Rosen said that the size of the house in terms of the square footage of the house is conforming and
547 they meet the requirements of the Zone with the water. Mr. Schneider said that there is not a
548 requirement regarding the square footage of a house but there is a requirement regarding in terms of

549 determining hardship for a Variance. Mr. Rosen said that with the two Variances they are seeking,
550 hardship is called unnecessary hardship and in their opinion preserving more of the property uphill was
551 one of the goals in order to not disturb more area. He considers that a good design and that it is an
552 unnecessary hardship to develop land that is not currently developed.

553 Mr. Rosen said that regarding the height in the side setback, the hardship is that they are putting the
554 basement level at the existing level of where the ground is now so they are not digging more. They
555 could lower the house, however, that did not seem to be as good an idea because there is more
556 excavation everywhere. They felt as though the preservation of the lake and as many trees as possible
557 on the site was right.

558 Mr. Rosen said that the unnecessary hardship is not taking down the trees, the property tapers, and the
559 property is half the size that is normally required in this zone. There is also an advantage to protect the
560 lake and keeping the existing retaining walls and not doing any further development in the most
561 sensitive part of the property.

562 Mr. Schneider asked and Mr. Rosen said that the existing garage is not being removed because there
563 have not been any decisions regarding what to do with it. They left the driveway where it is so they are
564 not changing the appearance of anything from the street. Mrs. Sidebottom said that they have not
565 talked about what to do with the garage as it is not part of the Variance discussion. Mr. Sidebottom said
566 that they have been focused on preserving the property as much as possible and keeping the house
567 within the footprint that it currently, is as well as the property as much as it currently is, so they have
568 not really talked about anything else with the property other than putting the storm water management
569 system in.

570 Ms. Gage said that she does not see the sill of the door as part of the Ordinance as it clearly says
571 windowsill so she does not see doors as allowed at that height. Mr. Schneider said that should be
572 addressed when they request a CZC. Ms. Gage said that the Board is being asked to grant a Variance for
573 that portion of the house that has the cutout and doors on the plan. Mr. Schneider said that this is not
574 part of the Variance request but that requirement does not depend on if it is within the 50 ft setback or
575 not. Ms. Gage asked and Mr. Rosen said that the cutout deck is in the 50 ft setback to the water and the
576 doors themselves are right around the 50 ft.

577 Mr. Davis said that since the Zoning application was submitted they have been developing the
578 stormwater management plan and the Shoreland plans and explained the drainage and development
579 plan to the Board. They are proposing repaving the existing driveway from near the top of the driveway
580 to the existing garage and then transitioning to a pervious pavement that will be either pavers or
581 another pervious surface that allows them to get the impervious area before the existing so the post
582 impervious coverage is less than the pre-development. They will direct the storm water to a swale that
583 then heads to a bioretention / rain garden area that allows them to dissipate the energy and also
584 provides for some detention and infiltration of the water. The remainder of the development includes
585 the house and the garage and the backside of the garage will have an infiltrating stone drip edge. The
586 roof water will be collected by gutters and directed to a drywell that will be a precast concrete drywell

587 with holes in it surrounded by stones and fabric with a final outlet as an overflow device. Overall, they
588 have reduced the impervious coverage and are providing a means to collect and treat all the runoff on
589 the site. There are currently not many controls in place so they think this is a substantial improvement
590 and are protecting the lake.

591 Mr. Lyons asked and Mr. Davis explained when they do any type of Shoreland Permit plan they provide
592 the owners with a maintenance manual that outlines all the protocols. The pervious pavers require
593 inspection to ensure that water is not running off them and vacuum them to clean the cracks. The drip
594 edge will need to be ensured that it is not being plugged by leaves and cleaned twice a year. The
595 bioretention area will need to be checked to make sure that there is no buildup of sediment and that it
596 is cleaned. They will be providing a landscaping plan for that feature which has plants that are designed
597 to be there so they will need to be maintained and ensured that they remain healthy. The drywell will
598 need to be opened twice per year to make sure that there is no standing water in it and that there is no
599 sediment or leaves and debris in there.

600 Vice Chair Claus asked and Mr. Davis said that the overflow for the rain garden is not shown on the plan
601 yet but he thinks that they will do a small stone weir to have the water flow down and out the side yard
602 much like it flows now; for most storm events it should not overflow but for bigger events it would. Vice
603 Chair Claus asked and Mr. Davis said that the drywell is capturing all of the roof water; the garage water
604 is not going into the drywell as a portion of the garage is collected in the pervious pavers and there is
605 the drip edge on the back. The drywell will be sized appropriately, they have not gotten to the final
606 design of it but will before they submit the Shoreland application.

