

1 TOWN OF SUNAPEE

2 ZONING BOARD

3 September 2, 2021

4 Chairman Simpson called the meeting to order at 6:20 pm and read from the agenda "The public has
5 access to contemporaneously listen and participate in this meeting through electronic online video
6 conferencing at <https://zoom.us/> with Meeting ID 979 9537 1537 and Passcode 705609, or by telephone
7 by calling (929) 205 6099."

8 Roll call was taken.

9 **MEMBERS PRESENT IN THE MEETING ROOM:** Aaron Simpson, Chair; Jeffrey Claus, Vice-Chair; David
10 Munn

11 **ALSO PRESENT IN THE MEETING ROOM:** George Neuwirt, Patty Brown, Josh Brown, Melissa Pollari,
12 Cory Flint (Arrived later)

13 **PRESENT VIA ZOOM:** Jim Lyons

14 There was a request for a continuance on the following cases on the agenda:

15 **CASE ZBA: 21-30; PARCEL ID: 0125-0011-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
16 **TO PERMIT A 8.7 FT SETBACK FROM THE WEST SIDE PROPERTY LINE WHERE 15 FT IS REQUIRED (THE**
17 **8.7 FT SETBACK HAS BEEN PREVIOUSLY APPROVED, HOWEVER, THE PLAN CHANGED SO THAT THE**
18 **ENTIRE LENGTH OF THE HOUSE WILL BE WITHIN THE 8.7 SETBACK). CATHLEEN SHEA & BRADLEY**
19 **WEISS, 38 JOBS CREEK RD, RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY**

20 Attorney Schuster requested that it be pushed back to the October 7th meeting.

21 Chairman Simpson made a motion to approve the continuation to the October 7th meeting. Seconded by
22 Vice Chair Claus. The motion passed unanimously.

23 **CASE ZBA: 21-31; PARCEL ID: 0118-0051-0000: SEEKING A VARIANCE FROM ARTICLE III SECTION**
24 **3.40(C) TO PERMIT A 27 FT 8-INCH SETBACK FROM THE WATERBODY (PERKINS POND) WHERE 50 FT IS**
25 **REQUIRED (THE EXISTING SETBACK IS 16 FT, 8-INCHES TO THE DECK AND 26 FT 8-INCHES TO THE**
26 **EXISTING HOUSE). DANIEL D. CAVE, 90 BURMA RD, RURAL RESIDENTIAL ZONE W/ SHORELINE**
27 **OVERLAY.**

28 **CASE ZBA: 21-32; PARCEL ID 0118-0051-0000 SEEKING A VARIANCE FROM ARTICLE III SECTION 3.10 TO**
29 **PERMIT A 17 FT SETBACK FROM THE CENTERLINE OF THE ROAD WHERE 50 FT IS REQUIRED. DANIEL D.**
30 **CAVE, 90 BURMA RD, RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY.**

31 **CASE ZBA: 21-33; PARCEL ID 0118-0051-0000 SEEKING A VARIANCE FROM ARTICLE III SECTION 3.50(K)**
32 **TO PERMIT AN ADDITION TO A PRE-EXISTING STRUCTURE LOCATED ENTIRELY WITHIN THE 50 FT**
33 **WATERBODY (PERKINS POND). DANIEL D. CAVE, 90 BURMA RD, RURAL RESIDENTIAL ZONE W/**
34 **SHORELINE OVERLAY.**

CASE ZBA: 21-34; PARCEL ID 0118-0051-0000 SEEKING A SPECIAL EXCEPTION PER ARTICLE IV, SECTION 4.90 TO PERMIT AN ACCESSORY DWELLING UNIT (ADU) IN A NEW GARAGE. DANIEL D. CAVE, 90 BURMA RD, RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY.

Mr. Lyons made a motion to approve the continuation to the September 21st meeting. Seconded by Vice Chair Claus. The motion passed unanimously.

CASE ZBA: 21-35; PARCEL ID 0133-0011-0000 SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A NEW LOT TO BE CREATED WITH 31.50 FT OF ROAD FRONTAGE WHERE 75 FT IS REQUIRED. CORY L & RENEE P FLINT, 16 HIGH ST, VILLAGE COMMERCIAL ZONE.

