

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **MAY 4, 2023**

4 **Vice Chairman Silverstein called the meeting to order at 6:35 PM.**

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

7 **MEMBERS PRESENT VIA ZOOM:** Jeff Claus.

8 **ALSO PRESENT IN THE MEETING ROOM:** Cordell Johnston – Town Attorney, Scott Hazelton-Planning,
9 Zoning and Compliance Director.

10 **PRESENT VIA ZOOM:** None

11 Vice Chairman Silverstein asked Peter White, Chairman of the Planning Board to join the discussion on
12 informing the members that this week the Selectboard had made the decision not to enforce the
13 Ordinance surrounding the short-term rentals. Basically, properties that were STR's prior to December 1,
14 2022, will now not need to seek a special exception to the Zoning Board, for Rural Residential Zone.
15 During the Vote in March, the popular vote had stated that they do need to seek a special exception.
16 She pointed out that Peter White, Jeff Claus, Joe Butler, and herself had attended the Selectboard
17 meeting that Monday evening and asked them to reconsider, and their request was denied. She added
18 that she had shared the Minutes of Meeting with the members of the board. As part of their discussion,
19 they emphasized the fact that the Zoning Board was prepared to hear all the cases and the same was
20 expressed by Mr. White, on behalf of the Planning Board.

21 Mr. White noted that it is important to understand where the Selectboard is coming from, in a sense the
22 Selectboard members who are the agents on enforcing the Ordinance basically are choosing not to
23 enforce over at what they are calling a preexisting STR's with the ones in existence on and before
24 December 1, 2022. Anyone after that will have to comply with the Ordinance. He added that there is still
25 a registration process that everyone must go through, but the regulations will not apply to preexisting
26 STR's, no matter what districts they are in. He noted that the Selectboard had recognized that it would
27 be packed with cases and it would be too much for the Town's staff, and that was their excuse for
28 choosing not to enforce the Ordinance.

29 Vice Chairman Silverstein announced that Chairman Claus was going to recuse himself at that point and
30 appointed Mr. Lessard as an acting board member. She then called for the case.

31 **NEW CASE**

32 **CASE # VA 23-02 PARCEL ID: 0115-0030-0000 SEEKING APPROVAL OF A VARIANCE FROM ARTICLE III,**
33 **SECTION 3.40(L) TO PERMIT THE CONSTRUCTION OF A SINGLE-FAMILY DWELLING ON A SLOPE THAT**
34 **EXCEEDS 25%. THIS INCLUDES SLOPES MEASURED AS AN AVERAGE ACROSS AN AREA WITH AN**
35 **ELEVATION CHANGE OF 20' OR MORE. VACATION HOMES, LLC BRETT W. ALLARD ESQ. NORTH SHORE**
36 **RD. RURAL RESIDENTIAL ZONE.**

Brett W. Allard, legal counselor for the applicant, presented the case. He introduced Andy Mason, landowner, Jeff Claus, landscape architect and George Chadwick, engineer. The vacant lot was situated in the Rural Residential District and the Shoreline Overlay District, with approximately 0.16 acres which has shoreline frontage on Perkins Pond and a legal preexisting nonconforming record. The lot does have the capacity to be tied into the municipal water and sewer on North Shore Road. He stated that the Zoning Board had granted a variance to reduce the front yard setback on this property from 50' to 20' in July 2021. The proposed single-family dwelling with that variance fits in entirely within the proposed building envelope without the existing envelope. At that time, it was the town's code enforcement staff's opinion that no other variances were required to permit this development. On March 8, 2022, the Zoning Ordinance was amended to prohibit construction on lots with slopes that exceed 25% including the lots with an average elevation change of 20' or more. He pointed out that the method in which the measurements were made was a little bit unclear in terms of the language of the Zoning Ordinance. He believed that they satisfy the variance criteria and pointed out that the new slope requirements exempt driveways, stairs, and utilities with submission of a drainage and erosion control report, which they have done. The only variance that they were asking for was to allow construction of a single-family home itself, and the proposal is zoning compliant.

Mr. Mason introduced himself and his family and said that they have been spending a lot of time in Sunapee and since 2019 have been thinking about the possibilities of buying a new house in Sunapee.

Mrs. Mason mentioned that Vacation Homes LLC caused some concerns amongst the residents and explained that it was her sister-in-law's idea who, as a lawyer, advised them to form up an LLC for financial reasons when they bought the house.

Mr. Allard went through the five variance criteria from their application. He also believed that they have satisfied the first hardship tests as well as the second test, owing to the special conditions of the property that distinguishes it from others, the property cannot be reasonably used in strict conformance with the Ordinance and therefore the variance is necessary to enable a reasonable use. This is a unique case and just like how the ZBA granted the front yard setback variance because there is no building envelope with the front yard setback and the shoreline setback overlapping, same thing with the slopes; they stretch across the entire lot, and they make it so there is no building envelope. He stated that if the Board were to deny the variance, and since there is nowhere else to put the house, the lot would remain vacant forever and the landowner is deprived of any reasonably viable use of it, which is contrary to the owner's Constitutional right to reasonably use and enjoy the property.

