

1 **TOWN OF SUNNAPEE**

2 **ZONING BOARD**

3 **MARCH 2, 2023**

4 **Chairman Claus called the meeting to order at 6:32 PM.**

5 **MEMBERS PRESENT IN THE MEETING ROOM:** Ann Bordeianu, Michael Jewczyn, Jeff Claus, Jamie  
6 Silverstein, Pierre Lessard, David Munn, Jim Lyons, Chris Murphy.

7 **MEMBERS PRESENT VIA ZOOM:** None

8 **ALSO PRESENT IN THE MEETING ROOM:** Scott Hazelton-Planning, Zoning and Compliance Director.

9 **PRESENT VIA ZOOM:** Shannon Martinez-Town Manager.

10 Chairman Claus announced the first case.

11 **NEW CASES**

12 **CASE # SE 23-01 PARCEL ID: 0104-0084-0000 SEEKING APPROVAL OF A SPECIAL EXCEPTION VIA**  
13 **ARTICLE IV, SECTION 4.10 FOR THE USE OF A MARINA IN THE VILLAGE COMMERCIAL DISTRICT. 1282**  
14 **ROUTE 11 GOODHUE SUNAPEE REAL PROPERTY LLC, PHILLIP HASTINGS.**

15 Phillip Hastings, attorney with Cleveland, Waters and Bass, Will Davis from Horizons Engineering and  
16 Cody Gray from Goodhue Marina presented the case. The project was a 5400 sq. ft. retail boat show  
17 room, a former single-family residence in a village commercial district. It would be a single-story building  
18 with parking for the sale of boats and watercraft. Mr. Hastings presented that there will be no service  
19 provided and there would be no storage. It would be solely a retail facility.

20 Chairman Claus asked why was it being classified as a marina?

21 Mr. Hazelton explained that under the definition of the ordinance, it is classified as a marina because it  
22 provides boat sales.

23 Mr. Hastings asked the Board if they could determine that this is not a marina, it is a retail sale, because  
24 this business only provides sales of boats and watercraft. He then continued with reading the five  
25 Criteria, as per their application.

26 Mr. Munn asked the applicant if the retail space would have a lighting sign out on the road?

27 Mr. Hastings answered that they have planned a signage on the building but not on the road.

28 Mr. Jewczyn asked the applicant about the received order from the DES and the caveat on the deed.

29 Mr. Davis answered that there was an inquiry about tree cutting which has been cleared and that there  
30 is no issue since it was cleared by the DES.

31 Chairman Claus noted that per their counselor the ZBA does not enforce the restrictions therefore they  
32 are not to be engaged in that matter.

33 Mr. Hazelton commented about the setback.

34 Ms. Bordeianu asked if the parking is going to be used just for the customers/visitors or is it going to be  
35 used for the boats as well. She also asked if there is going to be provided any kind of boat launch or  
36 concierge service. Her last question was if there has been any traffic study done at the location?

37 Mr. Hastings answered that there will be no boat parking there, just for the people visiting the  
38 showroom.

39 Mr. Gray answered that there will be no service provided from that side of their business.

40 Mr. Hazelton answered that the traffic study would be done during the site plan review process.

41 Mr. Jewczyn asked the applicant where are they going to put the snow?

42 Mr. Davis answered that there will be no need for the whole parking space in the winter, so there should  
43 be an adequate space in some of the parking spaces for the snow.

44 Mr. Lyons asked if there is going to be outside lighting for security purposes to prevent theft on the  
45 property.

46 Mr. Hastings answered that whatever lighting is going to be installed on the property will comply with  
47 the Town's Ordinance and site plan review regulations.

48 The Board members and the applicants discussed their concerns with the road access, occasional  
49 obstruction of the traffic, the high number of parking spaces on the premises, the possible increase of  
50 traffic and the visibility issues possibly implicated by the opening of this business. They also discussed  
51 the possibility of making Cooper Street a one-way street. During their discussion it was established that  
52 the showroom would rarely sell one boat a day and that would not contribute to safety risk increase in  
53 the parking due to trailer movements in and out of the parking and the driveway. The visibility issues  
54 would be overcome by regarding the property and cleaning up the vegetation around it.