607 Mr. Davis said that it is not shown on the plan but that there will be erosion and sediment controls that
608 are in place during construction between all of the work and the lake.

609 Chairman Simpson asked and Mr. Rosen said that he believes that they have presented everything but
610 asked if they can answer any questions that the neighbors might have.

611 Mr. Pratt said that they appreciate being included in the discussion but think that they are fine with the
612 proposal.

613 Mr. Wojick said that his house, which is to the east, is 75 ft from the shoreline and 25 ft or more from
614 the property line. Chairman Simpson asked and Mr. Davis said that the plan showing the other houses
615 was not included in the application. Mr. Rosen said that they did not include a survey of the abutting
616 properties. Mr. Davis said that that used aerial images from the State to impose them on the plan so
617 they are not trying to represent the building. Mr. Rosen asked and Mr. Davis said that they could survey
618 the distance that the Wojick's house is from the property line with the Wojick's permission. Mr. Rosen
619 said that they would be glad to provide more information if they need to. Mr. Wojick said that he was
620 discussing the comparisons between the two properties and the distance to the water earlier in the
621 conversation.

622 Mr. Wojick said that he would like to know more about the drip edge on the garage that is catching the
623 storm water; from what they see there is at least 1,600 sq ft of roof that will drain toward their property

if not collected. An inch of rain falling on 16 ft of roof will generate over 1,000 gallons of water and they would like to see how that will be managed as they get towards the lower end of the property as it slopes towards their property. The existing house is small and there is plenty of natural surface to collect the water but they do see some runoff at times. There is also a drain pipe coming from the existing house that drains towards their property so that will need to be factored in as they do not want to see any extra water coming out of that.

Mr. Wojick said that the main reason for the Variance is the height of the dormer. He spoke to Mrs. Sidebottom and they discussed their mutual privacy concerns of having bedrooms look into each other and the decks that they have on their house. They are also concerned about the noise and the people traffic at the corner of the house 15 ft from the property line.

Chairman Simpson asked and Mr. Rosen said that there will be one bedroom on the first floor and four bedrooms on the second floor. They have also identified a bunkroom in the basement in case at some point they have future grandchildren who want to sleep over but that room currently does not have a use. Chairman Simpson asked and Mr. Rosen said that the house is on the Town's sewer; there is a former leach field on the property but that is no longer in use. Chairman Simpson asked and Mr. Rosen said that there could be six bedrooms if the basement room becomes used as a bedroom. The drawings show how the basement might get used and that was one option. Chairman Simpson said that they may need to acquire a second hookup for Town sewer if they have six bedrooms. There was further discussion regarding the bedrooms in the house.

Mr. Rosen said that any of Mr. Wojick's concerns that he mentioned regarding the storm water management will be addressed. Any pipes that come from the existing house that go over to that corner of the property will be terminated. Regarding the roof area, the intent is to have it infiltrate to the ground but if there is a heavy storm there will need to be another place for the water to go on this property. He thinks that the topography changes a little bit so in terms of the location of the garage the Wojick's property is slightly uphill but going towards the water that reverses. Around the location of the existing patio, on the downhill side it does currently dip down and send water onto the Wojick's property, however, they will not be sending any water over there and the lawn with the firepit is relatively flat so the water soaks in there.

Mr. Rosen said that regarding the deck that Mr. Wojick mentioned, it is really more of a landing stair because the deck is on the other side and back farther from the property line than the stairs that are on the Wojick's side. The deck and stairs are a way to get out of the kitchen and go down to the lawn with the fire pit. Mr. Wojick asked if there was any consideration of moving the deck and stairs to be in front of the dining area and changing those windows to a slider or French doors. Mr. Rosen said that until the conversation that Mr. Wojick had with Mrs. Sidebottom, he had not really thought if that was going to be something that would be more of an imposition in the Wojick's minds. Mr. Wojick said that he thinks that would help in terms of privacy. There was additional discussion regarding this matter.

