

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **November 4, 2021**

4 Chairman Simpson called the meeting to order at 6:08pm 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; Jamie  
10 Silverstein; Jim Lyons

11 **ALSO PRESENT IN THE MEETING ROOM:** Melissa Pollari, Lincoln Jepson, Susan Cobb, Peter Tirinzoni,  
12 Tim Fraize, Charlie Jacobs, John Merriman, June Fichter, Cathy LaRose, Charles Jacobs, Jim Harrison, Jan  
13 Harrison

14 **PRESENT VIA ZOOM:** Dean Cibotti, Scott Legendre, Bill Patton, Diane Keane, Peter Brand, Wayne  
15 MacDonald, Mary Kay MacDonald

16 **NEW CASES**

17 **CASE ZBA:21-41; PARCEL ID 0106-0009-0000: SEEKING A SPECIAL EXCEPTION FROM ARTICLE III,**  
18 **SECTION 3.50 (G) TO PERMIT A 6 FT FENCE 26 INCHES FROM THE EDGE OF THE PROPERTY LINE (LAKE**  
19 **AVE, GM) DEAN CIBOTTI; 1049 LAKE AVE, GM; RESIDENTIAL ZONE W/ SHORELINE OVERLAY.**

20 Chairman Simpson advised Mr. Cibotti that there are only four Board members present for the meeting.  
21 The application will need three votes in the affirmative to have the special exception pass. Mr. Cibotti  
22 was having a hard time hearing Chairman Simpson. Mr. Cibotti asked if he should have an attorney  
23 present, and Chairman Simpson stated that he was allowed to have representation if he would like. Mr.  
24 Cibotti stated that he had spoken to Mrs. Pollari who said that he would be able to put up a 5-foot fence  
25 in at any time; he was only coming for the special exception to make the property look more unified. He  
26 said he wanted to be able to present to the Board with better communication as he was having a hard  
27 time hearing over the phone call, and he was in an airport. He requested to have his case rescheduled.

28 **Mr. Lyons made a motion to continue Case 21-41. Ms. Silverstein seconded the motion. The motion**  
29 **passed unanimously.**

30 Mr. Cibotti asked, and Mrs. Pollari stated that the next meeting would be December 2<sup>nd</sup>. Mr. Cibotti said  
31 he would like to be on that agenda.

32 Many people of the public that had come to the meeting raised concerns about this case. Chairman  
33 Simpson advised them to seek council from Mrs. Pollari after the meeting. He said they would not be  
34 discussing it further as the case is not being presented at this meeting. They are more than welcome to  
35 come back to the next meeting either in person or via Zoom. Ms. Silverstein added that if a letter was  
36 submitted, the Board is seeing them, and they are also seen by the applicant.

37     **RECONSIDERATION OF VARIENCE**

38     Daniel Cave requested a motion to reconsider two variances via a letter that was provided to the Board  
39     on November 4<sup>th</sup>.

40     Chairman Simpson then stated that he had spoken with Town Council about the process of approval or  
41     denial. Council had advised that if the Board makes a motion to approve and it is not passed then they  
42     should then do a motion to deny and state why it is being denied. In the past when a Board member  
43     voted against a motion to approve, they stated why they were voting against the motion; now they  
44     should wait to state why for when they make a motion to deny.

45     Chairman Simpson stated that if they vote to reconsider the project, it would be brought back to the  
46     Board at the next meeting. Ms. Silverstein asked if the letter from Mr. Cave had been seen by the Town  
47     Attorney. Chairman Simpson stated that he had received it from the Town Attorney. Mr. Lyons asked if  
48     there was any time constraint on the application for this reconsideration as he wasn't sure how long ago  
49     they had denied this variance. Chairman Simpson replied that they didn't deny the variances, it just  
50     wasn't approved, which is why Council has now asked them to deny any variance that does not obtain  
51     approval.

52     Mr. Claus asked when they had received this letter, and Mrs. Pollari stated that they had received it that  
53     day. Mr. Lyons stated that that creates a problem for him. If they vote to rehear these cases, then they  
54     may not have the ability to revote, as the approval of the case has already been voted on. His second  
55     concern is that he has not had the time to read the letter. Vice-Chairman Claus agreed as he had not had  
56     time to read it either. Chairman Simpson suggested they take a 10-minute break for everyone to read  
57     the letter. The Board agreed and took a break to read the letter individually.