55 Robin Saunders asked if there is going to be any water management plan, because of the impact that  
56 this project may have on the area, because the property is below previous surfaces to a lot of  
57 impervious surfaces, and the Otter Pond being next to it?

58 Mr. Davis answered that there will be a water management plan in the final design.

59 Cynthia Currier (Via ZOOM) asked if there is going to be asked for a fence variance since there is already  
60 a over 6' fence on that property? She also asked if the fence is going to remain there or be replaced. She  
61 commented that there was a natural woodland buffer to be replanted and asked if that was going to  
62 happen in that area?

63 Chairman Claus answered that there is where the retaining wall is planned to be built.

64 Mr. Davis answered that there will be a fence for safety and protection purposes at the top and the  
65 existing fence would be removed. He added that the plan is for the natural woodland buffer to be  
66 replanted.

67 Member of the audience asked if there is ever to be a change of use of this facility, would there need to  
68 be additional special exception?

69 Chairman Claus replied that it would have to be looked under allowed uses in a village commercial  
70 district and depending on what the use falls under, it would determine if there is a need for a special  
71 exception or variance.

72 After a discussion on the change of use topic, the Board brought up the option of putting a condition to  
73 this special exception regarding the change of use in the future.

74 Don Dupont asked if there is any plan for the 37 parking spots to be used for more parking functionality,  
75 so that the marina business could be increased.

76 Mr. Gray commented that the property and its use is not part of the principal plan, the proximity to the  
77 waterfront could help alleviate some of the parking congestion that exists in that area. He added that  
78 they also own the marina waterfront, former Sargent's Marina location, so the overflow short-term  
79 parking could utilize their parking area up top.

80 Paul Brown commented that the fence that was referred to earlier provides some protection to them as  
81 residents as well, so they have a concern when they hear that the fence is going to be replaced or  
82 modified. He asked if and how the fences are controlled in Sunapee?

83 Chairman Claus replied that depending on the heights there are restrictions, and 5' is the maximum, up  
84 to the property line. Anything above 5' falls into a minor structure and it needs to be applied by the  
85 setbacks.

86 Cynthia Currier (Via ZOOM) asked about the restriction that the property had in the deed.

87 Chairman Claus replied that it is not valid at the moment, because the restriction had been removed and  
88 the issue does not impact any decision that the Zoning Board needs to make.

89 Ms. Silverstein went back to the concern around the use of the facility and asked the applicant for  
90 suggestions to help alleviate the Board's concern surrounding approve of a special exception based on  
91 their application today, understanding that they are wary that the use could change at some point.

92 Mr. Hastings replied that they can take the rational reading of the Ordinance and determine that the  
93 business is not a marina because it is not located in the water and they are not doing any of the other  
94 things, other than the sale of boats. If the Board determine that it is not a marina, the applicant would  
95 not need a special exception, but if they did add the other uses in the future, they would be changing  
96 their classification from a retail use to a marina use, for which they would need a special exception.

97 Ms. Silverstein raised the question how would they approve them to be a retail facility if they are selling  
98 marina equipment?

99 The Board decided to take a short recess at 7:37 PM in order to consult with an attorney.

100 Don Dupont expressed concerns about the pedestrians crossing the road at the general store, regarding  
101 allowing people to park at the facility parking space, because the cross blocks were far apart, and asked  
102 the applicant what is the plan of getting them safely to cross the road?

103 Chairman Claus asked the applicant to list their intended use of the facility, so the Board can make a  
104 condition based on that.

105 Mr. Hastings replied that the intended use is for the retail, sales and display of boats and other  
106 watercraft inside the facility.

107 Mr. Gray added that they want to leave the option open for the property to be utilized for parking, as  
108 short-term customer parking, which could take some of the congestion off the waterfront property.

109 Chairman Claus went into deliberative session. He presented that the applicant had described what their  
110 use is going to be, so the Board can limit their decision on that. He mentioned the conditions that they  
111 had discussed: DES Shoreland Permit, Traffic Study by a third-party engineer and asked the members if  
112 they have exceptions or concerns to any of the Criteria.

113 The Board concluded that the Criteria are met, taking into consideration all the permits that the  
114 applicant would need to obtain. They discussed the conditions that needed to be set prior to making a  
115 motion of approval.

