

1 **SUNAPEE PLANNING BOARD MEETING**
2 **JUNE 5, 2008**
3 **7:00 PM**

4 *******DRAFT*******

*******DRAFT*******

5
6 **Present:** Peggy Chalmers, Chairman
7 Allan Davis, Vice-Chairman
8 Philip Porter
9 Peter White
10 Emma Smith. Ex-Officio
11 Michael Marquise, Planner
12 Roger Landry, Zoning Administrator
13

14 **Absent:** Bruce Jennings
15 Derek Tatlock
16 Frederick Gallup, Ex-Officio Alternate
17

18 **Others Attending:** See sign-in sheet.
19

20 **The meeting was called to order at 7:05 PM by Chairman Peggy Chalmers.**
21

22 **A motion was made by Peter White to approve the minutes of March 5, 2008. The**
23 **motion was seconded by Phil Porter. The motion was approved with 2 abstentions**
24 **(ES, AD).**
25

26 **A motion was made by Peter White to approve the minutes of May 1, 2008 as**
27 **corrected. The motion was seconded by Emma Smith. The motion was approved**
28 **with 2 abstentions (PP, AD).**
29

30 **7:15PM**

31 **CONTINUATION**

32 **Map 129, Lot 73, Sonya Land Investments LTD., 18 Central St., Site Plan Review,**
33 **Converting 3 BR Home into 1 BR Apartment and Real Estate Office.**
34

35 Peggy advised there are a number of outstanding issues from the last meeting. She asked
36 Bob Anthonyson, representing Sony Land Investments, to explain the parking. Bob
37 explained that the outstanding issues are addressed on the new plan. One issue that came
38 up was the signage and it is clearly labeled on the plan. 4 of the signs will have
39 downward lighting. The 4 signs with lighting are B, C, A, and E. The second issue was
40 parking. Spaces 2A and 3A will be used by the apartment dweller. Spaces 1 & 4 (in the
41 garage) will be used by employees. The other 5 spaces (5-9) will be public parking.
42 Another issue was the hours of operation from 7:00 AM to 9:00 PM. This would not be
43 all the time, as 7:00 AM arrival and 9:00 PM departure, are not the usual. The surface of
44 the parking: the new area would be bluestone and that does not generate dust. They have
45 investigated putting some of the parking on a different location on the site and there is no
46 room to do that. Most of the land that would be needed to do that, toward Rt. 11 and the
47 church, is not land of the property owner, but land owned by the State. The landscaping
48 plan and the species of plants are shown on this plan. There will be a garden as part of an
49 erosion/drainage plan to collect runoff. There was a question about pedestrian traffic.

50 There is a ramp to the left of the building, off the porch and into the parking area. There
51 will be no dumpster. All trash will be contained within the building and taken to the
52 Transfer Station as needed.
53

54 Peggy expressed concern over the height of the buffering and Bob Anthonyson stated that
55 Tony Bergeron advised that it needs to be low because of the road plowing and being
56 able to get the snow off the road. He stated that Tony's preference would be perennials
57 so they don't have to worry about damaging and trees or shrubbery. Roger Landry
58 confirmed that is what Tony prefers.
59

60 Peggy suggested that there should be some type of maintenance cycle put in place for the
61 plantings and rain garden.
62

63 The cut sheet for the lighting has not been received. Michael advised that the
64 calculations for the drainage were received. Peter White asked why there are not more
65 trees along the property line toward the Gonyea property for buffering. Bob Anthonyson
66 explained that this tree would provide a good block from their dining room. There is
67 room for additional trees if that is a concern, subject to sufficient spacing.
68

