TOWN OF SUNAPEE - ZONING BOARD OF ADJUSTMENT
A PUBLIC MEETING WILL BE HELD TUESDAY, APRIL 16, 2024, AT 6:30 PM, AT THE SUNAPEE TOWN MEETING ROOM ON THE FOLLOWING CASE(S):

Join Us on Zoom:
https://us06web.zoom.us/j/86815145175?pwd=F6nOIyKtIZHiIwJpTc7xNicvHA4GNc.1
Password: 350211

NEW CASES

Case # SE 24-03
Parcel ID: 0238-0067-0000

Jonathan Cheng
50 Sioux Path
Rural Residential

Requesting a Special Exception from Article IV, Section 4.15 to allow for a Short-Term Rental Owner-Not-in-Residence in the Rural Residential District.

Case # SE 24-02
Parcel ID: 0131-0025-0000

Debbie Samalis
70 West Court
Rural Residential

Requesting a Special Exception from Article IV, Section 4.15 to allow for the current Single Family Dwelling Unit to be converted to an Inn in the Rural Residential District.

Case # VA 24-01
Parcel ID: 0136-0027-0000

Kate & Matt Lowrie
313 Lake Ave
Residential

Requesting a Variance from Article III, Section 3.10 to allow for a subdivision resulting in the creation of a 0.49-acre lot where a 1.0-acre lot minimum is required.

Case # VA 24-02
Parcel ID: 0104-0083-0000

Cynthia Currier
1004 Lake Ave
Village Commercial

Requesting a Variance from Article III, Section 3.10 to allow for an additional apartment to be established, reducing the density to 4,138.2 square feet per dwelling unit where a 10,000 sq. ft/du is required.

NOTE: In the event the meeting is canceled, the agenda will be continued to the next scheduled Zoning Board meeting.

Case # VA 24-03 Parcel ID: 0118-0062-0000 *Gretchen Hall* *Brett Allard - Agent* *46 Burma Rd* *Rural Residential*	Requesting a Variance from Article III, Section 3.10 to allow for an existing deck and foundation to be converted into living space. Reducing the side setback to 12.5 feet where 15 feet is required.
Case # VA 24-03 - A Parcel ID: 0118-0062-0000 *Gretchen Hall* *Brett Allard - Agent* *46 Burma Rd* *Rural Residential*	Requesting a Variance from Article III, Section 3.40(c) to allow for an existing deck and foundation to be converted into living space. Reducing the waterfront setback to 25 feet where 50 feet is required.
Case # VA 24-04 Parcel ID: 0118-0062-0000 *Gretchen Hall* *Brett Allard - Agent* *46 Burma Rd* *Rural Residential*	Requesting a Variance from Article III, Section 3.40(c) to allow for an addition of 35 square foot structure on an existing cottage within the 50-foot waterbody setback.
MISCELLANEOUS:	
OTHER BUSINESS:	Review Previous Meeting(s) Minutes.

***NOTE: Any and all submissions must be provided 5 days prior to the meeting.**

NOTE: In the event the meeting is canceled, the agenda will be continued to the next scheduled Zoning Board meeting.

Case SE 24-03
Parcel ID: 0238-0067-0000

RECEIVED
MAR – 8 2024
BY:

CASE #: 24-03
FEE PAID: $ 285.00
METHOD: Ck # 133-135

Town of Sunapee
23 Edgemont Rd., Sunapee NH
Phone (603) 763-2212 ext. 1023
Website www.town.sunapee.nh.us
Email zoning@town.sunapee.nh.us

Zoning Board of Adjustment (ZBA)
Special Exception

Questions? Please contact the Land Use & Assessing Coordinator or the Planning & Zoning Director. All dates and deadlines are published on the ZBA calendar.

1. Landowner(s) Name(s): Jonathan Cheng
2. Parcel ID: SUN-0238-0067-0000 3. Zoning District: Residential
4. Project Location (Street & #): 50 Sioux Path 238 - 67
5. Mailing Address: 24 Sparhawk Circle Stoneham MA 02180
6. Phone Number: 781-249-0984
7. Email: Jonathanc0512@gmail.com

☑ ABUTTERS LIST: You must prepare a list of all abutting property owners and attach it to your application. If you have any difficulty, consult the town office, but the accuracy of the list is your responsibility. You can download an abutters list by using the Tax Maps/GIS on the town's website (directions attached).

☑ FEES:
- ☑ Application Fee: Please See Fee Schedule Attached
- ☑ Abutter Notification Fee: Please See Fee Schedule Attached
- ☑ Newspaper Notification Fee: Please See Fee Schedule Attached

* NOTE: All checks should be made payable to the Town of Sunapee.

☑ **ATTACHMENTS**: To assist the Board, please attach sketches, photos, surveys, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior Zoning or Planning decisions concerning the property. If you have something in writing stating that your proposed project does not meet zoning, please attach that to this application; it may be a letter, email or denied permit. A professional survey by a licensed surveyor is strongly recommended for variances related to setback requirements. For properties located in the Shoreline Overlay District, a professional survey is required. Supplemental materials for the Board must be submitted no later than five (5) days before the scheduled hearing, however, adequate plans and exhibits must accompany the application. This includes, but is not limited to: lot dimensions, dimensions of proposed and existing structures, identification of abutting properties and roads, locations of water bodies, wetlands, septic systems, etc.

GENERAL DESCRIPTION: This is a place to give a general summary of the proposed project as an introduction and overview for the public hearing. For example, where is the property is located? Describe the property. Give area, frontage, side and rear lines, slopes, natural features, etc. What do you propose to do? Why does your proposal require a Special Exception from the Board of Adjustment?

See attached

Applications will not be considered complete unless all the questions are answered, the fees are paid, and an Abutters Mailing List is attached.

Attach additional sheets of paper as necessary.

EXPLAIN HOW THE PROPOSAL MEETS THE SPECIAL EXCETION CRITERIA AS SPECIFIED IN ARTICLE 4 **, SECTION** 15 **OF THE ZONING ORDINANCE** (list all criteria from the Ordinance)

Criteria 1: That the selected site is an appropriate location for the proposed use

See attached for more information

Criteria 2: That adequate and safe highway access is provided to the proposed site and that there is adequate off street parking provided for the proposed use.

See attached for more information

Criteria 3: That adequate method of sewage disposal is available at the proposed site

See attached for more information

Criteria 4: That the proposal will not be detrimental, hazardous, or injurious to the neighborhood

See attached for more information

Criteria 5: That the proposed use is consistent with the spirit of the Ordinance and intent of the Master Plan.

See attached for more information

Criteria 6: _____

Criteria 7: _____

Criteria 8: _____

SIGNATURE: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing. To the best of my knowledge, the above is true and correct.

_____ March 03, 2024

Landowner(s) Signature(s) Date

50 Sioux Path
Special Exemption

Introduction

I purchased 50 Sioux Path in October 2021. At the time I had intended on living in the house as I was moved to a full remote job due to the pandemic. I moved to Sunapee from Boston MA and stayed there until early 2022. At that time my job required me to go in part time to Boston which is when I started to list the property as an STR. However, I decided to keep the home as I still go up often in the winter and summers with my own family and friends to enjoy time up in Sunapee.

I am submitting this application for special exemption as I missed the January 1, 2024 deadline to register my property as a legacy STR. The Property is a fully functioning 3000 sq foot single family home set on 1.1 acres of land and located at 50 Sioux path. Set back from the road there is ample off street parking space.

Significant research and best practices were established following STR guidelines from platforms such as Airbnb and VRBO leading to safety and satisfaction all around. Some examples are below:

1) Minimum age to book the rental is 25 years old
2) Minimum 3-night stay
3) Wi-Fi monitoring of home Temperature and water leakages

4) Local management company "Relax and Co" hired for Cleaning, Snow removal, Trash removal, and other adhoc requests
5) Fire extinguishers and first aid kit made available to guests

Explain how the proposal meets the special exception Criteria as specified in Article 4

Criteria 1: That the selected site is an appropriate location for the proposed use
As stated by Zoning Ordinance Article 4, Section 4.10 explicitly contemplates special permits being allowed for "Short-Term Rentals Owner Not in Residence". This provision is relevant to my situation and there are many STRs in the neighborhood that have operated in a manner that has been accretive to the local community and atmosphere. As stated, I have operated prior to December 2022 successfully and safely within the neighborhood and for the guests.

Jonathan
Superhost

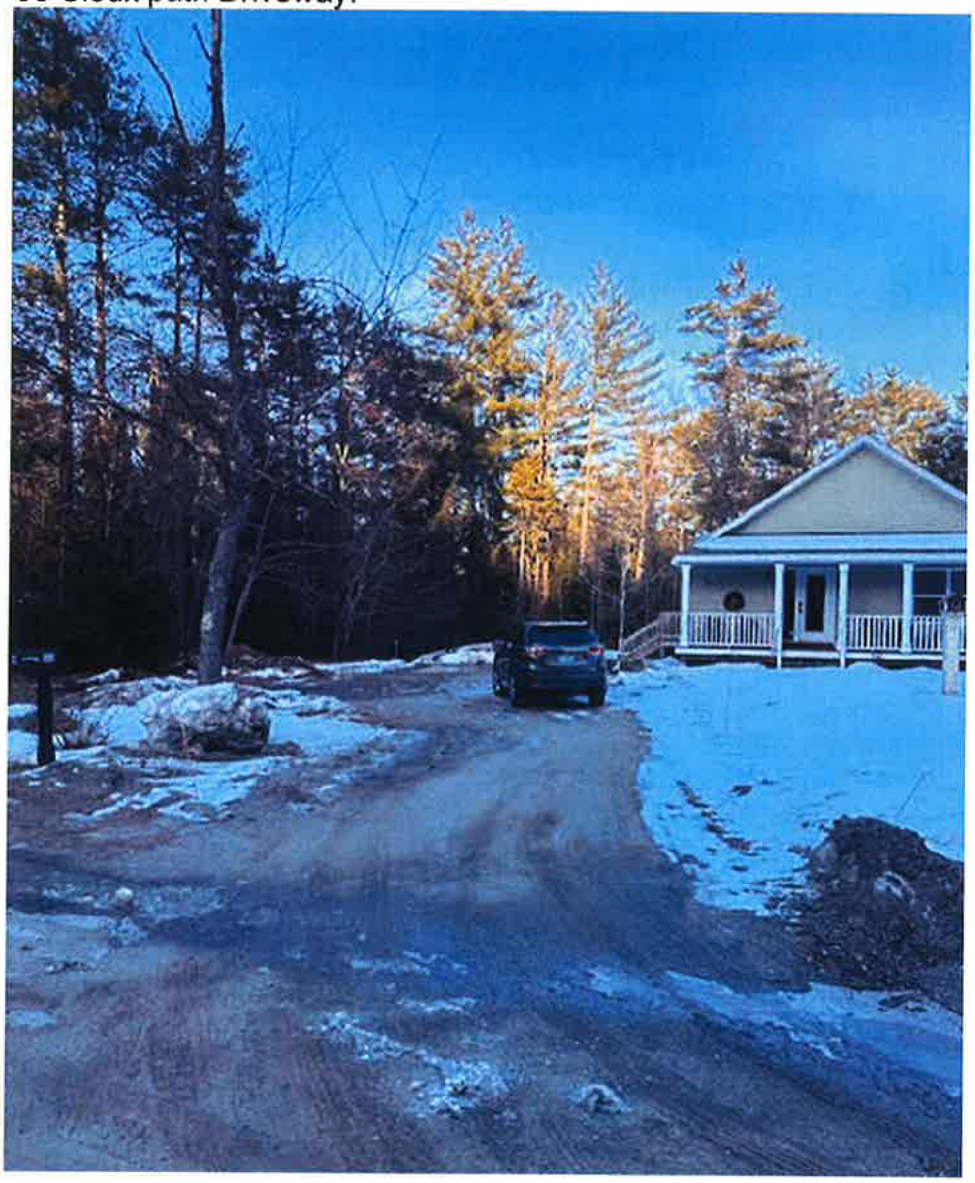
26
Reviews

4.92★
Rating

2
Years hosting

Criteria 2: That adequate and safe highway access is provided to the proposed site and that there is adequate off street parking provided for the proposed use. There is no obstruction to Sioux Path, as evidenced by the below driveway picture. There are also clear and open public street access directly to Route 103 via Penacook path → Nutting road →Bradford rd. Off street parking is more than adequate for the proposed use and snow obstructions are cleared professionally in the winter.

50 Sioux path Driveway:



Rt 103 → Bradford Rd.

Bradford Rd. → Nutting Rd.

Nutting Rd. → Penacook path

Penacook path→ Sioux Path

Criteria 3: That adequate method of sewage disposal is available at the proposed site

Per a septic system inspection done at the time of home purchase, the tank is 1500 gallon tank, and the leach field was in "Good" condition per the inspector (Full inspection in Appendix 1.1). The recommendation for pumping is every 2 years but I do them every year around November out of an abundance of caution (2022 & 2023 below)

INVOICE

Abbott Septic Service
372 River Rd
Charlestown, NH 03603

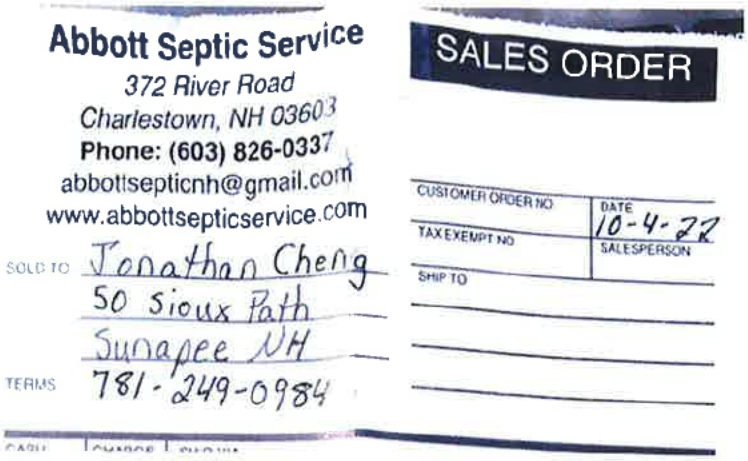
abbottsepticnh@gmail.com
+1 (603) 826 0337

Jonathan Cheng

Bill to
Jonathan Cheng
50 Sioux Path
Sunapee
NH

Ship to
Jonathan Cheng
50 Sioux Path
Sunapee
NH

Invoice details
Invoice no.: 4073
Terms: Net 30
Invoice date: 10/05/2023
Due date: 12/20/2023



Abbott Septic Service
372 River Road
Charlestown, NH 03603
Phone: (603) 826-0337
abbottsepticnh@gmail.com
www.abbottsepticservice.com

SALES ORDER

CUSTOMER ORDER NO.
DATE 10-4-22
TAX EXEMPT NO
SALESPERSON
SHIP TO

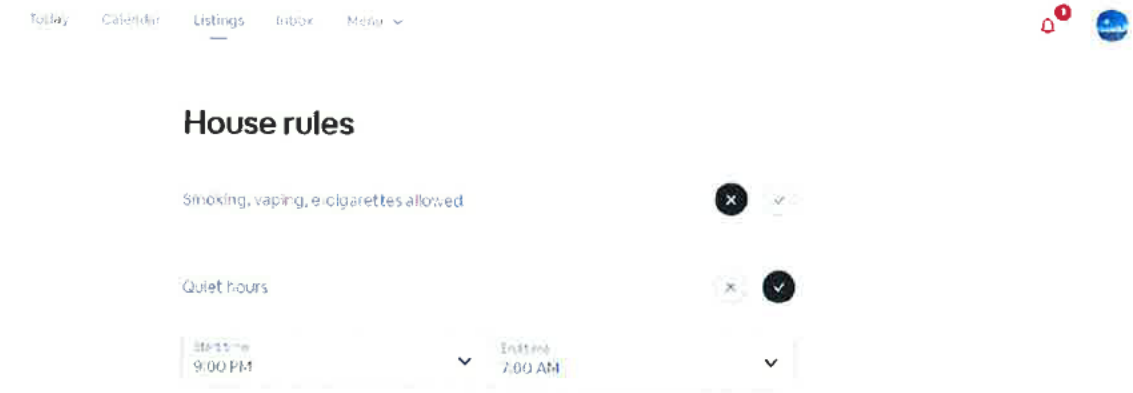
SOLD TO Jonathan Cheng
50 Sioux Path
Sunapee NH
TERMS 781-249-0984

Criteria 4: That the proposal will not be detrimental, hazardous, or injurious to the neighborhood

The proposal will not be detrimental, hazardous, or injurious to the neighborhood. It has been in operation for 2 years now operating safely and using best practices mentioned above:

1) Minimum age to book the rental is 25 years old
2) Minimum 3 night stay
3) Wifi monitoring of home Temperature and water leakages in all potential fail zones
4) Local management company "Relax and Co" hired for Cleaning, Snow removal, Trash removal, and other adhoc requests
5) Fire extinguishers and first aid kit made available to guests

In addition, house rules are set to require quiet hours within town rules (see below). No smoking is allowed and wifi cameras are placed on the outside of the house to monitor for trouble and rules are being followed. Most importantly, local companies are hired to address issues as they arise. The management company is "Relax and Co" , the plumbing company is "Sunapee Plumbing", the septic system is maintenance by "Abbot Septic", and the landscaper is my neighbor, Steve. This group ensure quick addressing of any broad scope of issues that arise and close monitoring of the property.



Criteria 5: That the proposed use is consistent with the spirit of the Ordinance and intent of the Master Plan.

The use of 50 Sioux path as a STR will bring in tax revenue as well as benefits to local business both directly and indirectly. Throughout the house local Sunapee establishments are suggested to guests to visit. Also, the businesses partnered with to support the STR are only local ones thus providing additional revenue benefits. Having the home as an STR will not adversely impact the neighborhood. Upkeep and maintenance have been consistent as evidenced by the homes Airbb high guest rating (see criteria #1).

Below in Green is how I will comply with Section 4.95 of the Ordinance. Below, in black, you will see text of Section 4.95 the Ordinance with my commentary on compliance with respect to my property at 50 Sioux path in Green.

Short-term rentals shall meet the following standards:

1) Short-term Rentals Owner-in-Residence (STR-OIR) are allowed in all zoning districts.Short-term Rentals Owner-Not-in-Residence (STR-ONIR) are allowed in all the Mixed-UseDistricts, Village-Commercial, Village-Residential, and Residential District. They are permitted only by Special Exception in the Rural-Residential District and prohibited in the Rural Lands District. Since STR registration for STR in operation prior to Dec 2022 was missed, special Exception required and applied for via this application.

2) Occupancy shall be limited to two persons per approved bedroom plus one additional person per unit. I will limit occupancy to 9-persons due to the home being a 4-bedroom residence. Please refer to Exhibit B: Excerpt From Town Property Card (summarizing tax assessment criteria)

3) The number of bedrooms used at the property must conform to the permit requirements from either the State of New Hampshire Department of Environmental Services Water Division Subsurface Systems Bureau (property on a septic system) or the Sunapee Water and Sewer Department (property on municipal sewer). As mentioned above, the property's septic system meets requirements mandated by New Hampshire Code of Administrative Rules. Note the septic is 250 gallons larger than recommended for a 4 bedroom.

4) Short-term rentals of single-family dwellings in their entirety (STR-ONIR) do not require Site Plan Review. This is relevant to my property.

5) Short-term rentals with owners in residence (STR-OIR) do not require Site Plan Review. N/A ("Not Applicable")

6) Short-term rentals with owners not in residence (STR-ONIR) in either a single-family dwelling with an additional room for rent or a two-family dwelling requires Site Plan Review. N/A

7) Short-term rentals that require site plan review may apply via the Home Business requirements (Article V, Section D) in the Site Plan Review regulations. N/A

8) Parking shall be 1 space/bedroom and a parking plan shall be submitted for review and approval. There is ample space to fit four cars in the property driveway. Please refer to the picture included as response to "Criteria 3" above.

9) The exterior of the property must maintain residential character. This criteria is met – please refer to picture of home in the cover page and this website: https://www.redfin.com/NH/Sunapee/50-Sioux-Path-03782/home/88210163

10) Short-term rentals must comply with any registration process set forth by the Board of Selectmen. Since STR registration for STR in operation prior to Dec 2022 was missed, a special Exception was required and applied for via this application .
11) A travel trailer, boat, or other mobile enclosure may not be used as a short-term rental. N/A
12) Outside trash receptacles must be screened and meet the building setbacks in the district in which they are located. Trash receptacles are heavy duty with collapsible lids set back away from visibility of the street. Three 96 gallon barrels are provided for ample space to avoid overflow. Trash pickup is conducted at the end of each stay to avoid smells and unwanted animals.