116 **Ms. Silverstein made a motion to approve Case # SE 23-01 Parcel ID: 0104-0084-0000 seeking approval**  
117 **of a Special Exception via Article IV, Section 4.10 for the use of a marina in the village commercial**  
118 **district. 1282 Route 11 Goodhue Sunapee Real Property LLC, Phillip Hastings. The use would be**  
119 **approved exclusively for retail sales and indoor display of watercraft and other marina equipment.**  
120 **Parking will be reserved for retail customers and Goodhue waterfront marina customers. Snow will**  
121 **not be stored or pushed over the bank from the parking lot toward Otter Pond Brook. A traffic study**  
122 **will be commissioned by a third-party engineer in advance of the site plan review and application to**  
123 **the Planning Board. This is contingent based on approval of the DES Shoreland Permit and as**  
124 **presented on a February 1, 2023 application and plan submitted tonight.**

125 **Mr. Lyons seconded the motion.**

126 **The motion was voted in favor unanimously.**

127 Chairman Claus called the next case.

128 **CASE # VA 23-01 PARCEL ID: 0104-0084-0000 REQUESTING A VARIANCE FROM ARTICLE III, SECTION**  
129 **3.40(J) THE CONSTRUCTION OF A RETAINING WALL OVER 42" IN HEIGHT WITHIN THE FRONT AND SIDE**  
130 **SETBACK. 1282 ROUTE 11 GOODHUE SUNAPEE REAL PROPERTY LLC, PHILLIP HASTINGS.**

131 Mr. Hastings presented that they had heard a lot of facts in the analysis of the previous hearing, so the  
132 record should reflect those facts as well. He stated that there were couple of unique features about this  
133 site that require a retaining wall along the easterly boundary. One was its general topography, which  
134 sorts of slopes afterward Otter brooks with its high point to the east. He noted that they need to be  
135 sensitive to the Otter brook watershed in terms of snow water management and erosion control in their  
136 site design. Because of the intersection and the traffic, there was an optimal location for the driveway  
137 on the site, on the easterly side. As mentioned previously, they are dropping the site by at least 6', to  
138 level it off and increase safety for vehicles entering and exiting from the site, as well as the Cooper  
139 Street. All of those factors that are unique to this property require some soil stabilization along the  
140 easterly boundary, which drives a retaining wall exceed 3 ½' maximum required by the Ordinance.

141 Mr. Davis presented the wall's vertical height as 10.73' and the proposed wall starts at the property line  
142 and comes down along the edge of the parking. The area from that point was the 10' setback. He  
143 presented the part of the proposed wall that was not compliant, which they were asking a variance for.

144 That portion was inside the 10' setback and the height was starting at 5' and ended up to 11'. Because of  
145 the proximity of the property line, the structural portion of the wall would be driven metal sheet pile  
146 with a wood finish material.

147 Mr. Hastings went through the Variance Criteria listed in their application.

148 Mr. Jewczyn asked what is on the other side of the fence and is there a roadway?

149 Mr. Davis answered that it is the boat club property and there is no roadway, it is a 30' wide strip of  
150 property.

151 Mr. Jewczyn commented that if for an unknown reason the wall should fail, it will seriously impact that  
152 property.

153 Mr. Davis agreed with that statement and Chairman Claus added that regarding those kinds of concerns  
154 the Board could make a condition of how the wall would be engineered.

155 Mr. Jewczyn commented that there would be a significantly high wall with a fence on top and that they  
156 have rules about the height of fence. He asked a hypothetical question if he can build any height fence  
157 and put one thing underneath it and another fence on top. He also asked for clarification if the proposal  
158 is a retaining wall plus a fence or a fence.

159 Chairman Claus explained that when it comes to fences, the visual impact is usually from the  
160 neighboring property. Therefore, the neighbor looking at that property is only going to see a 5' fence,  
161 not the wall itself.

162 Mr. Jewczyn argued that he is going to see what is beyond that as well and that it seems like an  
163 attractive nuisance.

164 Mr. Hastings added that the reason they have proposed the safety fence at the top was because they  
165 had anticipated that that would be a concern of the Board.

166 The Board agreed that it is absolutely a huge concern and hazard.

167 Ms. Bordeianu asked if there is going to be drainage along the bottom of the wall on the parking lot side  
168 and on the ground?