Mr. Chadwick presented the drainage report. He stated that the soil on this lot is well drained and that the lot is great for infiltration. For those reasons they have proposed pervious pavement infiltration type wells, to handle the runoff from the site. The site was being designed with multiple retaining walls in order to level out the slope that is about 33% currently. There is a 26' of grade change from the front to the back, and the 20' is maximum allowed, which is the reason they ask for this variance. All the roof water and the two driveways, the patios, the walkways are going to be built of either permeable material, or in the case of the roof, the water will be collected and put in a drywell situation, which allows the stormwater infiltrate into the ground. They have found that there is about 65% decrease in stormwater runoff as a result of this proposed development or design. It was his professional opinion that with this design and if constructed properly that the proposed design will actually be better for the lake than the existing 33% slope. It not only reduces flow to the lake, but it also reduces the velocity of

79 stormwater getting to the lake, as velocity creates erosion. A sill fence was designed around the entire
80 perimeter of work and if that fence is built and installed correctly will stop any runoff from the site, as a
81 means of stopping stormwater from proceeding down the hill.

82 Vice Chairman Silverstein opened the session for public questions.

83 April Royce from the audience, a direct abutter to the property, stated that this project does not meet
84 the criteria at all, based on the 25% slope, added that the criteria existed since 2004, way before the
85 property was bought by the actual owners. She also pointed out that the surrounding properties would
86 suffer diminutive value, that the project could affect the watershed, the size of the home would not fit
87 with the rest of the existing neighborhood, due to the proposed large size of it. The public had clearly
88 voted to prohibit construction on slopes that are more than 25% in 2022, and that was originally
89 adopted in 2004. She said that denial of the variance request would not result in unnecessary hardship
90 to the owner, because they had purchased the property with the zoning language in place.

91 Lynn Arnold noted that other variances would be required for the retaining walls and side setbacks.

92 Robin Saunders said that protection of Perkins Pond is her only goal. She stated that the plan submitted
93 by JCLA Land Design listed the slope of the lot as 29% plus or minus while Mr. Claus' testimony on July 1,
94 2021, Zoning hearing for variety of variances was that the slope is between 30-42%. She further talked
95 about the regulations that Sunapee has in place to protect Perkins Pond from steep slope erosion.

96 Catherine Priest said that they finally built a permanent home five years ago and they could not extend a
97 deck because their house was 50' from the water, so they had to move the house back.

98 Domenic Tripoli said that he was requesting for a 12' extension to his 9' deck and was not allowed.

99 Tanner Royce, abutter (Via ZOOM) noted that none of the other houses on that road are constructed on
100 a slope of that nature. His home was actually built closer to the water, in the 40's or 50's, and that is
101 why it was able to avoid the slope regulations. He emphasized that each of the five criteria has to be
102 met and that he had a hard time understanding the spirit of the Ordinance is not to prohibit
103 construction on slopes of 25% or more, as that language was adopted in 2004 and had additional
104 language added in 2022.

105 Mr. Allard responded to the comment that other variances were denied, so this one should be denied as
106 well. He reminded the Board that other decisions on variances do not set precedent, whether they are
107 approved or denied, as each case is unique. They know that the slopes are steep, and the erosion is bad
108 for the water quality of the lake, but as they heard from Mr. Chadwick, they are going to make things
109 better than existing conditions. Their erosion control plan reduces the stormwater runoff into the lake
110 to 65%, based on stabilizing the site by reducing the slopes. In terms of relying on the Master Plan, he
111 noted that the Master Plan is a document that guides the town's development of the Zoning Ordinance,
112 and once it is in place, they must look at the requirements and apply the variance criteria. In regards of
113 the variances for the retaining walls in the setbacks, he stated that it's not the case; they can go up to
114 42' in the setbacks. Lastly, about the comment that his client should have known about the slope
115 restriction or did know about it when they bought the property, therefore they cannot demonstrate
116 hardship, he noted that the Supreme Court has weighed in on this exact issue.

117 Vice Chairman Silverstein closed the public session and went into deliberative session.

118 Vice Chairman Silverstein recessed the meeting at 7:51 PM to consult with the counsel.

119 The deliberative session continued at 8:03 PM.

120 Mr. Andrews said that his sense is that they do have a lot of neighbors who are objecting, but they have
121 an expert opinion about the erosion as well, because most of objections are set around the impact of
122 erosion on the lake. He added that It was not clear if there is any evidence presented contrary to the
123 expert about the impact of erosion on the lake, so it was hard in his mind to justify that this variance
124 was against the public interest. In terms of hardship, it did seem that the property has an unusual slope
125 to it, so there is a uniqueness to the property. The slope requirement is there to protect the lake, but if
126 they have a plan to mitigate the erosion issues that the rules are intended to protect, he thinks that
127 would provide a pathway to grant the variance, subject to that erosion plan.

