

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **APRIL 1, 2021**

4 Chairman Simpson called the meeting to order at 6:04 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; Clayton Platt;
13 David Munn (joined late); Jamie Silverstein, Alternate; Michael Marquise (joined late)

14 **PRESENT IN THE MEETING ROOM:** Melissa Pollari; Gregory Swick; Marilyn Swick

15 **ALSO PRESENT BY VIDEO:** Carol Wallace; Pierre Bedard; Betsy Delfosse; Duane; Barry Schuster; Joe
16 Maraldo; Carol Maraldo; Mara Robinson

17 Mr. Platt recused himself from the first three cases.

18 **Mr. Lyons made a motion to appoint Ms. Silverstein as a voting member for the first three cases. Vice**
19 **Chair Claus seconded the motion. The motion passed unanimously.**

20 **CASE ZBA: 21-08: PARCEL ID: 0125-0011-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
21 **TO PERMIT A 6 FT EAST SIDE SETBACK WHERE 15 FT IS PERMITTED FOR A PRE-EXISTING NON-**
22 **CONFORMING LOT (THE EXISTING EAST SETBACK IS 3 FT); CATHLEEN SHEA & BRADLEY WEISS; 38 JOBS**
23 **CREEK RD; RURAL RESIDENTIAL ZONE**

24 **CASE ZBA: 21-09: PARCEL ID: 0125-0011-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.20**
25 **TO PERMIT 42.9% LOT COVERAGE WITHIN THE SHORELINE OVERLAY DISTRICT WHERE 25% IS**
26 **PERMITTED; CATHLEEN SHEA & BRADLEY WEISS; 38 JOBS CREEK RD; RURAL RESIDENTIAL ZONE**

27 **CASE ZBA: 21-10: PARCEL ID: 0125-0011-0000: SEEKING A SPECIAL EXCEPTION PER ARTICLE III,**
28 **SECTION 3.50 VERTICALLY EXPAND THE ENVELOPE OF THE HOUSE TO 23 FT; CATHLEEN SHEA &**
29 **BRADLEY WEISS; 38 JOBS CREEK RD; RURAL RESIDENTIAL ZONE**

30 Cathy Shea, Bradley Weiss, Attorney Barry Schuster, and Mara Robinson, a landscape designer,
31 presented the case.

32 Chairman Simpson asked and Atty. Schuster said that they would like to give an overview of all three
33 cases to the Board at the same time.

34 Mr. Munn signed into the meeting after the hearings were opened by Chairman Simpson.

35 Attorney Schuster said that there is a written supplement with the application as well as four
36 photographs that provide a view of the current cottage. The overall theme of the request is that the lot
37 is small and the Ordinance has an acknowledgement that there are opportunities for renovation and
38 renewal of properties so that is the basis for them coming before the Board. They are looking at pushing
39 the side setback farther than it currently is to give more space. Regarding the Shoreline Variance, there
40 is a question as to if it applies because most of the property is not in the Shoreline area. They are also
41 asking for a Special Exception for the height of the house on the roadside.

42 Atty. Schuster said that the photographs show that there is little to no environmental considerations on
43 the site as there is just short grass and no vegetation. Ms. Robinson and Peter Blakeman, the engineer
44 for the property, have put together significant environmental additions and enhancements to the
45 property and there is an outline submitted with the application that explains these improvements. He
46 would like to have Ms. Robinson give an overview for the Board to see the whole picture of what they
47 would like to do.

48 Ms. Robinson shared her screen with the Board showing a 3D plan to revegetate the site and the
49 proposed improvements. The plan shows some of the abutting houses to give context. Currently, there
50 is not much vegetation and they have extensive plans to add vegetation. The roadside will have a simple
51 pea stone drive with boulders to retain the grades, a smaller pea stone walkway, hemlocks, ground
52 coverings, ferns, and a small flowering tree. The larger trees and shrubs will help with erosion control.
53 The back of the site where it is all lawn will become heavily planted for erosion control and weed control
54 and will be low maintenance. Ms. Robinson explained the different plants that will be added to the site.

55 Atty. Schuster said that regarding east side setback, currently there is a deck that goes within 3 ft of the
56 boundary line and they will be pushing it back so that the house is 6 ft from the boundary line. The part
57 in the setback is just the kitchen area, not the entire elevation. They feel that given the nature of the
58 neighborhood it is consistent with the White Shutters neighborhood. Going through the five criteria,
59 the first two are that the use must not conflict with the explicit or implicit purpose of the Ordinance and
60 not alter the essential character of the neighborhood, threaten public health, safety or welfare, or
61 otherwise injure public rights and that it is in the public interest to uphold the Spirit of the Ordinance.
62 The spirit of the Ordinance includes not just health, safety, or general welfare but also that Zoning is a
63 tool that allows a Board to meet more effectively the demands of an evolving and growing community.
64 He thinks that the neighborhood letters make it clear that this is consistent with the neighborhood. The
65 unanimous support from the neighbors demonstrates that there would be no threat to health, safety, or
66 welfare, and they are entirely supportive. Atty. Schuster continued that the 6 ft setback is less than
67 what the covenants require for the neighborhood. Though the private covenants do not count, it does
68 demonstrate that there would be no change to the essential character of the neighborhood.

69 Chairman Simpson asked if there is a plan that shows the overlay of the proposed and existing house
70 and if that plan can be screen shared. Ms. Robinson screen shared the plan for the Board.

Chairman Simpsons said that he is asking about this drawing because it gives a sense of the neighborhood as well as what is proposed versus what is on the site. He would like Atty. Schuster to address the issue about what happens if everyone else in the neighborhood enlarges their property use in a similar fashion. Atty Schuster said that is a question that Zoning Boards always struggle with, however, he believes that the Courts have always maintained that each parcel is unique, every decision is unique, and there are very few decisions that act as precedence because no two properties are exactly alike. Chairman Simpson said that there is a case that he is familiar with about a propane tank and the Court said that the cumulative impact on a neighborhood is a proper consideration for the Zoning Board. Atty. Schuster said that cumulative impact can be a reason but if looking at the proposed house compared to the house next door they are about the same size. The applicants are looking to construct a house of a similar size and the neighborhood is evolving into small but year-round usable homes. This does not create a cumulative impact that would be adverse as demonstrated in the letters of support from the neighbors. The neighbors do not believe that this would create a cumulative impact let alone any adverse impact; they say that this is a good idea and that should go towards the character of the neighborhood and it demonstrates that there is no cumulative impact that would be adverse. Mr. Lyons said that he disagrees. He said that there is nothing unique about this property; there are 15 other properties in White Shutters that are similar. Atty. Schuster said that he thinks that the view of the White Shutters neighborhood shows that there are a number of houses that are far bigger and have also used the land that is available for them over time to develop. The expansion on the east side is actually reducing the setback from what it is with the deck by 3 ft which gives more space on the east side. Chairman Simpson asked and Atty. Schuster confirmed that this will be less non-conforming.