Chairman Simpson recused himself from this case. He then advised Mr. Neuwirt, who would be presenting this case, that there is an issue with only having two members physically present. However, with Zoom, there are three voting members present. Chairman Simpson stated that the council advised him to give the applicant the option to proceed with the application with the understanding that there are only two members physically present.

Mr. Neuwirt stated that he would like to proceed.

Vice-Chairman Claus raised the concern of legality with only having two voting members present and if later on, someone could challenge the outcome of the ruling due to only having two voting members physically present. Chairman Simpson stated that he had spoken with the Town's council and the Town Manager and that this was the suggested course of action. So long as the applicant is fully aware of the situation and is ok with the virtual vote, they could proceed. Chairman Simpson then addressed Mr. Neuwirt again and asked if he fully understood. Mr. Neuwirt said that he understood.

Chairman Simpson then appointed Vice-Chairman Claus to conduct the meeting.

Mr. Neuwirt introduced himself as a builder in Sunapee and stated that he had written permission from the Flints to present their case of a subdivision on 16 High St. Mr. Neuwirt started with a brief history of the property. Building lots are scarce in Sunapee and one of his clients is working with the Flints and has been offered a piece of land off of their existing lot. Mr. Neuwirt stated that he was not part of the project when the surveys were done but he was involved in house design, layout, driveway location, and other structural facets of the project. He believed that variances were designed for these situations, with certain criteria in place and he feels that this request fits those criteria.

Mr. Neuwirt then asked Mr. Lyons if he had seen the property and outlined the project. Mr. Lyons replied that he had. There is a condition of the property where it is on the edge of a hill that goes down into Sunapee Harbor and the dam. Keeping the driveway where it is, currently, is the best situation, as the driveway had already been moved once by the current owners to make it safer. Mr. Neuwirt stated that seeking a variance from the Zoning Board would help them have a viable building lot. This property is in a residential-commercial/residential zone and it has a half-acre minimum lot size for this district, the possibility exists that this 3-acre property could be cut up to create multiple structures.

Mr. Neuwirt continued that the property being proposed would support one single-family home. Potentially, this property could handle 3 houses. However, they are only pursuing and presenting that this new lot will be used for a single-family dwelling.

Mr. Lyons asked to clarify the possibility of subdividing this property into 3 parcels and if that is the proposed property that they are currently trying to separate from the current home or is that the current property as it is now including the pre-existing structure.

Mr. Neuwirt answered that the piece of the property that they are proposing to subdivide is 1.75 acres. Three single-family homes could be built within that property size. The entire property as it is now, a total of three acres, could support six to seven single-family homes.

Mr. Neuwirt stated that he is working with a different client that would like to buy the Flint's property, however, he is representing the Flints to subdivide the property so his clients can work with the flints on this new proposed building. Mr. Neuwirt went on to read the original application pointing out that they would like to build a single-family home in this subdivided area, they are adding to the school and traffic of the area, but they are not bloating it excessively. It will not impact the nature of the neighborhood. Having a new structure in a neighborhood of older structures will help the value of neighboring lots.

Vice-Chairman Claus asked what the projected value of the home they are proposing may be in today's housing market. Mr. Neuwirt stated that it could be around half of a million dollars.

Mr. Neuwirt then read from the application. The application meets the criteria of hardship as this subdivision is creating housing for a family. The pressures for additional housing in New Hampshire and Sunapee mean that there is a need for more housing such as ADUs. It also means that the permit and approval process to get multi-generational homes established or to create a denser population in certain areas are needed.

Mr. Neuwirt stated, that as the builder and presenter of this variance, it is a reasonable request. The special situation with the property is the steep hill of the road that the driveway connects to is an area of concern. There are letters on file from officials that felt positively about the current driveway location and if this were to be approved the driveway would be in the best location for the property. The hill is a special situation with this lot. It's in the best public interest to keep the driveway in its current spot.

