

**TOWN OF SUNAPEE
ZONING BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 1, 2024, 6:30 p.m.
SUNAPEE TOWN MEETING ROOM**

Members present in the meeting room: Jeff Claus, Jim Lyons, David Munn, Michael Jewczyn

Members present online: Jamie Silverstein

Also present in the meeting room: Michael Marquise, Town Planner; Allyson Traeger, Land Use and Assessing Coordinator; Craig Heino, Code Compliance Officer

Chair Claus called the meeting to order at 6:34 p.m.

NEW CASES

Case #SE 24-01, Parcel ID 0233-0064-0000, on behalf of Joseph Kroll III and Stephanie Kroll, 41 Nutting Road, requesting a **SPECIAL EXCEPTION** from Article IV, Section 4.95 to allow for a Short-Term Rental Owner-Not-in-Residence in the Rural Residential District.

DECISION: The special exception was granted.

DISCUSSION:

Ms. Traeger shared a letter with the Board from a resident objecting to Ms. Silverstein participating in this case based on a conflict of interest against short-term rentals. The letter is not from anyone related to the case. She said counsel confirmed the Board is not required to take action, and that it is not relevant for any Board member to recuse themselves.

Ms. Silverstein said there is no conflict of interest on her part; she does not own a short-term rental. She believes these individuals have malicious intent and that it will continue. These individuals have appeared before the Board in the past and did not like the Board's ruling. She invited them to bring any concerns to the Board.

Mr. Lyons moved that the Board has every confidence in Ms. Silverstein and she should continue to sit on this and every other case that the Board hears. Chair Claus seconded the motion. A vote was taken. All were in favor. The motion carried unanimously.

Chair Claus read this case into the record.

Joseph Kroll appeared before the Board. He thanked Ms. Traeger for her help as they completed their application. They purchased the house in October as a family getaway, with the intention to also use it as a short-term rental. They have engaged a management company to manage the property in their absence. He noted they will adhere to the new statutes.

Mr. Kroll reviewed the special exception criteria:

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- 1. The selected site is an appropriate location for the proposed use.** The house offers a good amount of privacy, and is close to Mount Sunapee and Lake Sunapee.
- 2. Adequate and safe highway access is provided to the proposed site and that there is adequate off-street parking provided for the proposed use.** The house offers easy access to Route 103, and has a detached two-car garage and multiple spaces in the driveway for parking.
- 3. Adequate method of sewage disposal is available at the proposed site.** The house has a septic system that was inspected and pumped on December 14, 2023, and no issues were found.
- 4. The proposal will not be detrimental, hazardous, or injurious to the neighborhood.** They are making interior and exterior improvements to ensure the house is safe and is a benefit to the neighborhood.
- 5. The proposed use is consistent with the spirit of the Ordinance and intent of the Master Plan.** By offering a ski home/lake house, they will bring families to Sunapee. This will support the businesses in town and fit the goal of the Master Plan.

Chair Claus noted there have been recent issues with the size of septic systems. Ms. Traeger has provided the applicant with information about this.

The Board discussed the source of drinking water, which Mr. Kroll said was a well on the property. Mr. Jewczyn asked why the deed includes the right to place a well on an abutting property. Chair Claus noted it might be an issue from the past.

Mr. Jewczyn said the property card noted this as a congested area and asked how bringing more congestion into the neighborhood is not injurious. Chair Claus pointed out this is already a residential use and the number of people in the home will not change.

Mr. Lyons clarified that there will be no parking on the street and Mr. Kroll agreed. Ms. Silverstein noted the ordinance stipulates a maximum of one car per bedroom. Mr. Kroll said they will follow the regulations regarding trash can or dumpster screening.

Mr. Jewczyn said in #5, as the Master Plan is looking to create more affordable housing, this use seems contrary to that. He will allow it as there is no rule against it, but he is personally against this. Mr. Marquise said when the Master Plan was written in 2010, housing was not the issue it is today. He believes the new Master Plan will address the need for housing.

Chair Claus asked for public input.

A resident said the applicant has put a lot of money into fixing up the house and it looks nice. He said the applicant has done a great job and will be a good neighbor.

The Board closed public input and began deliberation.

Chair Claus said they will make operational approval of the septic system a condition of approval.

The Board discussed whether the applicant intended to limit rentals to 120 days, as stated in his application. Mr. Jewczyn noted that any restrictions will be imposed on the property, not on the applicant.

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Chair Claus reopened public input and asked Mr. Kroll about his intention. Mr. Kroll clarified that his intention was if this requirement became a mandate, they would follow it. They would be willing to place a cap of 120 days on the rental, if that is what the Board wants.

The Board closed public input and resumed deliberation.

The Board discussed the applicant's intention. They agreed the application meets the qualifying criteria, subject to the septic permit. Mr. Traeger explained the applicant will not be approved for registration or a CZC as a short-term rental until this is confirmed.