169 Mr. Davis answered that they have not done the final design but their intent is to do an underground  
170 detention and treatment system, so under a parking lot will be a chamber system for storm water and  
171 catch basin.

172 Mr. Lyons proposed a mandatory periodical cleaning out of the catch basin in the Variance.

173 Chairman Claus asked is the natural grade of the wall falling away from the wall on the backside?

174 Mr. Davis confirmed that and Mr. Hastings added that they would not be increasing any flow because of  
175 the retaining wall, since they are not changing the grading and the natural flow would continue.

176 Mr. Lyons noticed that at the south-eastern corner there were some contour lines that actually came  
177 out and it looked like they were touching the line angle and the elevations were 11.44' at the wall,  
178 11.46' south and east of it and 11.48' south. He added that it does pitch down to the wall at that corner.

179 Chairman Claus noted that the proximity to the property line would be a challenge but that was the only  
180 way of doing it.

181 Ms. Silverstein turned into Section 10.42 and wanted to discuss Criteria C: "Denial of the permit would  
182 result in unnecessary hardship to the owner". She added that the Board would have to connect  
183 statements of fact to any decision that they make, related to the Ordinance. She noted that the  
184 applicant is maintaining that the hardship is due to the topography of the land.

185 Mr. Hastings responded that the hardship is largely due to the topography, the size of the lot, as well as  
186 the safety issues with this location. All of those factors together require a driveway and a parking lot in a  
187 certain configuration, and to do that, they need to increase safety and drop the site down, which  
188 requires a retaining wall. So, it is a combination of factors that are unique to the site that require a  
189 variance from the Ordinance that creates an undue hardship.

190 Ms. Silverstein asked if the reason to drop the parking lot is to make it more leveled.

191 Mr. Hastings confirmed that and added, to improve the site distance for the driveway. The alternative,  
192 he presumed, would be, instead of dropping the site down and not having a retaining wall of that size,  
193 or any at all, to have a site that is above grade at the street level, which would come down at a very  
194 sharp pitch to Route 11. By depressing the site, it improves the access in and out, creating safer access  
195 and also increases the safety of the site lines between Cooper Street and this driveway. He added that  
196 literal enforcement of the Ordinance would increase the safety hazards.

197 Mr. Hazelton commented that he is not 100% sure that the overall explanation is a hardship, because  
198 there is a limitation whereas physical improvement of the site distance can happen.

199 Ms. Silverstein asked what if the retaining wall was not in the setback?

200 Mr. Hastings responded that they would lose a significant amount of the parking, which he said the  
201 Board acknowledged in their previous granting of the Special Exception that is important to have.

202 Ms. Silverstein denied that the Board had acknowledged that.

203 Mr. Lyons said that one of the reasons he agreed with granting the Special Exception was that the  
204 applicant got rid of the dirt. He believed that the property is truly unique based on the topographic  
205 constraints, the steep incline.

206 Chairman Claus disagreed with the safety concerns about the grading on the entrance. Based on his  
207 calculations with the current information given by the applicant, it would not be even a 2' of grade  
208 change in 50', or about 4%. The applicant would have to provide more information to contribute the  
209 claim that it is a hardship to get from the driveway out on that road in a safe manner, because that has  
210 been a driveway for many years.

211 Ms. Silverstein stated that they have to connect the hardship to a statement of fact, so, it cannot be  
212 extrapolated, it has to connect back to the Ordinance; just because they want more parking spots, does  
213 not make it a hardship.

214 Mr. Hastings argued that they are proposing a number of parking spots to serve the use and it is a design  
215 of the parking that is reasonable. They could probably do something different, but then the variance  
216 criteria would no longer be based on no other practical alternatives. After the Simplex decision, in the

217 number of cases, the use has to be reasonable. That is the only standard, whether there are other ways  
218 to do it, is irrelevant, if what they proposed is objectively reasonable. They think that for variety of  
219 reasons, building a 11' high retaining wall within a setback is reasonable, given the unique setting of that  
220 property.