Below, in black, you will see text of proposed amendments to Section 4.95 the Ordinance with my commentary on compliance with respect to my property at 50 Sioux Path, in Green.

Amendment #9

Amend Article IV, Section 4.95 – Short-term rentals - to confirm the maximum allowed occupancy and parking, and to stipulate what accessory structures are allowed to be used as short-term rentals.

Full amended text of Section 4.95 will be as follows:

For the purposes of this section, Short-term rentals shall include any single-family residence, two-family residence, or single-family residence with an additional room for rent. It shall not include bed & breakfasts, inns, or hotels/motels.

Short-term rentals shall meet the following standards:

1) Short-term Rentals Owner-in-Residence (STR-OIR) are allowed in all zoning districts. Short-term Rentals Owner-Not-in-Residence (STR-ONIR) are allowed in all the Mixed-Use Districts, Village-Commercial, Georges Mills Village-Commercial, Village-Residential and Residential Districts. They are permitted only by Special Exception in the Rural- Residential District and prohibited in the Rural Lands District. Since STR registration for STR in operation prior to Dec 2022 was missed, special Exception required and applied for via this application.
2) Occupancy shall be limited to two persons per approved bedroom the number of bedrooms shown on the town assessing property card plus one additional person per unit. At no time shall a STR have an occupancy greater than 16 persons. I will limit occupancy to 9-persons due to the home being a 4-bedroom residence. Please refer to Exhibit B: Excerpt From Town Property Card (summarizing tax assessment criteria)
3) The number of bedrooms used at the property must conform to the permit requirements from either the State of New Hampshire Department of Environmental Services Water Division Subsurface Systems Bureau (property on septic system) or the Sunapee Water and Sewer Department (property on municipal sewer). As described above, the property's septic system meets requirements mandated by New Hampshire Code of Administrative Rules. Additional details available upon request.
4) Short-term rentals of single-family dwellings in their entirety (STR-ONIR) do not require Site Plan Review. This is relevant to my property.
5) Short-term rentals with owners in residence (STR-OIR) do not require Site Plan Review. N/A
6) Shore term rentals with owners not in residence (STR-ONIR) in either a single-family dwelling with an additional room for rent or a two-family dwelling requires Site Plan Review. N/A
7) Short-term rentals that require Site Plan Review may apply via the Home Business requirements (Article V, Section D) in the Site Plan Review regulations. N/A

8) Parking shall be 1 space/bedroom and a parking plan shall be submitted for review and approval. The number of cars on the property during overnight quiet hours specified in the Sunapee Noise Ordinance shall not exceed the number of bedrooms in the STR. There is ample space to fit four cars in the property driveway. Please refer to the picture included as response to "Criteria 3" above.

9) The exterior of the property must maintain a residential character. This criteria is met – please refer to picture of home in cover page and this website: https://www.redfin.com/NH/Sunapee/50-Sioux-Path-03782/home/88210163

10) Short-term rentals must comply with any registration process set forth by the Board of Selectmen. Special Exception required and applied for via this application
11) A travel trailer, boat, recreational vehicle, tent, or other mobile enclosure shall not be used as a short-term rental. These mobile enclosures shall also not be used to increase occupancy of the STR. N/A
12) Outside trash receptacles must be screened and meet the building setbacks in the district in which they are located. N/A

Amendment #10
Amend Article IV, Section 4.95 – Short-term rentals - to limit the amount of time a short-term rental with an owner not in residence (STR-ONIR) may be operated to 120 days during a 12-month period.
The full new text of Section 4.95(13) will be as follows:
13) An STR-ONIR shall not be operated as a short-term rental for more than 120 days in a 12-month period. Should this proposed amendment pass, I will adhere to the 120 day limit and not rent more than that in a 12 month period.

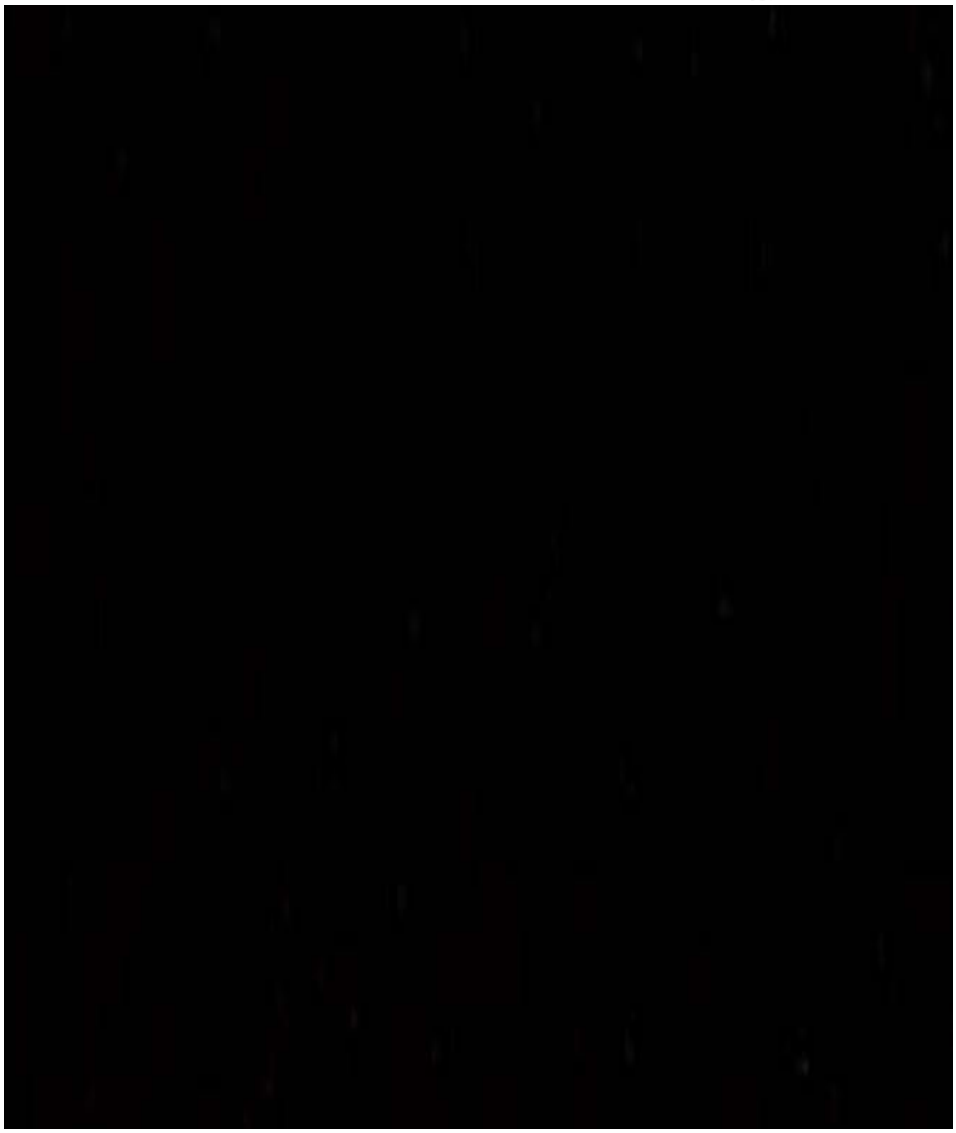
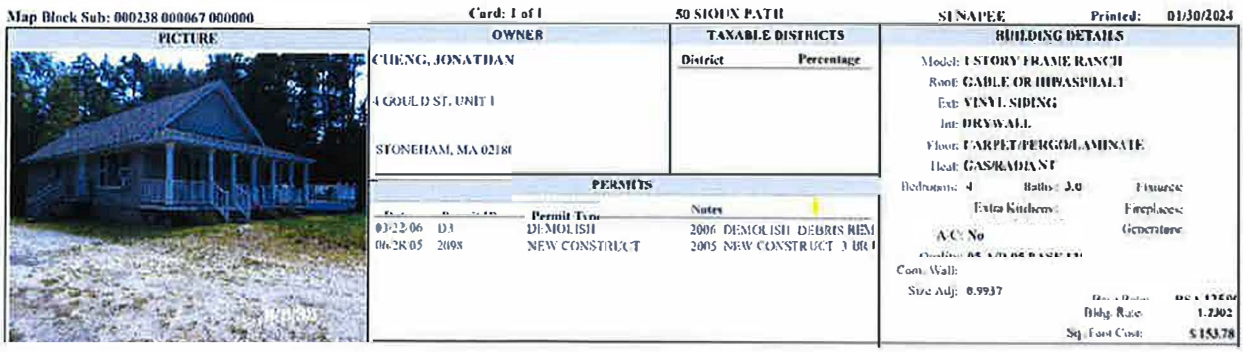


Exhibit B: Excerpt from property town card (summarizing tax assessment criteria)



Map Block Sub: 000238 000067 000000 Card: 1 of 1 50 SIOUX PATH SUNAPEE Printed: 01/30/2024

PICTURE

OWNER

CHENG, JONATHAN

4 GOULD ST, UNIT 1

STONEHAM, MA 02180

TAXABLE DISTRICTS

District	Percentage

PERMITS

		Permit Type	Notes
03/22/06	D3	DEMOLISH	2006 DEMOLISH DEBRIS REM
06/28/05	2098	NEW CONSTRUCT	2005 NEW CONSTRUCT 3 UR

BUILDING DETAILS

Model: 1 STORY FRAME RANCH
Roof: GABLE OR HIP/ASPHALT
Ext: VINYL SIDING
Int: DRYWALL
Floor: CARPET/PERGO/LAMINATE
Heat: GAS/RADIANT
Bedrooms: 4 Baths: 3.0 Fixtures:
Extra Kitchens: Fireplaces:
A/C: No Generators:
Com. Wall:
Size Adj: 0.9937
Bldg. Rate: 1.2302
Sq. Foot Cost: $153.78

Exhibit C: Septic operational approval

Water - Subsurface Onestop - Application Detail

Return to Query | Return to Result

Work Number:	199802329
Status:	APPROVED FOR OPERATION
Application Type:	CONSTRUCTION
Approval Number:	CA1998008639
Owner Name:	RICHARD GRENIER
Site Street Address:	SIOUX PATH SUNAPEE
County:	SULLIVAN
Book / Page:	640 / 334
Map / Lot:	0003 / 22
Subdivision Name:	
Subdivision Approval Number:	1571
Designer:	CARLISSE M CLOUGH GRANTHAM, NH
Surveyor:	
Installer:	NORMAN W SMITH JR NEWPORT, NH
Approval Date:	5/1/1998
Operation Date:	6/12/1998
Do Not Backfill Date:	
Bedrooms:	4
Flow:	600
Approval Conditions	1. THIS APPROVAL IS VALID FOR 90 DAYS FROM DATE OF SAID APPROVAL. 2. EXISTING SYSTEM TO BE DISCONTINUED AND FILLED.
NHDES Reviewer:	Contact NHDES at 603-271-3501

APPROVAL FOR OPERATION

N.H. DEPARTMENT OF ENVIRONMENTAL SERVICES
SUBSURFACE SYSTEMS BUREAU
P.O. BOX 95, 6 HAZEN DRIVE, CONCORD, NH 03302-0095

CA1998095639 APPROVAL NO. CA1998095639

AMENDED DUE TO:

OWNER:

RICHARD GRENIER
50 SIOUX PATH
SUNAPEE NH 03782

COPY SENT TO:

OFFICE OF SELECTMEN
PO BOX 717
SUNAPEE NH 03782

Map No./Lot No.: 0003 / 22 3/1-22
Subd. Appvl. No.: 1571
Subd. Name:
County: SULLIVAN
Registry Book No.: 640
Registry Page No.: 334
Probate Docket No.: (If Applicable)
Type of System: 4 BR 600 GPD

RECEIVED
JUN 29 1998
TOWN OF SUNAPEE

Town/City Location: SUNAPEE

Street Location: SIOUX PATH

Installer Norm Smith Permit No. 2238

☐ Owner Installed For His/Her Domicile

Was Inspected On (Date) 6/11/98
Before Covering And Is Hereby Approved For Use.

Date Approved: 6/12/98

By: Doug Dow
Authorized Agent Of N.H. Department of Environmental Services

(OVER)

Subsurface waste disposal systems must be operated and maintained in a manner so as to prevent nuisance or health hazard due to system failure. (RSA 485-A:37)

It is unlawful to discharge any hazardous chemicals or substances into subsurface waste disposal systems. Included are paints, thinners, gasoline and chlorinated hydrocarbon solvents such as TCE, sometimes used to clean failed septic systems and auto parts. (Env-Ws 410.05)

REVISED 6/97 199802329

TOWN'S

1. THIS APPROVAL IS VALID FOR 90 DAYS FROM DATE OF SAID APPROVAL.
2. EXISTING SYSTEM TO BE DISCONTINUED AND FILLED.

RECEIVED
MAY 06 1998
TOWN OF SUNAPEE

Eric Thomas

Approved this date: 05/01/98 By: ERIC THOMAS
N.H. Department of Environmental Services Staff

Date amended: _____ Amended by: _____ (C

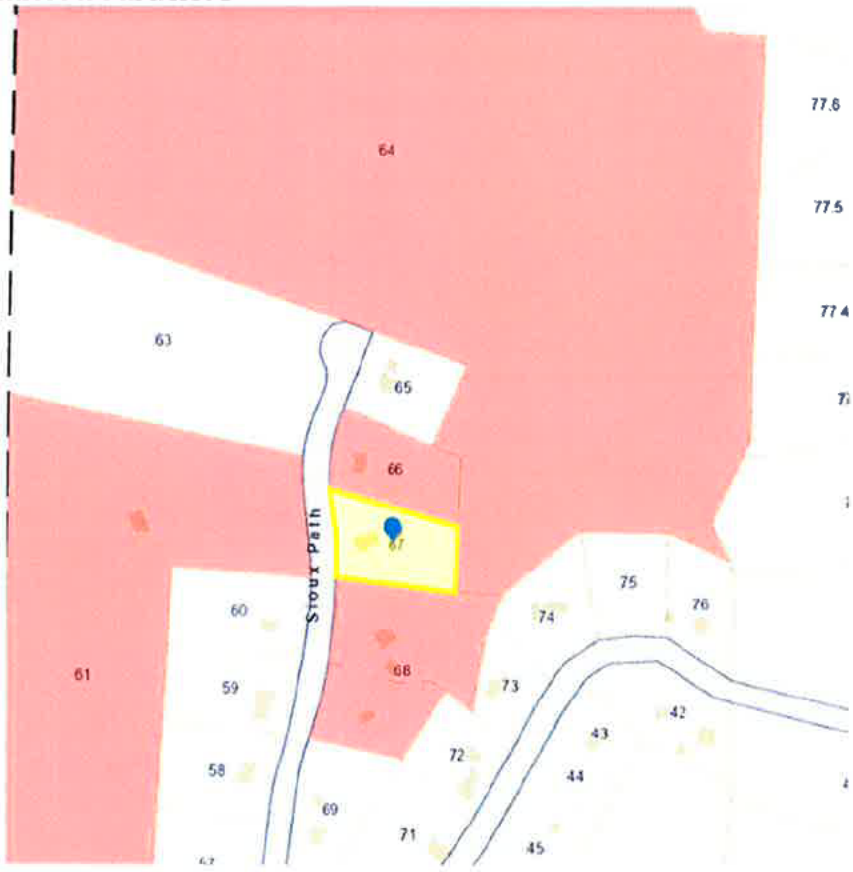
REVISED 6/97

199802329

TOWN'S

Appendix

Exhibit A: Abutters



Parcel Number	GIS Number	Cama Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner Address 2	Owner City	Owner State	Owner Zip
Sun-0238-0061-0000	Sun-0238-0061-0000	Sun-0238-0061-0000	51 SIOUX PATH	CAMBER, RUSTY J & DEBRA		51 SIOUX PATH		SUNAPEE	NH	03782
Sun-0238-0064-0000	Sun-0238-0064-0000	Sun-0238-0064-0000	SIOUX PATH	ROTH, III, WILLIAM		146 NUTTING RD		SUNAPEE	NH	03782
Sun-0238-0066-0000	Sun-0238-0066-0000	Sun-0238-0066-0000	58 SIOUX PATH	JOHN & MICH SAFFORD, CORY M & DAWN B		58 SIOUX PATH		SUNAPEE	NH	03782
Sun-0238-0068-0000	Sun-0238-0068-0000	Sun-0238-0068-0000	36 SIOUX PATH	GRAHAM, DEBORAH J & JAMES P		2 WEDGEWOOD COURT		LAKE RONKONKOMA	NY	11779

plus owner
Jonathan Cheng
21 Gould st unit 1
Stoneham MA 02180

SE 2403

JONATHAN CHENG
4 GOULD ST.
STONEHAM, MA 02180

RUSTY & DEBRA CAMBER
51 SOUIX PATH
SUNAPEE, NH 03782

W & M ROTH
146 NUTTING RD.
SUNAPEE, NH 03782

CORY & DAWN SAFFORD
58 SOUIX PATH
SUNAPEE, NH 03782

D & J GRAHAM
2 WEDGEWOOD CT.
LAKE RONKONKOMA NY 11779

JONATHAN CHENG
4 GOULD ST.
STONEHAM, MA 02180
SE24-03

RUSTY & DEBRA CAMBER
51 SOUIX PATH
SUNAPEE, NH 03782
SE 24-03

W & M ROTH
146 NUTTING RD.
SUNAPEE, NH 03782
SE 24-03

CORY & DAWN SAFFORD
58 SOUIX PATH
SUNAPEE, NH 03782
SE 24-03

D & J GRAHAM
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LAKE RONKONKOMA NY 11779
SE 24-03

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STONEHAM, MA 02180

RUSTY & DEBRA CAMBER
51 SOUIX PATH
SUNAPEE, NH 03782

W & M ROTH
146 NUTTING RD.
SUNAPEE, NH 03782

CORY & DAWN SAFFORD
58 SOUIX PATH
SUNAPEE, NH 03782

D & J GRAHAM
2 WEDGEWOOD CT.
LAKE RONKONKOMA, NY 11779

Case SE 24-02
Parcel ID: 0131-0025-0000

RECEIVED
MAR 0 5 2024
BY: .....

Town of Sunapee
23 Edgemont Rd., Sunapee NH
Phone (603) 763-2212 ext. 1023
Website www.town.sunapee.nh.us
Email zoning@town.sunapee.nh.us

CASE #: SE 24-02
FEE PAID: $ 270.00
METHOD: CHK 1674

Zoning Board of Adjustment (ZBA)
Special Exception

Questions? Please contact the Land Use & Assessing Coordinator or the Planning & Zoning Director. All dates and deadlines are published on the ZBA calendar.

1. Landowner(s) Name(s): Debbie Samalis
2. Parcel ID: 0131-0025 3. Zoning District: RR
4. Project Location (Street & #): 70 West Court Rd
5. Mailing Address: 70 West Court Rd Sunapee, NH 03782
6. Phone Number: 603-344-0100
7. Email: dsam0000@yahoo.com

☒ ABUTTERS LIST: You must prepare a list of all abutting property owners and attach it to your application. If you have any difficulty, consult the town office, but the accuracy of the list is your responsibility. You can download an abutters list by using the Tax Maps/GIS on the town's website (directions attached).

☒ FEES:
- ☐ Application Fee: Please See Fee Schedule Attached
- ☐ Abutter Notification Fee: Please See Fee Schedule Attached
- ☐ Newspaper Notification Fee: Please See Fee Schedule Attached

* NOTE: All checks should be made payable to the Town of Sunapee.

☒ **ATTACHMENTS**: To assist the Board, please attach sketches, photos, surveys, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior Zoning or Planning decisions concerning the property. If you have something in writing stating that your proposed project does not meet zoning, please attach that to this application; it may be a letter, email or denied permit. A professional survey by a licensed surveyor is strongly recommended for variances related to setback requirements. For properties located in the Shoreline Overlay District, a professional survey is required. Supplemental materials for the Board must be submitted no later than five (5) days before the scheduled hearing, however, adequate plans and exhibits must accompany the application. This includes, but is not limited to: lot dimensions, dimensions of proposed and existing structures, identification of abutting properties and roads, locations of water bodies, wetlands, septic systems, etc.

GENERAL DESCRIPTION: This is a place to give a general summary of the proposed project as an introduction and overview for the public hearing. For example, where is the property is located? Describe the property. Give area, frontage, side and rear lines, slopes, natural features, etc. What do you propose to do? Why does your proposal require a Special Exception from the Board of Adjustment?

70 W Court Rd. Single Family Dwelling converted to an Inn by Special Acceptance. 12.5 acres. lot, last house on west Court Rd. Inns allowed/permitted in R/R by special exception. Remaining houses on West Court Rd are Residential, and Inns are allowed/permitted by right.

Applications will not be considered complete unless all the questions are answered, the fees are paid, and an Abutters Mailing List is attached.