Atty. Schuster said without granting these Variances, it becomes impossible to do any of the lake protection, which is what the applicants would like to accomplish with this site.

Atty. Schuster said that rebuilding this house in the same footprint would not be functional as there is too small a structure and they are not really enlarging it. The overlay between what exists and what is proposed is very little expansion, there is just a little bit of expansion where there is no deck, however, that is really it. It is a minor incursion for which the Variance is the appropriate method of maintaining a functionally usable structure.

Atty. Schuster said that of the five criteria the Board must look at the character of the neighborhood, health, safety, and welfare and if the use is reasonable; residential use is reasonable. The Variance requirements have been relaxed from the old-style hardship which focused on proving something uniquely different about the lot which is not the case anymore. The hardship is if there are certain things that make this a difficult lot and that is the case here given that it is narrow sized, it slopes, and is a historic lot that is trying to, as modestly as possible, be used in a functional way. Given its unique topography and history, those are characteristics which render the hardship criteria satisfied as they are trying to create something that is reasonable which is a structure that can be used as a residence.

Mr. Lyons asked and Mr. Weiss said that the existing footprint is 1,055 sq ft and the proposed footprint is 1,250 sq ft, which is an increase of 199 sq ft. Approximately 120 sq ft is in conforming areas and the other 79 sq ft are other areas where it did not quite fit. On the CZC, adding all the living space and

110 decks, it becomes approximately 2,580 sq ft. There will be a basement and second floor within the
111 height requirements which adds square footage.

112 Ms. Shea said that it does not look as though the CZC application that they submitted as part of their
113 application for the Variances and Special Exception was included in the meeting packet. Chairman
114 Simpson asked and Mr. Weiss screen shared the CZC application with the Board. Mr. Weiss said that
115 once they submit the CZC application for approval they will include the ZBA decisions.

116 Chairman Simpson said that the CZC application says that the slope is over 15%. Vice Chair Claus said
117 that the slope issue will require an erosion control plan and asked if Chairman Simpson thinks it will be a
118 20% slope. Chairman Simpson asked if a Variance will be needed for construction in a sloped area. Atty
119 Schuster read from the August 25th ZBA minutes regarding the slope. Mr. Lyons asked and Vice Chair
120 Claus said that the slope needs to be calculated and you have to look at the wording of the Ordinance.
121 Vice Chair Claus said that there is 20 ft of grade change over approximately 80 ft. The calculation would
122 depend on how someone interprets the Ordinance because 20 ft of grade change in 80 ft is 25% slope
123 average. He thinks that someone needs to evaluate the site more. Mr. Weiss said what he is reading it
124 that the slope must exceed 25% and have an elevation change of more than 20 ft in the area of
125 construction. While there is a change of more than 20 ft on the property, in the actual construction area
126 it is a 10 ft change. Therefore, if it is an "and" then both things have to be true and it depends on what
127 is being discussed if it is the whole lot or just the area of construction. Vice Chair Claus said that he
128 would look at where they are disturbing; they are building a new driveway at the top and some
129 disturbance at the bottom and that is where he got the elevation marks. He thinks that the Ordinance
130 needs to be amended to make this clearer. Chairman Simpson asked and Atty. Schuster confirmed that
131 there is an erosion control plan for the proposal. Chairman Simpson said that if there is an erosion
132 control plan then driveways, utilities, and stairways are exempt from the requirement under Section
133 3.40(l). There was further discussion regarding this matter.

134 Ms. Shea said that they have received their Shoreland Permit from the State which required an erosion
135 control plan. Chairman Simpson asked and Mr. Weiss said that the Board should have the erosion
136 control plan as part of their packet. The Board discussed that the plan is not very legible.

137 There was a discussion regarding the plans submitted to the Board as they were difficult for the Board to
138 read.

139 Mr. Weiss screen shared the erosion control plan with the Board.

140 Mr. Lyons asked how much rain the stormwater management system is meant to take. Mr. Weiss said
141 that he does not know but there are several dry wells and a large infiltration bed at the south end of the
142 property. Mr. Lyons asked if they know how much water will overwhelm the system. Mr. Weiss said
143 that he does not know. Ms. Silverstein asked if there is a number that Mr. Lyons thinks is needed and he
144 said that 2 inches is what he would like to see. Ms. Silverstein asked if that is based on an engineering
145 study and Mr. Lyons said it is based off stuff that he has read. Vice Chair Claus said that the State has a
146 guidelines that most engineers follow when they submit to the State. He has never not seen anyone
147 design something for the 100-year storm.

148 Chairman Simpson asked when the application was submitted as the Zoning Ordinance regarding
149 erosion control changed after the Town Meeting. Ms. Shea said that their Shoreland Permit was
150 approved on September 17, 2020. Chairman Simpson said that the Town amended the Ordinance to
151 apply to the current version of the Stormwater Manual being used by the State. Mr. Weiss said that
152 they submitted the Variance applications to the Town approximately one month ago. Chairman
153 Simpson asked if when a Zoning Amendment has been proposed if the application has to comply with
154 that. Atty. Schuster said that may be the case but he is trying to determine what standard may be
155 different. Chairman Simpson said that the erosion control plan may comply with the State requirements
156 but it may not comply with the Town's. Mr. Weiss said that the application was submitted on March 4th.
157 Ms. Pollari said that the Zoning Ordinance now says that "the erosion control plan shall incorporate the
158 design standards from the most current version of the New Hampshire Stormwater Manual". Chairman
159 Simpson asked and Vice Chair Claus said that he does not know if the 2008 version is the most current
160 Stormwater Manual. Mr. Weiss said that if they have not used the current stormwater manual then
161 they can update it. Mr. Weiss asked and Chairman Simpson said that if something is already on the
162 ballot when an application is submitted it must comply with the proposed Amendment. Atty. Schuster
163 asked and Ms. Pollari said that the section of the Ordinance being discussed is Article IV, Section
164 4.33(B)(8)(a)(I). Chairman Simpson said that this may not matter as he is looking at the State's website
165 to see what they are currently recommending using and it looks as though they are using the 2008
166 Manual.