Vice-Chairman Claus clarified, and Mr. Neuwirt agreed that the concern about the driveway in proximity to the hill was the sight. Mr. Lyons added that there is a sign on the hill that states that there is a blind driveway, however, there are two parts to that. There is a horizontal and vertical component to the curve of the road in that area. The first move of the driveway significantly improved the horizontal visibility, however, there is still a concern about the vertical visibility and that is why the sign is still on the hill. Mr. Lyons was concerned about the Chief of Police's opinion of this movement of the driveway. Mr. Lyons doesn't think the applicants could move the driveway back to where it was for safety reasons but was worried that that is what was proposed to the Chief.

Mr. Neuwirt then asked if he could read the letter, to have it on record. Mr. Neuwirt read the letter from Chief Cahill, Sunapee Police Department, on July 1st of this year stated "Michael, I understand that Cory Flint will be asking to keep the location of his driveway in the current spot as he sells a back piece of property. As the Chief of Police and the matter of public safety, I truly support leaving the driveway to its residents on High Street in the current location. This driveway was moved to its current location a couple of years back which enhanced the safety of his family using the driveway as it was originally so close to the curve and hillcrest that it was unsafe. Their current location offers a safe view from his

driveway and not only allows his family safety pulling out onto High St. but to passersby; as well not encountering a vehicle they could not see. I also consider High Street a cut-through roadway as it accesses 103 and then the post office from Sunapee Harbor, so there is a fair amount of vehicle and pedestrian traffic on High Street during the day. Please let me know if there are any questions but I strongly support keeping the Flint driveway in or close to its current location in the interest of public safety."

Mr. Neuwirt stated that he realizes that they are adding some additional density. He sees Mr. Lyon's concerns. Mr. Lyons then interjected that there is still a sign there, so there is still a concern of visibility. Mr. Neuwirt replied that he assumed that if the Chief was concerned regarding this project, he would have stated that in the letter, but Chief Cahill seemed relatively neutral.

Mr. Lyons responded that he wanted to point out that the drawing shows where the old driveway was. He is concerned that Chief Cahill may have thought that if the driveway did not stay where it was, that the proposal would be that the driveway would have to go back to its original location, which would not be an accurate assumption. Mr. Neuwirt replied that he doesn't believe that there is that assumption. Mr. Neuwirt stated that he was confused as to why this was being brought up. Vice-Chairman Claus then tried to clarify the letter, that to meet the 75-foot minimum the applicant would have to move their driveway down and have the new proposed property put their own driveway in. The letter is stating to the Board, from Chief Cahill, that they should not move the current driveway back at all.

Mr. Neuwirt continued that he believed that Chief Cahill is stating that shared access to this property is in the best interest of public safety. The drawing of the old driveway location was to create a timeline. Putting the driveway where it is now has taken away access to the potential sale of this property because the current driveway cuts the property in half. It limits access to the rest of the property in its present zoning state. The driveway makes it difficult to access the back of the property or another sellable lot. Having shared access seemed reasonable, and agreed upon by Chief Cahill, in the public interest of safety.

Mr. Lyons stated that it could be a common driveway, and he didn't see how it is an issue of safety. Mr. Neuwirt stated that when the projects are complete it would be a shared driveway, they are looking to add 5 ft to the width of the driveway to make it a shared driveway. The applicant is not suggesting that if the variance is not approved that they are going to sell the parcel with 75 feet of road frontage and move their driveway back, that is not an option for the applicant. Mr. Lyons thanked Mr. Neuwirt for making that clarification.

Vice-Chairman Claus asked if there were any other questions and checked with Mr. Neuwirt if there was anything else he would like to present. Mr. Neuwirt stated that that was all he had at this time.

Vice-Chairman Claus stated that if there was a way to accommodate the 75 feet and then have some sort of easement when all the property lines were drawn out where both properties are protected, they wouldn't need this variance now. He understands the shared driveway but wondered if there was any discussion of solving the problem by providing that 75-foot road frontage. Per the survey there was going to be an easement granted either way because of the proposed party in the back. Mr. Neuwirt replied that they had gotten a lot of feedback from many of the interested parties as to the best way to go about creating access, so if they meet the 75 ft criteria and now the new person in the proposed back

152 lot goes for a driveway application but the Fire Department and Police Department may have issues with
153 the line of sight with the road as well. They would have the right to put a driveway anywhere within
154 those 75 feet. Mr. Neuwirt stated that he didn't think that would be the best for public safety. He felt
155 that it was more important to have safe access and egress than to meet the criteria of 75 feet. Mr. Lyons
156 disagreed, stating that the 75 feet had nothing to do with safety.