Attach additional sheets of paper as necessary.

EXPLAIN HOW THE PROPOSAL MEETS THE SPECIAL EXCETION CRITERIA AS SPECIFIED IN ARTICLE 4.15 **, SECTION** 4.15 **OF THE ZONING ORDINANCE** (list all criteria from the Ordinance)

Criteria 1: See Attaches - 5 criteria for Special Exceptions

Criteria 2: _____

Criteria 3: _____

Criteria 4: _____

Criteria 5: _____

Criteria 6: _____

Criteria 7: _____

Criteria 8: _____

SIGNATURE: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing. To the best of my knowledge, the above is true and correct.

Mabel Samaha 3-3-24

Landowner(s) Signature(s) Date

1. Bed & Breakfast,Inns are permitted by special exception,in Rural Residential Areas. My property is Rural Residential. It is also permitted by right in Residential Areas. All of West Court Road is Residential, therefore allowing Inns on any property on West Court Road.

2. There is adequate access to the proposed site and there is plenty of off street parking. I have 4 spaces in front of my house, and I have plenty of space to add more if needed. My lot size is 12.5 acres.

3. My septic system is sized for a 2 bedroom resident, yet it has a 1250 gal tank, which is oversized for a 2 bedroom, as well as my field. I have reached out to DES who has confirmed, my system is adequate for up to 4 bedrooms, and that I only need to update a design with the State, if the Special Exception is approved to convert it to Commercial Use.

4.I see no way that Approving this Special Exception will be detrimental, hazardous or injurous to the neighborhood. The house is existing, and there have been no such issues to date.

5.As stated in #1, Inns are permitted by Right in Resiential Areas. All of West Court is permitted by Right. Although, my property is Rural Residential, and Inns are allowed by Special Exception, I have no other access to my property. Access thru West Court Road, which definately keeps with the spirit of the Ordinance and the intent of the Master Plan. In fact there was an Inn where the High School Stands today, up until the 70's. So Inns are, and were allowed in my neighborhood.

April 4, 2024 Meeting

Samalis Property

Map 131 lot 25

11.70 acres.

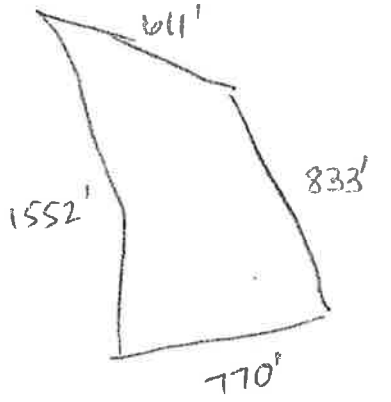
A. setback 78'

B. setback 82'

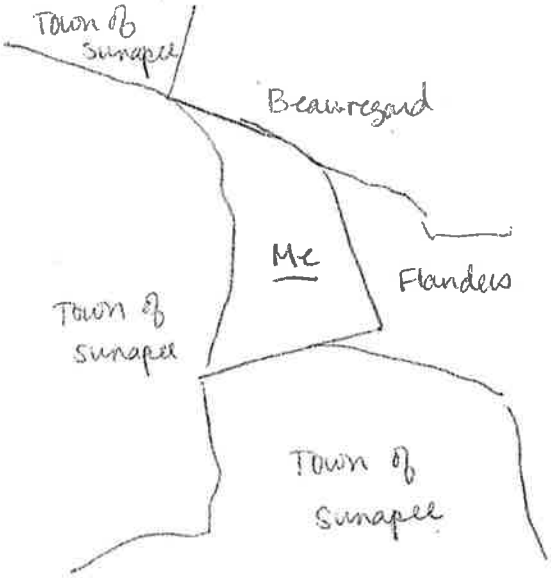
C. Parking Area 75' wide (9'x18' space) 4 spaces.

D. wetland setback. 170'

E. Septic Field / Tank.



lot Dimensions



Abutters

OWNER INFORMATION

SAMALIS, DEBBIE

70 WEST COURT RD

SUNAPEE, NH 03782

SALES HISTORY

Date	Book	Page	Type	Price	Grantor
03/05/2015	1937	42	U V 38		SAMALIS, DEBBIE
08/30/2012	1852	231	U V 51	18,000	SUGAR RIVER BANK
12/29/2011	1826	858	U V 51	556,327	JENNINGS, BRUCE
09/01/2005	1537	947	U I 48		JENNINGS CANDICE
01/01/1800	0	0			

PICTURE

LISTING HISTORY

03/29/23 KMBP
03/29/23 KMBP
04/05/22 KMBP
05/25/21 MPBP
05/09/19 KMBP
09/11/18 MPBP
07/31/18 MPBP
07/31/18 MPBP

VISIT BY APPOINTMENT ONLY

NOTES

10/13-WAIVER REC'D BK 1896 PG 0988 -2/14- CABIN WITH ELECTRICITY, PORTABLE BATHRM ONSITE; 7 X 14 ATT PORCH 6 X 12 ATT PORCH; EQUALS FOP; HEAT APPRS TO BE WOOD; 8/15-REMOVE LAND LINE 2 ST IND; NEW ROAD; NO SIGN OF SEPTIC; POND 2 BLDS=CAMPS; NEW WELL; UC=P/U NEW BUILDINGS & UPDATE P. SURVEY 10/15-CALL BEFORE VISIT - SEE PROP NOTES 2/16-CORRECT ACREAGE PER PLAN # DR04-125 RECORDED 2/27/2015.INSTALLED- COOP=N/V 2/23 NO START TO PROJECTS, CHK 24***CALL BEFORE VISIT***

EXTRA FEATURES VALUATION

Feature Type	Units	Lngth x Width	Size Adj	Rate	Cond	Market Value	Notes
CABIN W/PLUMBING	608	608 x 1	100	75.00	75	34,200	
SCREEN HOUSE	170		100	30.00	50	2,550	
CABIN-MINIMAL	332		100	45.00	75	11,205	
						48,000	

MUNICIPAL SOFTWARE BY AVITAR

TOWN OF SUNAPEE ASSESSING OFFICE
23 EDGEMONT RD
SUNAPEE, NH 03782
603-763-2212

PARCEL TOTAL TAXABLE VALUE

Year	Building	Features	Land
2022	$ 0	$ 42,200	$ 62,100
		Parcel Total:	$ 104,300
2023	$ 0	$ 48,000	$ 132,100
		Parcel Total:	$ 180,100
2024	**$ 0**	**$ 48,000**	**$ 132,100**
		Parcel Total:	**$ 180,100**

LAND VALUATION

LAST REVALUATION: 2023

Zone: RR - RURAL RES **Minimum Acreage:** 1.50 **Minimum Frontage:** 100 **Site:** **Driveway:** **Road:** PAVED

Land Type	Units	Base Rate	NC	Adj	Site	Road	DWay	Topography	Cond	Ad Valorem	SPI	R	Tax Value	Notes
1F RES	1.500 ac	150,000	C	95	100	100	100	100 -- TYPICAL	75	106,900	0	N	106,900	ACCESS
1F RES	10.200 ac	x 5,000	X	99				100 -- TYPICAL	50	25,200	0	N	25,200	
	11.700 ac									132,100			**132,100**	

Utilities:

PICTURE

OWNER

SAMALIS, DEBBIE

70 WEST COURT RD

SUNAPEE, NH 03782

TAXABLE DISTRICTS

District	Percentage

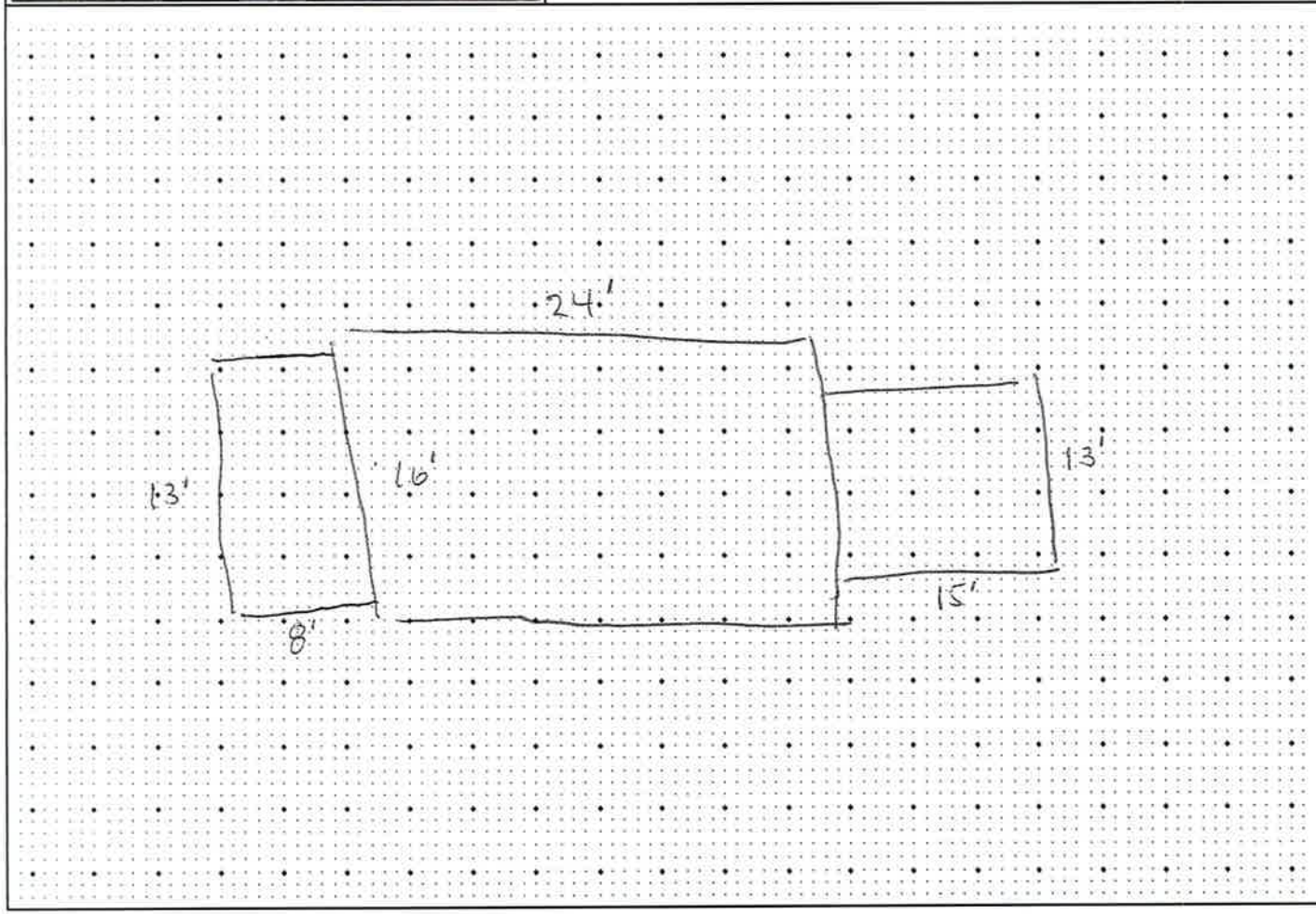
PERMITS

Date	Permit ID	Permit Type	Notes
04/04/22	4083	OUTBUILDING	28 X 13 POLE BARN
04/04/22	4081	OUTBUILDING	GREENHOUSE
04/04/22	4082	OUTBUILDING	20 X 24 SHED
05/24/21	4001	OUTBUILDING	6 FT X 8 FT WOOD SHED &
09/10/18	3742	OUTBUILDING	8' X 10' CHICKEN COOP ON
09/10/18	3741	NEW CONSTRUCT	CONVERT STRUCTURE PEI
07/31/18	2018-01783	EXCA/EROSION	IMPACT 2,757 SQ FT OF PR(

BUILDING DETAILS

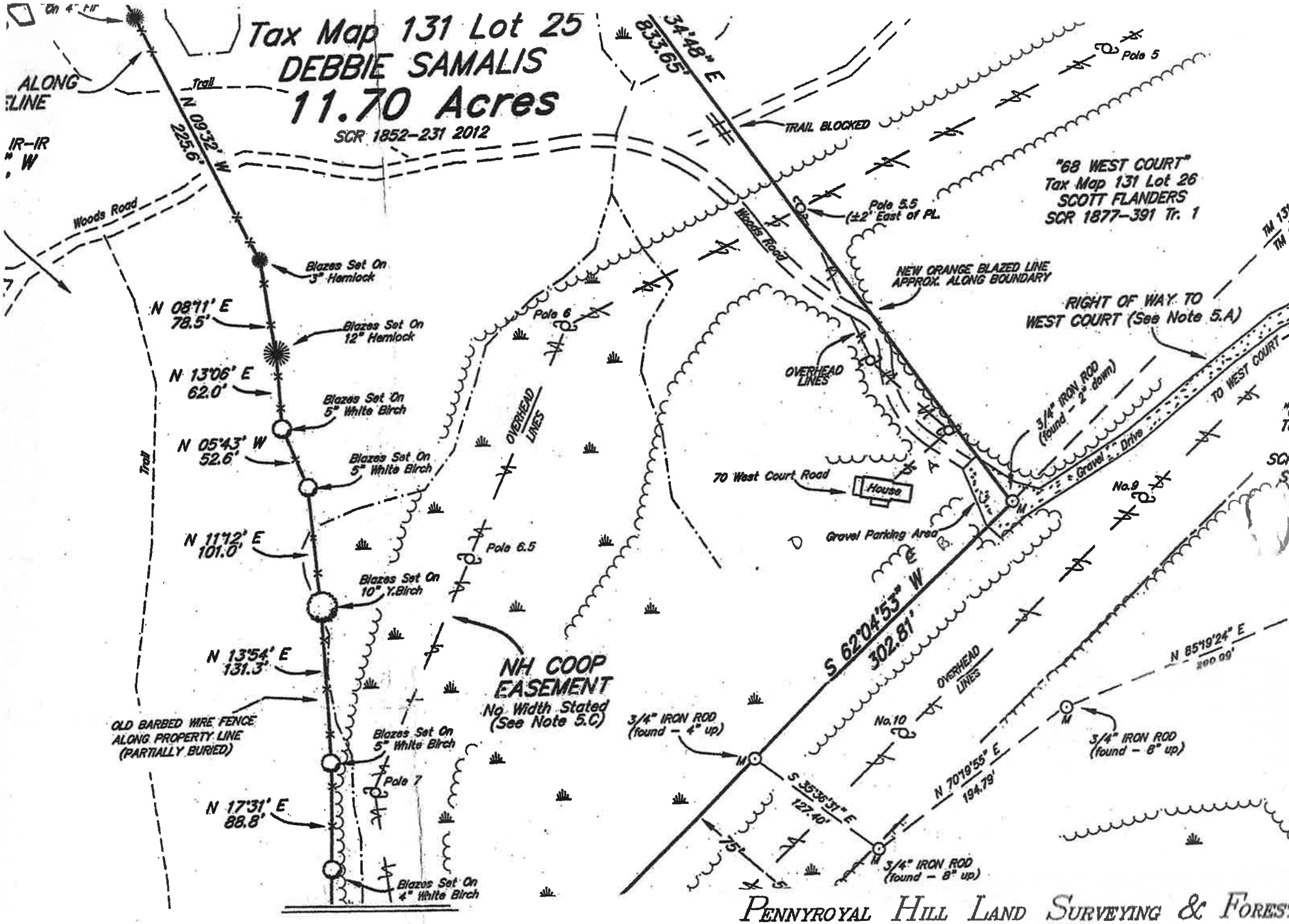
Model:
Roof:
Ext:
Int:
Floor:
Heat:
Bedrooms: Baths: Fixtures:
Extra Kitchens: Fireplaces:
A/C: Generators:
Quality:
Com. Wall:
Stories:
Base Type:

BUILDING SUB AREA DETAILS



2023 BASE YEAR BUILDING VALUATION

Year Built:
Condition For Age: %
Physical:
Functional:
Economic:
Temporary:
%



PENNYROYAL HILL LAND SURVEYING & FORES
CLAYTON E. PLATT LIC. SURVEYOR NO. 83
418 Pine Hill Road Croydon, NH 03773 (603) 86

Town of Sunapee
Planning Board

Decision

You are hereby notified that the application of DEBBIE SAMALIS

For: REVIEW STATUTE AND MAKE RECOMMENDATIONS TO ALLOW CONSTRUCTION OF A RESIDENCE ON A PRIVATE ROW IN ACCORDANCE WITH RSA 674:41-1(D), 70 WEST COURT RD

PARCEL ID: 0131-0025-0000

Has been APPROVED TO BE RECOMMENDED FOR THE BOARD OF SELECTMEN TO REVIEW AND ACCEPT A WAIVER

Conditions: NONE

The decision was made at the SEPTEMBER 5, 2013 Planning Board meeting.

Planning Board Chair

10.03.13.

Date

Note: Per NH RSA 677:15: Any person aggrieved by any decision of the Planning Board concerning a plat or subdivision may present to the Superior Court a petition, duly verified, setting forth that such decision is illegal or unreasonable in whole or in part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within 30 days after the date upon which the Board voted to approve or disapprove the application.

Rev. 3-9-2018

PERMIT # 3741

TOWN OF SUNAPEE

DECISION SHEET

For Certificates of Zoning Compliance (CZC)

Landowner(s) Name: SAMALIS, DEBBIE Parcel ID: 0131/ 0025/ 0000/

Street Location: 70 WEST COURT RD

Districts & Overlay Districts: RR 100 yr Floodplain? __Yes _x_ No __N/A

Notes: _____

_x__ Attach copy of Property Assessment Card

___ If there is a ZBA decision related to this application, check here & attach a copy of the decision

Date of ZBA decision: _____

Recommended action: _x_Approve __Deny __Not Applicable/No Permit Required

Nick Hyr 9/1/2018

Signature of Zoning Administrator Date

Certificate of Zoning Compliance: Based on the Zoning Ordinance and adopted administrative procedures, the owner SAMALIS, DEBBIE is hereby **GRANTED**/~~DENIED~~ a Certificate of Compliance for Property Parcel ID: 0131/ 0025/ 0000/ of the Sunapee Tax Records for a: Convert structure permitted through CZC #3107 to a dwelling unit per NHDES Approval for Construction of Individual Sewage Disposal System Approval #eCA2018070221

Certificate of Compliance expires: 9/11/2019 ___ Not applicable (no permit required)

Signature of Board of Selectmen:

Date signed: 9/10/18

DEBBIE SAMALIS
70 WEST COURT RD.
SUNAPEE, NH 03782

FLANDERS, SCOTT & CHRISTINE
66 WEST COURT RD.
SUNAPEE, NH 03782

BEAUREGARD, TANDA & JAMES
46 WEST COURT RD.
SUNAPEE, NH 03782

TOWN OF SUNAPEE
23 EDGEMONT RD.
SUNAPEE, NH 03782

DEBBIE SAMALIS
70 WEST COURT RD.
SUNAPEE, NH 03782
SE 24-02

FLANDERS, SCOTT & CHRISTINE
66 WEST COURT RD.
SUNAPEE, NH 03782
SE 24-02

BEAUREGARD, TANDA & JAMES
46 WEST COURT RD.
SUNAPEE, NH 03782
SE 24-02

TOWN OF SUNAPEE
23 EDGEMONT RD.
SUNAPEE, NH 03782
SE 24-02

DEBBIE SAMALIS
70 WEST COURT RD.
SUNAPEE, NH 03782

FLANDERS, SCOTT & CHRISTINE
66 WEST COURT RD.
SUNAPEE, NH 03782

BEAUREGARD, TANDA & JAMES
46 WEST COURT RD.
SUNAPEE, NH 03782

TOWN OF SUNAPEE
23 EDGEMNT RD.
SUNAPEE, NH 03782

Case VA 24-01
Parcel ID: 0136-0027-0000

Town of Sunapee
23 Edgemont Rd., Sunapee NH
Phone (603) 763-2212 ext. 1023 / Website www.town.sunapee.nh.us
Email zoning@town.sunapee.nh.us

CASE #: VA 24-01
FEE PAID: $283.00
METHOD: CK #8127

RECEIVED
MAR 0 1 2024
BY: .....

Zoning Board of Adjustment (ZBA)
Variance Application

Questions? Please contact the Zoning Administrator. All dates and deadlines are published on the ZBA calendar; see Page 6. For helpful guidelines on completing this application, see page 4-5.

Attach additional sheets of paper as necessary.

1. Landowner(s) Name(s): Katherine B. Lowrie, Matthew B. Lowrie (Kate and Matt)
2. Parcel ID: Sun-0136-0027-0000 3. Zoning District: Residential
1. Project Location (Street & #): 313 Lake Avenue
2. Mailing Address: 313 Lake Avenue, Sunapee, NH 03782
3. Phone Number: 617 851-5291 (Matt's cell); 603 763-9750
4. Email: mlowrie@me.com

☑ **ABUTTERS LIST**: You must prepare a list of all abutting property owners and attach it to your application. If you have any difficulty, consult the town office, but the accuracy of the list is your responsibility. You can download an abutters list by using the Tax Maps/GIS on the town's website (directions attached).