167 Chairman Simpson asked and Atty. Schuster said that they submitted paper plans as well as pdf plans.
168 Vice Chair Claus said that there is another copy of the erosion control plan on page 39 of the packet
169 which is clear. There was another discussion regarding the submission of the plans.

170 Chairman Simpson asked and Vice Chair Claus confirmed that regarding the slope, if the driveway is
171 taken out of the calculation then there is not 20 ft of change. Chairman Simpson said that there is an
172 erosion control which seems to meet the requirements.

173 Chairman Simpson asked and Mr. Weiss continued to scroll through the CZC application he had screen
174 shared. Chairman Simpson asked and Mr. Weiss confirmed that what he shared was what was
175 submitted with the application. Mr. Weiss said that they have not submitted a CZC application for an
176 actual permit yet but they were told that for the hearing the Board would like to see a copy of what they
177 would be submitting. Chairman Simpson said that a copy of the CZC application should be made a copy
178 of the record and added to the packet.

179 Chairman Simpson asked and Mr. Weiss confirmed that they have received a Shoreland Permit and Mr.
180 Weiss held it up for the Board to see. Chairman Simpson asked and Mr. Weiss said that they have not
181 submitted a copy of the Shoreland Permit to the Town Office. Chairman Simpson asked and Mr. Weiss
182 said that the Shoreland Permit number is 2020-02046. Chairman Simpson asked and Mr. Weiss said that
183 there are 11 specific conditions and seven general conditions. Chairman Simpson said that the Permit
184 should have been submitted and the Board generally requires that construction must comply with the
185 Shoreland Permit as a condition of approval. Mr. Weiss said that they can submit a copy of the Permit
186 to the Town Office.

187 Vice Chair Claus said that the original request was for a 4.1 ft setback and now they are requesting a 6 ft
188 setback. The Board has copies of the floor plans but they are scans that cannot be read. Vice Chair
189 Claus asked if anyone has the proposed floor plans that are legible so that he can see the dimensions.

190 Mr. Marquise joined the meeting.

191 Vice Chair Claus said that he wants to see the dimensions because the house has been pulled from the
192 setbacks by approximately 1.5 ft from the previous application. Mr. Weiss screen shared the plan with
193 the Board. Vice Chair Claus said that the original plan had 26 ft for one dimension (bathroom to stairs)
194 and then 9 ft 6 inches for the second (kitchen) and the proposed shows 26 ft and then 9 ft 3.5 inches.
195 The proposal is a reduction of over 1 ft and he does not know where that is going if the other setback
196 remains the same. Mr. Weiss said that the existing house is not parallel to the lot lines and in the
197 original design they were keeping the same lines of the house so the front of the house was closer to the
198 property line and the back was further. They have turned the house a bit so that everything is parallel
199 and everything is even on the side of the house.

200 Chairman Simpson asked if the two approved Variances are being used for this proposal. Atty. Schuster
201 confirmed that they are using them as they assume that they are still in place and would be
202 incorporated into this design. Chairman Simpson said that he believes one of the approvals was based
203 on the fact that it had to comply with the existing plans that were submitted. Mr. Weiss said that he
204 thought it was subject to the plans. Mr. Lyons said that he thought that this was going to be an entirely
205 new application. Chairman Simpson said that the applicants still possess the rights to the Variances that
206 they received before but he remembers one was conditioned on the plans as submitted. Atty. Schuster
207 said that the condition for the west setback approval reads "subject to the plans submitted and subject
208 to an approved DES Shoreland Permit"; in this case the setback has not changed, the plan just rotated
209 the building a bit.

210 Chairman Simpson asked and Atty. Schuster said that the other Variance that was approved was for lot
211 coverage of 45.1% where 40% is required and there were no conditions. Mr. Weiss said that he thinks
212 when the Variances were approved they knew the plans were going to change because some things
213 were denied. The reason that they were able to come back before the Board was because they
214 postponed hearing the Variance for the lot coverage in the Shoreland. Chairman Simpson said that they
215 may need to apply for the Variance for the west setback again. Atty. Schuster said that if that is what
216 the Board requires they will do that.

217 Chairman Simpson asked and Atty. Schuster said that he believes that he has talked about each of the
218 five Variance criteria including the spirit of the Ordinance, the character of the neighborhood, hardship,
219 and he thinks that the neighbor letters show that there would not be any adverse effects on property
220 values and would actually help the neighborhood to have a rebuilt house there.

221 Atty. Schuster said that the next Variance is regarding the maximum impervious surface coverages
222 within the Shoreline Overlay District to 42.9% where 25% is allowed. They have applied for the
223 Variance, however, he noted in his memo that Section 2.42 says that "if a lot or abutting lots owned by
224 one person are intersected by a district boundary, the lots shall be considered to be in the district which

comprises the majority of the lot area". The Shoreline Overlay is a District and in Section 4.30 is specifically referred to as an Overlay District. The lot is 4,390 sq ft and 2,245 sq ft are not in the Overlay District and 2,145 sq ft are in the Overlay District so it is 100 sq ft more that is not in the Overlay District. He questions whether a Variance is required for the Overlay District. Chairman Simpson asked Mr. Marquise for assistance with this matter. Mr. Marquise said that this question came up after speaking with Peter Blakeman and Atty. Schuster. His interpretation is that the Zone that is considered is the one with the most amount of area, however, the Article IV conditions for the Overlay would still apply for anything within the Overlay. Under Section 3.20 he believes that the District being discussed has a 40% maximum lot coverage and any other conditions would apply. The coverage is still over 40% but he is not sure they have to ask for a Variance from the 25% lot coverage. Chairman Simpson asked and Mr. Marquise said that he concurs with Atty. Schuster that they would consider this to be outside the Overlay District regarding the 40% lot coverage but he believes that a Variance is needed for over the 40%. Additionally, anything that is done within the 250 ft Overlay would still apply such as land disturbance and tree cutting. Chairman Simpson asked and Mr. Marquise said that he believes that the Board needs to consider the second Variance request because they are asking for 42% lot coverage. Vice Chair Claus said that there is an approved Variance for lot coverage. Mr. Marquise said that instead of asking for a Variance from 25% lot coverage he believes it can be requested from 40% lot coverage if that makes a difference. Chairman Simpson asked and Atty. Schuster reread the decision sheet for the prior approval for the lot coverage. Chairman Simpson said that this seems to make the Shoreland Overlay District irrelevant. Mr. Marquise said that it does in terms of the lot sizes and the tables but he does not think it becomes irrelevant in terms of Article IV and he thinks that they need to meet all the other underlying Zoning requirements. Chairman Simpson asked and Mr. Marquise confirmed that in terms of Article III he does believe that it is irrelevant. Atty. Schuster said that the applicants do intend to comply with everything in Article IV Section 4.33. Chairman Simpson asked if the Board deems the second Variance as not needed if the applicants would be amenable to including a condition that construction comply with Section 4.33. Atty. Schuster said that he does not believe that it is a problem as this is what Ms. Robinson's presentation was meant to show. Mr. Weiss said that he believes that Mr. Blakeman designed everything with the idea that they would have to comply the maximum way possible and to meet the codes and have the stormwater erosion and the landscaping plan.