221 Chairman Claus responded that Simplex in that case also states that a determination whether the zoning  
222 restriction applied interferes the land owners reasonable use of the property and that  
223 reasonable return is not maximum return. When they take that into consideration, the 37 parking  
224 spaces look like are maximizing the lot as opposed to is there another reasonable outcome where  
225 parking is reduced so the wall does not have to be built there.

226 Mr. Hastings stated that he does not think that is the correct reading of Simplex and the correct reading  
227 is that the Board need to make a determination of whether the proposed variance is reasonable, not  
228 whether there are other reasonable ways to avoid having a variance.

229 Chairman Claus asked what is the unique characteristic of the site that distinguishes it from others.

230 Mr. Hastings replied that it is the size, the topography and the location.

231 Steve Root from the audience commented that the steep slope is a concern and the ADA Compliance  
232 about making the parking area flat should be taken into consideration as well. He asked about the  
233 service life of a retaining wall.

234 It was concluded that that the service life of a retaining wall could be hundreds of years.

235 Member of the audience asked about the secondary effect of the retaining wall with the snow removal  
236 which seemed to him that the only way is Route 11.

237 Ms. Silverstein said that the applicant had stated that they will use part of the parking lot in the winter  
238 for the snow.

239 Mr. Murphy asked is the protective fence on top of the retaining wall part of the application.

240 Mr. Hastings replied that they do not need a variance for that.

241 Chairman Claus went into deliberative session. He noted that the hardship criteria is always the  
242 challenging one, so it was challenging for him as well, because it was not clear to him from the  
243 applicant's answers. His opinion was that the elevation of the site is not consequential.

244 Mr. Jewczyn questioned the decision of lowering the lot 6' and instead suggested lowering it less.

245 Mr. Murphy raised the question of compromising the maneuverability needed to move the boats inside  
246 the lot if part of parking is lost and the lot remains as it is and does not get lowered.

247 Ms. Silverstein's opinion was that whether it is a 6' or a 10' retaining wall from the public space on the  
248 street and from the boat club side, it is not going to be visible, and that is a benefit aesthetically.

249 The Board had a discussion about the unique features of the site related to the hardship criteria, and  
250 had found it hard to classify the site as unique.

251 Ms. Silverstein stated that the denial of the variance does not limit the use of the site. Essentially the  
252 Board could not find fact in the hardship to grant the variance.

253 **Ms. Silverstein made a motion to deny Case # VA 23-01 Parcel ID: 0104-0084-0000 requesting a**  
254 **Variance from Article III, Section 3.40(j) the construction of a retaining wall over 42”in height within**  
255 **the front and side setback. 1282 Route 11 Goodhue Sunapee Real Property LLC, Phillip Hastings.**

256 **Mr. Jewczyn seconded the motion.**

257 **The motion was voted in favor with four votes for and one vote against (Mr. Lyons).**

258 Chairman Claus recused himself for the next case.

259 Ms. Bordeianu recused herself as well.

260 **Ms. Silverstein made a motion to appoint Mr. Lessard as an acting board member in place of**  
261 **Chairman Claus.**

262 Ms. Silverstein called the next case.

263 **CASE # AP 23-01 PARCEL ID: 0115-0030-0000 APPEAL FROM AN ADMINISTRATIVE DECISION MADE ON**  
264 **DECEMBER 8, 2022 OF THE PLANNING BOARD REGARDING THE DECISION OF THE TREE CUTTING &**  
265 **VEGETATION CLEARING UNDER SECTION 4.33 (B)(8)(b)(I) CUTTING AND REMOVAL OF NATURAL**  
266 **VEGETATION WITHIN THE NATURAL WOODLAND BUFFER ON NORTH SHORE ROAD (VACANT LOT).**  
267 **THE APPEAL WAS REQUESTED BY ROBIN SAUNDERS.**

268 Ms. Silverstein announced the first order of business was the rules and procedure of who has the right  
269 to make an appeal and asked Ms. Saunders is she is an abutter?

270 Ms. Saunders replied that she is an abutter in the sense that the lake, Perkins Pond abuts all of the  
271 people that live on it and that this was an issue of ecology in Perkins Pond.

272 Ms. Silverstein noted that the Board will have to determine whether or not the abutter has standing to  
273 an appeal of administrative decision. She asked Ms. Saunders to share with the Board why she feels that  
274 she has standing to appeal the Planning Board’s decision.

