

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **May 6, 2021**

4 Chairman Simpson called the meeting to order at 6:00 pm.

5 A roll call of members present was taken.

6 **MEMBERS PRESENT BY VIDEO:** Aaron Simpson, Chair; Jeffrey Claus, Vice Chair; Jim Lyons; Clayton Platt
7 (arrived late); David Munn; Bob Henry, Alternate; Carol Wallace, Alternate; Michael Marquise; Daniel
8 Schneider (Alternate for meeting); George Neuwirt (Alternate for meeting; arrived late)

9 **PRESENT IN THE MEETING ROOM:** Melissa Pollari

10 **ALSO PRESENT BY VIDEO:** Laura Spector-Morgan; Anthony DiPadova; Duane; Barry Schuster; Patrick
11 Fine; Brad Weiss; Philip Hastings; Karen; Michael Clark, Frank Anzalone; David McCrillis; Chris Eldredge;
12 Michael Jewczyn

13 Chairman Simpson said that the first case is for a remand from the Court. The Town's attorney has
14 advised the Board that the members who heard the case should be present for the hearing. Therefore,
15 Daniel Schneider and George Neuwirt will need to be sworn in as Alternate Members for this hearing.

16 There was a brief discussion regarding the breakout room for the Board to talk to the Town's attorney.

17 **Mr. Lyons made a motion to appoint Daniel Schneider and George Neuwirt as Alternate Members for**
18 **the meeting. Vice Chair Claus seconded the motion. A roll call vote was called: Vice Chair Claus voted**
19 **yes, Mr. Munn voted yes, Mr. Lyons voted yes, and Chairman Simpson voted yes.**

20 Chairman Simpson swore Carol Wallace and Daniel Schneider in as Alternate Members pursuant to
21 Emergency Order #23 pursuant to Executive Order 2020-04.

22 Patrick Fine, a member of the public, asked for more details regarding the Executive Session. Chairman
23 Simpson said that the first case the Board is hearing is a case that was appealed from a decision in 2019
24 and went to the Superior Court who told the Board they needed to review the decision. The Board is
25 going into non-public session to consult with the Town's attorney, Laura Spector-Morgan. When the
26 Board comes out of non-public session, the members who were present in 2019 will consider the
27 decision; it is not an open meeting and no new information will be taken. After that case is done, the
28 Board will move forward with the agenda.

29 Ms. Wallace said that she lives on Burkehaven Lane and the later cases are for properties on Burkehaven
30 Lane. She asked if this means she should recuse herself from the discussion. Chairman Simpson said
31 that if Ms. Wallace thinks she would have a preconceived bias or not be able to have a neutral opinion
32 of the case then she would want to recuse herself. Attorney Spector-Morgan said that if Ms. Wallace
33 has an interest different than any other member of the public she should recuse herself.

34 Mr. Henry said that he will probably recuse himself from the McCrillis and Eldredge cases as he has
35 socialized and professionally dealt with Chris Eldredge for the last 20 years. Chairman Simpson
36 suggested talking about the case when the Board gets to them. Sunapee is a small town and
37 unfortunately the Board will probably know many of the applicants who come before them and the
38 Board is still obligated to hear the case unless they have an interest in the outcome.

39 Clayton Platt joined the meeting.

40 There was a discussion that people can attend meetings at the Town Office.

41 Attorney Spector-Morgan suggested the Board hear a case that could be done quickly.

42 Chairman Simpson asked if Attorney Schuster wanted to talk about the request for the continuance for
43 the Shea / Weiss Special Exception. Attorney Schuster said that given the Board has the application for a
44 rehearing pending as well as a question about the Variance on the west side that was raised during the
45 April 1st meeting, they feel it would be best to continue the hearing for the Special Exception until those
46 are resolved. Chairman Simpson asked if the outcome of the motion to rehear the Variance has an
47 impact on the continuance of the Special Exception. Attorney Schuster said that the Board's decision
48 regarding the rehearing would not impact the request to continue the Special Exception.

49 George Neuwirt joined the meeting.

50 Chairman Simpson requested the rehearing discussion be continued later in the meeting.

51 Chairman Simpson said that Mr. Neuwirt has been voted in as an Alternate Member for the hearing.

52 Chairman Simpson swore George Neuwirt in as an Alternate Member pursuant to Emergency Order #23
53 Pursuant to Executive Order 2020-04.

54 **Vice Chair Claus made a motion to go into non-public session pursuant to RSA 91:A(3)(2)(L). Mr. Lyons**
55 **seconded the motion. A roll call vote was taken: Vice Chair Claus voted yes; Mr. Munn voted yes; Mr.**
56 **Platt voted yes; Mr. Lyons voted yes; Chairman Simpson voted yes. The motion passed unanimously.**

57 The Board members went into a non-public session breakout room with the Town's attorney at 6:24pm.

58 The Board members came out of non-public session at 7:02 pm.

59 Vice Chair Claus read the Governor's Emergency Order #12 that authorizes the Zoning Board to meet
60 electronically: Due to the State of Emergency declared by the Governor as a result of the COVID-19
61 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order
62 2020-04, this Board is authorized to meet electronically. The public has access to contemporaneously
63 listen and participate in this meeting through video conferencing at <https://zoom.us/> with Meeting ID
64 97995371537 and Passcode 705609, or by telephone by calling (929) 205-6099.

65 Mr. Platt, Chairman Simpson, and Mr. Munn recused themselves from the case as they did not vote in
66 the original hearing.

Vice Chair Claus appointed Daniel Schneider and George Neuwirt as voting members for the Berg decision hearing.

NOTICE:

PURSUANT TO AN ORDER OF THE SULLIVAN COUNTY SUPERIOR COURT IN KAREN BERG V. TOWN OF SUNAPEE, DOCKET NO. 220-2020-CV-10, THE ZONING BOARD OF ADJUSTMENT WILL EXPLAIN ITS DENIAL OF THREE VARIANCES FOR THE PROPERTY LOCATED AT 34 JOBS CREEK RD BASED ON THE PREEXISTING RECORD. NO PUBLIC INPUT WILL BE TAKEN AT THIS MEETING; HOWEVER, THE PUBLIC IS WELCOME TO ATTEND AND LISTEN.

Vice Chair Claus read the Notice of Decision into the record:

“Karen Berg as Trustee for the Schirmer Revocable Trust of 2019 (“Berg”) seeks to raze and reconstruct an existing nonconforming cottage located on a 0.13 acre nonconforming lot. Berg proposes to replace the existing 832 square foot one story seasonal cottage with a 2,500 square foot, three story, year round house. Because the lot is nonconforming, it is subject to less stringent side and rear setbacks than it would be if it met the minimum lot size—15 feet instead of 25 feet. Additionally, because this is an existing nonconforming structure, it may be replaced in the same or smaller envelope. Nonetheless, Berg’s proposed house still required six variances from this Board.