69 Allan Davis asked Charlie Hirshberg, engineer, about the maintenance of the rain garden:
70 how often it should be done and how it should be done? Charlie explained that it is
71 required to be checked after a major rain event (an inch or more). They have a form from
72 EPA to fill in. In the past, the town has required, he thinks twice per year, a report that
73 certifies they are maintaining it so there is some annual record. Allan asked if it has to
74 be done by an engineer and Charlie advised it has to be someone who knows what he is
75 doing. He stated that the report goes to Tony Bergeron. Allan stated that copies should
76 be given to the Planning Board as they are the ones placing the condition. Roger stated
77 that a copy should go to the Zoning file so that if anyone has a question if it was done, the
78 information is there. Allan stated there should be a log kept on the site which contains a
79 report of each inspection and by May 1 and November 1 of each year, it should be
80 inspected by a professional engineer. Each report should be submitted to the Road Agent
81 and the Planning and Zoning office, signed and dated. Peggy questioned who should
82 inspect the storm-water elements and correct any deficiencies after a major rain event and
83 Allan stated it should be the owner or owner's representative.
84

85 Peggy recapped: They must maintain a log which should be kept on site for the Town
86 of Sunapee. The inspections are to be done during the months of May and November for
87 storm-water elements by a professional engineer with copies provided to the Road Agent
88 and Planning and Zoning office. The cut sheet for sign lighting is needed.
89

90 Roger stated the total signage equals 77 sq. ft., not including the boat. Allan Davis stated
91 that with two boats, there will be 8 signs. Peggy questioned the limit on signage and
92 Roger advised it is 96 sq. ft. Michael stated the regulations state "it is important that
93 signs are illuminated only by continuous indirect white light sources so placed they will
94 not constitute a hazard or nuisance due to glare". He stated that the lighting has to be so
95 subtle it will not reflect off the sign. That is why the cut sheet is critical.
96

97 Ken Adams, abutter, asked where the two boats, with signage on both sides, would be
98 stored on the property. Atty. Tony Dipadova stated they are not asking for signage

99 approval for the boats. They may or may not be on the property at some point. At this
100 point, they are only asking for the approval of the 77 sq. ft. which is shown on the plan.
101 Our position is the boats are not signs as defined under the Zoning Ordinance. That is up
102 to the Zoning Administrator to decide that. He stated “the issue the Board has to decide
103 today is, if at some time the boats show up on the property and the Zoning Administrator
104 believes that it is a violation because it goes over the 96 sq. ft. or it is not on the plan,
105 then he can issue a cease and desist to those folks. Then the applicant has a right to take
106 an appeal to the Zoning Board.” They would have to decide if they are signs or not.
107 Roger stated that Mr. Chiarella has been cautioned by him that if the boats come on the
108 property, in his opinion, he will be over 96 sq. ft. and will be cited. Mr. Chiarella asked
109 if he decided to store one of the boats on the property and removed one of the signs and
110 stayed under the 96 sq ft., would he still be in violation and Roger advised that he would
111 not. However, he cannot use the parking area to store the boat because the parking area
112 is specified for clients, apartment dwellers, etc. Arlene Adams stated enforcement is
113 limited.
114

115 Howard Dunn, Attorney for the abutters, stated the Board can make this a condition of
116 the approval, that the boats with signs not be parked on the premises. Peggy stated they
117 can say he cannot exceed the 96 sq. ft. and that any sign and its location needs to be part
118 of the approved site plan. Roger suggested that any additional signage and their location
119 must require Planning Board approval. Peggy stated that is what she meant. Roger
120 stated we should have some concern as to where that boat will be parked. He also
121 commented in regard to enforcing the rule. Every time the boat was parked in a different
122 location, there was an enforcement action taken. Arlene Adams asked how long it took
123 and Roger advised it usually takes at least 30 days and explained the procedure of
124 notification and cease and desist.
125