Chairman Simpson asked and Mr. Marquise confirmed that the 2008 Stormwater Manual is the most current.

Chairman Simpson asked if the Board wants to hear the Variance regarding the lot coverage or if they think it is not required. Atty. Schuster said that regardless of how the Board proceeds they would accept a condition that all the activities would be complied with.

Vice Chair Claus said that the magic line was in the applicant's favor and he agrees with Mr. Marquise's conclusion that the lot coverage is not an issue in the Shoreland Overlay District.

Mr. Lyons said that he is not sure why it is necessary to comply with the tree cutting and drainage if they do not need to conform to the lot coverage. Chairman Simpson said that it sounds as though the applicants are agreeing if the Board tacked these conditions to another approval that they would find it

acceptable. When he thinks of a District, he thinks of the fixed ones not the Overlay Districts, however, the Ordinance does not say that as Section 2.42 says whatever is the majority is considered. Mr. Marquise said that there is also a Wetlands Overlay District so they could have the same situation where someone is out of the Wetlands Overlay area but that does not mean that they could build within the wetland, the Section 4 requirements would still be effect.

Ms. Silverstein said that she thinks that this is completely acceptable and reasonable.

Mr. Munn said that he sees no problem based on the information provided.

Vice Chair Claus made a motion to find that a Variance is not required as stated in Case ZBA: 21-09: Parcel ID: 0125-0011-0000 due to the fact that the Zone at issue, the Shoreland Overlay District, does not apply to this case because it is the minor District that the lot is located in where the construction is happening. Ms. Silverstein seconded the motion. Betsy Delfosse, an abutter, said that she has no objection. The motion passed with four in favor and one abstention (Jim Lyons).

Ms. Delfosse said that she agrees with the plan for the first Variance. Looking at the drawings from a top-down perspective it does not show that her house, which is immediately abutting the Weiss / Shea property, is already three floors with a basement, first floor and second floor. The applicants are trying to keep with what is current with her structure and the structure on the other side which is also a three-story structure. Chairman Simpson asked and Ms. Delfosse said that she is to the west of the Weiss property. Mr. Lyons asked and Ms. Delfosse said that their third floor is not dormered, there are three windows, one on each side and one facing the lake. Mr. Lyons asked additional questions. Chairman Simpson asked and Mr. Lyons said that he is talking about a photograph that he took at the site.

Vice Chair Claus asked and Atty. Schuster said that the Variance has changed from the last application as they increased the distance from the lot line and decreases the non-conformity. Vice Chair Claus said that looking at the minutes from the last meeting the applicants were asking for a 4.6 ft setback. At that time, the Board was looking at the fact that it is currently a deck and the proposal will make it a primary structure, which is different with the verticality. He is struggling with the minor reduction as the house has not changed in any way or fashion, it has just been tilted. The presenter said that the applicants want a house similar in size to the house to the east, and the proposed footprint looks to be about that size, however, that neighbor has a large enough property that they are not infringing on side setbacks as much as the proposed house. Chairman Simpson asked and Vice Chair Claus said that to him hardship is difficult. During the last case he spoke about the design of the house with a width that he understands probably wants to take advantage of the views of the. He does not think that this proposal makes a strong effort to design the home to fit more closely within the setbacks. Mr. Lyons asked and Vice Chair Claus said that he thinks that they can design a home to fit and be more conforming. He does not see the hardship that is driving the house to be designed this way width wise.

Mr. Lyons said that he agrees with Vice Chair Claus as there is a plan in the packet that shows what a footprint would look like if all the various setbacks were enforced and it does not look that bad. There is an existing house and the applicant has the right to build on the existing footprint, which does include the decks. Regarding hardship, at one point the Town's attorney looked into this and she sent the Board

a copy of RSA 674:33(1) which has all the criteria listed out. For the hardship criteria it says “literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship” and then it goes on to say “for the purposes of this subparagraph, unnecessary hardship means owing to special considerations of the property that distinguish it from other properties in the area”. Mr. Lyons continued that the other properties in the area are part of White Shutters and with that as the criteria there is no uniqueness; there are plenty of other properties in the same general area that have all the attributes of this particular property, including the steepness. There is also a subparagraph that says “no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application to the property and the proposed use is a reasonable use”; that is all predicated on the property being unique and he does not think that the property is unique. There is another test that is “if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance and a Variance is therefore necessary to enable a reasonable use of it” which is also not true. He thinks that trying to argue hardship in this case is not a valid argument.

Vice Chair Claus asked and Mr. Munn said that he has not received any training regarding Variances. Chairman Simpson said that he thinks Mr. Munn should look at the application as what Mr. Lyons was just reading was the Statute and the application reflects the Statute. Hardship is generally the criteria that most people focus on, however, the Board is required to consider all the criteria. There was further discussion regarding this matter.

Ms. Silverstein said that she agrees that she does not see the hardship, however, she does see that there is a benefit to the neighborhood and the lake. When she looks at the site plan there is currently a deck in the area that comes within 3 ft of the property line so they are working to pull it back to 6 ft to make it more conforming.

Mr. Lyons said that there is a hedge and a birch tree along the deck that hold water back from the lake. At the present time there are no rivulets crossing the lower end of the property to suggest that there has been uncontrolled runoff though there have not been any bad storms this spring.

Ms. Silverstein said that she is not an engineer and she is not going to talk about anything else other than what was presented. She did not visit the site so she cannot talk about the water flow or the topography. However, the Board was presented with a plan that shows extensive landscaping to mitigate any runoff towards the lake and that works for her. She would approve that based on the plan materializing. She thinks that they are making a best effort to pull back and become more conforming. She appreciates Vice Chair Claus’ remark that it could be pulled back farther but they are in a neighborhood that is welcoming this improvement. She does not think that it is her place to say that the neighbors are wrong when they have accepted it.