On November 7, 2019, this Board granted three of the requested variances. It denied three others--the two side variances (4.4 feet from the westerly property line and 6.8 feet from the easterly property line) and the variance to allow a structure over 25 feet in height within the setback area. Berg appealed those denials, and the Sullivan County Superior Court remanded the matter back to this Board for “an explanation of its denial of the three variances in light of the five statutory considerations.” This is that explanation.

The Side Setback Variances

1. Granting the Variances Would Be Contrary to the Public Interest and Would Violate the Spirit of the Ordinance

Here, the two setback variances requested were for setbacks that are 30% and 45% of the already reduced required setbacks applied to nonconforming lots. On their face, they unduly and in a marked degree conflict with the ordinance such that they violate the setback’s basic objectives, which is to prevent overcrowding, prevent overbuilding, and prevent safety issues, a particularly important goal on nonconforming lots.

The 4.4 foot setback on the westerly side of the property would bring the house within 5-6 feet of the edge of the traveled way of a curve on White Shutters Road—a private road which is traveled and plowed. This raises safety concerns—a legitimate inquiry when considering the spirit of the ordinance and public interest variance criteria.

101 The 6.8 foot easterly setback brings the house closer to the property line. Our concern is that this
102 increases the nonconformity of the structure. As the New Hampshire Supreme Court has held, “[t]he
103 purpose of limiting the expansion of nonconforming uses, and reducing them to conformity as
104 completely and rapidly as possible would be negated by granting plaintiff a variance.”

105 The lot at issue here is one of approximately 16 lots in a subdivision. Each of those lots is significantly
106 undersized; in fact, Berg’s lot is average to larger when compared to others in the subdivision. The board
107 is entitled to consider the fact that not only do the requested variances create a potential peril on this
108 lot, “but also the threat posed by overdevelopment in general.”

109 The board concludes based on the evidence before it that the proposed variances would be contrary to
110 the spirit of the ordinance and the public interest and would create a safety issue and would increase
111 the nonconformities on the lot.”

112 Attorney Spector-Morgan asked if any of the Board members had any questions, concerns, or changes
113 regarding the first part of the Notice of Decision.

114 Mr. Lyons said that he does not have any changes.

115 Mr. Neuwirt said that he thinks that where the Notice says “the 4.4 foot setback on the westerly side of
116 the property would bring the house within 5-6 feet of the edge of the traveled way of a curve on White
117 Shutters Road. This raises safety concerns—a legitimate inquiry when considering the spirit of the
118 ordinance and public interest variance criteria.” that the specific safety concerns should be addressed
119 such as if it is people walking on the public way, plowing, a fence, etc. As a reader he is not thoroughly
120 convinced as to what safety concerns are being discussed.

121 Attorney Spector-Morgan asked the Board members who voted against the Variance what safety
122 concerns they had regarding the proximity to the traveled way.

123 Mr. Lyons said that this is both a horizontal and vertical curve and on the right when you enter this road,
124 which is an access road to the middle tier of houses, the road comes in and makes a hard turn around
125 the Berg property before going down. The corner of the house would be within a few feet of where an
126 ambulance or fire truck would have to negotiate that curve. The problem is on the other side there is
127 also a hazard as there is a low guardrail with a 3-4 foot drop off an embankment that belongs to the
128 property below. Therefore, an emergency driver could not move to the right without hitting or going
129 over the guardrail. He is concerned about vehicles getting in there, particularly in the winter.

130 Mr. Schneider agreed with the Mr. Lyons.

131 Attorney Spector-Morgan recommended adding language to the Notice of Decision which would say
132 “...a private road that is traveled and plowed. This curve provides access to the middle tier of the
133 subdivision. On the other side of the curve is another hazard, a 3-4 foot drop to the property below, The
134 Board is concerned with emergency vehicles being able to navigate the road, particularly in the winter
135 when the Board will be narrower.”

136 Mr. Neuwirt said that the problem is that there needs to be a link with the construction of the proposed
137 structure with the hazard. The gap has to be bridged as to how the property line creates more of a
138 hazard than it does now.

139 Mr. Schneider said that he thinks that Mr. Lyons did say that if the house is closer to the property than it
140 is now then that is the reason.

141 Vice Chair Claus continued to read from the Notice of Decision:

142 ***“Granting the Variances Would Not Do Substantial Justice***

143 The two critical inquiries in determining whether a variance would do substantial justice are: “(1)
144 whether the gain to the general public by denying the variance request outweighs any loss to the
145 individual; and (2) whether the proposed development is consistent with the area's present use.”

146 Focusing first on the area’s present use, it is clear that Berg’s proposed house is not consistent with that
147 use. Again, Berg proposes a 1,500 square foot footprint within 4 feet of one of the property lines and
148 within 7 feet of another. The plan submitted by Berg in conjunction with her motion for rehearing
149 demonstrates that all but 2 of the other homes in the subdivision are one story homes, with footprints
150 averaging 1,000-1350 square feet in size. The proposed house will “dwarf” the other houses in the area.

151 Moreover, the gain to the public by denying the variance outweighs the loss to the individual. As
152 discussed above, the gain to the public from denying the variances is the prevention of an overcrowded,
153 overdeveloped 0.13 acre lot with a structure located 5 feet from the traveled way of a road. On the
154 other hand, Berg may already, by right, reconstruct the existing cottage in its same footprint.

155 There is nothing about the zoning ordinance which prevents Berg from using her property as she sees
156 fit—instead it is her desire to quadruple the size of the house and increase the footprint by 40% which
157 prevents her from complying with the zoning ordinance. Substantial justice would not be done by the
158 grant of the setback variances.”

159 Attorney Spector-Morgan asked if any of the Board members had any questions, concerns, or changes
160 regarding the second section of the Notice of Decision and they did not.

161 Vice Chair Claus continued to read from the Notice of Decision:

162 ***“No Unnecessary Hardship Will Result from the Denial of the Variances***

163 ***a. There Are No Special Conditions of the Property That Distinguish it from Other Properties in the***
164 ***Area***

165 The starting point of an unnecessary hardship analysis is whether there is anything unique about the
166 property which distinguishes it from other properties in the area. Berg here alleges that her lot is small
167 and uniquely shaped and is therefore distinguishable from others in the area. While it is true that the lot
168 is small, it is no smaller than other lots in the White Shutters Subdivision. In fact, it appears to be
169 average to larger compared to other lots in that subdivision. While the shape of the lot is somewhat

170 unusual in the area, that shape does not necessitate the design of the house which brings the home
171 within the setbacks.