126 Caroline Humphrey asked whether Chief Cahill has reviewed the parking and safety
127 issues as suggested at the May 4, 2008 meeting and what his recommendation would be.
128 Roger stated that has been done and the recommendations are the reason for the change
129 in the drawing. Michael read the comments from Chief Cahill. The concern is parking
130 on the side of the road or cars backing out into the road. The town should re-sign the no
131 parking in the area that is already designated as no parking. Tony Bergeron commented
132 that the new exit should be no wider than 20 feet. The island area should prohibit
133 vehicular traffic, but shall accept snow from the plowing. On the plan the exit is 18 feet.
134 The Fire Chief said that the furnace must be in a one hour room and must have a light and
135 exit sign. All others are okay. Roger explained that the furnace must be in a room with a
136 one hour safety call.
137

138 Atty. Dunn stated that in order to fill the record in this matter he brought a document
139 signed by each of the abutters that he represents. He also has a written authorization
140 from his clients to represent them. He stated that the application is for a mixed use which
141 is not permitted in the Village District. He read from Section 4.2 which says “any use not
142 specifically permitted is prohibited”. Mixed use is for 2 uses on one lot. The Zoning
143 Ordinance has a list of permitted uses in the Village zone. This is a non-conforming lot
144 of .3 acres. In order to be consistent with the zone it has to be .5 acres and the garage is
145 inconsistent with the Zoning setback requirements. (See attachment to official minutes.)

146 He stated that changes in use are to be interpreted by the Zoning Board and they should
147 not address the site plan until after it has been to the Zoning Board so that the non-
148 conforming lot is a use that is approved of by the Zoning Ordinance per Section 6.11.
149 This is a usage change. It is a residential building that is going to become a part
150 commercial and part residential building. He claims this is a mixed use which is not
151 allowed in this zone.
152

153 Roger stated that accessory uses are uses which are principal to the lot and read the
154 definition of accessory use. If the uses are not permitted they have to go before the
155 Zoning Board of Adjustment for a Special Exception. If it is not in the Special Exception
156 criteria, they would then have to come before the Board for a Use Variance because it is
157 not permitted by Right or Special Exception and that is how we interpret our Zoning
158 Regulations and have done that for years.
159

160 Michael advised that the town did not have Use Zoning prior to 2000 when the rules were
161 written. They spoke to Town Counsel at the time, was the issue of having more than one
162 use of a lot. He stated that these uses would all be allowed on the lot in whatever
163 configuration and there would need to be a statement in the Ordinance that there may not
164 be any more than one primary use per lot. We do not have that statement and that is why
165 we allow more than one primary use on one lot.
166

167 Attorney Dunn stated that he disagrees. Atty. Tony DiPadova stated there is no definition
168 of Mixed Use in the Ordinance. Mixed Use is specifically defined under the Mixed Use
169 District. Any of these uses listed as permitted uses in the Village District can be used on
170 any lot and you do not have to apply for a Mixed Use Variance or Special Exception
171 because it is something not contemplated by the Ordinance. There are two permitted use
172 being used on this one lot – the single family residence and the professional office which
173 are permitted by right.
174

175 Caroline Humphrey asked why Section 4.20 is there if it is not being used. Allan Davis
176 Stated that he thinks the uses are permitted. The question is whether they are permitted
177 in a single residential building. Is it an office building with a residential unit in it or is it
178 a residential building with an office in it. The words for a single family dwelling
179 definition refer to a single residential building, but this could be a single office building
180 with a dwelling unit within it.
181

182 Roger stated he thinks the Board should go forward the way it has always interpreted the
183 permitted by right usage.
184

185 The setback of the garage was questioned by one abutter as he believes the change would
186 require that it be made conforming per Section 6.11 of the Zoning Ordinance. Peggy
187 stated that we have never interpreted a change in application for that property to require
188 change in setbacks or lot coverage or anything else. Atty. Dunn stated that it should first
189 go before the Zoning Board as a check. The Planning Board does not have the
190 jurisdiction to make that check. If you interrupt this in any other way you give up some
191 very important control. Peggy stated the Ordinance contains a lot of things and, as a pre-
192 existing, grandfathered property, it does not have to be changed. Atty. Dunn stated “there
193 is a lot of law around non-conforming uses outside of this Ordinance. You are entitled to

