

**TOWN OF SUNAPEE  
ZONING BOARD OF ADJUSTMENT  
MINUTES  
OCTOBER 5, 2023, 6:30 p.m.  
SUNAPEE TOWN MEETING ROOM**

**Members present in the meeting room:** Jeff Claus, Jim Lyons, Jamie Silverstein, David Munn, Michael Jewczyn, David Andrews, Pierre Lessard

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

**Present on Zoom:** Michelle of HP Sunapee; Karen Webb, legal counsel for HP Sunapee

Chairman Claus called the meeting to order at 6:30 p.m.

**NON-PUBLIC SESSION**

At 6:00 p.m., the Sunapee Zoning Board of Adjustment held a non-public session under RSA 91-A:3II(I) -- Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

**CONTINUED CASES**

**Case #VA 23-08, Parcel ID 0144-0004-0000** on behalf of John & Mary Higgins, located at 62 Rolling Rock Road, in a Rural Residential Zone, requesting a **VARIANCE** from Article III, Section 3.10 to allow construction of an attached garage within the 25-foot side setback.

**DECISION:** This application has been withdrawn.

**NEW CASES**

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

**DECISION:** Continued until November 2, 2023, meeting.

**DISCUSSION:**

John Quackenbos of the Quack Shack and Susan Mills of the Sunapee Riverway appeared before the Board. They would like to move a walk-in freezer from behind a neighboring building to the

## SUNAPEE ZONING BOARD OF ADJUSTMENT – OCTOBER 5, 2023

Quack Shack deck to avoid shuttling ice cream between the two locations. It will be located on the deck, under the roofline of the building.

The Board discussed alternative locations to place the freezer that would not require a variance. The applicant said they have a letter from the DES that states no permit is required to place this structure in this location. The Board discussed the possible hardships associated with this request.

The applicant reviewed the criteria for the variance:

1. Granting the variance would not be contrary to the public interest because the work on this project will not be obtrusive and it will be beneficial as the business owner will have easy access to the ice cream supply without moving it through the Harbor by hand on a busy day.
2. If the variance were granted, the spirit of the ordinance would be observed because no alterations to the existing building would take place. The panelized freezer unit meets the requirements for height, etc.
3. Granting the variance would do substantial justice because the addition of the unit is consistent with the present use of the building.
4. If the variance were granted, the value of the surrounding properties would not be diminished because the area is business use and the addition of the panelized freezer unit will be in keeping with the current use of the building.
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 the addition of the unit will not take away from the current use of the area. The area of placement is currently not used except for two 50-gallon trash cans.  
- and -
    - ii. The proposed use is a reasonable one because it will eliminate the need for transporting 5-gallon containers of ice cream through the Harbor and give the business more space inside.

Chair Claus asked for public comment.

A member of the public asked why if one freezer is already in this location, why a second one cannot be located in the same place. The Board clarified that the existing freezer would be considered grandfathered and pre-existing non-conforming.

A member of the public asked for a definition of a hardship. The Board directed her to the variance application.



SUNAPEE ZONING BOARD OF ADJUSTMENT – OCTOBER 5, 2023

Ms. Silverstein moved to continue Case #VA 23-09, Parcel ID 0133-0087-0000 on behalf of the Sunapee Harbor Riverway, Quack Shack, located at 72 Main Street in the Village Commercial District under HB 1661 to the November 2, 2023, meeting, as the Board needs more information, including a survey and the letter from the DES indicating that the applicant does not need a permit. Mr. Lyons seconded the motion. A vote was taken. The motion carried 4-1-0.

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Case #VA 23-10, Parcel ID 0104-0066-0000 on behalf of Ernest & Patricia Collins, 44 Springfield Road located in a Residential District, requesting a **VARIANCE** from Article IV, Section 4.31 to allow construction of a 28-foot x 30-foot garage within the 25-foot wetland setback.

**DECISION:** Denied as it does not meet the hardship criteria. The proposed project does not adhere to the spirit of the ordinance.

**DISCUSSION:**

Ernest and Patricia Collins, owners of the property, appeared before the Board. They described their intention to remove the existing garage and shed and build a garage within the 25-foot wetland setback. They would like to build a breezeway between the garage and the house.

The applicant reviewed the criteria for the variance:

1. Granting the variance would not be contrary to the public interest because it does not affect any abutters. Not building within wetlands. Will be adhering to road setback.
2. If the variance were granted, the spirit of the ordinance would be observed because it would improve the existing structure, remove shed from the wetlands and garage currently "grandfathered" in regards to road setback.
3. Granting the variance would do substantial justice because the current garage is in need of replacing due to declining structural integrity. To comply with the 50-foot center of road setback. Both the existing shed and garage could be replaced, as "grandfathered." Would like to be in compliance with current rules.
4. If the variance were granted, the value of the surrounding properties would not be diminished because the garage would be new and painted. It would be used for storage of some of the items currently stored in the yard. Removal of shed out of wetlands.
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 only area amenable on property with minimal disturbance to wetland and/or 50-foot road setback.

- and -

- ii. The proposed use is a reasonable one because both the current garage and shed are becoming structurally unsound. Reasonable to road setback.

The Board discussed the location of the garage in relation to the road and wetland setbacks. The proposed alternate locations and building sizes to avoid the need for a variance.

Chair Claus asked for public comment; there was none.

The Board closed public input and began deliberation.

The Board discussed the hardship of this property and the reasoning behind the proposed size of the garage.