☑ **FEES**:
___Application Fee: Please See Fee Schedule Attached
___Abutter Notification Fee: Please See Fee Schedule Attached
___Newspaper Notification Fee: Please See Fee Schedule Attached

* NOTE: All checks should be made payable to the Town of Sunapee.

#5 **ATTACHMENTS**: To assist the board, please attach sketches, photos, surveys, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior Zoning or Planning decisions concerning the property. If you have something in writing stating that your proposed project does not meet zoning, please attach that to this application. It may be a letter, email or denied permit. A professional survey by a licensed surveyor is strongly recommended for variances related to setback requirements. For properties located in the Shorelines Overlay District, a professional survey is required.

Applications will not be considered complete unless all the questions are answered, the fees are paid, and an Abutters Mailing List is attached.

GENERAL DESCRIPTION: This is a place to give a general summary of the proposed project as an introduction and overview for the public hearing. For example, where is the property is located? Describe the property. Give area, frontage, side and rear lines, slopes, natural features, etc. What do you propose to do? Why does your proposal require an appeal to the board of adjustment?

Please see attached documents. We seek to subdivide 313 Lake into a 1.1 acre conforming lake-side plot and a .49 acre land-side lot across the street.

Attach additional sheets of paper as necessary.

SPECIFIC REASON THE VARIANCE IS NECESSARY: A Variance is requested from Zoning Ordinance, Article III, Section 3.10 to permit the land-side portion to be subdivided into a separate .49-acre lot. The requested variance is from Section 3.10's specification of a minimum lot-size of one acre.

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest because: a .49 acre lot is consistent with this area of Sunapee (72% of the Lake Ave land-side lots are less than 1-acre), even so there are 2.5 acres of unalterable land adjacent to it so density requirements are still met, and there is no identifiable disadvantage to public health, safety or welfare. Please see attached for support and further detail.

2. If the variance were granted, the spirit of the ordinance would be observed because: The minimum residential lot size is to promote medium density. In this part of Sunapee a .49 acre lot is consistent with the existing density. In addition, the lot abuts 2.5 acres that cannot be disturbed, by deed restriction. So the net density here remains well over one acre per dwelling. Please see attached for support and further detail.

3. Granting the variance would do substantial justice because: Outside the harbor, this is the only Lake Ave land-side lot that cannot support a dwelling due to the 1-acre restriction. In addition, the benefit to the lot owner (ability to build a separately transferable dwelling) is not outweighed by any public detriment (there is none).

4. If the variance were granted, the values of the surrounding properties would not be diminished because: The (as divided) lot is bordered by Lake Avenue, an undeveloped 1 acre lot and 2.5 acres of land subject to a deed restriction preventing building, grading, cutting, etc. All other zoning requirements like setbacks will be met.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: As described above and in more detail in the attached, the unique circumstance of being situated among less-than-1-acre lots, being the only lot land-side of Lake Ave not able to support a dwelling, having no purpose for the lake-side lot given the lake-side lot size and the unalterable land next door render the 1-acre requirement uniquely unhelpful

- and -

ii. The proposed use is a reasonable one because: it is a single family residence use, which is what the residential district is for. By definition it is reasonable. This is not a request to build a horse stable or the like.

OR

b. Explain how, 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. In the alternative, there is no reasonable use of the area across the street if not for a separately-transferable dwelling. When 313 Lake was sold, 322 Lake could not be sold with it because the price-point was too high. If a structure is put across the street without subdivision, the value of 313 Lake is disproportionately high and it would be impossible to do anything but lose a lot on it. Please see the attached for more detail.

NOTE:
For person(s) with physical disabilities,
please see RSA 674:33 regarding alternative hardship criteria for a Variance.

SIGNATURE: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing. To the best of my knowledge, the above is true and correct.

Landowner(s) Signature(s) Katherine B. Lowrie Date 3/1/24

Town of Sunpee MATTHEW B. LOWRIE

Background and Reasoning for Variance/Subdivision of 313 Lake Avenue[1]

We are proposing to subdivide 313 Lake Avenue into two lots – one on the lake-side of Lake Avenue (1.1 acres) and the other across the street on the land-side (.49 acres). The purpose would be to build a dwelling on the land-side. The present intention is to maintain common ownership with the lake-side property. In the future, the land-side lot could be sold separately, to avoid a material economic loss from having to sell both as one (too expensive) package. There is no present intention to rent or sell either of the (proposed to be) subdivided properties.

We are applying to subdivide and, as a part of that, for a variance of the ZBL requirement of 1 acre per lot for the land-side part. Thank you for your time and attention. (P.S. I apologize for the length of this – but there's lots of pictures, so it's not as bad as it looks!)

Summary

313 Lake Avenue is rare in that Lake Avenue passes through the lot and singularly unique in that it is the only lake-side land where the 1-acre limit restricts what can be done on the land-side of the lot. Almost all land-side lots on Lake Avenue are separate and 72% of them are less than an acre. 313 Lake (land-side) is the only land-side area on Lake Avenue where the 1-acre limit would apply (the dozens of less-than-one-acre plots apparently being pre-existing). The 1-acre limit imposes a burden that is unique to the land-side of 313 Lake.

313 Lake Avenue is also unique in that the land-side part borders about 2.5 acres subject to an easement preventing any building, cutting, regrading, etc. (map below). As a result, allowing a .5-acre lot would not result in density greater than one unit per acre. Put another way, we could acquire and merge in .5 neighboring acres of unalterable land and have enough to meet the ZBL. The project would be the same – the building would have to be on the current .5 acres (although doubling the allowable impervious surface area within the existing .5 acres). Requiring acquisition of existing unalterable land would unnecessarily burden the applicants while not furthering the Town's interests at all.

Finally, 313 Lake Avenue is already in the top few assessments on Lake Avenue. Were an improvement made across the street that could not be sold separately, 313 Lake would be uniquely high and it would stick out farther among the surrounding valuations. Improvements to the land-side only make economic sense if it can be sold separately.

The five variance factors of RSA 674:33, I(a) are specifically addressed below, and all are met.

---

[1] I am a lawyer, but I don't generally do this kind of thing. So, I footnoted sources and comments so the Board can easily double check/verify everything and we can then address any errors.

Detailed Discussion of the Land and the Variance Factors

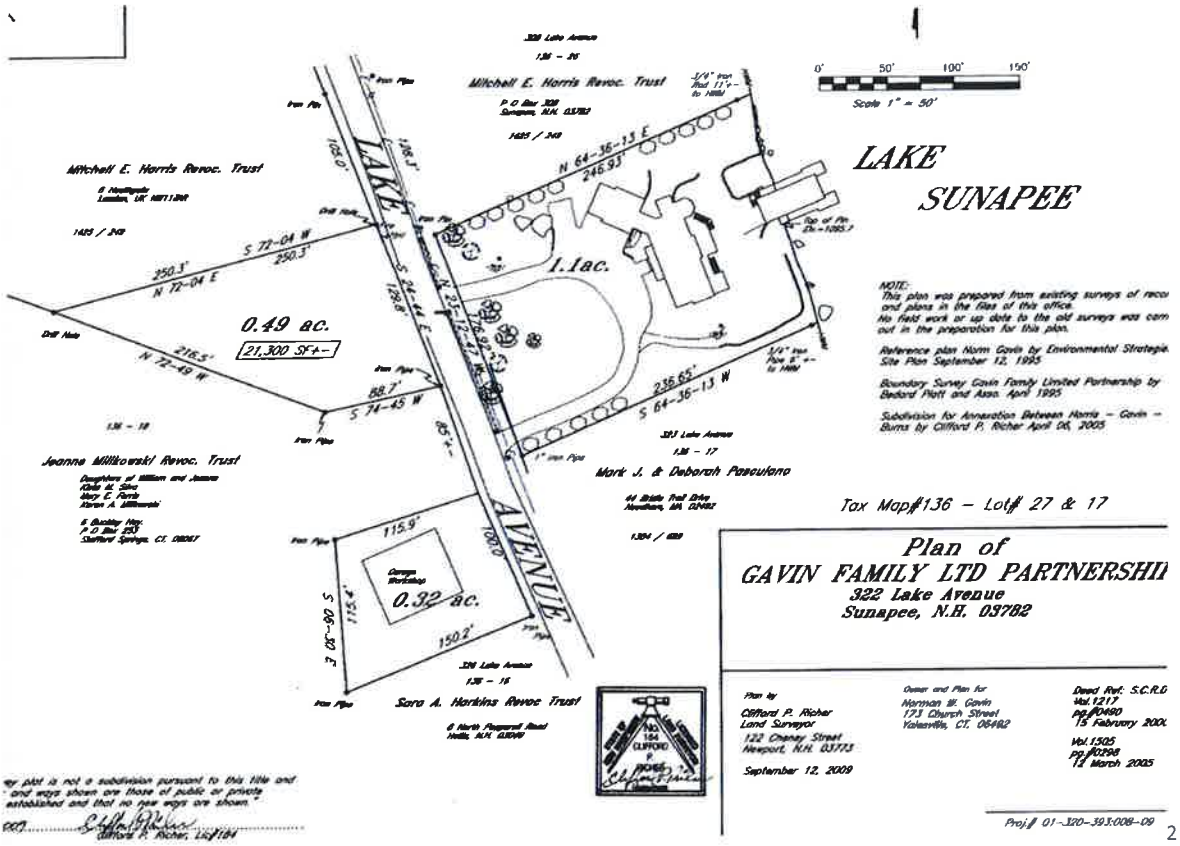
I. 313 Lake Avenue and Directly Abutting Properties

A. 313 Lake (and 322 Lake Avenue) In General

313 Lake Avenue is owned by Matt and Kate Lowrie. It is their primary (and only) residence.

313 Lake Avenue is located here:

As can be seen on the plot below, 313 Lake has 1.1 acres adjacent to Lake Sunapee and .49 acres across Lake Avenue. The .32 acres at 322 Lake Avenue was a separate lot which, at the time of the drawing, was commonly owned with 313, by the Gavins.



[2] The full document is available on GIS. We believe it accurate, except that the Northern portion of the driveway has been removed.

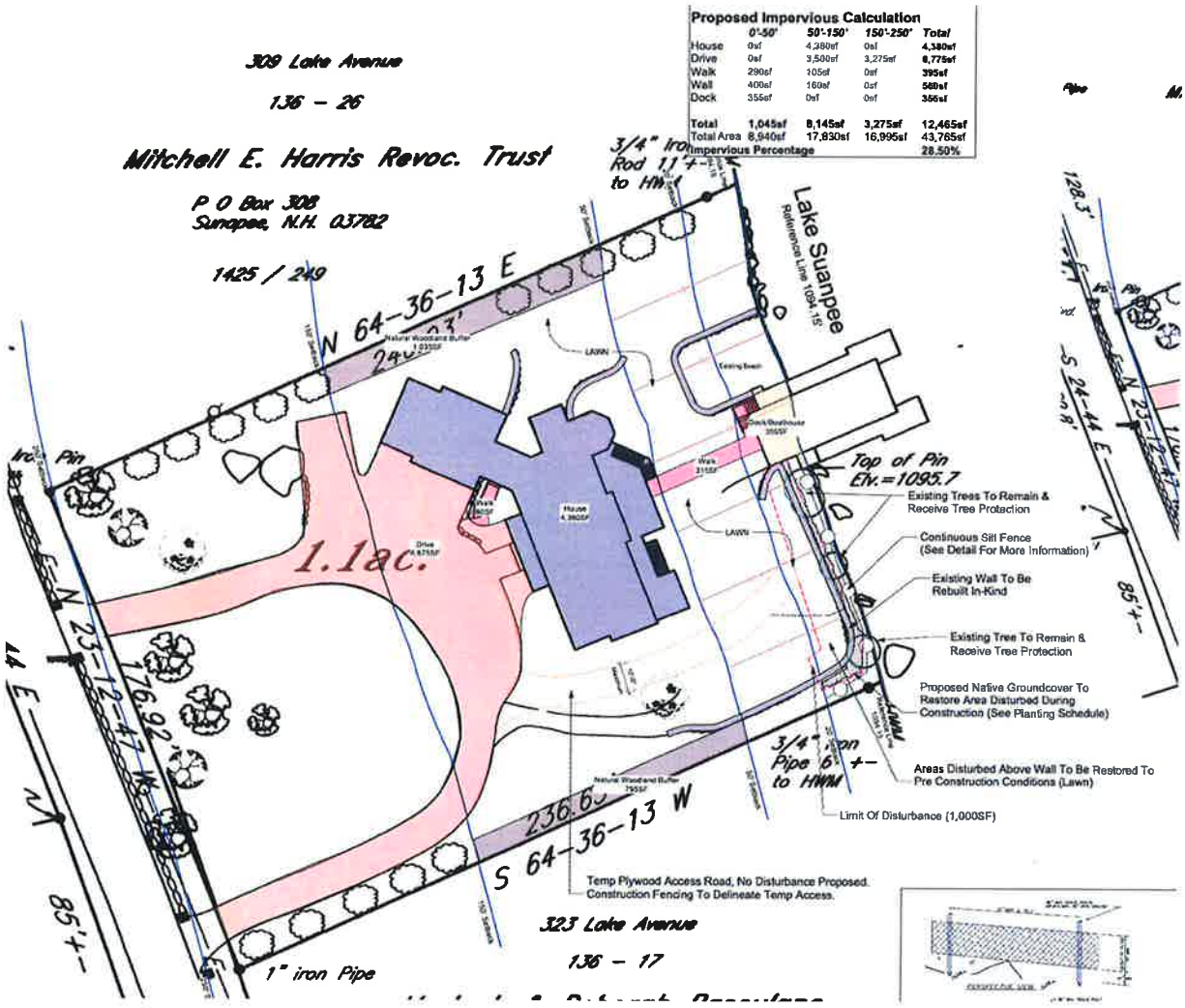
This is 322 Lake:

When the Gavins tried to sell 313 and 322 Lake together, it sat on the market for over a year without interest or offers, including from us due to the price point. After the Gavins alternatively listed 313 Lake Avenue separately (at a lower price, obviously), it fell into a price range where we first looked at it then bought it. 322 Lake was later sold to someone else.

The lake-side part of 313 Lake is believed to be conforming without the area across the street:

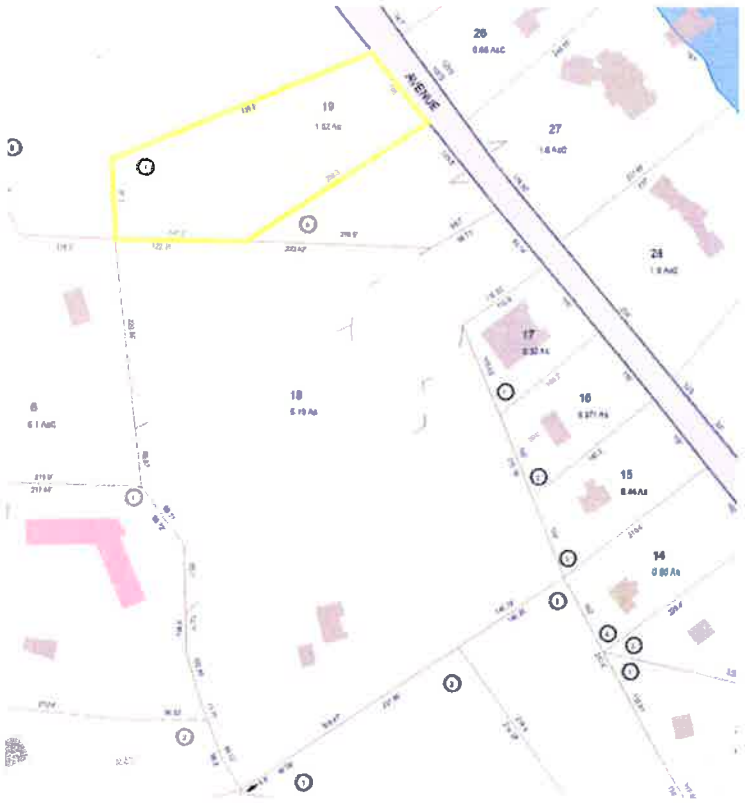
- It is over 1 acre in the residential district.
- The impermeable surface area is under 30%, as shown below.[3]

[3] This is a 2021 survey filed with Sunapee, for a permit to rebuild a stonewall by the lake. The coverage was 28.5% of the 1.1 acres, including a section of (impervious) driveway shown on the drawing but which has been removed -- so the coverage is less than 28.5%.



The land-side portion is believed to be conforming on its own, *except* for the requirement of an acre lot. For example, the frontage is 128.9 feet, well over the requisite 75 feet.

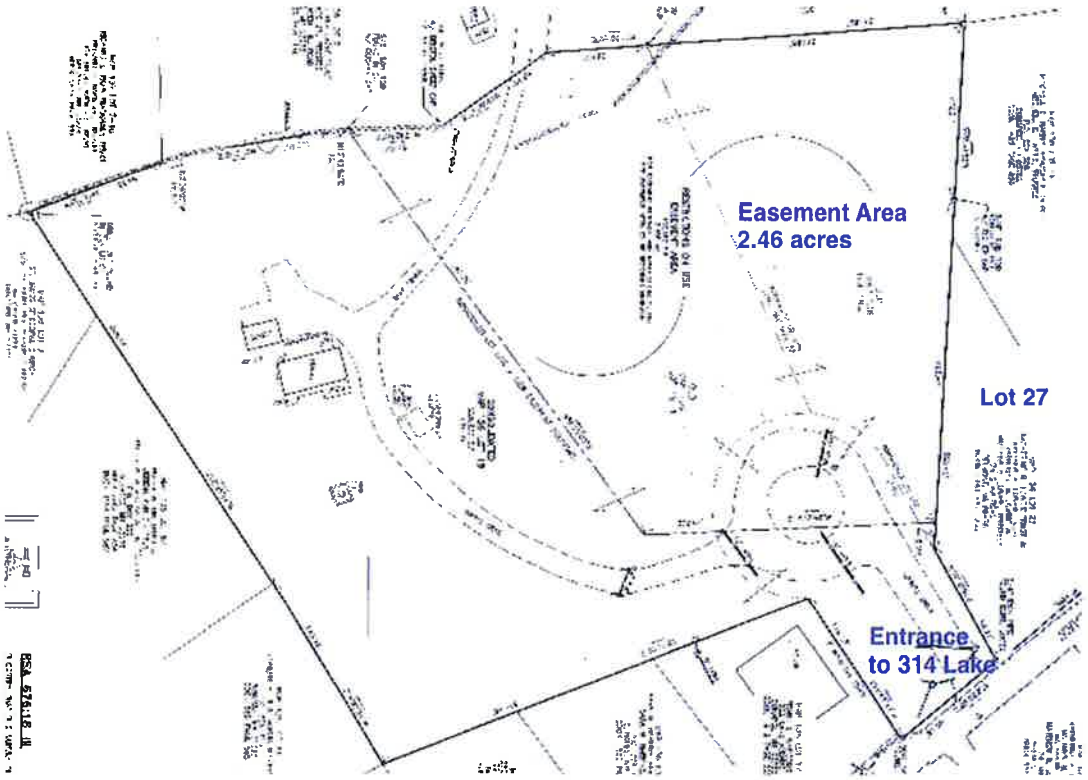
B. Directly Abutting Properties Are Not Materially Affected and Support Subdivision



Lot 19 to the northwest (highlighted above) is just over an acre of undeveloped, wooded land which is a separate lot, commonly owned with 309 Lake (Lot 28) across the street.

Lot 18 to the southwest (314 Lake) is a 5-acre lot with 85 feet of frontage. The property is subject to a use restriction, however, that prevents building structures or clearing trees (among other things) within an "Easement Area" that is about 2.5 acres of property directly abutting the land-side part of Lot 27 / 313 Lake Avenue:[4]

[4] The Restriction on Use and Easement for 314 Lake is on GIS, and prevents building, clearing, regrading, etc., except for purposes of stormwater management in the "Easement Area." It references Sullivan County Registry Plan 5310, available online, for the "Easement Area," a piece of which is reproduced here with labels added in blue.