172 Hardship must arise from the conditions of the property, not the circumstances of the owners. Here, the
173 property allows a 1,100 square foot footprint in which to construct a home. Though Berg asserted to the
174 zoning board that it would be challenging to construct a home in such a footprint; this Board does not
175 believe this conclusory representation made without any evidence.”

176 Attorney Spector-Morgan asked if any of the Board members had any questions, concerns, or changes
177 regarding this section of the Notice of Decision and they did not.

178 Vice Chair Claus continued to read from the Notice of Decision:

179 ***“A Fair and Substantial Relationship Exists Between the General Public Purposes of the Ordinance***
180 ***Provisions and the Specific Application of Those Provisions to the Property***

181 The general purposes of setback ordinances are to prevent overcrowding, prevent overbuilding, and
182 prevent safety issues; goals which are made even more difficult to achieve given that this is a
183 nonconforming lot. The zoning ordinance recognizes this difficulty and therefore reduces the required
184 setbacks for nonconforming lots, and moreover, allows the reconstruction of existing nonconforming
185 structures in their same footprint. Nonetheless, Berg wishes to expand the existing footprint by 40% and
186 to provide for much smaller setbacks than already allowed. A fair and substantial relationship exists
187 between these general public purposes and the application of the reduced setbacks to this property.”

188 Attorney Spector-Morgan asked if any of the Board members had any questions, concerns, or changes
189 regarding this section of the Notice of Decision.

190 Mr. Henry and Mr. Schneider said that they had none.

191 Mr. Neuwirt said that he thinks that there should be more specifics as it says: “The general purposes of
192 setback ordinances are to prevent overcrowding, prevent overbuilding, and prevent safety issues; goals
193 which are made even more difficult to achieve given that this is a nonconforming lot.” There is more
194 merit to the argument if there are specifics about what is overcrowding, what is overbuilding, and what
195 are safety issues.

196 Mr. Lyons said that there have been two fires in town, though technically one was just on the other side
197 of the town line, but both involved structures where there was a primary fire and then a structure next
198 door was damaged and fortunately saved. The first fire was the Georges Mills General Store which was
199 four or five years ago. The Town has an excellent Fire Department but they are voluntary and response
200 times vary and it takes time for fires to be noticed. A bigger building gets a bigger fire and in this
201 instance the structure burned and there was a house approximately 20 yards away that sustained heat
202 damage from the fire. On Otter Pond, there was another fire which started when someone was trying
203 to thaw pipes and they lost the entire structure and you could clearly see the smudge marks on the
204 house next door. With a small subdivision with big houses there is a very good chance of fires leaping

205 from one structure to another; it takes a while for fires to be noticed and it takes a while for the Fire
206 Department to arrive.

207 Mr. Schneider said that Mr. Neuwirt asked how overcrowding is defied and it is defined by what is in the
208 Zoning Ordinance as it was created in part to deter overcrowding which is why there are setbacks and
209 other dimensional Variances and requirements. To the extent someone wants to do something not
210 permitted in the Zoning Ordinance, there needs to be a reason specific to the property for that request
211 to be granted. In his mind, the definition of overcrowding is in the Zoning Ordinance with the setbacks
212 and dimensional controls.

213 Mr. Henry said that there is no defined distance for fires, it is in the eye of the beholder looking at the
214 total package; the Board looked at the total, not a given number.

215 Vice Chair Claus said that he agrees with the safety and with the overcrowding he does agree that the
216 Zoning has different districts and different setbacks to create the density in the area so those are the
217 controlling factors.

218 Attorney Spector-Morgan suggested some language to add to the Notice of Decision to go before the
219 last sentence: "The Board has seen these concerns play out with two fires in Town in recent years. The
220 Town has a volunteer Fire Department and its response time varies." Mr. Lyons said that technically the
221 second fire occurred in New London, the development is mostly in Sunapee and one structure is in New
222 London which is the one that burned. Attorney Spector-Morgan continued: "Houses close to property
223 lines present a greater danger of fires leaping from one structure to another". The Board agreed with
224 these changes.

225 Vice Chair Claus continued to read from the Notice of Decision:

226 ***"The Proposed Use Is Not a Reasonable One.***

227 The proposed size of the house is simply not reasonable, given the size of the lot and the ability of Berg
228 to build a smaller, more conforming house on the lot. This is evidenced by the fact that Berg has
229 submitted a new variance application which is more conforming with the side setbacks than is the
230 present proposal. No unnecessary hardship would result from the denial of the variance."

231 Attorney Spector-Morgan asked if any of the Board members had any questions, concerns, or changes
232 regarding this section of the Notice of Decision and the Board did not have any changes.

233 Vice Chair Claus continued to read from the Notice of Decision:

234 ***"The Height Variance***

235 Because this is a nonconforming lot with reduced setbacks, the Sunapee Zoning Ordinance imposes a 25
236 foot height limit within those reduced setbacks. The proposed house has a height of 35 feet – 9 feet
237 taller than the existing house.

238 We addressed this variance after we had addressed and denied the setback variances. Given that those
239 variances had been denied, this Board suggested that Berg withdraw the request for a variance from the
240 25 foot height restriction until a new plan reflecting the denied variances was submitted. Berg's
241 engineer asserted that "if he must go back and redesign this house, he would like to have more
242 guidelines to know what he is able to do." This Board, however, does not make advisory decisions on
243 plans that have not yet been drawn, much less reviewed the board. We therefore denied the requested
244 variance.

245 We believe this request to be moot, given our denial of the setback variances. Should the Court find
246 that we erred in denying those variances, we understand that we will need to reconsider the height
247 variance on its merits.

248 Vice Chair Claus asked if any of the Board members had any comments.

249 Mr. Henry said that the issue he had with the height is that after denial of the Variances without a house
250 plan that the Board could approve and what the height could be, the applicants just wanted the height
251 approved. He does not see that as a legitimate request with nothing presented to make a decision on.
252 Mr. Neuwirt said that the Board is not an architectural review committee and applicants should not
253 have to a plan of a house to see if the Board likes it or not. Mr. Henry disagreed. Mr. Neuwirt said that
254 there is a building on the lake with all flat roofs that people do not like, it does not necessarily matter if
255 the Board agrees with the architectural plan. Mr. Henry said that it is not the architectural plan, it is if
256 the plan exceeds the limits that are allowed. Mr. Neuwirt said that is what the Variance applicant is
257 addressing; it is saying that the proposed plan is going to exceed that. Attorney Spector-Morgan said
258 that she thinks that what Mr. Henry is saying is that since the side Variances were denied, this becomes
259 a hypothetical height Variance as they have to redesign the house to better meet the side setbacks and
260 until that is done the Board does not know what the height Variance is. Mr. Henry agreed with Attorney
261 Spector-Morgan.