58     There was a discussion within the Board that they could revote without reconsideration, or they could  
59     reconsider the case. Mr. Lyons stated that he would like to have a meeting with the Town Attorney to  
60     understand why this change on the voting process was made and if something happened to change it.  
61     Chairman Simpson stated that there have not been any new court cases on RSA 677:2 which is the  
62     section of the law in question. The last change made to RSA 677:2 was a verbiage change in 2018.

63     Ms. Silverstein asked what the Board's options were, and Chairman Simpson stated that the options  
64     were as follows: a motion to deny if the Board feels that the letter is not persuasive which would not  
65     give the applicant another hearing, or a motion for a rehearing if they feel that the letter is persuasive.  
66     In past reconsiderations they would have a rehearing because of incorrect application of the law or  
67     missed information or facts that were not adequately communicated. The Board can either make a  
68     motion to adjust their denial or they can make a motion to rehear the whole case. Vice-Chairman Claus  
69     clarified that he thought they would need to vote on both. Mr. Lyons thought that they are interlocked.  
70     Ms. Silverstein agreed that they are in some respects. She stated that they can either have the rehearing  
71     of the whole case, or they can only re-open the motions they made, for procedural purposes, without  
72     rehearing the whole application over again.

73     **Ms. Silverstein made a motion to not consider rehearing the entire case as a substantive matter.**  
74     **The Board will not be allowing the applicant to re-try this case. Vice-Chairman Claus seconded the**  
75     **motion.**

Mr. Lyons stated that he thinks this whole situation is terrible. He did not feel comfortable voting on something they just received. Chairman Simpson responded that the Town Attorney stated they could vote on the hearing. Mr. Lyons replied that he didn't want to. He wanted time to consider it and to figure out what Council is looking for; there are allegations in the letter that concern him.

Vice-Chairman Claus proposed that the vote could be based just on the letter. Vice-Chairman Claus and Ms. Silverstein stated that they do not agree with some of the information provided in the letter. Vice-Chairman Claus stated that he felt that a lot of the letter was opinion based. There are too many assumptions of the Board's reasons for not approving these Variances. Mr. Lyons stated that he is not comfortable with voting on this as he felt that he only had one half of the argument. He would like some time to look at the previous meeting and the minutes from the original meeting, so he has the full conversation. Vice-Chairman Claus stated that he understood what Mr. Lyons was saying.

**Ms. Silverstein and Vice-Chairman Claus withdrew their motion and second on the basis that they don't want to make Board members vote if they don't feel ready to do so.**

**Ms. Silverstein made a motion to discuss this letter regarding Case numbers ZBA: 21-31 and ZBA: 21-32, Daniel Cave, 90 Burma Road; "A motion for rehearing pursuant to RSA 677:2" to be heard next month. The motion was seconded by Mr. Lyons. The motion passed unanimously.**

#### **MINUTES**

Vice-Chairman Claus asked which minutes they needed to go over. Chairman Simpson stated that they were two behind, and that the Board Members should really be reading the minutes before the meetings.

**September and October minutes were continued until the next meeting.**

Chairman Simpson stated that Mr. Lyons suggested rewatching the meetings to go over minutes. Mr. Lyons disagreed, he said he does create his own transcripts of the meetings when going over certain cases, especially when there is talk of a re-hearing. He said that the minutes are well taken, however, there are times when he wants to have the transcript, and the applicant's quotes verbatim.

Mr. Lyons asked if the Board needed to go over the minutes and if there is a timeline requirement for when the Board needs to vote on the changing of the minutes. Chairman Simpson stated that there wasn't. The situation that had been brought into question in recent history had to do with re-signing decision sheets when an original decision sheet was lost. It was in the middle of the pandemic, and it was a mistake. It did not pertain to the meeting minutes though.

It was then discussed if the Board could meet with Town Council before the next meeting to go over the letter. Chairman Simpson stated he would try to set something up, but they may need to be flexible with their schedule. It was agreed that they could all do a Zoom as well.

**Mr. Lyons made a motion to adjourn the meeting at 7:10 PM. Vice-Chairman Claus seconded the motion. The motion was passed unanimously.**

Respectfully submitted,