II. The "Neighborhood" Supports Allowing Subdivision

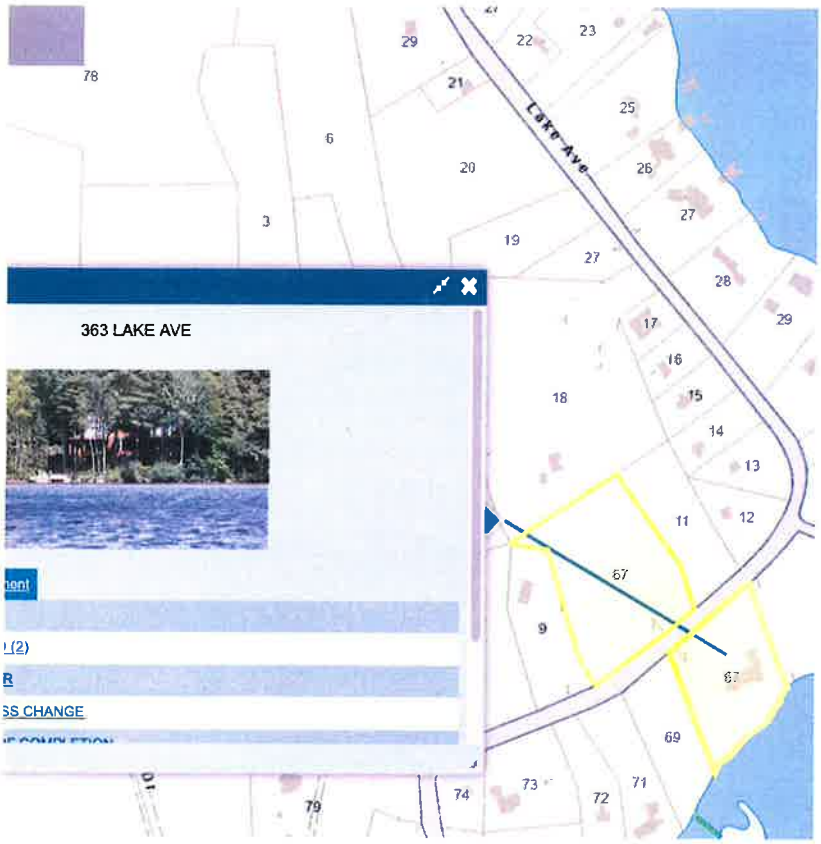
There are any number of ways to define a neighborhood. I picked Lake Avenue outside the harbor. That latter part I defined as the first house that does not point at land at the other side of the harbor – 163 Lake Ave – up to the Episcopal church and the lake-side Lake Avenue lots that are not waterfront (next to Burkehaven Hill road). I think a smaller "neighborhood" could be drawn, e.g., just the straight part of Lake Avenue that 313 is on, but I do not think it would make much difference and might make an even more compelling case for variance/subdivision.

A. Lots with area on both sides of Lake Avenue – 313 is Unique

On Lake Avenue and outside the harbor (i.e., on Lake Ave from 163 Lake to Burkehaven Hill Road, but excluding the last two lots which are not lake-front), there are roughly 45 lake-side lots,[5] only one of which also has area across Lake Avenue, i.e., 363 Lake.[6] The parts of the lot on each side of 363 Lake Avenue are both over an acre. Every other lot, on the land-side of Lake Avenue outside the harbor, is a separate parcel irrespective of size.

[5] Counted on GIS by hand, cross-checked against published tax data for most recent assessment; excludes the two closest lots to Burkehaven Hill Road because they are lake-side of Lake Avenue but not lake-front. Spreadsheets are attached with lists.

[6] According to the GIS maps.



Put another way, for this part of Lake Ave, 313 Lake Avenue is one of two lake-side lots with land across the street, and the only one where the the 1-acre limit restricts what can be done there.

B. Lot sizes on Lake Avenue Support Subdivision

As it stands, there is only one lot on Lake Avenue larger than 313 – and that property (363 Lake) could be subdivided, as there is more than an acre on each side of the road.

On the lake-side of Lake Avenue outside the harbor, there are roughly 45 properties. If 313 Lake is subdivided, the lake-side property would be 1.1 acres, which would still be one of the largest lake-side lots. My best shot at creating a list is attached. 1.1 acres ties for 39th largest of the 45 lake-side lots.

On the land-side, my best shot is attached for lots with addresses (presumably a house or the like on them) and without addresses (presumably no house, but pre-existing). That puts the land-side of 313 Lake (.5 acres) right at the midpoint of lots with addresses and just below (5th of 14) for lots without addresses. Tables for these are also attached.

A super-majority (21 of 29 or 72%) of the existing land-side lots are below one acre.

As can be seen in the map, there are 6 or 7 land-side houses in the immediate area on lots with less than .5 acres.

III. Factors Making 313 Lake "Unique" or Which Raise "Special Conditions"

First, there is a public way running through 313 Lake. As shown above, that is unique. The practical effect is to meaningfully impair use of the land-side property. There is plenty of room on the lake-side part for accessory uses. There is already a 3-car garage with attic storage there. There is no need for accessory structures across the street. The more practical use across the street is as a stand-alone structure, not an accessory structure (even if commonly owned) -- as is the case up and down Lake Avenue.

Second (though related), as established when 313 was last sold, any development across the street may need to be sold separately from the lake-side property. Building across the street, without subdivision, risks significant economic loss because it puts 313 Lake into a price category that the market will not bear, as was the case when 313 Lake and 322 Lake were commonly owned and had to be listed (then sold) separately to attract buyer attention.

In fact, according to the most recent tax assessment, 313 Lake Avenue is already assessed in the top few most expensive houses on Lake Avenue, and is only $100k from being the highest assessment on this part of Lake Avenue. A substantial improvement that could not be sold separately would make 313 Lake Avenue the highest valued property on Lake Avenue, by as much as 20% or more. It is textbook real estate that we could never recover full value if sold together, just as the Gavins before us could not.

Third, virtually every other lot on Lake Avenue is not subject to the same restrictions, even though around 72% of the land-side ones are less than one acre. Application of a 1-acre minimum to the land-side of 313 Lake Avenue, and as it turns out ***only*** to the land-side of 313 Lake Avenue, is unique and hard to justify.

Fourth, the land-side part is bordered by 2.5 acres that cannot be developed due to a deed restriction, which is also unique. Building a dwelling here will not increase perceived density to more than one dwelling per acre; it would remain far below that.

IV. Variance Factors

RSA 674:33, I(a) sets out 5 conditions for a variance, so they are addressed below.

A. Factors 1 and 2, Not Contrary To Public Interest and Spirit of the Ordinance Observed.

Factors 1 (public interest) and 2 (spirit of the ordinance) should be considered together. *Harborside Associates, L.P.* v. *Parade Residence Hotel, LLC,* 162 N.H. 508 (2011). In making such a determination, the ZBA should examine whether the variance would (a) alter the essential

character of the locality or (b) threaten public health, safety or welfare. Id. *Perreault* v. *Town of New Hampton*, 171 N.H. 183 (2018), *Malachy Glen Associates, Inc.* v. *Town of Chichester*, 155 N.H. 102, 105-106 (2007); *Naser d/b/a Ren Realty* v. *Town of Deering Zoning Board of Adjustment*, 157 N.H. 322 (2008).

Subdivision would make 313 Lake fit in with (or be more like) the surrounding properties, the opposite of altering the essential character of the neighborhood. And there is no identifiable threat to public health, safety or welfare.

In addition, a purpose of the residential district is to provide for single family residences. Allowing subdivision would permit an additional year-round single-family residence and thereby further that goal. At the same time, subdivision will not increase the density of the existing housing in the area. Given the deed restrictions on 2.5 acres of the neighboring property, the subdivided property will remain far less dense than provided for in the Bylaw – seemingly a 3-acre lot of which .5 acres is buildable.

B. Factor 3, Substantial Justice is Done

The guiding principle is whether the harm to the individual by denial is outweighed by a gain to the general public. Whether a proposed use is consistent with the Bylaw is also considered. *Farrar* v. *City of Keene*, 158 N.H. 684, 692 (2009).

Here, the proposed use (a separate lot that can support a residence) is consistent with, and in fact supported by, the Bylaw.

The gain to the individual here would be the ability to build and separately sell a dwelling on the property and to better use the land-side property that is cut-off from the main part of the lot by a public way. An overweighing detriment to the public, or any detriment at all, is difficult to imagine.

C. Factor 4, Value of Surrounding Properties is Not Diminished

It is difficult to imagine how building a property in compliance with the ZBL's setbacks would harm neighboring property. This is even more the case since the abutting property on one side is undeveloped and, on the other side, abuts 2.5 acres of property that cannot be developed.

D. Factor 5, Unnecessary Hardship

There are two paths to unnecessary hardship – Subsections 1 and 2 of RSA 674:33, 1(b).

1. RSA 674:33, 1(b)(1).

This subsection provides that there is unnecessary hardship if, owing to "special conditions":

(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(B) The proposed use is a reasonable one.

(B) is easy. The proposed use, as a single dwelling unit in the residential district, is what a residential district is for. By definition, the proposed use is a reasonable use.

For (A), the general purpose of the ordinance provision on lot size is a "medium density" residential area. There is no fair and substantial relationship to applying that to a subdivision of 313 Lake because:

- The restriction is inconsistent with the lots in this area because Lake Avenue passes *through* 313 Lake Avenue and ***NONE*** of the surrounding properties are burdened by this, or constrained in what they can do by virtue of Lake Avenue passing through the lot.

- A super-majority of similar properties (on the land-side of Lake Avenue) would not comply were a one-acre limit imposed. 313 Lake Avenue (land-side) is the *only* lot on the land-side of Lake Avenue where a 1-acre restriction is limiting.

- Deed restrictions on the property adjacent to 313 Lake, land-side, assure that the overall effect of building on the land-side of 313 Lake Avenue is less dense than medium density as defined in the ZBL (one dwelling per acre).

For the last, and to bring the point home, it would be possible for the owner of 313 Lake to acquire .51 acres of neighboring land at 314 Lake that is unalterable through deed restrictions, then merge and subdivide, to build a dwelling as-of-right in precisely the same place and of the same (or bigger) size on the existing .5 acres. Requiring acquisition of that unbuildable land would serve no public good. Such a requirement would only impose an unnecessary hardship on 313 Lake Avenue, to acquire .51 acres of existing undevelopable land, the only result being to permit a larger building and more impervious surface area within the existing .5-acre lot (the acquired part being undevelopable), i.e., it would be contrary to any ZBL purpose of limiting density.

2. RSA 674:33, 1(b)(2).

The ZBA only reaches subsection 2 if subsection 1 is not met. Subsection 2 asks if there is *any* reasonable use of the land, in the absence of a variance.

For most otherwise reasonable uses, they do not make sense. There is already a 3-car garage (with loads of extra parking) and storage on the lake-side part. Putting more of the same across

the street is not a reasonable use at 313 Lake Avenue. This is confirmed by the fact that the lake-side part of 313 Lake is conforming/more than an acre.

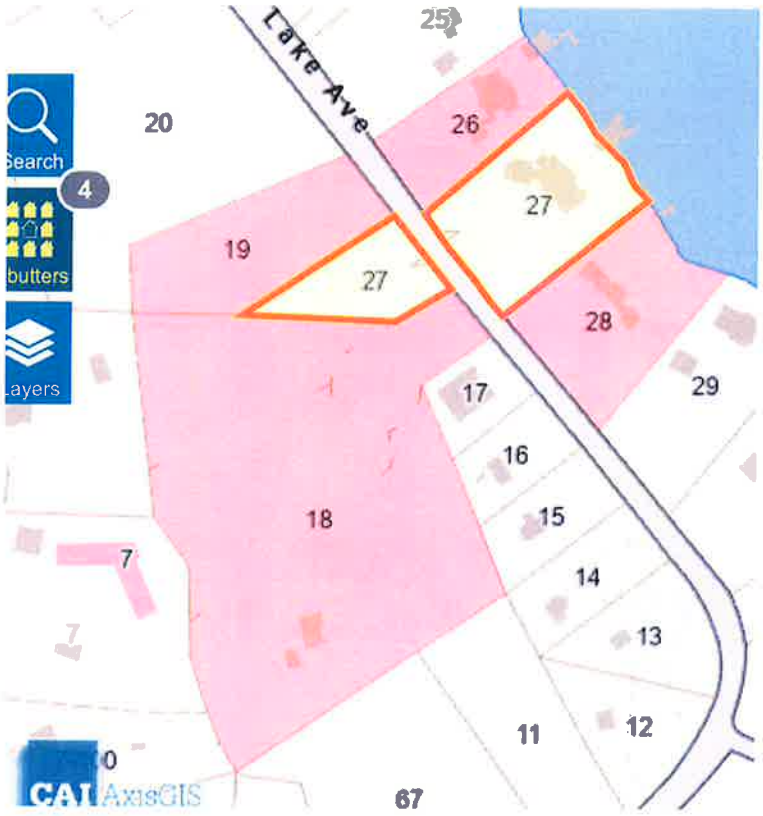
The real question is whether a reasonable use would be more living space/bedrooms, without it being a "dwelling" and without an ability to sell it separately in the future (i.e., without subdivision). A question remains as to why one would do that across Lake Ave, rather than on the lake-side part. That is not a reasonable use.

In addition, as described above, such a building likely would result in a material economic loss when sold – 313 Lake Avenue was unsellable at a price point that included 322 Lake Avenue with the dwelling on it, and a combined sale would make 313 Lake by far the highest priced property on Lake Avenue. Building across the street without subdividing would be an economic mistake.

We might very well do it anyway. If we do, it would be a knowing decision to engage in economically unreasonable behavior.

But the ZBA may instead conclude that building essentially the same structure (but, for example, without an oven so it is not a dwelling) at an economic loss is not a "reasonable" sole use of the land-side part of 313 Lake. That is, an economically unreasonable project is not a "reasonable use," there are no others, and subsection 2 is met.

313 Lake Avenue Abutters List



Lot(s)	Street Address(es)	Owner(s)	Mailing address
18	314 Lake Ave	James D. Shinn II Revocable Trust Brenda A. Shinn Revocable Trust	PO Box 710 Sunapee, NH 03782
19 and 26	Lake Avenue (Lot 19) 309 Lake Avenue (Lot 26)	Mitchell E Harris Revocable Trust	PO Box 308 Sunapee, NH 03782
28	323 Lake Ave	Mark J and Deborah Pasculano	22 Chestnut St Boston, MA 02108

27 313 LAKE AVE — MATTHEW B. LOUPE TRUST, KATHERINE B. LOUPE TRUST 313 LAKE SUNAPEE, NH 03782

PETER WHITE ARCHITECT

6 228 Main St NL NH

Listing of Lake-Side Properties Sorted by Size

Table row	Map	Lot	Number	Street	Acres	Owner
1	134	23	255	LAKE AVE	0.05	MARINO REVOCABLE TRUST, DEBRA J.
2	134	17	245	LAKE AVE	0.13	PIETRAS, ALISON C; PIETRAS, WILLIAM M
3	134	21	251	LAKE AVE	0.14	CHIAMIS, MARY ZATTA
4	134	1	193	LAKE AVE	0.15	TIBBETTS 2015 REVOC TRUST, SUZANNE W
5	134	16	243	LAKE AVE	0.15	EVERSON KNIGHTLY COTTAGE TRUST
6	134	18	247	LAKE AVE	0.16	LUKASIK FAMILY TRUST OF 2022
7	134	13	233	LAKE AVE	0.172	DAVIS, THOMAS F & MICHELLE M
8	134	10	223	LAKE AVE	0.18	PIKE, MARCELLE V & ALAN
9	134	20	249	LAKE AVE	0.18	RESNICK FAMILY TRUST, MITCHELL B
10	134	8	221	LAKE AVE	0.19	HAGUE, DONALD M & NAOKO B
11	134	22	253	LAKE AVE	0.19	SHUKOVSKY, HAROLD B & YVONNE
12	127	16	173	LAKE AVE	0.2	GOTTLING REVOC TRUST, JAMES G.
13	127	18	183	LAKE AVE	0.2	GAZELLE FAMILY REVOCABLE TRUST 2008
14	134	12	231	LAKE AVE	0.2	HORAN REVOC TRUST, HEATHER A
15	134	14	235	LAKE AVE	0.2	CHASE FAMILY REALTY TRUST
16	127	20	189	LAKE AVE	0.216	TIBBETTS 2015 REVOC TRUST, SUZANNE W
17	134	5	211	LAKE AVE	0.22	RHEINGOLD, JOYCE B & PAUL D
18	127	19	187	LAKE AVE	0.23	CLARK IRREVOC TRUST, RUSSELL D. & NANCY
19	127	14	163	LAKE AVE	0.27	MATTILA REVOC TRUST, KAINO U
20	134	2	197	LAKE AVE	0.27	ROHRER, JR REVOC TRUST, HARRY O
21	127	15	169	LAKE AVE	0.3	SCANLON, SCOTT
22	136	24	299	LAKE AVE	0.31	BEACHAM LIVING TRUST
23	134	33	248	LAKE AVE	0.37	ALLEN, MARCUS D
24	134	4	207	LAKE AVE	0.39	SUNAPEE LIMITED PARTNERSHIP
25	127	25	176	LAKE AVE	0.44	GOTTLING REVOC TRUST, JAMES G.
26	127	17	177	LAKE AVE	0.49	STRAIGHT, ROGER E & SUSAN B
27	136	32	339	LAKE AVE	0.52	MINK BROOK INVESTMENTS, LLC
28	136	22	295	LAKE AVE	0.55	ROGERS REVOC TRUST, RUTHANNE C.
29	134	25	271	LAKE AVE	0.56	SCAMMON FAMILY REVOC TRUST OF 2018
30	134	7	217	LAKE AVE	0.58	THE SUNAPEE LAKE LLC

31	134	42	200	LAKE AVE	0.63	INDIAN COVE, LLC
32	136	26	309	LAKE AVE	0.66	HARRIS REVOC TRUST AGREEMENT, MITCHEL
33	134	24	257	LAKE AVE	0.67	MARINO REVOCABLE TRUST, DEBRA J.
34	134	26	275	LAKE AVE	0.77	CARROLL, MICHAEL D & MARYBETH
35	136	72	375	LAKE AVE	0.78	ST JAMES CHURCH RECTORY
36	136	69	367	LAKE AVE	0.86	HALL, DAVID M & GALLUP, PATRICIA J
37	136	28	323	LAKE AVE	1	PASCULANO, MARK J & DEBORAH
38	136	71	373	LAKE AVE	1.04	MONTGOMERY, MARK
39	136	29	331	LAKE AVE	1.1	HYER, FRANK S & JANE B
40	136	23	297	LAKE AVE	1.3	CHAMBERLAIN SUNAPEE ESTATE
41	136	25	305	LAKE AVE	1.3	BURNS, KENNETH L
42	136	33	343	LAKE AVE	1.39	SCHAPIRO QPRT REMAINDER TRUST
43	134	27	279	LAKE AVE	1.52	LOUCKS INVESTMENT TRUST
44	136	31	337	LAKE AVE	1.7	MONTGOMERY QLFD PRSNL RES TRUST, ANNE
45	136	67	363	LAKE AVE	4.02	DIK TRUST, ROGER W

Listing of Land-Side Properties Without Addresses Sorted by Size

Table row	Map	Lot	Number	Street	Acres	Owner
1	134	35		LAKE AVE	0.26	SAVAGE COTTAGE TRUST, LIZZIE
2	134	37		LAKE AVE	0.36	HORAN REVOC TRUST, HEATHER A
3	134	36		LAKE AVE	0.43	CHASE FAMILY REALTY TRUST
4	127	26		LAKE AVE	0.48	MATTILA REVOC LIVING TRUST, KAINO U
5	134	39		LAKE AVE	0.6	RHEINGOLD PRSNL RES TRUST, PAUL D
6	134	43		LAKE AVE	0.66	TIBBETTS 2015 REVOC TRUST, SUZANNE W
7	134	38		LAKE AVE	0.67	HAGUE, DONALD M & NAOKO B
8	127	23		LAKE AVE	0.76	STRAIGHT, ROGER E & SUSAN B
9	127	21		LAKE AVE	0.89	CLARK III, RUSSELL D & JOHN M CLARK
10	136	19		LAKE AVE	1.02	HARRIS, MITCHELL E REVOC TRUST
11	136	11		LAKE AVE	1.09	NICKERSON III, JOSEPH H & MARCIA L
12	134	40		LAKE AVE	1.3	SUNAPEE LIMITED PARTNERSHIP
13	136	20		LAKE AVE	3.08	BURNS, KENNETH L

Listing of Land-Side Properties With Addresses Sorted by Size

Table row	Map	Lot	Number	Street	Acres	Owner
1	136	21	292	LAKE AVE	0.25	CROFT, JR., KURT ALAN & SAMANTHA DEREXA
2	134	32	256	LAKE AVE	0.28	KNIGHTLY, THOMAS E & BARBARA J
3	136	17	322	LAKE AVE	0.32	WHITCOMB, FRANK L.
4	134	33	248	LAKE AVE	0.37	ALLEN, MARCUS D
5	136	16	326	LAKE AVE	0.37	GEARHEART, MEGAN S
6	127	25	176	LAKE AVE	0.44	GOTTLING REVOC TRUST, JAMES G.
7	136	15	328	LAKE AVE	0.44	270 LAKE AVENUE, LLC
8	136	14	332	LAKE AVE	0.5	SCIBELLI, FILOMENA
9	136	13	336	LAKE AVE	0.58	WALSH, PETER
10	136	12	354	LAKE AVE	0.6	DANIEL J. CARTER 2007 REVOC TRUST
11	134	34	244	LAKE AVE	0.625	ROSSI EVERSON FAMILY REVOC TRUST
12	134	42	200	LAKE AVE	0.63	INDIAN COVE, LLC
13	134	28	276	LAKE AVE	1.2	MURPHY, PHILIP J & PATRICIA
14	134	29	282	LAKE AVE	1.5	VARIAN, MICHAEL & LALANYA
15	136	18	314	LAKE AVE	5.19	SHINN, II 2020 REVOC TRUST, JAMES D
16	134	30	270	LAKE AVE	27.83	270 LAKE AVENUE, LLC

J & B SHINN II REVOC. TRUST
PO BOX 710
SUNAPEE, NH 03782

MITCHELL HARRIS REVOC.TRUST
PO BOX 308
SUNAPEE, NH 03782

M & D PASCULANO
22 CHESTNUT ST.
BOSTON, MA 02108

M & K LOWRIE TRUST
313 LAKE AVE
SUNAPEE, NH 03782

J & B SHINN II REVOC. TRUST
PO BOX 710
SUNAPEE, NH 03782
VA24-01

MITCHELL HARRIS REVOC.TRUST
PO BOX 308
SUNAPEE, NH 03782
VA 24-01

M & D PASCULANO
22 CHESTNUT ST.
BOSTON, MA 02108
VA24-01

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BOSTON, MA 02108

M & K LOWRIE TRUST
313 LAKE AVE
SUNAPEE, NH 03782

Case VA 24-02
Parcel ID: 0104-0083-0000

Town of Sunapee
23 Edgemont Rd., Sunapee NH
Phone (603) 763-2212 ext. 1023 / Website www.town.sunapee.nh.us
Email zoning@town.sunapee.nh.us

RECEIVED
MAR 07 2024
SUNAPEE

CASE #: VA 24-02
FEE PAID: $300
METHOD: CK # 3461

Zoning Board of Adjustment (ZBA)
Variance Application

Questions? Please contact the Zoning Administrator. All dates and deadlines are published on the ZBA calendar; see Page 6. For helpful guidelines on completing this application, see page 4-5.