128 Mr. Jewczyn said that looking at the five criteria, whether or not any value was being diminished to the
129 surrounding properties, knowing the general nature of the neighborhood and the fact that it is new
130 construction would be a benefit to the public interest, if properly done. He added that the owner could
131 also use the land for other purposes besides the house. It all comes down to the ability of the engineer
132 to make it work, taking the steep slopes into consideration. Granting the permit is substantial justice and
133 he would vote yes for this case; the use will not be contrary to the spirit of the Ordinance.

134 Mr. Lessard said that looking into the five criteria in terms of being contrary to the public interest,
135 having a residence on a residential property, lakefront is similar to the other neighbors. He hears the
136 concerns about the water quality, but he thinks that from their erosion plan and the statements from
137 their expert, the applicants are considering that and looking to mitigate and improve it, which is in line
138 with the spirit of the Ordinance about protecting from erosion. As far as substantial justice, the only
139 The person that is affected by the decision is the applicant. Some of the feedback goes to the erosion and
140 the water quality, but he does not think that if the Board denies the variance and the applicant can't
141 build there, the erosion process will stop, because it takes more than just one property to address that.
142 There is a problem, but not specific to this lot, it is something that the whole community has to do. He
143 concluded that the applicant had met the criteria.

144 Mr. Munn mentioned that there was a relief valve put in to control erosion and that concern about the
145 lake is going to be mitigated by the use of construction materials to prevent it. It leads him to believe
146 that with the erosion plan, they have made the effort to address the water flow.

147 Mr. Murphy said that it is a real dilemma to have so many folks in the neighborhood oppose something
148 like this and then to have to balance that with the criteria that the Board has to look at, which he thinks
149 the applicant had met, especially the hardship. He thinks the property is unique and distinguished from
150 others due to the steep slope, but it's still troubling that so many people in the neighborhood oppose it.
151 Nevertheless, they still must go by the rules of their ordinances and laws.

152 Mr. Lyons was not sure that this is not contrary to the spirit of the Ordinance, he worries about erosion
153 control not working, that it is not designed up to that task. He has no way of knowing whether the
154 values of the surrounding properties are being diminished, because one house on a 23% grade probably
155 won't trip the lake in bad things, but certainly if every 25% grade was built, it would clearly be a
156 contributor to the degradation of the waterbody. The biggest problem for him was the hardship,

157 because he believes that this property is not unique. He did not think that this was a reasonable
158 proposal for this particular lot, mainly due to the proposed size of the house.

159 Vice Chairman Silverstein replied that to her, the remark of Mr. Lyons about the size of the house is
160 subjective and their job is to evaluate the application as is. From her perspective, the expert testimony
161 solidified that there is a benefit to the public interest, because the erosion will be controlled and the
162 runoff into the lake will be reduced. The spirit of the Ordinance is observed through the drainage they
163 have included in the plan, as well as the maintenance schedule. The substantial justice, public versus
164 private, is also served. In terms of the hardship, there were two different criteria, and she thinks that
165 they both have been met. This is a reasonable use and with strict conformity of the Ordinance, it is a
166 hardship. It is buildable, except for the steep slope, so she would support the application.

167 Mr. Lyons asked if the motion would include the maintenance plan and Vice Chairman Silverstein
168 answered affirmative.

169 Mr. Hazelton suggested a condition for the motion that third-party engineers observe construction and
170 inspect the erosion and sediment control, as they have done for other projects.

171 **Ms. Silverstein made a motion to approve Case # VA 23-02 Parcel ID: 0115-0030-0000 Seeking**
172 **approval of a Variance from Article III, Section 3.40(I) to permit the construction of a single-family**
173 **dwelling on a slope that exceeds 25%. This includes slopes measured as an average across an area**
174 **with an elevation change of 20' or more. Vacation Homes, LLC Brett W. Allard Esq. North Shore Rd.**
175 **Rural Residential Zone, with the following considerations: there will be a third-party engineer to**
176 **observe and inspect construction and sediment control; the Town will be supplied with a maintenance**
177 **plan for erosion control that the property owner will support.**

178 **Mr. Jewczyn seconded the motion.**

179 **The motion was passed, with one vote against (Mr. Lyons).**

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

181 There were no Minutes from Previous Meeting(s) reviewed.

182 OTHER BUSINESS:

183 Board members discussed the collaboration between the two boards with Peter White, Chairman of the
184 Planning Board.

185 **Mr. Lyons made a motion to adjourn the meeting at 8:41 PM.**

186 **Mr. Munn seconded the motion.**

187 **The motion was passed unanimously.**

188 Respectfully submitted

189 Rajmonda Selimi