Vice Chair Claus said that regarding the current deck and pulling the house farther back, a deck is a structure but not a primary structure so the house is a bigger impact than the deck. This is where he struggles because the training they have had regarding Variances is that they have to meet the five

criteria and if they fail to meet all five then it does not pass. Looking at the black and white, it does not open something up to the rationale that Ms. Silverstein applied to the case. He has been in other meetings where the Board almost negated the five Variance criteria if something was a reasonable use. He struggles with what Ms. Silverstein presented with the rationale, however, he then struggles with the black and white with what he feels the Board needs to focus on.

Chairman Simpson said that part of the reason for Zoning is for health and safety reasons. Fire access and distance from buildings and controlling fires is a safety issue and he thinks this neighborhood is over-dense if the Board considers that a health and safety criteria. He shares Vice Chair Claus' struggles as this may be a reasonable use but to get there will require a major land disturbance and that is why there is erosion control but the proposal is a more intense use of the lot because the deck will be replaced with a primary structure. He is cognizant that there is a drawing that shows the setbacks and a building could be constructed entirely within the setback and be bigger than this one. He struggles on the two issues as in some respects the proposal defies the spirit of the ordinance regarding the health and safety issues and there was a way to build a house on this property without requiring setback Variances. There is also an issue that there is a setback on the other side that conditioned on the plans submitted last time and he thinks that they need to resubmit on that criteria.

Atty. Schuster said that almost every home in the neighborhood encroaches on the setbacks so if the Board wants to say that this is not unique, they probably could and that the applicants are asking to do what all the neighbors have done. On the other hand, their property is unique for the Zone in which it is located because there are not lots that are 0.10 acre. There are other lots that are small in there but this is the Zone that is being discussed. Regarding fire safety, the property is right on Jobs Creek Rd and has easy access for the Fire Department and by having a 6 ft setback there is still plenty of room for emergency access to get to the house. The rebuilding of the house will end up using less of the land as it will be landscaped which will have a significant environmental benefit to the lake and the neighborhood and that is a significant benefit to the public. The landscaping does not have to be put in but it is a public benefit. Atty. Schuster continued that the Statute says that denial of the Ordinance would result in unnecessary hardship to the owner. Hardship has always been a problem under Zoning law and it used to be almost impossible to get a Variance with hardship and now the Court has changed that to look at if something is a reasonable use which is an important consideration. The Board has to look at if this is a reasonable use or if the applicants can never build on this lot unless they build a trapezoidal house that goes up 50 ft and is only 10 ft wide. That might be nice for an architect to design something that no one will live in but that is not reasonable; what is designed is reasonable. The hardship is that they are balancing what is reasonable to what is a loss to the owner of a piece of property because right now the structure that is there is a fire hazard and is dangerous and it becomes worthless for anyone to rebuild a tiny camp which becomes unreasonable. Looking through the criteria and the neighbors' letters, there will be no diminution in value, it would benefit the public interest through significantly enhanced landscaping. Substantial justice is balancing what is better for the public and what is better for the owner; this is one where the owner will significantly gain as opposed to the public losing. There is no public loss to grant the Variance, there is a private gain. Regarding the spirit of the Ordinance and health and safety, there is no evidence that this would create any health danger. Unnecessary hardship

is that almost every house in the development already violates the setbacks and they are asking to do something less than many of the neighbors but to have the same privilege as their neighbors which is wholly distinct from others within the Zone. This is a unique little neighborhood and the applicants have tried to not push anything further than they can but for two people to live there and work from home this is a reasonable house; two people cannot live there in its current shape.

Chairman Simpson noted for the record that Mr. Delfosse is now attending the meeting.

Ms. Silverstein said that she appreciates Atty. Schuster's comments. The reasonable use with no diminished impact to the neighborhood and the improvement to the erosion to the lake is a very compelling discussion for her. It may not work in black and white but she thinks the Board's sense of reason should prevail. Chairman Simpson said that if that were the case and not the criteria that may work for everyone.

Mr. Lyons said that there are reasonable solutions and Vice Chair Claus agreed. Vice Chair Claus said that reading the "cheat sheet" the Board has it says "when the hardship so imposed is shared equally by all property owners, no grounds for a Variance exists" and the applicants have said that all of the lots are basically the same. The cheat sheet also says "only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed."

Chairman Simpson said that the Board has discussed a condition on a Variance regarding the Shoreline Permit and an erosion control plan and compliance with Section 4.33. Mr. Lyons asked and Chairman Simpson said that he believes maintenance of the erosion control plan is required under the 2008 Stormwater Manual. Mr. Lyons said that he would like to see it in the motion. Chairman Simpson said that he also thinks the landscaping should be part of the motion as he does not think it is required in Section 4.33. Vice Chair Claus asked and Chairman Simpson said that the landscaping will become part of the approval if the Board makes it part of the approval. Vice Chair Claus asked if something is submitted if it does not become part of an approval. Chairman Simpson said that the Board has had plans submitted and an application approved and then the applicant went to the Planning Board with a new plan so he thinks that it should be part of the criteria that is approved.

Ms. Silverstein made a motion to approve Case ZBA: 21-08: Parcel ID: 0125-0011-0000: seeking a Variance from Article III, Section 3.10 to permit a 6 ft east setback where 15 ft is permitted for a pre-existing non-conforming lot, the current existing east setback is 3 ft; with the agreement that the landscaping plan will be included and maintained and that Section 4.33 will be in full compliance, and that the Shoreland Permit will comply with all conditions that are outlined by the State Shoreland Permit 2020-04046. Vice Chair Claus seconded the motion. A roll call vote was taken: Ms. Silverstein voted yes; Mr. Lyons voted no (hardship); Mr. Munn voted yes; Vice Chair Claus voted no (hardship); Chairman Simpson voted no (hardship and spirit of the ordinance). The motion failed with three opposed and two in favor.

Atty. Schuster asked to continue the special exception.