157 Mr. Lyons said he thinks they could design a lot that doesn't need the variance for the road frontage. If
158 they are concerned about future development, those concerns can be handled at that time and the
159 Board is not opposed to reviewing that at that time. Mr. Lyons stated that he doesn't see the hardship.
160 The current property has 316 feet of road front on High Street, most of it is not feasible for a driveway,
161 but 75 feet is double what they are asking for. It would be fine with a common driveway. There are
162 hundreds of ways they could split up this lot to appease this 75-foot road front criteria. Mr. Lyon and
163 Vice-Chairman Claus questioned why the proposed setup is the only option. There was no reason
164 proposed that the owner needed those additional feet to not allow the 75-foot criteria, such as an
165 attachment to that space, or a hardship that requires the applicant to keep that square footage. Mr.
166 Neuwirt stated that it was decided by both parties to a parcel size and land configuration.

167 Cory Flint joined the meeting at this time. Mr. Flint spoke on the concerns that had just been brought up
168 stating that the reason the Flints didn't want to give up the additional feet to meet the 75-foot
169 requirement was control. The owners had concerns that the new owner could plant trees or do
170 whatever they feel and the Flints have kids that will be driving soon. This whole proposal was brought
171 up by the potential buyers who were asking if this was an option that the applicant was comfortable
172 with. Mr. Flint stated that they are not looking to create a complex in this backlot, just a single-family
173 home. After consulting with Mr. Neuwirt, Clayton Platt, and Chief Cahill, this is what made sense. By not
174 moving down that line, the Flints can control that part of the driveway, the visibility, and the
175 landscaping.

176 Mr. Lyons stated that these are concerns that could be specified in the sale; it can be set up with an
177 easement and specific criteria within the sale of the lot and could all be conditions of the sale so they
178 could still meet that 75-foot road front criteria.

179 Mr. Flint stated that he had been advised that this would be the best form of action. Mr. Neuwirt added
180 that for conformity and control, applying for this variance was the best option. From a stylistic and
181 control standpoint, keeping the Flint's lot as conforming as possible by applying for this variance, they
182 believed that it was a reasonable request. There was potential for complications whichever way they
183 went, applying for the variance was the most uniform process for creating this lot.

184 Vice-Chairman Claus asked if there were any additional questions.

185 The abutters, Mrs. and Mr. Brown of 26 High Street, stated that they are in support of this and that it
186 makes the most sense to them given the different options that were presented. It was stated by Mrs.
187 Pollari that another abutter had responded and stated that they were ok with the proposal as well.

188 **Vice-Chairman Claus closed the hearing to the public.**

189 Mr. Lyons stated that he does not see the hardship and doesn't see anything special about this property
190 that requires this variance. He thinks this is a great plan, however, it falls foul of the road frontage
191 requirements within the Ordinance and does not meet the requirements for a variance.

192 Mr. Munn stated that he thinks that they need to stop trying to find a way to get around the variance.
193 The board needs to look at what is being presented and the plan that they have brought to the board,
194 rather than coming up with solutions on how to follow the Ordinance. They need to vote on what was
195 presented. Vice-Chairman Claus responded that it is hard not to see alternate options, however, Vice-
196 Chairman Claus sympathizes about the control of the driveway. He also agreed with Mr. Lyons that
197 these are things that could also be handled in the sale. The hardship is with this driveway and the safety
198 concerns attached to moving it. Mr. Lyons disagreed, again stating that the lot is not unique and there is
199 no reason that they cannot meet the 75-foot road front requirement.

200 **Vice-Chairman Claus re-opened the hearing to the public.**

201 Mr. Neuwirt stated that the criterion of hardship is very opinion-based. Variances are allowed to have
202 opinions introduced. There are people on the Board that feel that this application, though it may not
203 match the criteria of hardship perfectly, is reasonable. There are others on the Board that are taking
204 more of a hard and fast approach that could be tempered if the Board is willing to take a look at if this
205 application is reasonable. Being reasonable is also a very important part of the criteria that the variances
206 hope to establish. He hoped that in the process of analyzing the data that the Board would see that the
207 proposal is reasonable.

