

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **December 2, 2021**

4 Chairman Simpson called the meeting to order at 6:15 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 832 1875 2029, or by telephone by calling (929) 205
7 6099."

8 Roll call was taken.

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

11 **MEMBERS PRESENT VIA ZOOM:** Jamie Silverstein

12 **ALSO PRESENT IN THE MEETING ROOM:** Melissa Pollari, Dean Cibotti, Linc Jepson, Vicki Jepson, Sue
13 Cobb, Wayne MacDonald, MaryKay MacDonald, Pete Tirinzoni, Julie Tirinzoni, June Fichter, John
14 Merriman, Pat Fraize, Tim Fraize, Charlie Jacobs, Lucy Jacobs, Angela Neilson, Jan Harrison, Jim Harrison,
15 Amanda Slack

16 **PRESENT VIA ZOOM:** Bill Patton, Bernie Seifert, Daniel Cave, Peter Brand, Scott Hazelton, Daniel Cave

17 **CONTINUATION**

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

21 Dean Cibotti presented the case. He showed a copy of the application. It showed that he is requesting to
22 build a 6-foot fence on the south side of Lake Ave and that it will be built no less than 26 inches from the
23 asphalt to allow for snow removal. There is a tree at 32 inches from the asphalt. He does not believe
24 that it will negatively impact his neighbors but acknowledged that from the responses, others may not
25 agree. The fence will be 6-feet above the road elevation making it a "standard" privacy fence height.

26 Mr. Cibotti stated his concerns and reasons for wanting to install the fence. The number one concern is
27 safety and security. He has spoken to the local police three times since 2018. One of the calls was about
28 the gas that was stolen from his boat's tank. Chairman Simpson asked how putting up a fence on the
29 road would stop people from stealing gas from the boat on the lake and Mr. Cibotti stated that they
30 would get to that.

31 Mr. Cibotti Said that he had kayaks go missing that had been retrieved along with some tools that have
32 also gone missing. To try and prevent this from continuing he had installed a light that is motion
33 sensed on the tree down by the dock along with a camera. He reiterated safety and security are his
34 number one concern.

His second concern is privacy and security. He is away from home a lot and his wife and daughter and some of their friends "feel like they are living in a fishbowl when they are down on the dock". He also has a dog that they don't currently let down on the lake as other dogs have open access so being able to bring the dog down would be great. They are trying to utilize their property.

Mr. Cibotti then presented photos of houses either on Lake Ave or within a quarter of a mile from the house. He specifically showed Mr. Merriman's home that has some privacy fencing to create privacy for their dock. He also consulted with a few landscaping and nursery companies, and they advised him to go with a fence rather than shrubs or greenery. He then showed photos of homes that have been built that have obstructed the view of the lake and other properties that have fences higher than 6 feet. He spoke to another property owner that lives about an eighth of a mile from his home and asked him about his privacy fence. Chairman Simpson asked about the photographed house and if Mr. Cibotti knew if they have received a special exception or variance for the fence, and Mr. Cibotti stated he did not know if they had or not. He stated that he believed that the rule about being within five feet of the road was fairly new in the Ordinances. Chairman Simpson stated that it has been in the Ordinances since 1982.

Mr. Cibotti then explained his intention and some of the challenges for this project. He stated that the landscape is very steep and there is a tree that is 32 inches from the road and there is a telephone pole even closer that creates limited options as to where they can place the fence. He plans to hand-build the fence and not buy basic panels because he wants it to look nice. The goal is to enhance the look of the land. They have been repairing the home since they bought it, it was a bank-owned house, with the long-term goal of moving into it full time.

Chairman Simpson opened the floor for comments and questions from the public.

Amanda Slack stated that she was frustrated with Mr. Cibotti's statement about his daughter being uncomfortable when her 16-year-old daughter also feels this way due to short-term rentals and Airbnb's in the area.