416 **Ms. Silverstein made a motion to allow the case to continue. Vice Chair Claus seconded the motion.**
417 **The motion passed with four in favor and one opposed (Mr. Lyons).**

418 Ms. Silverstein signed off and Mr. Platt became a voting member for the rest of the meeting.

419 **CASE ZBA: 21-11: PARCEL ID: 0148-0023-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
420 **TO PERMIT A 33.1 FT FRONT SETBACK WHERE 50 FT IS ALLOWED; SWICK FAMILY REVOC TRUST; 12**
421 **HAMEL RD; RURAL RESIDENTIAL ZONE**

422 **CASE ZBA: 21-12: PARCEL ID: 0148-0023-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
423 **TO PERMIT A 6.42 FT SIDE SETBACK WHERE 15 FT IS ALLOWED FOR A PRE-EXISTING NON-**
424 **CONFORMING LOT; SWICK FAMILY REVOC TRUST; 12 HAMEL RD; RURAL RESIDENTIAL ZONE**

425 Greg Swick and Marilyn Swick and Pierre Bedard presented the case.

426 Chairman Simpson asked and Mr. Swick confirmed that they would like to present both cases at the
427 same time.

428 Mr. Swick said that they submitted a four-page overview of what they are proposing to do. They own 12
429 Hamel Rd which is unhabitable and has been declared unhabitable by the Town and is not on the tax
430 rolls. It is non-conforming as it relates to the protection of the lake; there is no erosion control and the
431 structure is in the 50 ft setback. There is a septic system somewhere on the property and the condition
432 is not known and there is no well. Chairman Simpson asked and Mr. Swick said that the Town is not
433 charging taxes on the structure, just the land.

434 Mr. Swick said that they want to redevelop the property by tearing down the house and rebuilding the
435 shoreline. They will build terracing and protection for the lake as well as a sink at grade to capture the
436 runoff from the house and keep it from going to the lake. They will also be putting in a compliant septic
437 system and a well. Mr. Swick continued that they will be making this their permanent residence and
438 would like to make this a year-round house.

439 Mr. Swick said that the problem with the small lot is trying to take the main house and move it back
440 from the lake as the existing house is within the 50 ft setback and they do not want to build in the same
441 footprint so they are pulling the structure away from the lake. They want to build a reasonable house
442 with a one-car garage for the winter. They need a provision for a septic system and a well so they had to
443 push everything towards the northwest. Doing this, they believe they are preserving the good of the
444 lake but that gives them a problem with two setbacks. The first setback issue is that the structure will
445 be 6.42 ft to the side and the second issue is that it will be 33.1 ft from the front. They are trying to
446 make a tradeoff that preserves the lake and gets a house that is reasonable as well as a new septic
447 system. The proposal also gives them a place to trap the runoff and gets them a well. Pushing all the
448 moving parts around on the small lot ends up with the structure scrunched against one area.

449 Mr. Swick said that they believe the setback is consistent with other properties in the neighborhood and
450 he supplied pictures to the Board showing neighboring properties.

451 Mr. Swick said that he thinks what they are asking for is a big improvement in lake quality which is
452 backed up by the work that Mr. Bedard has done. Also, they have received letters from their abutters
453 that they are in favor of the proposal as is the Mountain View Lake Association President.

454 Mr. Swick said that regarding hardship, the lot is small and they would like to have the amenities that
455 they believe they need to live in a reasonable manner including a well and a septic system and a garage.
456 They also want to pull the structure away from the lake and improve the lake quality. Also, speaking to
457 the economic impact, the impact would be felt most directly on the lot next to this lot where the
458 structure would be closest and they own that lot so they would be the most affected.

459 Chairman Simpson asked and it was confirmed that the Board has an existing conditions plan.

460 Mr. Platt asked about the red area on the proposed plan. Mr. Swick said that it is a proposed deck.
461 Chairman Simpson asked and Mr. Swick said that it says "proposed through-flow first floor decking,
462 pervious pavers under deck".

463 Mr. Claus asked and Mr. Swick said that they will be more conforming for the lot coverage. Mr. Bedard
464 said that they just submitted the Shoreland Permit application and that the current lot coverage is
465 31.6% and the proposed is 31.4%.

466 Chairman Simpson asked and Mr. Bedard said that the Shoreland Permit application was just mailed to
467 the State so the Board does not have a copy. Mr. Platt said that State law says that the Board cannot
468 require a Shoreland Permit for a Zoning Variance. The Board has long discussions about Shoreland
469 Permits and it uses a lot of time and is inappropriate in his opinion. Chairman Simpson said that the
470 Shoreland Permit informs the Board about what is going on with the lot and what the State sees, he
471 relies on State expertise to set the criteria. Mr. Platt asked if Chairman Simpson relies on professionals
472 who prepare the plans. Chairman Simpson said that he does but the plans are intended to be
473 persuasive and the State decides what is relevant and he does not think that is irrelevant to consider
474 what the State says. Mr. Bedard said that he has had several phone and email conversations with the
475 State for guidance and though they have not received an approval they felt as though they were
476 meeting some of the concerns that were raised with this property.

477 Chairman Simpson asked how far the existing structure is from the lake. Mr. Bedard said that he does
478 not have the actual measurement but there should be an existing conditions plan that shows the
479 existing structure is within the waterfront buffer. They have moved the main structure back behind the
480 waterfront buffer. Mr. Swick said that the whole front of the existing house and deck is within the 50 ft
481 setback.

482 Chairman Simpson asked if the existing walkway to the lake will be replaced with something different.
483 Mr. Bedard said that the stairs will be replaced and will be shorter. There are a couple of existing
484 retaining walls that are both in poor condition; there is a concrete retaining wall just inside the
485 waterfront buffer that is failing and a wooden retaining wall closer to the shore that they are also
486 replacing with terra-crete block walls. Down near the shore on the northeast end there is an old
487 concrete block wall that was originally part of a boathouse dug into a bank that they are removing and

488 trying to reestablish the natural contour of the hill and help with the stormwater runoff. There was
489 further discussion regarding this matter.

490 Mr. Swick said that the problem is everything flows down towards the lake; the beach area is mucked up
491 and overgrown because all the silt materials are flowing into the lake and the terracing will capture this
492 and prevent it from flowing into the lake.

493 Mr. Lyons asked how steep the property is and Mr. Bedard said that the house location is fairly level and
494 then going down to the lake it varies because of the retaining walls that are there. The steepest part is
495 towards the easterly end and that is the part that will remain untouched. Mr. Lyons said that it struck
496 him as rather cliff-like as he could not go down one side of the lot. Mr. Bedard said that is why the stairs
497 were originally put in.

498 Chairman Simpson asked and Mr. Bedard said that the thick black line on the proposed plan is one of the
499 terra-crete walls. There is a retaining wall and patio to the right-hand side of where the existing
500 structure was that will be removed though part of the wall runs along the property line and is still in
501 good condition so it will not be removed.

502 Chairman Simpson asked for the record and Joe and Carol Maraldo of 48 Hamel Rd said that they signed
503 into the meeting as they are interested neighbors.