194 the non-conforming uses as a matter of Constitutional Law and this Ordinance is
195 designed to protect those units, those buildings, as long as there is no change in use or
196 structure.”
197

198 Atty. DiPadova stated that Atty. Dunn is reading a lot more into Section 6.11 that is not
199 there. The change in use is to another permitted use which is consistent with the
200 Ordinance. He is not making any changes that are making this lot or this structure more
201 non-conforming. That would be typically where you would be required to go back to the
202 Zoning Board for a Special Exception or a Variance approval if that is required. The
203 change in use is consistent with the Ordinance and the changes within the building are
204 consistent with the Ordinance.
205

206 One abutter stated that the biggest issue brought up at the last meeting was the safety and
207 he has not heard that addressed. That is still his biggest concern. Peter White stated that
208 is not necessarily the applicant’s responsibility. The abutter stated it is the Planning
209 Board’s responsibility if granting the application is going to be unsafe in that
210 neighborhood. Peter stated that the Police Chief has addressed it by advising the
211 applicant to change the traffic flow to one way in and one way out. Even though there
212 may increased traffic because of this business, most of the traffic as it comes off Rt. 11
213 will not be going 50 miles per hour. It will be considerably slower because it has to make
214 the turn into the business. He also believes most of the traffic coming out of the business
215 will be going slow because it is coming into the intersection with Rt. 11. He, personally,
216 does not see this business creating a lot more 50 MPH traffic. Where he does see a
217 problem is traffic coming off Rt. 11 doing 40 – 50 MPH and a car is coming out of the
218 business. The abutter stated it does happen and he has almost been rear ended. Peter
219 stated he thinks Chief Cahill addressed that with his layout. The abutter stated that he
220 asked specifically at the last meeting if the Planning Board had the right to deny the
221 application if they felt it would be unsafe and he was told yes they do.
222

223 Rodney Gonyea asked about the description of home business which stated that it will not
224 change the residential character of the dwelling or the neighborhood. Peggy explained
225 the purpose of a home business which is a different thing. Mr. Gonyea also questioned
226 where the snow will go from the property plowing. He questioned the number of trees to
227 block the parking lot from his residence and the height and size of it. There will be one
228 tree and Bob Anthonyson stated it will be a white pine, which is fast growing, but he does
229 not know the size of it. Mr. Gonyea questioned how high the initial planting will be. He
230 also stated that he sent a copy of a letter from his realtor which stated that having this
231 here it would take longer to sell his house and will impact the price. He also questioned
232 the lights. The lights on the building will not change. The lights on the signs will be
233 down lighting. Mr. Gonyea stated he wants to know where the snow will go. Charlie
234 Hirshberg stated that there is an area before you get to the rain garden that will be able to
235 store that snow. Mr. Gonyea questioned where the drainage will go. Charlie advised
236 that the rain garden has a stone area similar to a leech field.
237

238 Phil Porter questioned the difference between this and a dweller coming before the Board
239 to create an office use within the building. Peggy explained that the point she was
240 making earlier about whether you are living there or someone else, you are entitled to
241 have a dwelling unit on that property.

242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289

Arlene Adams stated that what their Attorney is saying is that you can have this permitted use and that permitted use, but you cannot have the two of them in one building because a combination in one building is not on the list of permitted things. Peter White stated that the Board’s lawyer suggested that it be written that way for a specific purpose. Every lawyer has his own interpretation. Attorney Dunn suggested that the Board ask their attorney for an opinion because he thinks he will give them a different opinion now. Ms. Adams also stated that one tree is not enough of a buffer. What about the people across the street? There have got to be restrictions on the vegetation, the signage, and the lighting. They have a history of not following the rules. She gave the handicap parking space at their current location as an example. There are two or three cars parked in front all the time.

9:03 PM – Peggy closed the public input session of the meeting.