Mr. Tirinzoni said he was concerned about snow removal, the other photos showed shorter stone walls. That's not the same as a 6-foot wooden fence that is two feet off the road. When they get 30 inches of snow, when the plow goes by, the snow will either fall back into the street or it will damage the fence. That is a narrower part of Lake Ave. and when people are walking their dogs in the winter having a 6-foot fence and all the snow is only going to make it more dangerous.

Mr. Jepson said, recently, he and his wife were driving home right in that area at dusk, there were three baby carriages with five people on that side of the road so they could see the oncoming traffic, but his wife couldn't see them until they were right on them. There are no sidewalks, and this is a safety concern in the area.

Mrs. MacDonald said they had a canoe that was stolen off the lake and they have a fence, so she is not sure how having this fence is going to stop people from stealing things off the lake. Also, she's not sure how a fence from above is going to make them feel like they have more privacy as the lake is lower, there is very little privacy from the lake. Many of the houses that they showed were built many years ago when there weren't the variances and laws that are in place now. Safety is an issue, especially on that bend.

Mr. Patton brought up the Ordinance and the criteria that are needed to provide this special exception. The first is that the fence would be needed to utilize the property, and the second is that it agrees with the master plan. He feels that neither of these things has been proven in the presentation given. He feels that there should be a second opinion taken on the natural barriers and feels that that would be a much better way to go about this. He pointed out that the master plan makes a point to preserve scenic views as one of the values of the town. A fence there would be unfortunate and unnecessary to provide privacy. Chairman Simpson asked and Mr. Patton responded that he was reading from the Ordinance in Section 3.55; it is a dimensional special exception. Chairman Simpson agreed that this does pertain to this case.

Mr. Merriman was looking for clarification on the right of way and was unsure if it is from the edge of the pavement. Mr. Simpson replied that the Board have been advised that it is 45 feet from the center of the road. Mr. Merriman brought up the fire hydrant located along this property and stated that the fence would obstruct that. Mr. Cibotti clarified that it would not be the full 200 feet length of the property, they were looking at about 162 feet if he remembers correctly. Vice-Chairman Claus stated that the drawing provided showed it as 200 feet along the whole length of the property.

Mrs. Jepson stated that what he had requested was the full length of this property, he can't change that in the middle of the presentation. Chairman Simpson stated that they could put it as a condition of the vote. She asked if that would be in writing, Chairman Simpson stated if they made it a condition it would be. Mr. Jepson stated that the fire hydrant was replaced about a year and a half ago and should be working.

Mrs. Jacobs stated that all of the privacy fences that had been shown in the presentation were somewhat see through, and perpendicular to the road. Chairman Simpson interrupted and stated that he understood that the presenter was showing examples of other privacy fences in the area, but it doesn't have an impact on the vote tonight. Other sections of the ordinance ask for comparisons to other neighbors within 500 feet of the applicant's location. This special exception does not require that.

Mr. Harrison asked if Mr. Hazelton of the Highway Department had been consulted with, Mrs. Pollari stated that he had been consulted with and is present on Zoom.

Mr. Hazelton then stated that he had sent Mrs. Pollari and the Board photos of the plow truck that plows Lake Ave. The purpose of the photos is to show that a fence placed within the location that he has seen pictures of is in direct line with the plow. It shows the plow from the driver side of the plow from the centerline of the road with the wing down. That fence would be hit by the wing plow no matter what the plow did. They typically try not to straddle the centerline too much as that does not leave a lot of room for oncoming traffic to pass. Mr. Hazelton went on to talk about the weight of slush and snow and how it regularly impacts road signs, mailboxes, etcetera. Even if they were to not impact the fence directly with the plow, the buildup of snow and other road debris would impact that fence. They also routinely remove and shelf their snowbanks to make sure they are maintaining the width of, not only the paved surface, but also, the shoulder. There is typically an ice core within these build-ups that they either have to move with the wing plow or the grader. When they push that snowbank back it can do significant damage. The Town does not take responsibility for things that get impacted if they are in or very close to the town's right of way. The situation in this location specifically is that it is generally not

114 successful to try and push the snowbank up the slope, and if they try to push it down the slope it has the
115 tendency to fall down that steep slope towards the lake.