262 Attorney Spector-Morgan said that if the Board agrees with the Decision, they will need to make a
263 motion to accept it, second the motion, and then vote on it.

264 **Mr. Lyons made a motion to adopt the Notice of Decision as amended. Mr. Schneider seconded the**
265 **motion. A roll call vote was taken: Mr. Henry voted yes; Mr. Lyons voted yes; Mr. Schneider voted**
266 **yes; Mr. Neuwirt abstained, and Vice Chair Claus voted yes. The motion passed with four in favor.**

267 Attorney Spector-Morgan said that she will be revising the Notice of Decision and sending it to the Town
268 Office to be sent to Vice Chair Claus for his signature.

269 Vice Chair Claus asked Chairman Simpson to act as Chair for the remainder of the meeting.

270 Daniel Schneider signed out of the meeting.

271 **REQUEST FOR REHEARING:**

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

276 George Neuwirt resigned as an Alternate Member and signed out of the meeting.

277 Clayton Platt recused himself from the case.

278 Mr. Lyons made a motion to appoint Carol Wallace as a voting member. Vice Chair Claus seconded the
279 motion. The motion passed unanimously.

280 Attorney Barry Schuster presented the request for the rehearing.

281 Attorney Schuster said that he has requested a rehearing for the applicants due to two primary points.
282 One has to do with the Spirit of the Ordinance and public interest. He included a letter from Norma
283 Skantze, a consultant with Fire Risk Management who has spent a lifetime in fire management and fire
284 safety and his opinion is clear that the reconstruction of this house will improve fire safety because it
285 will include new building code provisions and protections; it really does serve the Town to have a new
286 building. The consultant's opinion is firm and he cites the residential building code which states that
287 building a house with a 6 ft setback complies with the building code as it applies to the Town and the
288 State. The consultant sees that given the condition of the structure that rebuilding it as proposed is a
289 significant improvement in the White Shutters area and in the Town.

290 Chairman Simpson said that this is not a reconstruction, it is a rebuilding as reconstruction is a term in
291 the Zoning Ordinance. Attorney Schuster agreed and said that this will be a completely new building
292 that will comply with codes which is the reason Mr. Skantze sees it as a significant improvement.

293 Attorney Schuster said that this issue was brought up during deliberations so there was no opportunity
294 to provide this information during the hearing so they consider it new information that will assist the
295 Board in its deliberations.

296 Attorney Schuster said that there was also a reference that he included that was from the Berg case as
297 to how the Superior Court defined the hardship and it is not what was stated by the Board when they
298 decided on the Shea / Weiss case. It is that the proposed use is reasonable and that the Variance does
299 not necessarily need to be necessary but that it is reasonable. As per the third page of his letter, the
300 Court stated in Berg that the proposed use is reasonable considering the property's conditions and not
301 the Variance was necessary. For this case it is a reasonable request to construct the building with a 6.5
302 ft setback, it may not be necessary but the Court said that is not the standard, the standard is if it is a
303 reasonable use. Given the improved fire safety of a new house, this would be a reasonable way to
304 approach safety on the lot and address the hardship criteria.

305 Attorney Schuster said that they are just requesting a rehearing, they are not asking for a decision on
306 the Variance at this meeting.

Chairman Simpson asked Attorney Shuster if the Board does not have to consider the hardship on the property that there is nothing that distinguishes this lot from neighboring lots. Attorney Schuster said this is an interesting issue as what are distinguishing features of this lot from other lots in this Zone; this is a lot that is quite different from other lots in this Zone. For instance, there may be 10 houses in Town on a steep slope and they may be in different areas but they may all qualify for a Variance as they would all be taken separately. For this lot, what is the difference from this lot in a residential Zone from other lots; this lot is a tenth of an acre where the Zone requires more than an acre, that may apply to several lots in the Zone but it is comparing this lot to other lots in the particular Zone. This is a pre-existing non-conforming lot and there may be others like this but it is comparing this lot to other conforming lots and for that reason a Variance is required. It is because of the hardship of the slope and size that the Variance is required. Chairman Simpson asked if it this is true that this is not about other lots in the Zone but about other lots in the area. Attorney Schuster said that he does not know if that is the case, he thinks that it is what distinguishes this lot from other lots. In the area, in the neighborhood and across the street, there are bigger lots so it may be that there are other similar lots in the White Shutters development that may all share the hardship but other lots along the road are all in the area and when you drive down the road you will see the larger lots. Therefore, this lot is being compared to other lots in the neighborhood and all around there are different sized houses on much larger lots so this lot is quite distinguished from other lots along the road. Chairman Simpson asked if Attorney Schuster denies that it is how the Board defines the area. Attorney Schuster said that the Board can always set its own standards to some degree as long as they comply with the Variance standards. Chairman Simpson said that the language quoted from the Berg decision includes the term "area", not Zone. Attorney Schuster said that it is how area is defined.

Ms. Wallace asked what the Board will hear differently than what was originally presented. Chairman Simpson said that Attorney Schuster needed to elaborate on what information the Board did not have and he thought that Attorney Schuster said it is the information from the fire consultant. Attorney Schuster said that was not an issue that had come up during the public hearing. He would ask Mr. Skantze to participate and explain in first person his experience and why he thinks building this house would be in the public interest and observe the spirit of the Ordinance with a much safer house. He thinks that fire safety would go towards some of the concerns in the previous discussion and the Board will get direct information on fire safety.

Chairman Simpson asked and there were no additional comments or questions from the Board for the applicant. Chairman Simpson closed the meeting to public comments.

Mr. Lyons said that on the basis on what Attorney Schuster said, one of the things that sparks a rehearing is new information that the Board did not have. He does not think that the Board misunderstood the facts, however, there is new information that the Board did not have at the time they made their decision.

Mr. Munn said that the Board was not presented this information at the first hearing so he thinks the rehearing sounds reasonable.

345 Vice Chair Claus said that on the fire issue it is a moot point because any new construction will have
346 improved fire safety based on code. They will not be doing anything special with that home regarding
347 the size of the home. He does not see how this information improves the case or changes the
348 presentation.

349 Chairman Simpson said that he thinks hardship played a part of the Board's decision and it parallels with
350 what Vice Chair Claus is saying as any new home will lend itself to a more fire compliant design and
351 materials. He thinks that it is relevant to determine if this one issue of fire safety is the only reason the
352 Board denied this request as contrary to the spirit of the Ordinance.

353 Ms. Wallace said that if the Board looks at the reasons for a rehearing, the Board did not misapply the
354 law but there is new information, if there is new information then the Board should consider a
355 rehearing.