Attach additional sheets of paper as necessary.

1. Landowner(s) Name(s): Cynthia Currier
2. Parcel ID: 0104-0083-000 3. Zoning District: Village Commercial
1. Project Location (Street & #): 1004 Lake Ave.,Georges Mills, NH
2. Mailing Address: PO Box 116, Georges Mills, NH 03751
3. Phone Number: 603-801-0444
4. Email: ccurrier@mac.com

☑ **ABUTTERS LIST**: You must prepare a list of all abutting property owners and attach it to your application. If you have any difficulty, consult the town office, but the accuracy of the list is your responsibility. You can download an abutters list by using the Tax Maps/GIS on the town's website (directions attached).

☑ **FEES**:
150 Application Fee: Please See Fee Schedule Attached
90 Abutter Notification Fee: Please See Fee Schedule Attached
60 Newspaper Notification Fee: Please See Fee Schedule Attached

* NOTE: All checks should be made payable to the Town of Sunapee.

ATTACHMENTS: To assist the board, please attach sketches, photos, surveys, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior Zoning or Planning decisions concerning the property. If you have something in writing stating that your proposed project does not meet zoning, please attach that to this application. It may be a letter, email or denied permit. A professional survey by a licensed surveyor is strongly recommended for variances related to setback requirements. For properties located in the Shorelines Overlay District, a professional survey is required.

Applications will not be considered complete unless all the questions are answered, the fees are paid, and an Abutters Mailing List is attached.

GENERAL DESCRIPTION: This is a place to give a general summary of the proposed project as an introduction and overview for the public hearing. For example, where is the property is located? Describe the property. Give area, frontage, side and rear lines, slopes, natural features, etc. What do you propose to do? Why does your proposal require an appeal to the board of adjustment?

Picture attached, address above. It has become near impossible to rent the remaining space as commercial. Paid ads did not work, nor did a sign out front. However, as a result I received many, many calls asking if I had an apt. space. It became evident that the need is for living space, not commercial. I would like to make the empty space/office space an apt.

Attach additional sheets of paper as necessary.

SPECIFIC REASON THE VARIANCE IS NECESSARY: A Variance is requested from Zoning Ordinance, Article 3, Section 3.10 to permit an additional apartment. The lot is 33,105.6 sq. ft, which would be 4,138.2 sq.ft per unit. It is currently required to be 10,000 and soon probably to be 7,000 sq ft. There are now 7 apartments and now a request for 1 more. This would not meet the article sq ft., but would be best for Sunapee

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest because: there is plenty of space/parking for the requested apartment. There are already 7 apts, so one more just seems to fit. There would be less traffic going out to Rte 11 than if it were commercial. It would not negatively impact the neighborhood. It would be a lot better than some something like coffee roasting. The current tenants above would be best served by another apartment rather than a commercial venture. Many commercial ideas would be detrimental to the above apartments.

2. If the variance were granted, the spirit of the ordinance would be observed because: the less than required sq footage would not affect this apartment or others. They would have their own entrances and their parking space(s) would not be where the other tenants park, so they would not be affected. can't think of how this would affect any of the current tenants or those in the surrounding neighborhood, only make it better, because some odiferous/noisy commercial ventures would negatively impact the apartments above/neighbors.

3. Granting the variance would do substantial justice because: there would be no public harm. There is a known need for affforable rent in Sunapee. People are calling whether I advertise commercial space, or not even advertising, to ask if I have any available apartments. With the recent fire in Georges Mills, I received many calls for an apartment. The majority of my current tenants have been there for 3 years up to 15!

4. If the variance were granted, the values of the surrounding properties would not be diminished because: This is the only commercial/residential space around me. The rest are businesses and their values would not be impacted, because I am not asking for another business. Property values are often questioned when comparing like uses. You really can't say an apartment would reduce the value of a convenience store, roofing company, post office or boat club.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: I

- and -

ii. The proposed use is a reasonable one because:

OR

b. Explain how, 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. please see attached

NOTE:
For person(s) with physical disabilities,
please see RSA 674:33 regarding alternative hardship criteria for a Variance.

SIGNATURE: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing. To the best of my knowledge, the above is true and correct.

Landowner(s) Signature(s) Date

5. Unnecessary Hardship

b. This property is different, because it is mixed use- commercial/residential. The Commercial is located below 3 apartments in that building. Thus anything commercial is going to directly impact the tenants above. A couple unacceptable ideas, of which there were few, from potential commercial renters were for coffee roasting and dog vaccinations. This would not work, because the smell would soon be offensive to those living right there. Dogs coming and going would be a problem with anyone else going in that building as well as the barking.

Surrounding buildings are either residential or commercial.

There seems to be no need of office space as no calls were for simple office spaces. The economy does not seem conducive to businesses branching out and adding offices, or for new companies to start up with an office. The space would be ideal for offices, but no offers came forward. Sunapee needs more long term dwelling rental space more than offices!

We are in dire need for long term rental apartments in Sunapee. I am constantly getting calls from people looking for an apartment. This is not something I would like to continue. The last 2 times, I had a vacant apartment, it was rented the next day.

Commercial ventures require makeovers and then they do not seem to stay long, and then it requires another makeover. This is disruption for those already occupying space in this building. It is also a hardship, because plans and permits have to be done each time.

Consistent income to keep up with constant improvements/repairs/renovations, taxes, water and sewer is needed. Having to have this commercial requires the same or likely, more parking. It can negatively impact the neighborhood and current tenants with ideas that do not fit the existing environment. Why have someone rent who will not add to the existing area, knowing a new apartment renter would become a part of our wonderful community?

This really is not so much about the benefit to the applicant as it is a benefit to the town of Sunapee.

It seems fair for this request to be looked upon favorably, please.

Abutters List

Subject Property
Parcel Number: Sun-0104-0083-0000
CAMA Number: Sun-0104-0083-0000
Property Address: 1004 LAKE AVE GM
Mailing Address: CURRIER, JAMES P & CYNTHIA M, PO BOX 116, GEORGES MILLS, NH 03751

Abutters:
Parcel Number: Sun-0104-0083-0000
CAMA Number: Sun-0104-0083-0000
Property Address: 1004 LAKE AVE GM
Mailing Address: CURRIER, JAMES P & CYNTHIA M, PO BOX 116, GEORGES MILLS, NH 03751

Parcel Number: Sun-0104-0070-0000
CAMA Number: Sun-0104-0070-0000
Property Address:1 281 ROUTE 11
Mailing Address: BIG LEAP LLC
125 SUMMIT ROAD
NEW LONDON, NH 03257

Parcel Number: Sun-0104-0072-0000
CAMA Number: Sun-0104-0072-0000
Property Address: 1285 ROUTE 11
Mailing Address: BLACKSTONE, THOMAS B
PO BOX 471
GEORGES MILLS, NH 03751

Parcel Number: Sun-0104-0073-0000
CAMA Number: Sun-0104-0073-0000ROUTE 11
Property Address: Route 11
Mailing Address: OTTER SQUARE REALTY TRUST
NORMA P MCGRAY TRUSTEE
PO BOX 296
GEORGES MILLS, NH 03751

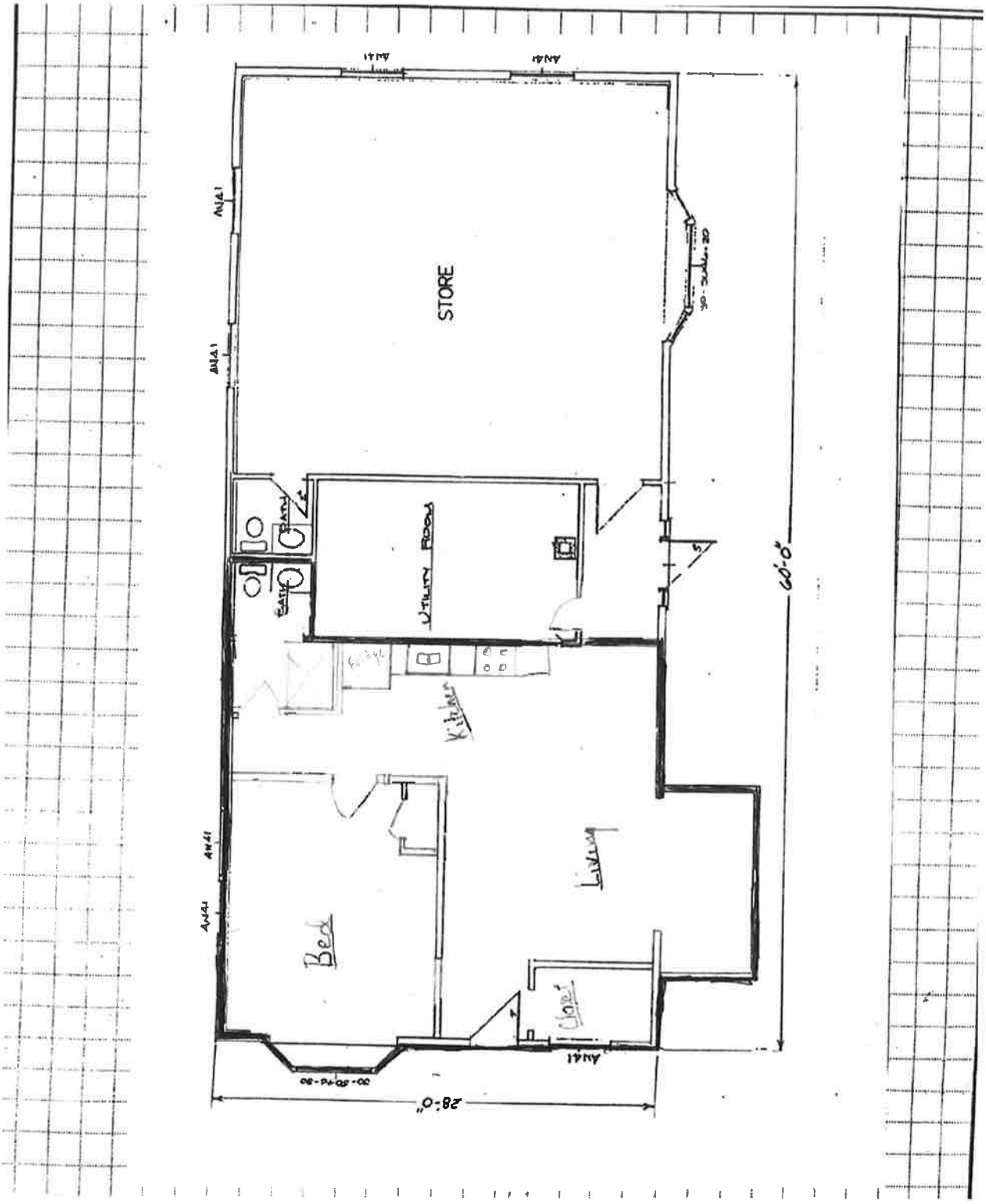
Parcel Number: Sun-0104-0081-0000
CAMA Number: Sun-0104-0081-0000
Property Address: 1005 LAKE AVE GM
Mailing Address: SUNAPEE REALTY LLC
P.O. BOX 249
GEORGES MILLS, NH 03751

Parcel Number: Sun-0106-0017-0000
CAMA Number: Sun-0106-0017-0000
Property Address: 1024 LAKE AVE GM
Mailing Address: GM BOAT CLUB
PO BOX 638,
NEW LONDON, NH 03257

Building at 1004 Lake Ave., Georges Mills

Side entrance with parking

Plan for new apartment for Currier Properties, 1004 Lake Avenue, Georges Mills, N H



CURRIER, JAMES & CYNTHIA
PO BOX 116
GEORGES MILLS, NH 03751

CURRIER, JAMES & CYNTHIA
PO BOX 116
GEORGES MILLS, NH 03751
VA 24-02

CURRIER, JAMES & CYNTHIA
PO BOX 116
GEORGES MILLS, NH 03751

BIG LEAJP LLC
125 SUMMIT ROAD
NEW LONDON, NH 03257

BIG LEAP LLC
125 SUMMIT ROAD
NEW LONDON, NH 03257
VA 24-02

BIG LEAP LLC
125 SUMMIT ROAD
NEW LONDON, NH 03257

THOMAS BLACKSTONE
PO BOX 471
GEORGES MILLS, NH 03751

THOMAS BLACKSTONE
PO BOX 471
GEORGES MILLS, NH 03751
VA 24-02

THOMAS BLACKSTONE
PO BOX 471
GEORGES MILLS, NH 04751

OTTER SQUARE REALTY TRUST
PO BOX 296
GEORGES MILLS, NH 03751

OTTER SQUARE REALTY TRUST
PO BOX 296
GEORGES MILLS, NH 03751
VA 24-02

OTTER SQUARE REALTY TRUST
PO BOX 296
GEORGES MILLS, NH 03751

SUNAPEE REALTY LLC
PO BOX 249
GEORGES MILLS, NH 03751

SUNAPEE REALTY LLC
PO BOX 249
GEORGES MILLS, NH 03751
VA 24-02

SUNAPEE REALTY LLC
PO BOX 249
GEORGES MILLS, NH 03751

GM BOAT CLUB
PO BOX 638
NEW LONDON, NH 03257

GM BOAT CLUB
PO BOX 638
NEW LONDON, NH 03257
VA 24-02

GM BOAT CLUB
PO BOX 638
NEW LONDON, NH 03257

Case VA 24-03 & VA 24-03 - A
Parcel ID: 0118-0062-0000

Town of Sunapee
23 Edgemont Rd., Sunapee NH
Phone (603) 763-2212 ext. 1023 / Email zoning@town.sunapee.nh.us
Website www.town.sunapee.nh.us

CASE#_____

Zoning Board of Adjustment (ZBA)
Variance Application

Questions? Please contact the Land Use & Assessing Coordinator or the Planning & Zoning Director. All dates and deadlines are published on the ZBA calendar; see Page 6. For helpful guidelines on completing this application, see page 4-5.

Attach additional sheets of paper as necessary.

1. Landowner(s) Name(s): Gretchen Hall C/O Brett W. Allard, Esq., Shaughnessy Allard, PLLC
2. Parcel ID: 118-62 3. Zoning District: RR
4. Project Location (Street & #): 46 Burma Road
5. Mailing Address: 24 Eastman Ave., Suite C3, Bedford, NH 03110
6. Phone Number: (603) 644-4357 ext. 3
7. Email: brett@salaw-nh.com

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___Application Fee: $150 * Make check payable to Town of Sunapee.
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* NOTE: Rates and fees are subject to change. For the most current rate, please check with the Town Office.

☑ **ATTACHMENTS**: To assist the board, please attach sketches, photos, surveys, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior Zoning or Planning decisions concerning the property. If you have something in writing stating that your proposed project does not meet zoning, please attach that to this application; it may be a letter, email or denied permit. A professional survey by a licensed surveyor is strongly recommended for variances related to setback requirements. For properties located in the Shoreline Overlay District, a professional survey is required. Supplemental materials for the Board must be submitted no later than five (5) days before the scheduled hearing, however, adequate plans and exhibits must accompany the application. This includes, but is not limited to: lot dimensions, dimensions of proposed and existing structures, identification of abutting properties and roads, locations of water bodies, wetlands, septic systems, etc.

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See attached.

Attach additional sheets of paper as necessary.

SPECIFIC REASON THE VARIANCE IS NECESSARY: A Variance is requested from Zoning Ordinance, Article 3, Section 3.10 & 3.40(c) to permit the area over the existing deck and foundation to be converted to living space within the 50 FT waterbody setback and partially within the 15 FT side setback.

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest because:

See attached.

2. If the variance were granted, the spirit of the ordinance would be observed because:

See attached.

3. Granting the variance would do substantial justice because:

See attached.

4. If the variance were granted, the values of the surrounding properties would not be diminished because: See attached.

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: See attached.

- and -

ii. The proposed use is a reasonable one because: See attached.

b. Explain how, 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. N/A

NOTE:
For person(s) with physical disabilities,
please see RSA 674:33 regarding alternative hardship criteria for a Variance.

SIGNATURE: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing. To the best of my knowledge, the above is true and correct.

Landowner(s) Signature(s) Date 3/6/2024

By: Brett W. Allard, Esq., Attorney for the Owner/Applicant

Introduction

Gretchen Hall (the "Applicant") is the owner of the approximately 0.20-acre (8,700 square foot) property situated at 46 Burma Road (Tax Parcel 118-62) along Perkins Pond. The lot is situated in the Rural Residential District. The property has about 62 feet of frontage along Burma Road and approximately 69 feet of frontage along Perkins Pond. The lot is a legal preexisting nonconforming lot of record. The cottage is situated on the westerly waterfront side of the parcel and is served by a well and municipal sewer. The existing cottage is situated entirely within the 50-foot waterbody setback. A small portion on the southerly side of the existing cottage also encroaches about 2.5 feet into the southerly side setback.

As shown on the enclosed plans, the Applicant proposes to reconstruct the cottage on its existing footprint, thereby maintaining the existing foundation. The Applicant also proposes a building addition off the easterly "road" side of the existing structure. With the exception of a small sliver of land (approximately 35 square feet) within the 50-foot waterbody setback between the easterly edge of the existing cottage and the westerly building envelope boundary that the proposed addition must cover in order to reach the building envelope (that is the subject of the special exception application submitted simultaneously herewith), the proposed addition is situated entirely within the building envelope and does not require any relief from the ZBA.

This variance application concerns only a portion of the existing cottage. The southerly portion of the cottage running the length of the building is a deck over a foundation (approximately 114 square feet). This portion of the cottage is labeled on the enclosed Existing Conditions Plan dated September 6, 2023 as a "covered concrete foundation" and is situated entirely within the 50-foot waterbody setback. A very small portion of its southerly corner (approximately 10 square feet) is also situated within the 15-foot side setback (12.5 feet from the property line, i.e., a 2.5-foot encroachment). Since the Applicant proposes to convert the area over the deck and foundation to living space, she is requesting variances from Section 3.40(c) of the zoning ordinance (waterbody setback) and Section 3.10 of the zoning ordinance (side setback) to permit same.

For the reasons set forth below, the Applicant submits that she has satisfied the five variance criteria and respectfully requests that the Board grant the variances.

1 & 2. Granting the variances will not be contrary to the public interest and will be consistent with the spirit of the ordinance.