The Board discussed the application. Peter White suggested that it might be prudent to consult their attorney and have his input. The other Board members agreed and Peggy asked what the questions would be. Allan Davis stated he thinks they should be are dwelling units permitted in any building other than single residential buildings in the Village District. Peggy clarified that he is questioning if it says single residential building does it mean only that? Roger stated that the Board really should ask is the Planning Board interpreting the regulations correctly now and in the past. Peggy asked if both are asking if we are allowing multiple uses within one building, whether residential or commercial. Roger added and whether it is a new owner or a pre-existing owner. Roger stated he would look and the permitted uses and the fact that the lot usage is not being exceeded. He would then say they do not need relief from the Board of Adjustment and it would go on to the Planning Board for Site Plan Review. Peggy reviewed that she has down the intent of saying a single residential building. Does it mean just a residential use, as in our definition which says a single residential building, and not a business use and can there be a dwelling unit in a non-residential building? Peter stated there is one other point that was made which is the sentence under non-conforming structures in Section 6.11 which says “Future changes to the structure(s) or usage changes shall be consistent with this ordinance.” should be run by the attorney also. Allan stated it could be also be read that as long as the use is consistent with the Ordinance that it is permissible in a non-conforming structure.

A motion was made to adjourn this hearing until they hear from Town Counsel. The motion was seconded by Phil Porter. The motion was not voted on.

Michael stated that the Board should also comment on anything else the applicant should bring back as they are not the only issues. Peggy advised they need the cut sheet on the lights and the issue was raised about turning the lights off outside of business hours. Also the maintenance and report schedule on the rain garden needs to be included in the plan. Locations of the signs must be approved and the buffering needs to be addressed.

9:18 PM – A motion was made by Allan Davis to open the meeting to allow for input. The motion was seconded by Emma Smith and approved unanimously.

290 Allan questioned where the windows are on the north side of 22 Central St. and Mr.
291 Gonyea stated there are 4 windows in the dining room and 2 large ones on the second
292 floor. The Board had no other questions.
293

294 **9:22 PM – A motion was made by Allan Davis to close the hearing. The motion was**
295 **seconded by Phil Porter and approved unanimously.**
296

297 Peter suggested that a plan be submitted by a qualified landscape architect. Peggy stated
298 that what needs to be defined is the number, height, and type of plantings. They also
299 think additional buffering should be put along the Gonyea side. Peter also feels anything
300 along the front will help. Allan advised you have to careful of sight lines. Roger stated
301 that if they are going to change that they would have to go back to the Police Chief and
302 the Road Agent for reconsideration on this. The members agreed. Emma questioned the
303 amount of signs and Peggy advised they have said that the location of any additional
304 signs must be approved by the Planning Board. Roger stated that one of the things the
305 Board might want to consider in the future for the Ordinance is a limit on the number of
306 signs on a property. Page 6 of the Site Plan Regulations deals with the traffic circulation
307 going in and out. The no parking signs should be brought to the Selectmen. Peggy
308 questioned the erosion and Michael advised it falls under the low impact development
309 which is sort of the standard today on small lots and these rain gardens seem to be very
310 popular in other areas. He believes Charlie has designed it to a standard.
311

312 Peggy stated they are not going to make a decision tonight. They need a ruling from
313 counsel. She recapped the things that would be required: the cut sheet, better
314 landscaping information, suggest they get a landscaping architect to address better
315 landscaping along the Gonyea side of the property, in particular to identify the height of
316 the trees going in, the type and the number, documentation on the monitoring of the
317 maintenance of the rain garden, and the fact that any additional sign locations must be
318 approved, and there would be a condition to turn off the outside lights, particularly the
319 sign lighting, after business hours.
320