275 Ms. Saunders shared that she had thought that she would come to the Board to appeal the decision, but  
276 then was told that the reason will be only to find out if she is eligible to appeal the decision. Otherwise,  
277 there would have been a number of other people present there, including one of the abutters.

278 Ms. Silverstein told Ms. Saunders that she was misinformed and if the Board could determine during the  
279 discussion that she has cause to appeal the decision, they will hear the case at this meeting.

280 Ms. Saunders stated that she was not prepared to appeal the decision because she had been told  
281 different information.

282 Ms. Silverstein moved forward with the request for the appeal and said that if it is granted, they will  
283 schedule the actual appeal probably for May, because she will not be able to be present in the April  
284 meeting and Chairman Claus will have to recuse himself.



285 Mr. Murphy asked for clarification if there are two things going on; one was to determine whether there  
286 is a standing and then the other issue is the appeal itself.

287 Ms. Silverstein clarified that they were supposed to make the determination and have the hearing at  
288 this meeting.

289 Town Manager Martinez explained that the Town Attorney had recommended a continuance to the  
290 next meeting, since there is not enough information in the application to determine that the applicant  
291 has standing. She said that if the Town Attorney was present, her recommendation would be to  
292 deliberate and discuss whether or not there is standing or continue the case to the next meeting  
293 because of lack of information.

294 Mr. Lyons asked for clarification if the Town Attorney's legal opinion was that they do not have enough  
295 information to determine whether the applicant has standing.

296 Town Manager Martinez confirmed that and added that since Ms. Saunders is there, if the Board is open  
297 to it and Ms. Silverstein finds it reasonable, they can deliberate and come to a conclusion.

298 Ms. Silverstein suggested to continue the case and let the applicant revise the application, so that the  
299 record could reflect whether she has standing and that way it is all well thought out and the applicant  
300 would not be under any pressure at that point to try to convince the Board.

301 Mr. Jewczyn argued that it sounds like Ms. Silverstein is advising the applicant and that the Board can  
302 choose how to handle things.

303 Brett Allard, attorney for the landowner, present there for this case, requested that the Board move  
304 forward on determining whether or not there is jurisdictional standing without continuing it, because  
305 the application has been submitted, the applicant is present, and he is present and ready to discuss on  
306 behalf of the landowner, and the Town Attorney had indicated that it would be appropriate. He stated  
307 that they could at least have a preliminary discussion about whether there is standing in jurisdiction. If  
308 the Board finds that is not, then the appeal can be dismissed, and if the Board finds that there is, they  
309 can come back for a substitute hearing on the application.

310 The Board decided to move forward on determining whether the applicant has standing.

311 Ms. Saunders stated that the abutter fff at first had signed the application but then was afraid of  
312 repercussion and that is why Ms. Saunders had decided to represent her and filled out the appeal form  
313 herself. She continued that she was a full-time yearlong resident on Perkins Pond for the past 22 years  
314 and water quality has been her number one focus and concern. Her education, knowledge and  
315 experience protecting waterbodies in Sunapee have earned the appointment by the Governor on the  
316 NH Public Water Access Advisory Board. While her home is not a physical abutter to the property on  
317 Northshore Road, all homes on the pond are connected by the pond, and together they share the  
318 responsibility for its care, maintenance and protection. According to NH RSA 676:5 she has standing to  
319 challenge the recent Planning Board decision involving tree cutting on the steep slope located on the  
320 North Shore Road property. As an aggrieved party, she believed that the environmental impact of tree  
321 cutting on the steep slope on the North Shore Road property will have a significant and negative impact  
322 on the water quality of Perkins Pond. She was deeply concerned about the potential damage of the eco  
323 system, including erosion, loss of habitat for wildlife, and additionally, this activity could lead to

324 increased runoff under Perkins Pond, which would further harm the delicate balance of this important  
325 natural resource.

326 Ms. Silverstein asked what is the proximity of Ms. Saunders's home to that property.

327 Mr. Jewczyn asked Ms. Saunders if she has a letter in writing saying that she is representing that person.

328 Ms. Saunders replied that she does not have it but she could get a letter and that she has a signed  
329 application.