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives. Farrar v. City of Keene, 158 N.H. 684 (2009). The relevant tests are (1) whether the proposal will alter the essential character of the neighborhood; and (2) whether it threatens the public health, safety or welfare. Id. Because it is in the public's interest to uphold the spirit of the ordinance, the Supreme Court has held that these two criteria are related. Id. If you

meet one test you almost certainly meet the other. Id. As such, the Applicant addresses these two criteria together.

Granting the variances will not alter the essential character of the neighborhood because the property will remain consistent with the single-family residential character of the area. There is nothing about the Applicant's request that will threaten public health and safety. Indeed, if the variances are granted, the property will not be made more nonconforming relative to the distance between the cottage and reference line because the Applicant is not proposing to expand further toward the Pond. Similarly, the property will not be made more nonconforming relative to the distance between the cottage and southerly property line because the Applicant is not proposing to expand further toward that property line.

Further, if the variances are granted, the Applicant will be removing all existing outbuildings on the property. Doing so will result in the removal of four (4) encroachments within side setbacks, bringing the lot further into compliance with the zoning ordinance than it is presently in that regard. Moreover, if the variances are granted, the Applicant will be reconfiguring the existing driveway and walkway. As a result of this reconfiguration and the removal of the largest outbuilding, impervious coverage on the property will be made less nonconforming, as it will be reduced from 30.61% existing to 26.9% proposed, even with the building addition (where up to 25% impervious area is allowed on the lot). The height of all new or expanded structures will be constructed in compliance with all applicable height requirements of the zoning ordinance. Accordingly, granting the variances will not be contrary to the public interest and will be consistent with the spirit and intent of the zoning ordinance.

3. Granting the variances would do substantial justice.

The Supreme Court has held that measuring substantial justice requires balancing public and private rights. "Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 515 (2011). There is no injury to the public if the variances are granted because it will allow the Applicant to realize reasonable property rights without harming abutters or developing the property in a manner out-of-character with other residences in the neighborhood – on Burma Road in particular and Perkins Pond in general.

Additionally, there is no gain to the public if the variances are denied. There is only loss to the Applicant if the variances are denied. Therefore, when balancing public and private rights, the loss to the Applicant if the variances are denied outweighs any loss or injury to the public if the variances are granted. Indeed, given the outdated condition of the existing cottage, the proposed addition is "appropriate for the area". See U-Haul Co. of New Hampshire & Vermont v. City of Concord, 122 N.H. 910, 913 (1982). Granting variances for requests that are appropriate for the area does substantial justice. Accordingly, granting the variances would do substantial justice.

4. The values of the surrounding properties will not be diminished.

The proposal is in harmony with the neighborhood. If the variances are granted, the property will be completely revitalized and aesthetically enhanced, which will be a benefit to surrounding property values and the neighborhood generally. Additionally, the proposed single-family residential use of the property is permitted by right, and uses permitted by right are *per se* reasonable. See Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007) (permitted uses are *per se* reasonable). It is presumed that a reasonable use will not diminish the values of surrounding properties. Further, the area in which the Applicant proposes to enclose the existing deck within the side setback is extremely small (only 10 square feet), and only encroaches 2.5 feet into the setback. 12.5 feet of open space will remain between the enclosed existing deck and the southerly lot line. Therefore, surrounding property values will not be diminished if the variances are granted.

5. Unnecessary hardship.

Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and (1) there is no fair and substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property; and (2) the proposed use is reasonable. See RSA 674:33.

This property has several special conditions that distinguish it from other properties in the area, the most relevant ones being the small size of the parcel and the location of the existing cottage. First, the entire cottage is situated on a foundation outside what is already a modestly sized building envelope – partially within the side setback and entirely within the waterbody setback. As a result, the creation of any additional living space above the existing footprint – even over that portion of the existing foundation that presently lacks living space – requires a waterbody setback variance. Moreover, if the existing cottage were situated only 2.5 feet to the north, the existing deck and foundation would be outside the 15-foot side setback and that setback variance would not be required to convert that area to living space. In other words, given the small size of the lot and the location of the existing cottage, the strict application of the zoning ordinance requires a variance for essentially any external redevelopment of the cottage.

Owing to these special conditions, there is no fair and substantial relationship between the purpose and application of the zoning ordinance's waterbody and side setback requirements and their application here. The property will remain consistent with the single-family residential character of the area. The property will not be made more nonconforming relative to the distance between the cottage and reference line because the Applicant is not proposing to expand further toward the Pond. Similarly, the lot will not be made more nonconforming relative to the distance between the cottage and southerly property line because the Applicant is not proposing to expand further toward same. The removal of four (4) encroaching outbuildings within side setbacks will bring the lot further into compliance with the zoning ordinance than it is presently in that regard. As a result

of the removal of the largest outbuilding and reconfigured driveway, impervious coverage on the property will be made less nonconforming even with the building addition (30.61% existing to 26.9% proposed). The side setback encroachment is extremely modest, at only 10 square feet and only 2.5 feet into the setback area. In sum, notwithstanding the conversion of deck area to living space, on balance, the property will be made less nonconforming than it presently is if the variances are granted.

Accordingly, the purposes that the zoning ordinance seeks to protect are not in any way threatened if the variances are granted. Therefore, the Applicant can show unnecessary hardship and the variances should be granted. Indeed, granting the variances will allow the Applicant to realize reasonable, constitutional property rights without harming abutters or developing the property in a manner out-of-character with other residences in the neighborhood.

The proposed use is reasonable.

For all of the foregoing reasons, which are incorporated herein by reference, the proposed use is reasonable. Moreover, the building addition is requested in connection with the single-family residential use of the property, which is permitted by right, and uses permitted by right are *per se* reasonable. See Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007) (permitted uses are *per se* reasonable).

50 foot Abutters List Report

Tri Town, NH
March 05, 2024

Subject Property:

Parcel Number:	Sun-0118-0062-0000	Mailing Address:	HALL, GRETCHEN
CAMA Number:	Sun-0118-0062-0000		PO BOX 4041
Property Address:	46 BURMA RD		SHREWSBURY, MA 01545

Abutters:

Parcel Number:	Sun-0118-0039-0000	Mailing Address:	HALL, GRETCHEN
CAMA Number:	Sun-0118-0039-0000		PO BOX 4041
Property Address:	BURMA RD		SHREWSBURY, MA 01545
Parcel Number:	Sun-0118-0040-0000	Mailing Address:	APPLEBEE-COLE, TRACEY
CAMA Number:	Sun-0118-0040-0000		60 RONDEAU ST
Property Address:	BURMA RD		PALMER, MA 01069
Parcel Number:	Sun-0118-0061-0000	Mailing Address:	APPLEBEE-COLE, TRACEY
CAMA Number:	Sun-0118-0061-0000		60 RONDEAU ST
Property Address:	48 BURMA RD		PALMER, MA 01069
Parcel Number:	Sun-0118-0063-0000	Mailing Address:	MARTINEZ-PARIS FAMILY REVOC TR
CAMA Number:	Sun-0118-0063-0000		29 BURMA RD
Property Address:	44 BURMA RD		SUNAPEE, NH 03782
Parcel Number:	Sun-0215-0043-0000	Mailing Address:	LEONE, RALPH & RICHARD , ET AL
CAMA Number:	Sun-0215-0043-0000		PO BOX 98
Property Address:	BURMA RD		GRANTHAM, NH 03753

Tracey Applebee-Cole
60 Rondeau Street
Palmer, MA 01069

Martinez-Paris
Family Revocable Trust
29 Burma Road
Sunapee, NH 03782

Ralph Leone, Richard Leone &
Ronald Leone
P.O. Box 98
Grantham, NH 03753

Gretchen Hall C/O
Brett W. Allard, Esq.
Shaughnessy Allard, PLLC
24 Eastman Avenue, Suite C3
Bedford, NH 03110

Chris Kessler, PLA
Gradient, PLLC
P.O. Box 311
New London, NH 03257

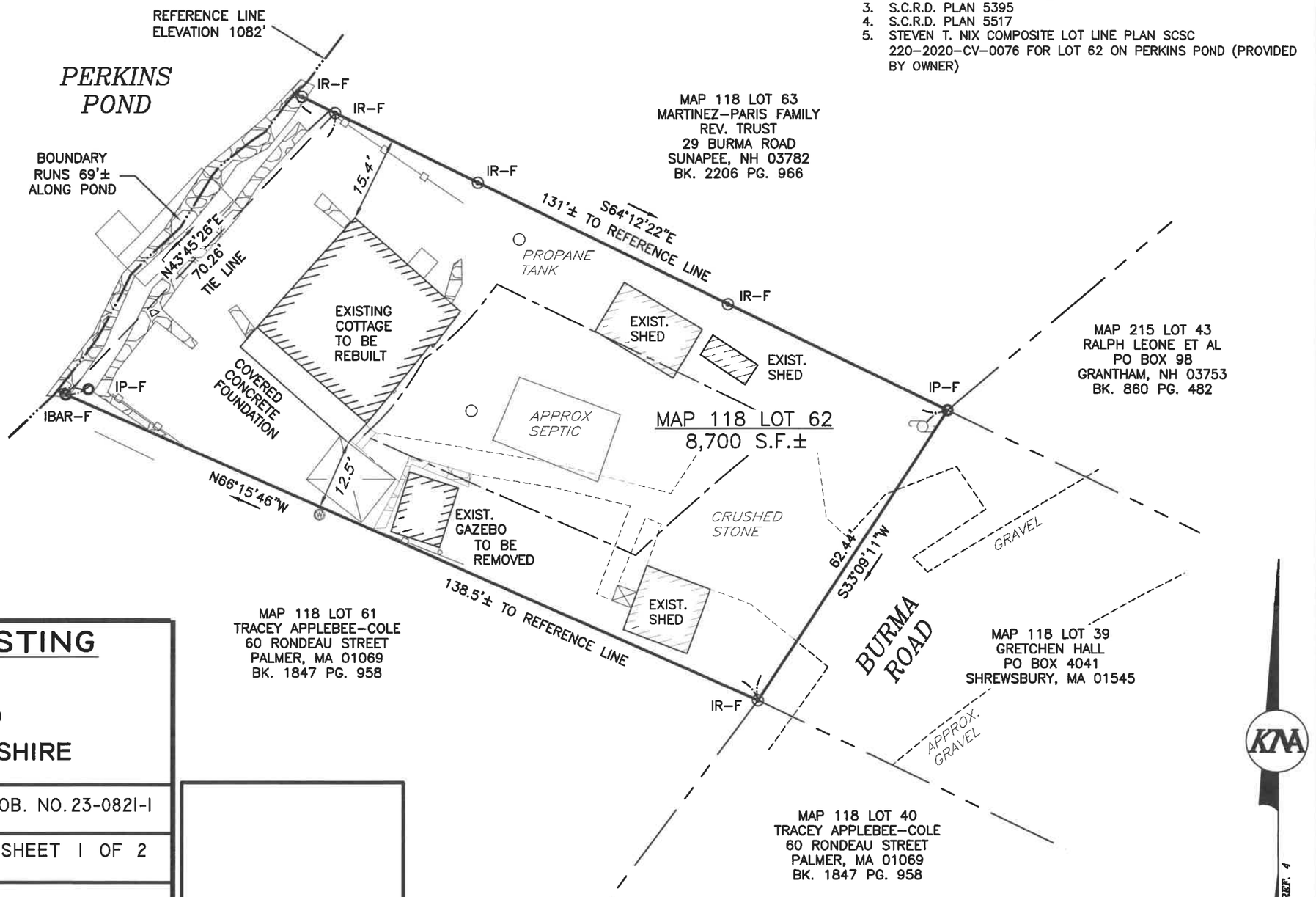
Peter White, AIA
Peter J. White, Assoc.
228 Main Street
New London, NH 03257

NOTES:

1. THE PURPOSE OF THIS PLAN IS TO DEPICT THE EXISTING CONDITIONS PRESENT ON MAP 111 LOT 58 IN THE TOWN OF BELMONT, NEW HAMPSHIRE IN ACCORDANCE WITH A ZBA APPLICATION FOR A PROPOSED HOUSE ADDITION.
2. BOUNDARY INFORMATION SHOWN HEREON IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED BY THIS OFFICE IN SEPTEMBER OF 2023.
3. EXISTING LOT AREA = 8,700–SF
   EXISTING LOT IMPERVIOUS AREA: 3,106–SF
   EXISTING IMPERVIOUS COVERAGE: 35.7%
4. BUILDING SETBACKS:
   –FRONT: 50 ft (FROM ROAD CENTERLINE)
   –REAR/WATERBODY: 50 FT
   –SIDE: 15 ft

REFERENCE PLANS

1. S.C.R.D. PLAN DR05–0088
2. S.C.R.D. PLAN DR05–0162
3. S.C.R.D. PLAN 5395
4. S.C.R.D. PLAN 5517
5. STEVEN T. NIX COMPOSITE LOT LINE PLAN SCSC 220–2020–CV–0076 FOR LOT 62 ON PERKINS POND (PROVIDED BY OWNER)



GRAPHIC SCALE

20' 0' 10' 20' 40'

(IN FEET)

1 inch = 20 ft.

ZBA EXHIBIT - EXISTING

MAP 118 LOT 62

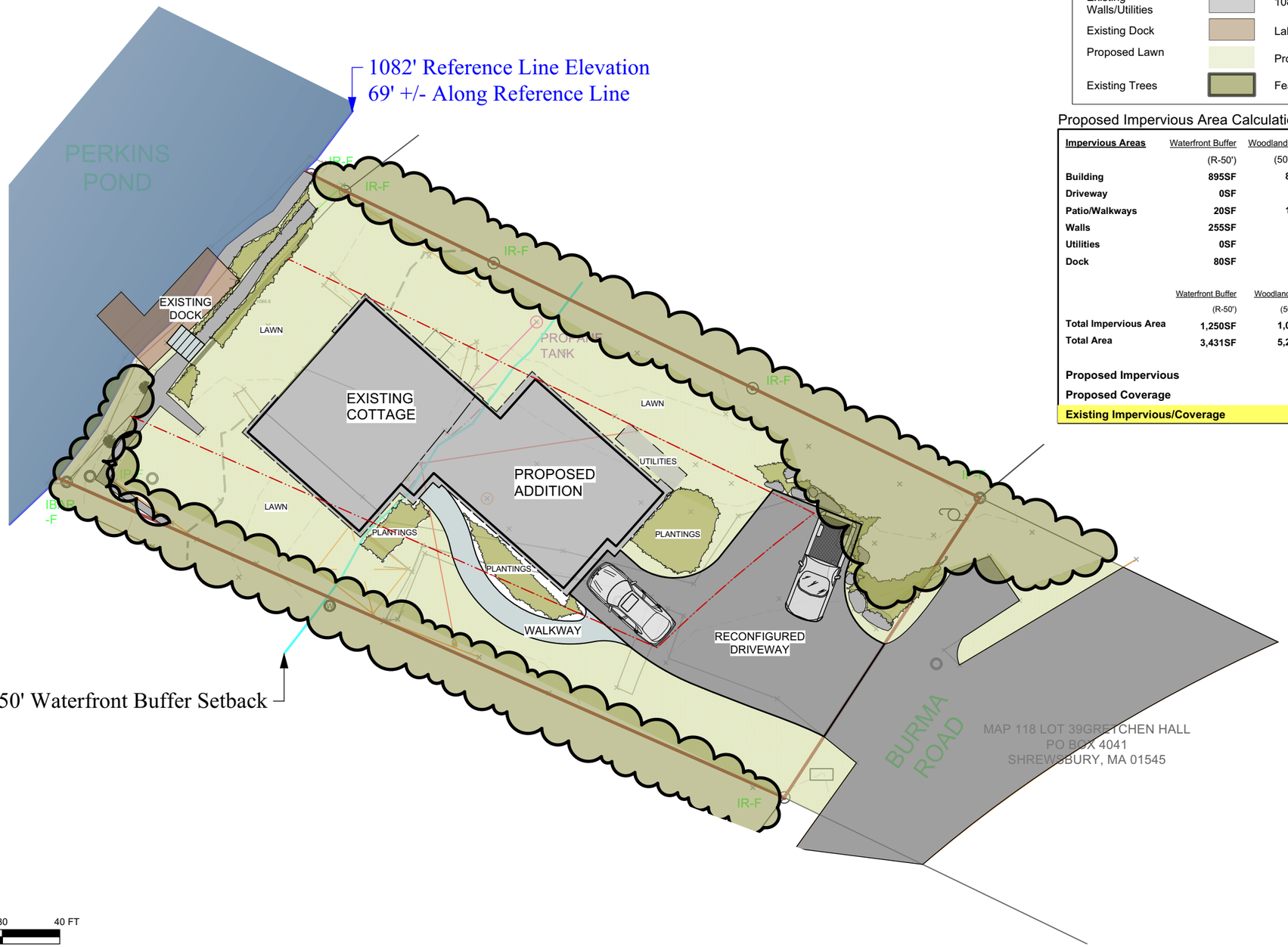
46 BURMA ROAD

SUNAPEE, NEW HAMPSHIRE

DRAWN BY: TK	DATE: 09-06-2023	JOB. NO. 23-0821-1
CHECKED BY: CJH	SCALE: 1" = 20'	SHEET 1 OF 2

KEACH–NORDSTROM ASSOCIATES, INC.

Civil Engineering Land Surveying Landscape Architecture
10 Commerce Park North, Suite 3B, Bedford, NH 03110
Phone (603) 627–2881



Legend

Proposed Building		Property Line	
Proposed Driveway		Existing Major Contour	
Proposed Walkway/ Patio		Existing Minor Contour	
Existing Walls/Utilities		1082' Reference Line	
Existing Dock		Lake Setback Lines	
Proposed Lawn		Property Setback Lines	
Existing Trees		Feature Stone	

Proposed Impervious Area Calculations

Impervious Areas	Waterfront Buffer (R-50')	Woodland Buffer (50'-150')	Protected Shoreland (150'-250')	Total (R-250')
Building	895SF	855SF	0SF	1,750SF
Driveway	0SF	0SF	0SF	0SF
Patio/Walkways	20SF	105SF	0SF	125SF
Walls	255SF	0SF	0SF	255SF
Utilities	0SF	50SF	0SF	50SF
Dock	80SF	0SF	0SF	80SF

	Waterfront Buffer (R-50')	Woodland Buffer (50'-150')	Protected Shoreland (150'-250')	Total (R-250')
Total Impervious Area	1,250SF	1,010SF	0SF	2,260SF
Total Area	3,431SF	5,297SF	0SF	8,728SF

Proposed Impervious	25.89%
Proposed Coverage	39.90%
Existing Impervious/Coverage	30.61%

N

Revisions

#	Description	Date

Gretchen Hall
46 Burma Road
Sunapee, NH

GRADIENT
LANDSCAPE ARCHITECTS
P.O. Box 311
New London | NH | 03257

Project Name: Hall Property

Drawing Title: Conceptual Master Plan

Project Manager: Chris Kessler
Drawn By: C. Kessler
Date: 5 March 2024
Scale: 1" = 20'

CMP1

Case VA 24-04
Parcel ID: 0118-0062-0000

Town of Sunapee
23 Edgemont Rd., Sunapee NH
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Website www.town.sunapee.nh.us

CASE#_____

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See attached.

Attach additional sheets of paper as necessary.

SPECIFIC REASON THE VARIANCE IS NECESSARY: A Variance is requested from Zoning Ordinance, Article 3, Section 3.40(c) to permit construction of an approximately 35 square foot structure approximately 47 feet from the reference line of Perkins Pond connecting an existing cottage to a proposed building addition within the building envelope where a 50-foot waterbody setback is required.

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest because:

See attached.

2. If the variance were granted, the spirit of the ordinance would be observed because:

See attached.

3. Granting the variance would do substantial justice because:

See attached.

4. If the variance were granted, the values of the surrounding properties would not be diminished because: See attached.

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a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: See attached.

- and -

ii. The proposed use is a reasonable one because: See attached.

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NOTE:
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please see RSA 674:33 regarding alternative hardship criteria for a Variance.

SIGNATURE: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing. To the best of my knowledge, the above is true and correct.

Landowner(s) Signature(s) Date 3/21/24

By: Brett W. Allard, Esq., Attorney for the Owner/Applicant

Introduction

Gretchen Hall (the "Applicant") is the owner of the approximately 0.20-acre (8,700 square foot) property situated at 46 Burma Road (Tax Parcel 118-62) along Perkins Pond. The lot is situated in the Rural Residential District. The property has about 62 feet of frontage along Burma Road and approximately 69 feet of frontage along Perkins Pond. The lot is a legal preexisting nonconforming lot of record. The cottage is situated on the westerly waterfront side of the parcel and is served by a well and municipal sewer. The existing cottage is situated entirely within the 50-foot waterbody setback. A small portion on the southerly side of the existing cottage also encroaches about 2.5 feet into the southerly side setback.