356 **Mr. Lyons made a motion to approve to rehear the case. Mr. Claus seconded the motion. A roll call**
357 **vote was taken: Vice Chair Claus voted no; Mr. Munn voted yes; Ms. Wallace voted yes; Mr. Lyons**
358 **voted yes; Chairman Simpson voted yes. The motion passed with 3 in favor and 2 opposed.**

359 **CONTINUED:**

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

363 Chairman Simpson said that given the Board granted a rehearing for the Variance he thinks that it is
364 appropriate to continue the case.

365 **Ms. Wallace made a motion to continue the case. Mr. Lyons seconded the motion. A roll call vote**
366 **was taken: Mr. Munn voted yes; Ms. Wallace voted yes; Mr. Lyons voted yes; Vice Chair Claus voted**
367 **yes; Chairman Simpson voted yes. The motion passed unanimously.**

368 **NEW CASES:**

369 **CASE ZBA: 21-13: PARCEL ID: 0140-0026-0000, PARCEL ID: 0140-0029-0000 & PARCEL ID: 0140-0025-**
370 **0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A REDUCTION OF LOT SIZE**
371 **FOR PARCEL ID: 0140-0026-0000 FROM 1.80 ACRES TO 1.10 ACRES WHERE 1.50 ACRES IS REQUIRED.**
372 **SALLY M ELDREDGE 1997 REVOC TRUST & JOHN C. MCCRILLIS REVOC LIVING TRUST; 10, 12, & 18**
373 **BURKEHAVEN LN; RURAL RESIDENTIAL ZONE**

374 Mr. Lyons and Mr. Platt recused themselves from the cases.

375 Vice Chair Claus made a motion to appoint Mr. Henry as a voting member. Mr. Lyons seconded the
376 motion. The motion passed unanimously.

377 Vice Chair Claus made a motion to appoint Carol Wallace as a voting member. Mr. Lyons seconded the
378 motion. The motion passed unanimously.

379 Attorney DiPadova presented the case with David McCrillis and Chris Eldredge's verbal permission as
380 trustees of the trusts.

381 Attorney DiPadova asked Clayton Platt to give a brief background of the proposal as he did the survey.

382 Mr. Platt said that he started this project in 2007 and it has been reviewed by the Town numerous
383 times. It seems like a complicated situation but it is actually simple. They are trying to divide the
384 ownership of the properties between the McCrillis family and the Eldredge family and to do that as
385 cleanly as possible. He thinks that when this project is done it will be better for the Town and for the
386 owners. He thinks that this is similar to Variances that have been granted in the past for long time
387 families who are trying to adjust things between themselves; for example, the Bissells by the Yacht Club;
388 Sandy Alexander who received a Variance to reduce the frontage down by Granliden; and the Hill
389 boathouse that was granted approval to be separate from their house on a small lot in the late 1990s so
390 it seems to be in the spirit of the Ordinance.

391 Chairman Simpson asked and Mr. Platt said that the 1.8 acre lot is the big lot called the Orchard House;
392 currently both the boathouses are part of that lot. Per the plan, the green hatched strip will be
393 subdivided from Lot 26 and attached to the Cross Cottage (Lot 25) and the orange hatched strip will be
394 subdivided from Lot 26 and attached to the Haddock Cottage (Lot 29) to make that lot a little bigger.

395 Vice Chair Claus asked and Mr. Platt said that everything that is hatched and everything that says 1.10 in
396 the middle is currently part of one property. It is a fairly large property and all properties are jointly
397 owned by the McCrillis and the Eldredge Trusts. The hatched pieces will be going off the Orchard House
398 lot and going to the other lots. Vice Chair Claus asked and Mr. Platt confirmed that the large lot will be
399 going from 1.8 acres to 1.1 acres and the other properties will get bigger. Chairman Simpson asked and
400 Mr. Platt said that the Haddock House is only 0.20 acres right now and the other lot is currently 0.60
401 acres.

402 Attorney DiPadova said that the Haddock Cottage (Lot 29) has historically been used by the McCrillis
403 family and at the bottom of the plan there are two boathouses, one is labeled the "McCrillis boathouse"
404 which has historically been used with the 0.20-acre lot and the other is labeled the "Eldredge
405 boathouse" which has historically been used by the Cross Cottage (Lot 25). One feature that is unique
406 about this property is that the Eldredge boathouse is actually deeded to the Haddock Cottage (Lot 29) so
407 it is physically located on the Orchard lot (Lot 26) but there is a separate deed that is referred to in his
408 materials that deeds the Haddock Cottage along with the Eldredge boathouse to the McCrillis'. The goal
409 is to adjust the boundary lot lines so the properties are consistent with the historical use of the way the
410 families have used the properties over the last 60 years and the boathouse has been there since
411 probably the early 1900s.

412 Attorney DiPadova said that looking at the Variance criteria and how it applies to the difference
413 properties, a size Variance has to be requested because the 1.80-acre lot is going to become smaller; it
414 will still be more than an acre but the 0.20 acre lot will be going up to 0.60 acres and the 0.60 acre lot
415 will be going up to 0.80 acres. They have also created the orange hatched area at the bottom (Lot 29A)

416 which will not be a separate lot but will be attached to the Haddock lot (Lot 29) and contain the McCrillis
417 boathouse.

418 Chairman Simpson asked and Attorney DiPadova confirmed that there will not be any waterfrontage
419 attached to the Orchard lot (Lot 26). Chairman Simpson asked and Attorney DiPadova said that he
420 believes that they will maintain easements from the Orchard lot to the shore. Attorney DiPadova asked
421 and Mr. Platt said that the lot currently does not have any easements because they own the whole
422 shorefront.

423 Attorney DiPadova said that granting the Variances will not be contrary to the public interest because in
424 this case two non-conforming lots are being larger and less non-conforming. From the public's
425 perspective, nothing will change, so looking at the outside in, no one will notice anything different.
426 There will not be any added structures, there will not be a change of use, and there will not be any
427 higher traffic. There will still be same families using the properties and the same three lots. The only
428 change will be moving the boathouses so they are attached to the lots where they have historically been
429 used. There would be no disadvantage to anyone in the public by granting these Variances.

430 Attorney DiPadova said that if the Variances are granted the spirit of the Ordinance will be observed as
431 these are lots in a residential district. The proposed Variances will preserve the character of the
432 neighborhood, preserve the historic use of these lots as single-family residences as they always have
433 been as there not be any additional development, and all the structures will be staying the same and the
434 use will stay the same.

435 Attorney DiPadova said that the purpose of the Zoning Ordinance is to preserve the health, safety, and
436 general welfare of the community by encouraging the most appropriate use of the land which is what
437 they are trying to do. The family has owned the land for the past 60 years and they have used it in the
438 same way; they are not asking to change the character by growing the property or buildings so they are
439 observing the spirit of the Ordinance. They are trying to conform the lot lines to the historic usage.