208 Mr. Flint added that he had been advised by many professionals, town officials, and local officials that
209 this variance was the best course of action. After owning the land for 5 years they had decided that they
210 didn't want to sell a bunch of the lots, they want to keep as much of the land as possible. This was the
211 right approach for the selling of the lot, keeping the driveway, and for his family.

212 Mr. Neuwirt added that public opinion and influence should also play a large role in this decision. The
213 people that are most affected, such as the Brown's, are in support of this proposal. He went on to say
214 that he hoped the Board would look at all the factors in making this decision. There has been a lot of
215 thought put into this plan, and he asked that the board take all of that into consideration.

216 **Vice-Chairman Claus closed the hearing to the public.**

217 Vice-Chairman Claus stated that when the Board looks at any case, they always end up looking at the
218 hardship, and for him in this case it seems to be the paved driveway in its current location and the one
219 owner wanting to maintain control of that driveway, and that is where he sees the hardship.

220 Vice-Chairman Claus asked, and Mr. Lyons responded that he does not agree. He still does not see the
221 hardship. Mr. Munn stated that he agreed with Vice Chairman Claus that he sees the weight of what the
222 applicant is trying to do and sees the hardship in that as well.

223 **Mr. Munn made a motion to approve Case 21-35; Parcel ID 0133-0011-0000 seeking a variance from**
224 **Article III, Section 3.10 to permit a new lot to be created with 31.50 ft of road frontage where 75 ft is**
225 **required; Cory L & Renee Flint, 16 High St, Village Commercial Zone. Mr. Lyons seconded the motion.**

226 Mr. Lyons went on to read all 5 of the requirements of permitting a variance within the Ordinance. He
227 stated that this application meets 4 of the 5 requirements. He stated that in his opinion there is no
228 hardship in this case. This is not a unique piece of property, there's nothing unique about it that dictates
229 the proposed plan, and thus he sees no hardship, so he is voting against it.

230 **Mr. Lyons voted no, Vice Chairman Claus and Mr. Munn voted yes. The motion was denied.**

231 **Chairman Simpson returned to the board.**

232 **MINUTES**

233 Changes to the minutes from June 17, 2021:

234 Line 42, Strike out the second comma after "interest"

235 Line 45, Strikeout "at"

236 Line 53, add "is" before "no plan"

237 Line 73, add "at" before "the current"

238 Line 91, strikeout second "is"

239 Line 100, add "it" before "is a present state"

240 Line 101, strike "that", add "of"

241 line 237, strike "will be not", add "won't"

242 line 242, strike the "so" between high and even

243 Line 318, strike this, add "is that" after "question"

244 Line 343, strikeout second "that"

245 Line 348, strike out "it" between "this" and "is"

246 **Vice-Chairman Claus made a motion to approve the changes made to the June 17th minutes as**
247 **amended. Mr. Munn seconded. Motion passed unanimously.**

248 Changes to the minutes from August 5, 2021:

249 Page 3 halfway down, change rebutting to abutting.

250 Page 5 halfway down, add or after "asking for" change "disorientation" to "misrepresentation"

251 Page 5 halfway down, Change "there is no further discussion" to "should there be any further
252 discussion"

253 **Vice-Chairman Claus made a motion to approve the changes made to the August 5th minutes as**
254 **amended. Mr. Munn seconded. Motion passed unanimously.**

255 Chairman Simpson proposed a meeting with the Town's Council on the grandfathering information in
256 the Ordinance. He would be asking the Council if Mr. Marquise and Mrs. Pollari could sit in on this
257 meeting. This meeting would not only be beneficial for recent cases but future cases as well. They then
258 discussed a proposed time for the meeting.

259 Chairman Simpson asked the Board members to reach out to residents they may know who may be
260 interested in being alternates.

261 **Chairman Simpson made a motion to adjourn the meeting at 7:51 PM. Mr. Munn Seconded the**
262 **motion. The motion was passed unanimously.**

263 Respectfully submitted,

264 Sarah Liang