As shown on the enclosed plans, the Applicant proposes to reconstruct the cottage on its existing footprint, thereby maintaining the existing foundation. The Applicant also proposes a building addition off the easterly "road" side of the existing structure. This application concerns only this building addition because it must cover a small sliver of land (approximately 35 square feet) within the 50-foot waterbody setback between the easterly edge of the existing cottage and the westerly building envelope boundary in order to reach the building envelope where the balance of the addition will be constructed by right.

For the reasons set forth below, the Applicant submits that she has satisfied the five variance criteria and respectfully requests that the Board grant the variances.

1 & 2. Granting the variance will not be contrary to the public interest and will be consistent with the spirit of the ordinance.

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives. Farrar v. City of Keene, 158 N.H. 684 (2009). The relevant tests are (1) whether the proposal will alter the essential character of the neighborhood; and (2) whether it threatens the public health, safety or welfare. Id. Because it is in the public's interest to uphold the spirit of the ordinance, the Supreme Court has held that these two criteria are related. Id. If you meet one test you almost certainly meet the other. Id. As such, the Applicant addresses these two criteria together.

Granting the variance will not alter the essential character of the neighborhood because the property will remain consistent with the single-family residential character of the area. Indeed, granting the variance will allow the existing cottage to be connected to the dwelling proposed within the building envelope, and the spirit of the zoning ordinance in the Rural Residential District favors a single dwelling over multiple disconnected dwellings on the same lot. There is nothing about the Applicant's request that will threaten public health and safety. Further, if the variance is granted, the property will not be made more nonconforming relative to the distance between the cottage and reference line because the Applicant is not proposing to expand further toward the Pond.

Moreover, the Town has taken the position that the Applicant only needs a variance for the purposed connector building addition because she is simultaneously seeking variances to permit reconstruction of the existing cottage within the waterbody and side setbacks. If the Applicant did not need those variances, a special exception could be obtained for the connector addition pursuant to Section 3.50(k) of the zoning ordinance. If Section 3.50(k) were available to the Applicant, all three criteria would be unequivocally satisfied because the proposed addition (1) is more than 40 feet from Perkins Pond; (2) is on the side of the existing cottage that faces away from the Pond; and (3) is not higher than 25 feet from the finished grade at its tallest point.

Further, if the variances are granted, the Applicant will be removing all existing outbuildings on the property. Doing so will result in the removal of four (4) encroachments within side setbacks, bringing the lot further into compliance with the zoning ordinance than it is presently in that regard. Moreover, if the variances are granted, the Applicant will be reconfiguring the existing driveway and walkway. As a result of this reconfiguration and the removal of the largest outbuilding, impervious coverage on the property will be made less nonconforming, as it will be reduced from 30.61% existing to 25.89% proposed, even with the building addition (where up to 25% impervious area is allowed on the lot). The height of all new or expanded structures will be constructed in compliance with all applicable height requirements of the zoning ordinance. Accordingly, granting the variances will not be contrary to the public interest and will be consistent with the spirit and intent of the zoning ordinance.

3. Granting the variance would do substantial justice.

The Supreme Court has held that measuring substantial justice requires balancing public and private rights. "Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Harborside Assocs., L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 515 (2011). There is no injury to the public if the variance is granted because it will allow the Applicant to realize reasonable property rights without harming abutters or developing the property in a manner out-of-character with other residences in the neighborhood – on Burma Road in particular and Perkins Pond in general.

Additionally, there is no gain to the public if the variance is denied. There is only loss to the Applicant if the variance is denied. Therefore, when balancing public and private rights, the loss to the Applicant if the variance is denied outweighs any loss or injury to the public if the variance is granted. Indeed, the proposed addition is "appropriate for the area". See U-Haul Co. of New Hampshire & Vermont v. City of Concord, 122 N.H. 910, 913 (1982). Granting variances for requests that are appropriate for the area does substantial justice. Accordingly, granting the variance would do substantial justice.

4. The values of the surrounding properties will not be diminished.

The proposal is in harmony with the neighborhood. If the variances are granted, the property will be completely revitalized and aesthetically enhanced, which will be a

benefit to surrounding property values and the neighborhood generally. Additionally, the proposed single-family residential use of the property is permitted by right, and uses permitted by right are *per se* reasonable. See Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007) (permitted uses are *per se* reasonable). It is presumed that a reasonable use will not diminish the values of surrounding properties. Further, this variance application only seeks to permit construction of an approximately 35 square foot building addition ranging from 47 feet to 49 feet from the reference line of the Pond. Granting this variance to allow for such a small addition one to three feet from the permitted building envelope will not diminish the value of surrounding properties. Therefore, surrounding property values will not be diminished if the variance is granted.

5. Unnecessary hardship.

Unnecessary hardship will be found when the subject property has special conditions or circumstances that distinguish it from other properties in the area and (1) there is no fair and substantial relationship between the purpose of the ordinance and the specific application of the ordinance as applied to the property; and (2) the proposed use is reasonable. See RSA 674:33.

As discussed above, the Town has taken the position that the Applicant only needs a variance for the purposed connector building addition because she is simultaneously seeking variances to permit reconstruction of the existing cottage within the waterbody and side setbacks. If the Applicant did not need those variances, a special exception could be obtained for this connector addition pursuant to Section 3.50(k) of the zoning ordinance, and, as discussed above, the Applicant would satisfy all three criteria. The Town's reasoning is that Section 3.50(k) relates to alterations to grandfathered structures and, once a variance is granted, the structure is no longer grandfathered, but rather, is permitted by variance, so the special exception provision of Section 3.50(k) would no longer be applicable. It is precisely these types of unusual and unique circumstances inherent in the specific, strict application of the zoning ordinance for which the variance mechanism is designed to provide relief to landowners. See NH Practice 15 – Land Use, Planning, and Zoning, Peter Loughlin at 24.03 (variances are "designed to correct maladjustments and inequities in the operation of zoning regulations"); see also Bacon v. Town of Enfield, 150 N.H. 468, 477 (2004) (the variance is designed to operate as zoning's constitutional "safety valve").

This property has several special conditions that distinguish it from other properties in the area, the most relevant ones being the small size of the parcel and the location of the existing cottage. First, the entire cottage is situated on a foundation outside what is already a modestly sized building envelope – entirely within the waterbody setback. As a result, the construction of even a modest 35 square foot addition requires a waterbody setback variance. In other words, given the small size of the lot and the location of the existing cottage, the strict application of the zoning ordinance requires a variance for essentially any external redevelopment of the cottage.

Owing to these special conditions, there is no fair and substantial relationship between the purpose and application of the zoning ordinance's waterbody setback requirement and its application here. The property will remain consistent with the single-family residential character of the area. The property will not be made more nonconforming relative to the distance between the cottage and reference line because the Applicant is not proposing to expand further toward the Pond. The removal of four (4) encroaching outbuildings within side setbacks will bring the lot further into compliance with the zoning ordinance than it is presently in that regard. As a result of the removal of the largest outbuilding and reconfigured driveway, impervious coverage on the property will be made less nonconforming even with the building addition (30.61% existing to 25.89% proposed). The proposed waterbody setback encroachment is extremely modest – 35 square feet – and is a mere one to three feet from the building envelope. This variance is only required in order to connect the existing cottage to the building addition within the permitted envelope. In sum, notwithstanding the proposed connector addition, on balance, the property will be made less nonconforming than it presently is if the variance is granted.

Accordingly, the purposes that the zoning ordinance seeks to protect are not in any way threatened if the variance is granted. Therefore, the Applicant can show unnecessary hardship and the variance should be granted. Indeed, granting the variance will allow the Applicant to realize reasonable, constitutional property rights without harming abutters or developing the property in a manner out-of-character with other residences in the neighborhood.

The proposed use is reasonable.

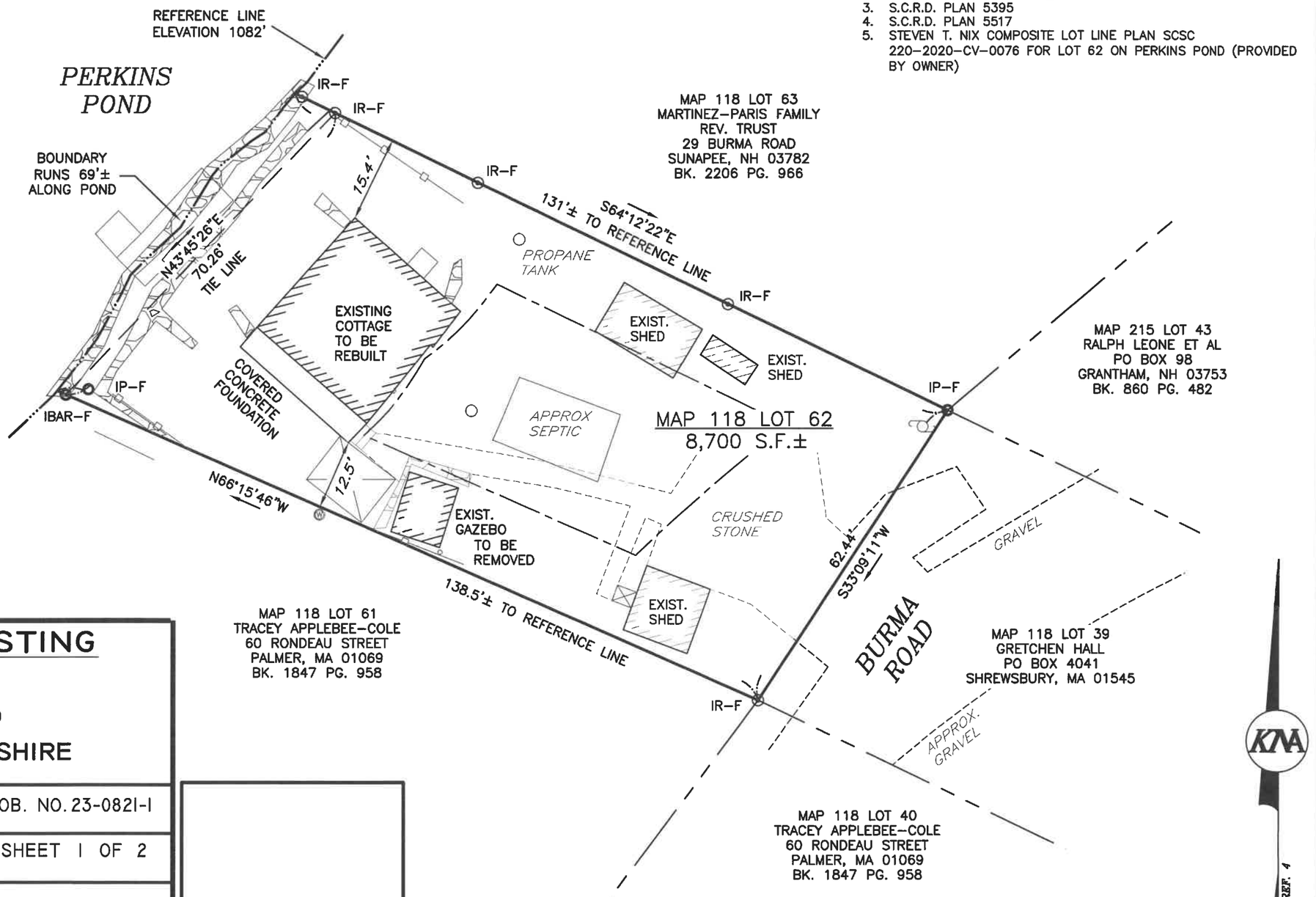
For all of the foregoing reasons, which are incorporated herein by reference, the proposed use is reasonable. Moreover, the building addition is requested in connection with the single-family residential use of the property, which is permitted by right, and uses permitted by right are *per se* reasonable. See Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007) (permitted uses are *per se* reasonable).

NOTES:

1. THE PURPOSE OF THIS PLAN IS TO DEPICT THE EXISTING CONDITIONS PRESENT ON MAP 111 LOT 58 IN THE TOWN OF BELMONT, NEW HAMPSHIRE IN ACCORDANCE WITH A ZBA APPLICATION FOR A PROPOSED HOUSE ADDITION.
2. BOUNDARY INFORMATION SHOWN HEREON IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED BY THIS OFFICE IN SEPTEMBER OF 2023.
3. EXISTING LOT AREA = 8,700–SF
   EXISTING LOT IMPERVIOUS AREA: 3,106–SF
   EXISTING IMPERVIOUS COVERAGE: 35.7%
4. BUILDING SETBACKS:
   –FRONT: 50 ft (FROM ROAD CENTERLINE)
   –REAR/WATERBODY: 50 FT
   –SIDE: 15 ft

REFERENCE PLANS

1. S.C.R.D. PLAN DR05–0088
2. S.C.R.D. PLAN DR05–0162
3. S.C.R.D. PLAN 5395
4. S.C.R.D. PLAN 5517
5. STEVEN T. NIX COMPOSITE LOT LINE PLAN SCSC 220–2020–CV–0076 FOR LOT 62 ON PERKINS POND (PROVIDED BY OWNER)



GRAPHIC SCALE

20' 0' 10' 20' 40'

(IN FEET)

1 inch = 20 ft.

ZBA EXHIBIT - EXISTING

MAP 118 LOT 62

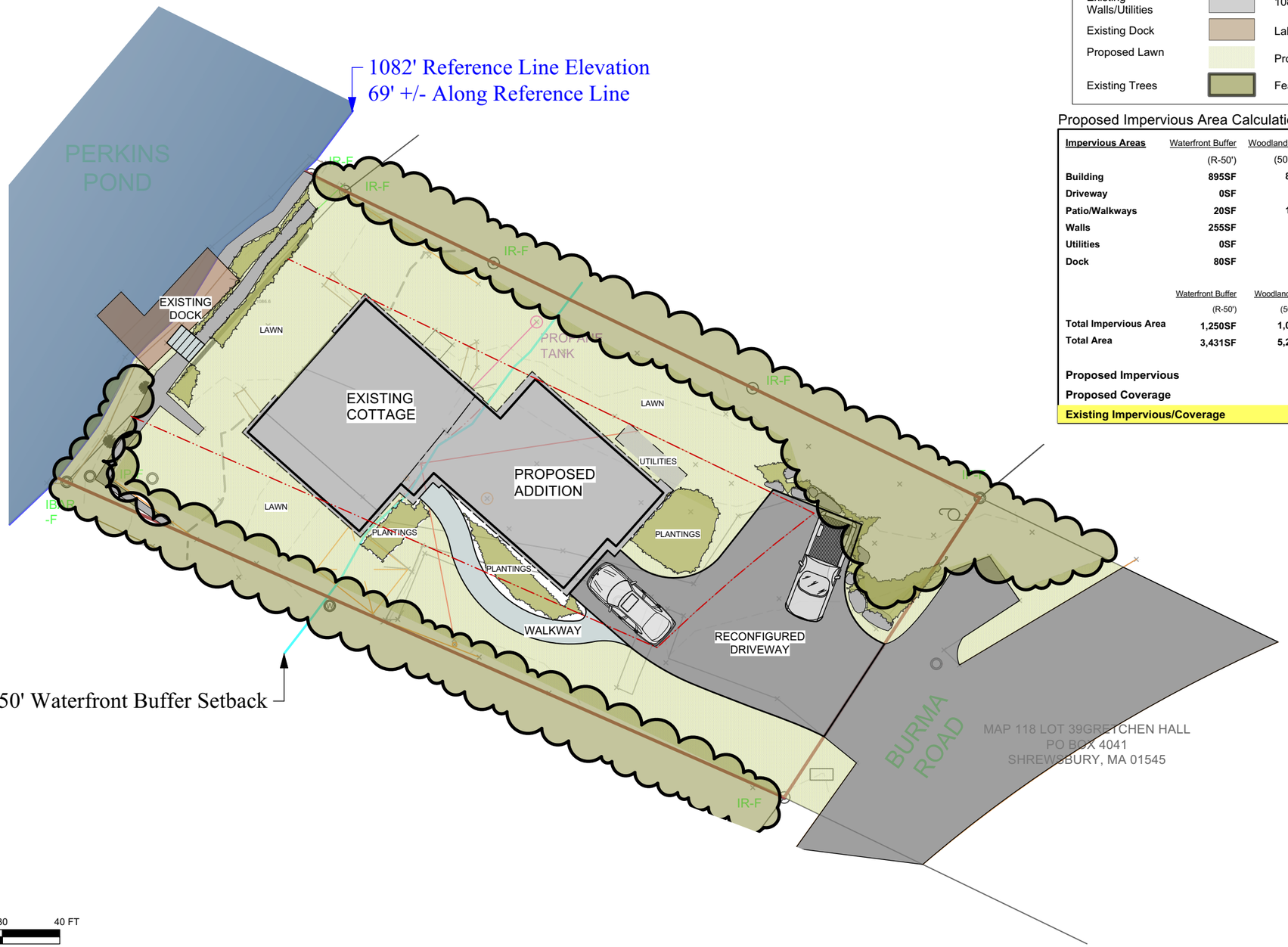
46 BURMA ROAD

SUNAPEE, NEW HAMPSHIRE

DRAWN BY: TK	DATE: 09-06-2023	JOB. NO. 23-0821-1
CHECKED BY: CJH	SCALE: 1" = 20'	SHEET 1 OF 2

KEACH–NORDSTROM ASSOCIATES, INC.

Civil Engineering Land Surveying Landscape Architecture
10 Commerce Park North, Suite 3B, Bedford, NH 03110
Phone (603) 627–2881



Legend

Proposed Building		Property Line	
Proposed Driveway		Existing Major Contour	
Proposed Walkway/ Patio		Existing Minor Contour	
Existing Walls/Utilities		1082' Reference Line	
Existing Dock		Lake Setback Lines	
Proposed Lawn		Property Setback Lines	
Existing Trees		Feature Stone	

Proposed Impervious Area Calculations

Impervious Areas	Waterfront Buffer (R-50')	Woodland Buffer (50'-150')	Protected Shoreland (150'-250')	Total (R-250')
Building	895SF	855SF	0SF	1,750SF
Driveway	0SF	0SF	0SF	0SF
Patio/Walkways	20SF	105SF	0SF	125SF
Walls	255SF	0SF	0SF	255SF
Utilities	0SF	50SF	0SF	50SF
Dock	80SF	0SF	0SF	80SF

	Waterfront Buffer (R-50')	Woodland Buffer (50'-150')	Protected Shoreland (150'-250')	Total (R-250')
Total Impervious Area	1,250SF	1,010SF	0SF	2,260SF
Total Area	3,431SF	5,297SF	0SF	8,728SF

Proposed Impervious	25.89%
Proposed Coverage	39.90%
Existing Impervious/Coverage	30.61%

N

Revisions

#	Description	Date

Gretchen Hall
46 Burma Road
Sunapee, NH

GRADIENT
LANDSCAPE ARCHITECTS
P.O. Box 311
New London | NH | 03257

Project Name: Hall Property

Drawing Title: Conceptual Master Plan

Project Manager: Chris Kessler
Drawn By: C. Kessler
Date: 5 March 2024
Scale: 1" = 20'

CMP1

50 foot Abutters List Report

Tri Town, NH
March 05, 2024

Subject Property:

Parcel Number:	Sun-0118-0062-0000	Mailing Address:	HALL, GRETCHEN
CAMA Number:	Sun-0118-0062-0000		PO BOX 4041
Property Address:	46 BURMA RD		SHREWSBURY, MA 01545

Abutters:

Parcel Number:	Sun-0118-0039-0000	Mailing Address:	HALL, GRETCHEN
CAMA Number:	Sun-0118-0039-0000		PO BOX 4041
Property Address:	BURMA RD		SHREWSBURY, MA 01545
Parcel Number:	Sun-0118-0040-0000	Mailing Address:	APPLEBEE-COLE, TRACEY
CAMA Number:	Sun-0118-0040-0000		60 RONDEAU ST
Property Address:	BURMA RD		PALMER, MA 01069
Parcel Number:	Sun-0118-0061-0000	Mailing Address:	APPLEBEE-COLE, TRACEY
CAMA Number:	Sun-0118-0061-0000		60 RONDEAU ST
Property Address:	48 BURMA RD		PALMER, MA 01069
Parcel Number:	Sun-0118-0063-0000	Mailing Address:	MARTINEZ-PARIS FAMILY REVOC TR
CAMA Number:	Sun-0118-0063-0000		29 BURMA RD
Property Address:	44 BURMA RD		SUNAPEE, NH 03782
Parcel Number:	Sun-0215-0043-0000	Mailing Address:	LEONE, RALPH & RICHARD , ET AL
CAMA Number:	Sun-0215-0043-0000		PO BOX 98
Property Address:	BURMA RD		GRANTHAM, NH 03753