Ms. Silverstein moved to approve Case #SE 24-01, Parcel ID 0233-0064-0000, on behalf of Joseph Kroll III and Stephanie Kroll, 41 Nutting Road, requesting a SPECIAL EXCEPTION from Article IV, Section 4.95 to allow for a Short-Term Rental Owner-Not-in-Residence in the Rural Residential District, subject to the applicant providing the Town with the original septic permit to indicate the size of the septic system that meets the three-bedroom criteria. Mr. Munn seconded the motion. A vote was taken. The motion carried unanimously.

CONTINUED CASES

Case #VA 23-09, Parcel ID 0133-0087-0000 on behalf of Sunapee Harbor Riverway, Quack Shack, 72 Main Street, Village Commercial District, requesting a VARIANCE from Article III, Section 3.40(c) to allow a 9.5' x 9.5' panelized freezer to be placed within the 50-foot shoreline setback of Sugar River.

DECISION: *The request for a variance was denied*

DISCUSSION:

Chair Claus read the case into the record.

Brett Allard of Shaughnessy Allard, attorney for the landowner, Sunapee Harbor Riverway, and John Quackenbos, Quack Shack owner, appeared before the Board. The case was continued in November to await clarification from DES whether the freezer required a shoreland permit. The Board reviewed emails from DES, which Mr. Allard said were inconclusive, and the case was again continued. Mr. Allard reached out to DES for further clarification and received a response that if the freezer is an independent appliance placed on a deck, it would not meet the definition of a structure and would not require a shoreland permit.

Mr. Allard said for a variance to be required, the freezer would need to be a structure as defined by the Town. He said the crux of whether something is a structure is if it has a fixed location on the ground, as defined by the Town and the state. He clarified the deck is the structure and the freezer is an appliance located on the deck. He cited a similar situation that was presented to the Board regarding a request for a variance, even though no variance was required. He requested the Board make the threshold finding of whether the freezer is a structure.

Mr. Marquise said the staff feels if something is on the ground and is not regularly moved, it is a fixed location.

Ms. Silverstein asked what kind of protection will be in place to prevent freon and other substances leaking onto the deck and into the water. Mr. Quackenbos said the deck is built on the foundation of the original

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building. Mr. Allard said this footprint is grandfathered, as it has not been abandoned, so a structure could be built on it that would not require a variance. Mr. Marquise said any expansion would have to be within the envelope of the current structure.

Chair Claus noted that Mr. Allard obtained the information the Board requested from DES. He asked the Board if they believe the freezer is a structure and if so, they would continue with the variance. If the Board feels it is not a structure, they could vote that the variance is not required.

Mr. Jewczyn believes it is a structure. He said the DES emails say this is a structure.

Chair Claus said while the applicant makes a strong case, administratively these have been ruled as structures in the past. He noted that in the Town's definition of a structure, there are examples of items that are not fixed, such as above-ground swimming pools.

Mr. Lyons believes this requires a variance and the freezer is a structure.

Ms. Silverstein said the definition of a structure does not include appliances. The freezer is not a permanent structure and can be moved. She pointed out if the applicant moved the freezer every 89 days, a variance would not be required. She noted this is a gap in the ordinance.

The Board voted on whether the freezer is a structure. Four of the five members voted that it is, with Mr. Munn in opposition.

The Board discussed the location of the sewer line and the associated easement. Mr. Allard said it is difficult to prove the actual width of the existing easement, as it is not in the chain of title. Mrs. Traeger noted mention of the easement has existed in documentation since 1943. The Board discussed whether the freezer could be located in the easement and dismantled, if access to the sewer line was needed. Mr. Quackenbos noted the freezer needs to be placed on a cement pad, which would be a permanent structure and not moveable. Mr. Jewczyn said water and sewer operators can navigate equipment in this easement.

Mr. Allard reviewed the layout of the property that creates a hardship. He noted they do not see where water quality will be threatened or that there will be overcrowding or congestion. Mr. Jewczyn said there are no guarantees of this and noted making a non-conforming structure more non-conforming is not an effective argument.

Ms. Silverstein suggested a smaller freezer that would fit under the eaves on the other side of the building, out of the setback. Mr. Quackenbos explained the volume of the business requires this size freezer. Ms. Silverstein noted need is not related to a hardship.

Ms. Silverstein asked Mr. Allard what his client could concede that would help the Board mitigate their concerns. Mr. Allard asked what those concerns were and was told encroachment on the waterway and expansion of the envelope. The Board discussed alternative locations for the freezer.

Chair Claus noted the Board has been advised on the definition of hardship by counsel and the applicant's request does not meet this criteria.