330 Mr. Jewczyn noted that they do not have evidence that Ms. Saunders is representing the abutter and  
331 from everything she had said can be concluded that she is not an abutter.

332 Ms. Silverstein noted that they are not going to litigate the case, they are going to simply focus on  
333 whether or not Ms. Saunders has a cause to bring this case. She asked her to help the Board understand  
334 why she feels that she has a cause to bring this action and how she is harmed.

335 Ms. Saunders said that this property has a tremendous slope on it, somewhere between 30-52% and has  
336 always been a non-buildable lot.

337 Ms. Silverstein responded that if the owner chooses to build and they should get the permit and they  
338 are paying taxes, it is an allowed use.

339 Ms. Saunders argued that according to the Ordinance any undeveloped piece of property that has a  
340 slope over 25% is unbuildable.

341 Ms. Silverstein stated that Ms. Saunders is not qualified to testify what the slope of the property is and  
342 whether is buildable or not.

343 Ms. Saunders stated that the tree cutting application will cause a tremendous erosion and disruption to  
344 the ecological habitat around Perkins Pond and destroy the water quality.

345 Mr. Jewczyn said that what she is telling them is her opinion and not a statement of facts, without the  
346 engineering data. He added that technically everyone is affected by the lake dying due to ecological  
347 disaster. However, if the person wants to build on that lot and they can afford the engineering, they can  
348 do whatever they want, in the scope of things that are allowed.

349 Ms. Silverstein noted that Ms. Saunders is maintaining that she has the right to appeal any  
350 administrative decision on every lot on Perkins Pond.

351 Ms. Saunders responded that she is not, if it does not affect the water quality.

352 The Board determined based on the map that Ms. Saunders is not a direct abutter to the property.

353 Mr. Allard addressed two components. The first one was the jurisdiction and under the RSA 676:5 sub-30  
354 the ZBA only has jurisdiction over the administrative appeals that come from the Planning Board in the  
355 context of subdivision approval and site plan review. He stated that if someone thinks that the Planning  
356 Board made an error, should go through the Superior Court. To the extent of the appeal, under RSA  
357 677:15 the applicant had 30 days to appeal the tree cutting permit directly to the Appeals Board of  
358 Superior Court, which did not happen. The decision of the Planning Board has become final and the ZBA  
359 lacks jurisdiction over the appeal at this point. With regards of standing, even if this Board did have

360 jurisdiction over this appeal, under 676:5 sub-1, appeals to the ZBA may be taken by the person in  
361 grieved. He noted that an abutter has a specific meaning under RSA 672:13 and Ms. Saunders is not  
362 entitled as an abutter in this case. Based on the facts stated, he established that she is also not an  
363 aggrieved party.

364 Ms. Silverstein went into deliberative session.

365 Mr. Lessard said that he believes the landowner's attorney made a case under the RSAs.

366 Mr. Munn agreed with the facts as well.

367 Mr. Jewczyn stated that under their rules and laws, Ms. Saunders has not met the criteria.

368 Mr. Lyons was referring to Section 10.2 and asked for clarification and after a brief discussion, the Board  
369 determined that Ms. Saunders does not qualify to file an appeal under that Section.

370 **Ms. Silverstein made a motion to deny Case # AP 23-01 Parcel ID: 0115-0030-0000 appeal from an**  
371 **Administrative Decision made on December 8, 2022 of the Planning Board regarding the decision of**  
372 **the tree cutting & vegetation clearing under section 4.33 (B)(8)(b)(I) cutting and removal of natural**  
373 **vegetation within the natural woodland buffer on North Shore Road (Vacant lot). The appeal was**  
374 **requested by Robin Saunders. Based on the fact that the petitioner lacks standing and is not an**  
375 **abutter to this parcel.**

376 **Mr. Jewczyn seconded the motion.**

377 **The motion was voted in favor with four votes for and one vote abstained (Mr. Lyons).**

378 MISCELLANEOUS: Review Minutes from Previous Meeting(s).

379 There were no Minutes of Meeting reviewed.

380 OTHER BUSINESS:

381 **Mr. Munn made a motion to adjourn the meeting at 10:30 PM.**

382 **Mr. Jewczyn seconded the motion.**

383 **The motion was passed unanimously.**

384 Respectfully submitted,

385 Rajmonda Selimi