440 Attorney DiPadova said that granting the Variances would do substantial justice because if there is harm
441 to the abutters that outweighs the advantage to the applicants then that is not substantial justice but if
442 there is no harm to anyone in the public or the abutters and there is a disadvantage to the applicants in
443 not granting it then substantial justice would not be done. In this case, substantial justice is done as
444 there will be no changes that affect anyone in the public and there are several abutters who support the
445 proposal.

446 Attorney DiPadova said that the values of the surrounding property would not be diminished as from
447 the outside looking in nothing will change as there will still be the same three buildings and the same
448 two boathouses and the same people and the same number of people who are using the shorefront or
449 cottages.

450 Attorney DiPadova said that the literal enforcement of the Ordinance will result in unnecessary hardship
451 to the applicant as owing to the special conditions of the property that distinguish it from other
452 properties in the area or other properties in the environment. In this case, there is a boathouse that is

already connected to the lot in the back. They are asking to switch the boathouses and have one connected to the lot in the back and one connected to the lot on the side. One of the unique features about this property is the existence of a free-standing boathouse that is deeded to a 0.20 acre lot in the back. This would correct that in some way as they will be adding the additional shorefront lot that will be annexed to the Haddock lot and each boathouse would have shorefront associated with it as one of the boathouses does not have any shorefront associated with it. This is what makes this unique and this extra area of shore frontage attached to the Haddock lot will be needed to remedy that.

Attorney DiPadova said that there is no fair and substantial relationship that exists between the general purposes of the Ordinance provisions and the specific application of those provisions to the property because Sections 4.33(b)(6) and (b)(7) are designed to prevent someone having a small lakefront parcel that is attached to a large parcel in the back where someone will build a condominium or something where there are multiple people living there. This is not the case here so there is no fair and substantial reason to apply this rule to this case because it is the same two families and the same three houses. In all the years they have owned the properties they have not asked to expand into the setbacks, raise the height, etc., they have maintained and improved the original cottages that have been on the lots. He thinks these regulations were designed to prevent big buildings to use a small shore frontage which does not apply in this case.

Attorney DiPadova said that the proposed use is a reasonable one and that is all that needs to be established. It is the same use that the families have had for the last 60 years and there will be no new lots of record created as Lot 29A would be attached to the Haddock lot. Also, the Eldredge boathouse is deeded and currently taxed to the Cross lot. They need to redo the legal boundaries so that they conform to the historic use of the properties.

Chairman Simpson asked and Attorney DiPadova explained that Sections 4.33(b)(6) and (b)(7) are the section of the Ordinance where they are seeking a Variance. Section 4.33(b)(6) says "rights to gain access to a water body by or through a Shore land lot shall not be created or attached to any real estate. Waterfront access shall be gained only in accordance with the standards set forth below and subject to Planning Board approval" and Section 4.33(b)(7) sets the standards where there needs to be 200 ft minimum of shore frontage. They are asking to have less than 200 ft and to have the orange hatched section of shore front attached to the lot in the back which is the Haddock lot. When he says that Sections 4.33(b)(6) and (7) do not bear a substantial relationship to the applicants because it is not what he reads that section of the Ordinance was intended.

Attorney DiPadova said that there is no injury to any private or public rights to others as the neighbors seem to be OK with this and no one will know anything is different. The only thing that will be changing in this case are the deeds; nothing on the ground will be changed. They are not asking for a use Variance or a setback Variance or anything else; nothing will change. It seems like the reasonable thing to do to adjust the boundary lines to conform with the way the families have treated these lots historically.

490 Chairman Simpson asked if the proposal presumes that the land is not going to be sold. Attorney
491 DiPadova said that there is not an intention to sell any of the properties, however, if the land were to be
492 sold, they would still be limited to the three cottages and the same number of people using them. There
493 would not be a way to increase the use of the property that anyone else would notice without coming
494 before the Zoning Board or Planning Board and asking to make a change. What will happen here is the
495 McCrillis family will be deeded their lot and the Eldredge family will be deeded their lot so if one family
496 decides to sell nothing will change in terms of the use as the boathouses will be maintained by the same
497 cottage as they historically have been used.

498 Ms. Wallace asked if there is a way to create access for the Cross property without diminishing shore
499 front that is currently being allocated to the Haddock lot and to be able to maintain the required
500 amount of waterfront. Attorney DiPadova said that if they annex any frontage to the Haddock lot there
501 would be less than 200 ft. Mr. Platt said that the line for the boathouses was set due to State rules for
502 boat slips and using the boathouse as there needs to be 20 ft on either side of a dock to meet the State
503 regulations and have access to the docks.

504 Attorney DiPadova said that the Tara Hall subdivision that was approved in the late 1990's that basically
505 is the same thing as there is a back lot with a small shore front lot that has a boathouse and they are
506 considered one lot. Chairman Simpson said that he thought Attorney DiPadova said that this case was
507 unique. Attorney DiPadova said that what they are trying to do is unique because the boathouse itself,
508 without any shore front, is deeded to the back lot.

509 Ms. Wallace asked and Attorney DiPadova confirmed that the Eldredge boathouse is going to the Cross
510 property and the McCrillis boathouse will be going to the Haddock property. Ms. Wallace asked what
511 happens to the Orchard property as there will no longer have any waterfront. Attorney DiPadova said
512 that property is owned by the applicants and will be retained under mutual ownership. Chairman
513 Simpson asked and Attorney DiPadova said that it is not really necessary to have easements for the
514 families at this time.

515 Ms. Wallace asked and Attorney DiPadova confirmed that the driveway easements will be reserved. Ms.
516 Wallace asked and Chairman Simpson confirmed his question was related to easements to the
517 waterfront. Chairman Simpson said that is what 4.33(b)(6) addresses.

518 Chairman Simpson asked why the shorefront lot is not staying with the current lot. Mr. Platt said that is
519 how the owners want it. There are two lots with shore front now and there will be two lots with shore
520 front; they are not increasing the density of the shorefront with their proposal. Ms. Wallace said she
521 thought all the shorefront was with the Orchard lot. Mr. Platt said that the Cross lot has a small shore
522 front piece on the other side of the boathouse which is approximately 57 ft. They do not need a
523 Variance for that shore front as their area will actually get bigger.

524 Chairman Simpson asked and Mr. Marquise said that he has looked at this proposal many times. He
525 does not have any comments about it except that the concept of merging the Haddock lot with the
526 shore front may not be possible. They can be considered together, however, cannot be merged for
527 other purposes. This is why they have been asked to submit a Variance for that to be its own lot of 0.08

528 acres. Vice Chair Claus said that was something he questioned as he did not know if there could be two
529 separate lots counted as one. Chairman Simpson asked if this would mean the dock could be sold
530 without it being attached to a property. Mr. Marquise said that he thinks it will need to be looked at as
531 a separate lot but there could be a requirement that they have to be deeded together. He does not
532 think that they can be merged as they are separated. Mr. Platt said that he thinks that they are looking
533 for a condition that the boathouse lot cannot be deeded separately from the Haddock lot.