Mrs. Sidebottom said that they continue to be up more and they want to continue that they have good neighborly relationships. They do not want to make the Wojick's property any less appealing, they want

662 it to be even better. One of the reasons they are trying to build where the house is now is because they
663 know if they move the house back farther there will need to be dynamite used and hammering and they
664 do not want to disrupt the land or their neighbors.

665 Chairman Simpson asked and there were no additional comments or questions for the applicants so he
666 closed the meeting to public comments.

667 Mr. Lyons said that the proposed structure is much larger than is currently there. The attribute is that it
668 has moved somewhat farther from the lake. He is concerned that they do not meet a hardship
669 regarding the height, however, since they can fill in the side yard, he is not sure that is a desirable thing
670 either.

671 Mr. Platt said that he does not think that there is a hardship created by theoretically having someone fill
672 in land which he does not think that they can do because it creates additional unaltered areas. His
673 general feeling is if a house is going to be expanded to this level they should be more compliant than it
674 was before. The hardship is hard to see because it is more of an architectural desire than a hardship.
675 Chairman Simpson asked if there is any of the other Variance requirements that Mr. Platt would like to
676 comment about. Mr. Platt said that he does not think that this fits the spirit of the Ordinance. It is
677 meant to create a 15 ft buffer and that is not being done. The proposed height is not close to
678 compliance as it is 7 ft or so.

679 Mr. Schneider and Vice Chair Claus said that that they agree with Mr. Platt.

680 Mr. Schneider said that he does not think that there would be a hardship to have a slightly smaller
681 house given the topography of the land.

682 Mr. Platt said that moving the house back would not affect this request anyway.

683 Vice Chair Claus said that the reason for the reduced height limit is exactly what Mr. Wojick presented as
684 a privacy concern and having the visual impact of having that height that close to the property line.

685 Chairman Simpson said that he concurs with pretty much everything that has been said. He also has
686 some concerns about Section 3.40(i) as he is not sure that is complied with given the added deck as he
687 believes that the eave has to be measured above the door and he thinks that would be a condition that
688 he would want to be put on any approval.

689 **Mr. Schneider made a motion to approve Case #ZBA21-05: a Variance is requested from Zoning**
690 **Ordinance Article III, Section 3.10 to permit a maximum height of not more than 32 ft whereas 25 ft is**
691 **allowed in the reduced side setback area subject to the condition that the requirements of Zoning**
692 **Ordinance Section 3.40(i) are met. Vice Chair Claus seconded the motion. Mr. Schneider said that he**
693 **does not think that the Shoreland Permit is relevant to the height Variance. Chairman Simpson said**
694 **that this is not a Variance from Section 3.50 as indicated on the agenda but Section 3.10. Mr.**
695 **Schneider said that he would like to amend the motion accordingly. Vice Chair Claus seconded the**
696 **motion. Chairman Simpson asked and Mr. Platt said that he is satisfied and does not think that they**
697 **need a survey submitted. Vice Chair Claus said that he is also satisfied as the plan comes from an**

engineering firm. Chairman Simpson said that does not qualify as a survey under NH law. Mr. Platt said that it might be appropriate to ask for that in the motion for the next Variance as that is where they are talking about the footprint. A roll call vote was taken: Mr. Lyons voted no because he does not believe that the hardship criteria has been met and he does not believe this is consistent to the spirit of the Ordinance and with the abutting property losing some of its privacy he is not sure that there would not be a diminution in value; Mr. Platt voted no for the reasons that he previously stated as that he does not really see a hardship; Vice Chair Claus voted no for the same reasons; Mr. Schneider voted no as he does not see a hardship and he does not think that the project as proposed is consistent with the spirit of the Ordinance; Chairman Simpson voted no as he concurs with what has already been said. The motion failed unanimously.

Mr. Platt said that regarding the Variance for the Shoreland setback, he supports this as it makes the house a little more conforming than the existing house. He sees a benefit to build the house at the existing elevation and within the existing footprint as much as possible and he does think that the way the lot grades and the narrowness as it moves up would make it difficult to move the house back 10 ft or 15 ft and this seems to be the best place for the structure.

Mr. Schneider said that he agrees that compared to the existing structure the proposed is farther from the lake and the lake setback does get reduced slightly. He also would like to ask Ms. Gage to explain exactly what the request for the Variance is from the 50 ft setback. Mr. Platt said that the plan says 39.08 ft but he thinks that 39 ft would be acceptable.

Vice Chair Claus said that he agrees that there does seem to be some improvement in terms of the non-conformity.