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Mr. Allard said it appears that when considering substantial justice and weighing harms to the applicant versus harms to the public, there are a lot of hurdles the applicant would have to navigate. There would be no harm to the public, if the variance was granted. Chair Claus replied having this structure within 20 feet of a waterway could potentially be harmful to the public. Mr. Allard said no members of the public have spoken against this. The Board noted the business has thrived with the freezer in a remote location.

The Board closed public input and began deliberation.

Mr. Jewczyn said there is no hardship. The applicant has other options to locate the freezer. The Board needs to maintain setbacks from the water body.

Ms. Silverstein said her concern is that it is a structure, and the envelope is being increased. She said she is concerned the structure could be changed and enlarged in the future. She is also concerned there were no concessions made by the applicant. She does not feel the hardship criteria was met.

Chair Claus reopened public input.

Mr. Allard noted if they place the freezer outside the setback, a variance would not be needed. It would be cost prohibitive to propose disassembling the freezer after a set period of time.

The Board closed public input and resumed deliberation.

Mr. Lyons noted a concern with the cumulative effect of approving this and setting a precedent.

The Board discussed whether the property meets the hardship criteria. They agreed the size of the freezer is necessary for the business but that this location is based on convenience.

Ms. Silverstein moved to deny Case #VA 23-09, Parcel ID 0133-0087-0000 on behalf of Sunapee Harbor Riverway, Quack Shack, 72 Main Street, Village Commercial District, requesting a VARIANCE from Article III, Section 3.40(c) to allow a 9.5' x 9.5' panelized freezer to be placed within the 50-foot shoreline setback of Sugar River. Mr. Munn seconded the motion.

Mr. Lyons voted in favor of the motion to deny, as he did not find the hardship criteria was met from the standpoint of reasonableness. He felt the structure was too big to fit into the proposed site. He expressed concern about the cumulative impact, which would be detrimental to the public interest and contrary to the spirit of the ordinance. He was concerned about increasing the size of the envelope and what could happen in the future, if the business were to change hands.

Mr. Munn felt it was reasonable to move the freezer to an alternate location that did not encroach on the setback.

Chair Claus voted to deny. He did not feel it met the spirit of the ordinance based on the cumulative impact on the waterfront buffer of many such projects.

Mr. Jewczyn voted to deny. He did not believe the applicant gave enough evidence that there was a hardship. He does not believe the water and sewer easement is a legitimate issue, as it can be overcome. He believes the Board has an obligation to the Town to preserve the water body setback. He agreed with the concern regarding changing the envelope. He said the applicant did not make an effective case.

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Ms. Silverstein voted to deny for the reasons stated.

A vote was taken. All were in favor. The request for a VARIANCE was denied.

MISCELLANEOUS

Ms. Silverstein asked that a letter be on file from counsel as part of the record that acknowledges that specific Board members being asked to recuse themselves is a malicious intent and usually is not a viable request. She said this is not the only Board being challenged with this kind of attack and she wants to ensure other Boards can navigate it.

Ms. Traeger said it makes sense to have something from counsel outlining the procedure the Board should follow, should this happen again. It could be a part of the Board's policies and procedures. She will contact counsel and request such a document be drafted, and then will share it with the Board.

OTHER BUSINESS

The Board signed the minutes of the December 7, 2023, meeting.

Ms. Traeger reported she is working on modifying the variance application. She would like Board input, so will send a link for them to complete test applications. She noted the application lists what is required before an applicant can appear before the Board, and it cannot be submitted until it is complete.

The Board discussed the applicant including the 120-day rental stipulation in their application for a special exception request earlier in the meeting. Ms. Traeger said she is telling applicants about the proposed amendments for informational purposes.

Chair Claus said the Board needs to look at the definition of a structure, pursuant to the discussion during the variance request earlier in the meeting.

ADJOURNMENT

Mr. Lyons made a motion to adjourn at 9:23 p.m. Chair Claus seconded the motion. A vote was taken, all were in favor. The motion carried unanimously.

Meeting adjourned at 9:23 p.m.

Respectfully submitted,

Beth Haggeli
Recording Secretary

Jeff Claus, Chair

Jamie Silverstein

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Michael Jewczyn

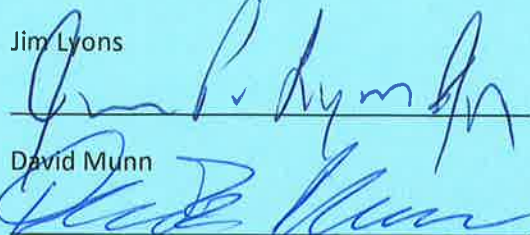
A blue ink signature of Michael Jewczyn, written in a cursive style, positioned above a horizontal line.

David Andrews

A blue ink signature of David Andrews, written in a cursive style, positioned above a horizontal line.

Chris Murphy

Jim Lyons

A blue ink signature of Jim Lyons, written in a cursive style, positioned above a horizontal line.

David Munn

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Pierre Lessard