321 **The application was continued to the next meeting on July 3, 2008.**
322

323 **CONSULTATION**

324 **Map 133, Lot 87, Sunapee Harbor Riverway, Inc., Minor Subdivision**

325 Wayne McCutcheon presented the subdivision plan. Lot 2 will be the Quack Shack and
326 the Café and the line that separates that area where .51 acres is shown is the straight line
327 that comes from Main St. and goes to the center of the Sugar River. The rest of the land
328 is Lot 1 which is the house which was the former LSPA and that is the only substantial
329 structure of Lot 1. There is a shed up near the road which is portable. He had to show all
330 the other information for the new Shoreline Protection regulations. He can delete the
331 layers for the final subdivision plan and show the contours and the main features. There
332 were originally two lots and merged by the Harbor Riverway. Mike Dufour believes it
333 was merged in the 90's. Allan Davis asked is the lots are conforming and Michael
334 advised they are. Mr. McCutcheon advised that building setback lines will be shown and
335 the tax map and lot number will be included on the plan.
336

337 **MISCELLANEOUS**

338 **Map 149, Lot 19, Jeff Bushey, Re-opening “Rosie’s Restaurant” as “Double**
339 **Diamond Café”, Route 11**

340 Jeff Bushey advised that Mr. Landry asked him to see the Planning Board in regard to
341 parking as they have added seating to the location. Roger advised that Mr. Bushey is
342 reopening the restaurant for breakfast and lunch with 4 employees. He also stated that he
343 wanted to build a deck on the back side of the building and adding more seats to the
344 restaurant. He then advised to come before the Planning Board not only to get the
345 statement of property usage signed off, but also for the added seats that the Board might
346 want to consider another statement of usage or have him come back for a sight plan
347 review. Peggy questioned how many seats this is approve for and Mr. Bushey stated it is
348 for 36 now. He would be adding another 20 which would be seasonal outside. The
349 previous owner had 12 parking spaces set up in the paved area. When he measured it, he
350 came up with 8 in the back and 2 by the road, which is a total of 10 allowed by every 9
351 feet. In the front of the building is 50 ft. which is room for 4 employees. Another area,
352 which has recently been filled in, allows for more which brings the total to 24 when only
353 18 are needed, using the parameters of 1 parking space for every 3 seats. He also stated
354 that the filled area was not finished and he intends on putting blue stone in that area to
355 keep the dust down.
356

357 Michael advised there are two things before the Board that they need to address. One is
358 can the restaurant continue under the existing use and the Board would approve a
359 statement of usage to that effect. The only thing he asked of Roger was whether it
360 triggered the Selectmen’s review based on the discontinuation of a use, which is 2 years,
361 and he felt they are okay under that because they were open two summers ago. The
362 bigger question which would require Site Plan Review would be an approval of an
363 increase in use which is more seats. More parking, waste water issues, building setbacks,
364 etc. would have to be addressed. Michael recommends that a Site Plan be required.
365

366 Roger stated that his building application for a deck cannot be approved by the Board of
367 Selectmen without an approval for the extra seating from the Planning Board. Mr.
368 Bushey advised the deck will be 20’ by 24’ and a door will replace a window. Allan
369 Davis advised that drawings will be needed. Roger believes he can submit a drawing to
370 scale showing the parking spaces, but that is up to the Board. Also, Michael mentioned if
371 the septic system has the capacity to handle 20 additional seats. He knows there was a
372 change made to the septic system when it became Rosie’s. Michael advised it is an issue
373 for the Board as they have to make sure it is adequate. That is one of the criteria.

374 Michael advised there should be a scaled plan.
375

376 **A motion was made by Phil Porter to approve the statement of property usage as is.**
377 **The motion was seconded by Peter White and approved unanimously.**
378

379 Peggy advised Mr. Bushey to come back with a scaled drawing for a Site Plan Review
380 for the additional seating and parking. He was advised that the next possible meeting is
381 on July 3, 2008. Mr. Bushey stated he may not do this. He has to talk it over with some
382 people.
383

384 **Map 203, Lot 7, Bob Bell, Final Mylar and Letter of Credit Approval**