534 Chairman Simpson asked and Mr. Platt confirmed that the subdivision will need to go to the Planning
535 Board for approval.

536 Vice Chair Claus asked and Mr. Platt said that the condition of approval would be that the McCrillis
537 boathouse lot would not be deeded separately from the Haddock lot. This is similar language to when
538 there is a lot that is annexed to another.

539 Ms. Wallace asked if the boathouse and dock should also be hatched and Mr. Platt explained that he
540 does not usually count things in the State waters. Ms. Wallace asked and Mr. Platt confirmed that they
541 are part of the Lot 29A parcel. Chairman Simpson asked and Attorney DiPadova confirmed that they are
542 looking for that as a condition of approval.

543 Chairman Simpson asked and Mr. Henry did not say that he had any questions or comments.

544 Ms. Wallace asked if the people who use the Orchard house will use the waterfront and if that will
545 create an issue with the properties they will be traversing. Attorney DiPadova said that the Orchard
546 property and the Cross property will be jointly owned as it is now. Chairman Simpson asked and
547 Attorney DiPadova confirmed that there are no easements, it has been permissive. Ms. Wallace asked
548 and Attorney DiPadova confirmed that no easements are being requested at this time. Chairman
549 Simpson asked and Attorney DiPadova said that they are not asking for the Orchard lot to have any
550 rights to use either of the shore front lots. Chairman Simpson asked what should be done in the future
551 if this becomes an issue and Attorney DiPadova said that if the owners want to sell the property in the
552 future they would have to come before the Zoning or Planning Board for approval.

553 Ms. Wallace said she is concerned with shrinking the waterfront and making it less than the required
554 200 ft and setting a precedence for the future. Attorney DiPadova said that in this case it is being done
555 due to the unique circumstances and if someone wanted to do it in the future it would have to be
556 because of unique circumstances which is what he assumes happened in the Tara Hall case. The Board
557 can point to the uniqueness of the situation with this case if anyone wants to do this in the future.

558 Chairman Simpson asked and Attorney DiPadova said that the deed for the Haddock lot and boathouse
559 to the McCrillis' was from 1963 and the boathouse was put built in the early 1930's and attached to the
560 Haddock lot then.

561 Michael Jewczyn said that he lives on Burkehaven Lane and noticed on the survey that the property lines
562 are drawn through the road and asked if they are saying that the applicants own that part of the road.
563 Mr. Platt said that he believes that they do and it is an easement through the road. Mr. Jewczyn said

that it is a private road that everyone uses. Mr. Platt said that everyone has the right to use the road but the owners own the underlying land. Mr. Jewczyn said that the survey shows the land attached to those lots as though it is privately owned property and he does not believe they own it. Mr. Platt said that they own the land under the easement meaning they own the land with the easement for people to use it. It was a public road at one point that was thrown up and at that time everyone came together to determine how wide it would be and to get an easement on it. Mr. Jewczyn said that the road is barely passible now so if they own it they should be responsible for its maintenance. Mr. Platt said that he thinks the easement holders are jointly responsible for their access. Chairman Simpson asked if this is an issue before the Board. Mr. Jewczyn said that the survey seems to misrepresent the properties. Mr. Platt said that he believes the Orchard lot currently owns clear across the road to the shorefront as a single parcel. Attorney DiPadova said that they are not asking for any Variances that change the road. Mr. Jewczyn said that he is trying to clarify the presentation. Vice Chair Claus said that he agrees with Mr. Jewczyn as in this case the road is listed as a right of way. Mr. Platt said that a right of way is an easement. Attorney DiPadova said that a right of way and an easement are rights to pass and repass over land of someone. In this case, the abutting landowners along the road each own a piece of land on the road in front of their property and others along the road to pass and repass. Chairman Simpson said that easements do not need to be right of ways but a right of way is a type of easement. Mr. Jewczyn said that he believes the applicants have the right to travel over the road but the survey shows it as ownership of property. Mr. Platt said that Mr. Jewczyn has the right to travel over the road but the applicants own the property. Ms. Wallace said that there is part of the survey that shows that the applicants own a portion of the road and the Nickersons own the other side and further along the Cross property goes fully across the road and then further down the road half would be owned by the Orchard lot and half by Cross and then further half would be owned by the Haddock lot and half by the Orchard lot and asked if there is a better way of depicting a right of way over a lane. Chairman Simpson said that the ownership can be owned by one lot with another lot having the right to use it but if it is not well defined then the ownership it to the middle of the road. It does not eliminate the right to use the road but may eliminate the right to expand it. Mr. Jewczyn said that the existing road is only 8 ft wide. Chairman Simpson said that the right of way may be wider; a roadbed is the easement area. Ms. Wallace said that the survey shows Burkehaven Lane as a 16 ft private right of way. She just wanted an explanation that nothing is encroaching on the lane. Attorney DiPadova said that nothing about the road will change with the granting of the Variances.

Patrick Fine said that he is not an abutter but as a neighbor on the road this sounds like a very reasonable request by the two families that are trying to rationalize the ownership of the historic properties. He has no objections as he thinks that this is a reasonable request.

Mr. Jewczyn said that the factual representation is slightly misleading. Attorney DiPadova said that they have not made any representation regarding the road. They are not asking for any changes to the road or maintenance of the road, they are asking to change the lot lines. Chairman Simpson asked and Attorney DiPadova said that the ownership of the road will change but that he does not think that it changes anything with the road. Mr. Jewczyn said that he is trying to determine if they are representing that part of the road is attached to the parcels and they are claiming ownership. Mr. Platt said that they

604 will be bringing the subdivision to the Planning Board and will be happy to bring the deeds and factual
605 information regarding ownership of the road with him. Vice Chair Claus said that it is one thing to
606 approve where the line is located but another thing with the legality that everything with the right of
607 way is being honored. Mr. Platt said that there is a historical written document from 1930's that deals
608 with the property beyond the McCrillis and Eldredge properties.

609 Ms. Wallace asked the Board about setting precedence by approving the reduction of the shorefront
610 down from 200 ft. Vice Chair Claus said that the Orchard property in its current state does not meet the
611 200 ft requirement as there is 198 ft. This is already non-conforming and they are just dividing it a little
612 more.

613 Chairman Simpson closed the hearing to public comments.

614 Mr. Munn asked Chairman Simpson to share his screen.

615 Ms. Wallace said that she thinks that the initiative is well founded to straighten out the anomalies that
616 have occurred over the years. She is concerned about the shrinking of the waterfront but they are
617 moving from a non-conforming situation to a little more conforming. Chairman Simpson said that he
618 thinks that it could possibly be considered more non-conforming by dividing the shorefront lot.
619 However, they are making two lots more conforming and one lot less conforming but larger than the
620 other two lots. Ms. Wallace agreed and said that she thinks that it is an appropriate request.