Chair Claus reopened the hearing. He noted that the proposed breezeway is not on the plan and will also need a variance. Mr. Collins asked if the garage is connected to the house, would it require a variance. The Board clarified a variance would still be needed.

Land Use and Assessing Coordinator Traeger clarified that granting a variance is a relief from the setback of the ordinance; the Board's decision should not be connected to a specific plan. The statements of fact will reference the ordinance. The Board agreed to discuss this at a later date, for more clarification.

**Ms. Silverstein moved to deny Case #VA 23-10, Parcel ID 0104-0066-0000 on behalf of Ernest & Patricia Collins, 44 Springfield Road located in a Residential District, requesting a variance from Article IV, Section 4.31 to allow construction of a 28-foot x 30-foot garage within the 25-foot wetland setback. Mr. Jewczyn seconded the motion.**

Mr. Munn approved the denial as it does not meet the hardship criteria due to the wetland area issue.

Ms. Silverstein agreed that it does not meet the hardship criteria. There is a building envelope that would not put the structure into the wetland setback.

Chair Claus said the applicant has not established any special conditions or characteristics of the property that unfairly burden it from other properties in the area, so no hardship has been established.

Mr. Lyons believes the hardship criteria are not met for the same reasons as Chair Claus.

Mr. Jewczyn does not feel the hardship criteria have been met as the plan is presented.

The applicants thanked the Board for their input.

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**SUNAPEE ZONING BOARD OF ADJUSTMENT – OCTOBER 5, 2023**

**Case #VA23-11, Parcel ID 0237-0025-0000** on behalf of Robin Abendroth, 63B Nature Way, Rural Residential District, requested a **VARIANCE** from Article IV, Section 4.90 to allow an Accessory Dwelling Unit in a two-family dwelling.

**DECISION:** Continued until November 2, 2023, meeting.

**DISCUSSION:**

Mr. Lyons and Mr. Munn recused themselves from the Board. Chair Claus appointed Mr. Andrews to sit in for Mr. Lyons and Mr. Lessard to sit in for Mr. Munn.

Robin Abendroth appeared before the Board. She reviewed the history of her project, which was to create a dwelling in her basement for a roommate. She applied for a special exception but was told that was only for a single-family dwelling and she needed to apply for a variance. She disagrees that a variance is needed as she feels she lives in a single-family home, not a two-family dwelling. Chair Claus clarified the definition of a two-family dwelling. This will not be for a short-term rental.

The Board discussed the septic system and determined it was designed for a four-bedroom house, so there are no issues. Mr. Lessard noted all other requirements for an ADU have been met.

The Board discussed whether a variance or a special exception applies in this situation. They agreed they need to consult with counsel to find out if they can legally issue a variance for a use that is approved by special exception.

Chair Claus asked for public comment.

A member of the public asked regarding the use of the term "roommate." It was clarified that the person would not be living in any of the existing bedrooms.

Ms. Abendroth asked for clarification as to what elements institute an ADU. Town Planner Marquise explained having a collection of rooms with a cooking area that creates a separate living area will define a space as an ADU.

George Edwards, 63A Nature's Way, an abutter to this property, said he is concerned because there have been changes to the exterior of the building. He cited chapter 356-B:30 of the New Hampshire Condominium Act, which states that changes are not permitted to the exterior of the building. He said the condominium documents also state residents are not allowed to make changes to the exterior of a building. Chair Claus clarified the exterior of the building is not in the Board's purview.

## **SUNAPEE ZONING BOARD OF ADJUSTMENT – OCTOBER 5, 2023**

Ms. Silverstein asked if there are safety standards that have to be met. Chair Claus said state standards will need to be followed.

Michelle, representing HP Sunapee, the owner of the subdivision, appeared via Zoom. She wanted to ensure no changes would be made to the property that would impede the common area or affect the rest of the subdivision. Ms. Abendroth said there are no changes to the common area or the subdivision. Michelle noted the current owners have no plans to continue to develop the subdivision.

Karen Webb, counsel for HP Sunapee, appeared via chat message. She registered an objection to the special exception request, as they have not been provided with plans for the requested ADU, so have no information regarding setbacks and other requirements. Ms. Traeger clarified that this will be all interior work and does not affect the footprint of the structure.

**Chair Claus moved that this case be continued until the November 2, 2023, meeting, until the Board can obtain clarification or guidance from counsel on the special exception criteria and if the Board can discuss a variance regarding a use that is approved by special exception. Mr. Andrews seconded the motion. A vote was taken, all were in favor.**

Mr. Jewczyn noted in the New Hampshire Condominium regulations and under Section 356B:5, there is a reference to a condominium conversion being allowed by a vote of everyone in the complex.

Mr. Lyons and Mr. Munn rejoined the Board.

### **MISCELLANEOUS**

The Board discussed the format of the minutes moving forward. They agreed it would be helpful to list the statement of fact and the decision in the beginning, and then the discussion.

### **REVIEW AND ACCEPTANCE OF MINUTES**

The September minutes will be approved at the next meeting.

### **ADJOURNMENT**


Mr. Lyons made a motion, seconded by Mr. Munn, to adjourn. Motion carried unanimously.

Meeting adjourned at 9:11 pm.

Respectfully submitted,

Beth Hanggeli  
Recording Secretary

SUNAPEE ZONING BOARD OF ADJUSTMENT – OCTOBER 5, 2023

  
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Jeff Claus, Chairman  
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Michael Jewczyn  
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David Andrews  
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Chris Murphy  
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Jamie Silverstein  
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Jim Lyons  
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Pierre Lessard