504 Mr. Swick further explained the terra-crete walls to the Board.

505 Mr. Platt asked if the proposed footprint of the existing house is the same as the proposed size wise.
506 Mr. Bedard said that he does not know but they have reduced the impermeable surfaces, some of which
507 was taken up by the patio and the huge overhangs on the existing house. Chairman Simpson said that
508 he thinks that the existing house says that it is 2,100 sq ft and the proposed says 1,542 but he does not
509 believe it includes the garage or the proposed deck. Mr. Swick said that the proposed footprint is 26 ft
510 by 38 ft and the garage is 15 ft by 22 ft. The proposed house is bigger than the existing house, however,
511 they will be getting rid of a lot of other impervious surfaces such as a patio and other areas that cause
512 runoff.

513 Mr. Swick said that they are having United Construction build them a drywell to capture runoff that
514 comes off the new structure. The drywell will be located right above the garage and will be at grade.

515 Chairman Simpson said that the structure also includes the deck which looks to be 10 ft by 38 ft.

516 Mr. Swick said that they have gone with a proposal of 38 ft but they are designing the house to be 36 ft;
517 they are building in two feet of margin because if they go over the 36 ft by a little bit they are not
518 pushing on the approved boundary.

519 Chairman Simpson asked if the retaining walls will be built according to the Town's guidelines. Mr.
520 Bedard said that they will meet the Town's regulations and that is partly why they needed to be placed
521 the way that they are. Chairman Simpson asked and Mr. Bedard confirmed that the retaining walls will
522 be under 42 inches high. Chairman Simpson said that he thinks when there are two or more they have

to be a certain distance apart. Mr. Platt asked if this is relevant to the Variances being discussed. Chairman Simpson said that he just wants to be informative for the applicants. Mr. Platt said that he understands but asked if it is relevant to the question at hand; the presumption is that they will comply with Zoning. Mr. Marquise said that the height of the retaining walls cannot be more than 42 inches and traditionally, terraced retaining walls need to be set back from each other by 42 inches but he is not sure it is written in Zoning. Chairman Simpson said that the Zoning Ordinance says "all multi-tiered retaining walls must have a terrace whose depth is equal to or greater than the adjacent height of any wall".

Vice Chair Claus asked if this project needs another Variance to build within the 50 ft setback. Mr. Marquise said that he believes the entire part of the decking is over existing house so it is within the envelope of the existing house. Vice Chair Claus said that he thought that the existing house is not a box but is "L" shaped and it looks like there is more frontage on the proposed structure than the existing home has in the 50 ft buffer. Chairman Simpson said that the existing home has a deck sticking out from it. Mr. Lyons said that the deck is literally in the air; he has sent the Board some pictures of under the deck. Vice Chair Claus said that he thinks that everything to the right of the existing walkway and stairs to the water are not part of the house, it is just parking gravel. Mr. Bedard said that it is patio. Vice Chair Claus said that the proposed plan is all deck in that area. Mr. Swick said that the 50 ft line is the red line and the house goes across that. Vice Chair Claus said that it does go into the 50 ft buffer but does not go as far across as the proposed deck. Vice Chair Claus asked and Mr. Bedard said that they will be building a structure outside the existing footprint. Vice Chair Claus said that this will need a Variance. Mr. Marquise said that he thought that it was a patio. Vice Chair Claus said that is different than a deck as a deck is a structure. Chairman Simpson said that a structure is "anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Structure includes but is not limited to a house, garage, deck, shed, building, swimming pool", etc. He sees where Vice Chair Claus is coming from that there may be a need for a Variance as it is not within the envelope, however, he is not sure they are limited by the envelope. Mr. Swick said that in the 50 ft buffer there is a patio, the house, and the deck and they will be pulling everything back except the deck. Mr. Platt said that the Board should raise their concerns with Mr. Marquise and move on with the Variances that have been requested and if the decision is made that the deck does not comply the applicants may need to come back before the Board or shorten it.

Chairman Simpson asked if the walkway is a structure as it is over 32 sq ft. Mr. Platt said that there is already a walkway there. Chairman Simpson asked and Mr. Bedard said that the walkway is not quite in the same footprint. Mr. Swick said that the proposed walkway will be smaller. Mr. Bedard said that because of the way the property will be graded the stairs will be shorter and smaller, especially the landing area. Chairman Simpson asked and Mr. Bedard said that the square footage of the proposed platform. Mr. Swick asked if they can add up the existing square footage and the proposed and compare the two and talk to Mr. Marquise to determine if a Variance is needed so that they do not make a mistake. Chairman Simpson said that the reason that he addresses the deck and such is because it is either outside the consideration of the structure or it is inside it and needs to be considered part of the structure.

Mr. Platt said that they are rebuilding the existing stairs and he does not understand if they move a couple of feet one way or another how it affects the side and front setbacks that the Board is supposed to be discussing. The Board are not the Zoning Administrators and they are here to discuss the front and side setbacks. He thinks that the discussions about everything else is inappropriate; the Town has hired people to make the decisions about the deck and the stairs and he does not think that it is pertinent to the discussion. Vice Chair Claus said that he somewhat agrees with Mr. Platt but he spoke with someone after one of the meetings when he was trying to only speak about what was presented and was told differently. He was told that the Board reviewing the plans is another set of eyes and was given this advise from someone who has been involved in Planning and Zoning in Town. He sympathizes that the Board does get caught up on things and it takes a lot more time. He asked if someone makes an error or misses something if Mr. Platt thinks the Board should just let it go. Mr. Platt said that he thinks that the Board should comment that an applicant might need a Variance or something more and then be done. The Board should not deny a front or side setback because a Variance might be needed for a deck. Vice Chair Claus said that he agrees with that approach. However, if the Board makes an applicant aware of a possible additional Variance needed and the Board votes on the other Variances if the Board relies on the Zoning Administrator catching them and then the applicant needs to reapply. Mr. Platt said that he would hope so as that is their jobs. Vice Chair Claus asked and Mr. Platt confirmed that just because the other Variances are approved it does not give applicants a greenlight to build if more Variances are needed. Mr. Bedard said that if the Variances are granted and the Zoning Administrator determines there are other issues when the building permit application is submitted then the building permit would be denied and they would have to come back before the Zoning Board. Chairman Simpson agreed but with all of these projects, applicants typically want to get started and if they do not hear about some of these concerns and then the Zoning Administrator denies a building permit it can become an issue. The point of mentioning something is to give applicants a head start if something is needed or not.

Chairman Simpson closed the meeting to public comments.