621 Chairman Simpson explained the Variance requests to Mr. Munn using the plan.

622 Vice Chair Claus said that looking at the Variance requirements he agrees with the first four but the with
623 the hardship the legalities are hard for him to understand. It seems like it is a hardship as there are
624 boathouses that belong to other properties and they are trying to correct a convoluted situation so on
625 the legality side it seems like a hardship. He does not have the expertise in this but is trusting someone
626 does and can help determine if the legality of having different boathouses in front of different
627 properties. Chairman Simpson said that he cannot give Vice Chair Claus a legal opinion. Vice Chair Claus
628 said that he is not familiar with a stand-alone piece of real estate that is in State waters and the adjacent
629 property being owned by someone else. It seems cleaner to him that the property associated with the
630 boathouse would want to be the same from a legal standpoint which is why he is agreeing to the
631 hardship. The only other thing he would comment on is if the Board approves this they would have to
632 trust that everything gets documented from the legal standpoint such as the Cross cottage driveway and
633 such. Chairman Simpson said that the only thing the Board can do is impose a condition that the
634 McCrillis boathouse will go with the Haddock lot.

635 Mr. Munn asked in reference to a grandfathered situation that is convoluted where the Zoning works
636 into the proposal for the Board to determine if moving things around makes it cleaner. Chairman
637 Simpson said that he does not know if he has a good answer but the Board could reopen the meeting to
638 public comments. Vice Chair Claus asked if Mr. Munn is asking about hardship as this has always been
639 like this and has worked and can continue. Mr. Munn said that he is trying to determine how because

640 the original standards were not met how the Board can say that they cannot do it now. Ms. Wallace
641 said that would apply to any non-conforming lot.

642 Chairman Simpson said that the green hatched part that is part of Orchard house will be going to the
643 Cross cottage and the orange hatched part of Orchard house will be going to the Haddock lot. Ms.
644 Wallace said that the two smaller lots are becoming less non-conforming. Chairman Simpson said that
645 he does remember the applicants saying there are no easements. Ms. Wallace said that the survey says
646 that existing easements will be preserved. Vice Chair Claus asked if the Board could not make that a
647 condition as right now the driveway that accesses the Orchard lot has an easement which he assumes is
648 for the Cross cottage but now that property goes to the Cross lot the easement will need to change. He
649 wants to know if this can all be sorted out in the deeds. Chairman Simpson said that these issues are
650 not really ones for the Board, what is before them is the shorefront lot that they are asking for the
651 waiver from and he does not know if the Board needs to worry about what problems they may create
652 for themselves as a result of the annexation but the Board's focus should be on the shorefront lot.

653 Chairman Simpson reopened the hearing to public comments.

654 Chairman Simpson asked if Mr. Henry is present or if he had recused himself from the hearing. Vice
655 Chair Claus said that he was appointed.

656 Chairman Simpson said that it appears as though there are only four members present and the
657 applicants have the right to have the case heard by the full Board. Though Mr. Henry was sworn in, he
658 has not been able to be reached and the applicant needs three votes in favor of the applications in order
659 for them to be approved. Attorney DiPadova asked and Chairman Simpson said that it does not appear
660 as though one of the Board members is attending the meeting and there will only be four members
661 voting and the applicants need three votes in favor in order to be approved.

662 Attorney DiPadova said that there was a question about easements to the lake from the Orchard lot and
663 there are none and they are not asking for any. The driveway easements will remain as per the survey.
664 Regarding to chopping up the lakefront, the Cross lot already has a smaller lakefront part that will be
665 getting bigger. Chairman Simpson asked and Ms. Wallace said that it is on the other side of the
666 Nickerson property. Attorney DiPadova continued that the Cross lot has 57 ft of frontage and will be
667 getting bigger.

668 Chairman Simpson asked why the boathouse is shown to be in the water. Attorney DiPadova said that it
669 is attached by a walkway of cement piers in the lakebed. Chairman Simpson asked and Attorney
670 DiPadova confirmed that the applicants would accept the condition that the boathouse that will be
671 annexed to the Cross lot will not be able to be sold separately.

672 There was a discussion regarding continuing the hearing.

673 Attorney DiPadova spoke to Mr. Eldredge and Mr. McCrillis and they decided to continue the hearings to
674 ensure that they have five voting members.

CASE ZBA: 21-14: PARCEL ID: 0140-0026-0000; SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO CREATE A LOT OF 0.08 ACRES WHICH IS LESS THAN THE REQUIRED LOT SIZE OF 1.50 ACRES FOR A NEW SHORE LAND LOT (PARCEL 0140-0029-000A). SALLY M ELDREDGE 1997 REVOC TRUST & JOHN C. MCCRILLIS REVOC LIVING TRUST; 10 BURKEHAVEN LN; RURAL RESIDENTIAL ZONE

CASE ZBA: 21-15: PARCEL ID: 0140-0029-000A & PARCEL ID: 0140-0029-0000: SEEKING A VARIANCE FROM ARTICLE IV, SECTION 4.33(B)(7)(A)(I) TO PERMIT A LOT TO HAVE LESS THAN THE 200 FT OF SHORE FRONTAGE REQUIRED (LOT WILL HAVE 130 FT OF SHORE FRONTAGE). SALLY M ELDREDGE 1997 REVOC TRUST & JOHN C. MCCRILLIS REVOC LIVING TRUST; BURKEHAVEN LN; RURAL RESIDENTIAL ZONE

CASE ZBA: 21-16: PARCEL ID: 0140-0029-0000 & PARCEL ID: 0140-0026-0000: SEEKING A VARIANCE FROM ARTICLE IV, SECTION 4.33(B)(6) TO PERMIT PARCEL ID: 0140-0029-0000 TO ACCESS LAKE SUNAPEE VIA A SHORE LAND LOT. SALLY M ELDREDGE 1997 REVOC TRUST & JOHN C. MCCRILLIS REVOC LIVING TRUST; 18 & 10 BURKEHAVEN LN; RURAL RESIDENTIAL ZONE

Vice Chair Claus made a motion to continue ZBA Cases #21-13, #21-14, #21-15, and #21-16 pertaining to Parcel IDs: 0140-0026-0000, 0140-0025-0000, and 0140-0029-0000. Ms. Wallace seconded the motion. The motion passed unanimously.

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.

Changes to the minutes from April 6, 2021: The minutes were continued to the next meeting.

Chairman Simpson adjourned the meeting at 9:09 pm

Respectfully submitted,

Melissa Pollari