Mr. Lyons said that anything that gets structures farther away from the lake is an improvement; it is very slight but it is a step in the right direction. He is concerned about storm water management and would like to make sure that some stipulation regarding maintenance of the elaborate and efficient storm water management plan is maintained. Mr. Schneider said that in this case the motion should include the DES permit.

Chairman Simpson said that he appreciates that the house is being moved away from the lake but they are also adding a garage at the back of the property and he is not sure that he sees a hardship. The lot is smaller than the minimum lot size but he does not think that there is hardship to build the proposed building within the shoreland given the other features of the lot. He is also not convinced that it is different than other properties in the area.

Mr. Schneider made a motion to approve Case ZBA21-06: a Variance is requested from Zoning Ordinance Article III, Section 3.40(c) to permit not less than a 39 ft setback from the waterbody of Lake Sunapee for a new structure whereas not less than a 50 ft setback is required by the Ordinance; subject that a DES Permit is obtained and the conditions therein are adhered to and also that a maintenance plan for the storm water drainage be submitted to the Zoning Administrator. Mr. Lyons seconded the motion. Chairman Simpson asked if the Board wants to require a survey be submitted as a condition. Mr. Schneider amended his motion to include that the applicants provide a survey to

the Zoning Administrator. Chairman Simpson asked if the Board wants to include anything under Section 3.40(i). Mr. Schneider said that he thinks that was already mentioned for the other Variance. Chairman Simpson said that Variance did not pass. Mr. Schneider said that he is not sure it is relevant to this Variance. Chairman Simpson said that it is relevant so that it is not left to the Zoning Administrator to verify. Mr. Platt said that it is the Zoning Administrator's job. Chairman Simpson said that it is the applicant's job to prove it. Mr. Schneider said that it is the Zoning Administrator's job to determine if a Variance is needed. Ms. Gage said that she was concerned if the Board approves a Variance for what is submitted then people can later look at the plan and say that it was approved. Mr. Schneider said that the Board is approving the Variance from the setback, not the plan. Chairman Simpson said that his next question is if the Board is approving the Variance based on the plans submitted because they could build something different. Mr. Platt said that the Board denied the Variance to build the roof as high as they wanted within the side setback so the plan will need to be revised and asked if that is a change to the plan that needs to come before the Board. Mr. Lyons seconded the motion to amend the motion. A roll call vote was taken: Mr. Lyons voted yes; Mr. Platt voted yes; Vice Chair Claus voted yes; Mr. Schneider voted yes; Chairman Simpson voted no. The motion passed with four in favor and one opposed.

MINUTES

Changes to the minutes from December 3, 2020: Change Line 45 to read "...from the Town Conservation Commission regarding..." Change Line 121 to read "...yet insure proper aquifer recharge." Change Line 237 to read "... Mr. Bombaci said that the calculations..." Change Line 301 to read "no additional questions for the application so he closed the meeting..." Change Line 362 to read "...and that the lot coverage is not higher..." Change Line 378 to read "...make a condition that the applicant..." Change Line 505 to read "... the closest comparison lot..." Change Line 609 to read "...to slow down the road that comes down..." Change Line 623 to read "...the height is increased is within..." Change Line 772 to "Mr. Schneider asked if the windows shown..."

Mr. Schneider made a motion to approve the minutes as amended. Mr. Lyons seconded the motion. The motion passed unanimously.

OTHER BUSINESS

There was a discussion about Ms. Gage giving her notice and that the Board will miss her; they thanked Ms. Gage for helping with the Board.

There was a discussion regarding how the Board wants to continue hearings or trying to keep meetings shorter and how Newbury conducts their meetings as Newbury has another day per month on their schedule and will only accept a certain number of cases on their agenda. The Board agreed that they would like to determine a way to limit the number of cases to help the meetings not last as long; there is 45 days to hear a case from the time the application is received. The Board discussed having another night reserved for meetings.

772 There was a discussion regarding Mr. Schneider and Mr. Lyon's terms expiring this year and Mr. Claus
773 being voted in by write in and his term length. Mr. Schneider said that he will not be running for
774 another term nor does he want to stay on as an Alternate Member.

775 There was a discussion about the final Zoning Amendment that will be going to the ballot.

776 Chairman Simpson adjourned the meeting at 10:37 pm.

777 Respectfully submitted,

778 Melissa Pollari