Mr. Lyons said that he is concerned about the slope towards the water and about the construction in that slope exceeding the allowance. He sent some pictures to the Board showing the supports and how the house is uninhabitable. He wants to be careful with whomever brings heavy equipment onto the site to do the work. That being said, he is all for getting the structure, deck, etc. away from the lake. They are trading a setback from the lake for the setback from the road and what they are asking for on the road does not do anything to constrict the flow of emergency vehicles or snow clearance in the winter. He thinks the plan to move the structure away from the water is good.

Vice Chair Claus agreed with Mr. Lyons and said that he does not have an issue with the reduction of the front setback as there is a narrow building envelope. He does not see the hardship with the garage and the side setback at 6.42 ft. To him this is a repeat of the last case as it is a design that needs to change to accommodate the site. Mr. Lyons asked if Vice Chair Claus would rather the rebuilding be on the existing footprint. Vice Chair Claus said that he does not think there is a hardship to infringe as much on the side setback as they are.

602 Mr. Lyons asked about handicap accessibility as one of the arguments for the garage was to have
603 through access for elderly individuals who need it in their older age and does not know where the access
604 could go. Chairman Simpson said that what Mr. Lyons is talking about is a different criteria for hardship
605 under the Statute as there is a section that says hardship could be related to disability of the applicant
606 but not the potential disability because any Variance granted under that Statute could be temporary.

607 Mr. Platt said that a more general question would be if it is reasonable in New England to have a one car
608 garage. He thinks in the past the Board has allowed Variances for garages like this under the assumption
609 that is a reasonable use to have a garage on a small lot; especially a single car garage. He finds it
610 reasonable to have a modest garage to get in and out of a house and there is not another place to have
611 a garage.

612 Vice Chair Claus said that he knows that there are a thousand different home designs that could put on
613 there and not be less than 7 ft on the side setback though it would still go into the front setback. There
614 was further discussion regarding this matter.

615 Mr. Swick asked to speak and Chairman Simpson said that the hearing is closed to public comments.

616 Vice Chair Claus said that the deck still concerns him as there have been other applicants who were not
617 allowed to expand a deck within the 50 ft setback and he thinks that this is an expansion of the deck.
618 Mr. Lyons said that he thought all the construction was out of the setback.

619 Chairman Simpson opened the meeting to public comments.

620 Mr. Marquise said that he thinks on both points he will need to clarify what is on the ground. He knows
621 that there is a deck that will replace the house but has to understand the width because he agrees that
622 there may be 8 ft to 10 ft of the deck that is not replacing something so it may require cutting the deck
623 back. Regarding the stairs, at first look they looked exactly the same except for being cut back; they may
624 be wider but looks like the same configuration, just cut back because of the landscape. He can get this
625 confirmed with Mr. Bedard or the applicants and take care of this.

626 Chairman Simpson asked how far the current house is from the road. Vice Chair Claus said that he
627 thinks the existing house is fully outside the 50 ft setback. There was further discussion regarding this
628 matter and Mr. Bedard said that just a small portion of the existing house extends over the 50 ft
629 setback.

630 Mr. Swick said that regarding Vice Chair Claus' concerns, Mr. Bedard has done a lot of work and it is not
631 just the house design but there is also a septic system that needs to get away from the well. There has
632 been a trade off because it is not just the house footprint but to also get the septic system so that has
633 enough area around it and to get it away from the well. It is a small lot and the garage cannot just be
634 put anywhere, this is the only place they could put the garage. Chairman Simpson asked and Mr. Swick
635 said that the well will be a new drilled well in the upper corner that will be as far away from the septic as
636 possible. There is not an existing well on the site, they need to drill a new well. Chairman Simpson
637 asked and Mr. Swick said that the septic system is as far from the well that they can get and they cannot

put the garage near the septic system because they cannot drive over it; these are what drove these decisions and requests for the Variances, not just the house.

Chairman Simpson closed the hearing to public comments.

Chairman Simpson said that he appreciates the applicants are making the house less non-conforming on the lake front which is why he does not have a problem with it being closer to the road. He does share some of Vice Chair Claus' concerns regarding the side setbacks but given the grade of the land and the need for a well and a septic he thinks that there is a hardship. Mr. Lyons asked and Chairman Simpson confirmed that the Board could consider the placement of the well and the septic unique to this property. Chairman Simpson said that he does not know the quality of the water coming from the lake though he knows that there are many properties that still draw water from it. He does see the hardship and is happy to see a one-car garage because if there was a two-car garage he would say it was being over built. They are also meeting the west side setback and the east side setback except for where the garage is located. Because there is a hardship, he does not have a problem with the side setback.

Mr. Platt made a motion to approve a Variance from Article III, Section 3.10 to permit a 33.1 ft front setback where 50 ft is required; Swick Family Revocable Trust; 12 Hamel Rd; said Variance to be conditioned that all construction comply with the owner's Shoreland Permit and that all construction comply with the Sunapee Zoning Regulations to the satisfaction of the Sunapee Zoning Administrator. Vice Chair Claus seconded the motion. A roll call vote was taken: Mr. Platt voted yes, Vice Chair Claus voted yes, Mr. Lyons voted yes, Mr. Munn voted yes, Chairman Simpson voted yes. The motion passed unanimously.

Mr. Platt made a motion to approve a Variance from Article III, Section 3.10 to allow a 6.5 ft where 15 ft is allowed for a pre-existing non-conforming lot; Swick Family Revocable Trust; 12 Hamel Rd; and presuming the other conditions are met. Vice Chair Claus seconded the motion. A roll call vote was taken: Mr. Platt voted yes, Vice Chair Claus voted no (hardship), Mr. Lyons voted yes, Mr. Munn voted yes, Chairman Simpson voted yes. The motion passed with four in favor and one opposed.

MINUTES

Changes to the minutes from January 7, 2021: The minutes were continued to the next meeting.

Changes to the minutes from March 4, 2021: The minutes were continued to the next meeting.

MISCELLANEOUS

The Board discussed having a training meeting regarding Zoning.

The Board welcomed Mr. Munn to the Board.

ALTERNATE MEMBER

The Board talked to Carol Wallace about becoming an alternate member. Ms. Wallace explained why she is looking to become a member of the Board.

672 There was a brief discussion about Zoning and about how Alternate members participate in meetings.

673 **Mr. Platt made a motion to approve Ms. Wallace as an Alternate. Mr. Lyons seconded the motion.**

674 **The motion passed unanimously.**

675 There was a discussion about not talking about cases outside of the meeting and not sending group
676 emails to the Board members.

677 There was a discussion about training that is provided for Board members from the State, NHMA, etc.

678 Chairman Simpson adjourned the meeting at 9:33 pm

679 Respectfully submitted,

680 Melissa Pollari