116 Chairman Simpson asked about Mr. Hazelton's evaluation of the size of the right of way. Mr. Hazelton
117 stated that the typical right of way width in newer subdivisions now are typically 3 "rods", and a rod is
118 16 and a half feet. In that location on Lake Ave., the width of the right of way varies a little; it ranges
119 between 40 to 45 feet. He measured that with a cross on the Town's GIS system. He said that a more
120 accurate measurement of that would need to be done by a surveyor.

121 Ms. Silverstein asked Mr. Cibotti if the property had been surveyed, as there was not a survey map in
122 the packet. Mr. Cibotti stated that it was and that he had supplied it to Mrs. Pollari. They then pulled up
123 what was believed to be the survey, however, Chairman Simpson stated that it did not have the
124 surveyor stamp or been signed. Mr. Cibotti stated that the PDF that was provided was not the signed
125 copy. He stated he does have one. He went on to say he had his property surveyed because he originally
126 was thinking about putting a shed on the property but due to the slope, he hasn't been able to figure
127 out how to make that work. Chairman Simpson responded that they currently do not have a certified
128 survey within the packet, and that is what they are looking for.

129 Ms. Silverstein asked if Mr. Cibotti has a monitor and alarm system at the property. He replied that he
130 did not, he only has cameras.

131 Vice-Chairman Claus asked if the special exception was granted would a surveyor lay the fence, Mr.
132 Cibotti stated that he would be putting the fence up as far away from the road as possible. If he needs to
133 move it around that tree he would. He stated that his struggle is that there is a steep decline right after
134 that so to maintain the integrity of the earth he would have to put it up above that decline.

135 Vice-Chairman Claus stated he has to be 24 inches from the property line. He went on to state that,
136 although the survey is hard to read, it looks like the property line goes right through the tree which
137 means that he would have to put the fence 24 inches back from that. Mr. Cibotti stated that he can't go
138 downhill because that would be too hard to do. There was then a discussion about the property line and
139 the turn in the road. Mr. Cibotti stated he was staying away from the turn due to the fire hydrant.
140 Chairman Simpson stated that he wasn't satisfied that the drawing before them was an actual survey.
141 There was then more discussion amongst the board about the minimum of two feet from the right of
142 way.

143 Mr. Lyons stated that he had gone to the property and measured the width of the road, which was 20
144 feet wide. He stated that if you go 10 or 11 feet past the edge of the pavement you are in the air; it
145 turns into a cliff. Mr. Lyons stated he would like to know exactly where the property line is. If they
146 include the road right of way, then the property line has got to be a way down that hill. There was more
147 discussion about the property line shown in the survey.

148 Mr. Hazelton interjected. He explained that property lines are established by licensed land surveyors
149 and because that is on the curve of the road the property boundary survey, which has to be stamped by
150 a licensed land surveyor in the State of New Hampshire, not by an engineer, would show curved radius
151 measurements that would match the alignment of the road, and it would be in relation to the road. The
152 right of way would also be shown on the survey. Mr. Hazelton then stated that regarding the method

153 and how to install the fence, he respectfully disagreed with Mr. Cibotti, the ability to build that fence on
154 the downhill slope is possible. Mr. Hazelton stated that he strongly suggests putting the fence as far
155 downhill as possible as the plows are going to impact this fence no matter where it is on that slope so
156 the farther away from the road it is the better.

157 A member of the public stated that if he moves the fence down the slope, it could then be an 8- or 10-
158 foot fence as he is asking for 6 feet above the surface of the road. Chairman Simpson agreed, stating
159 that that is what he is asking for.

160 There was then a question of why Mr. Cibotti can't build a fence down by the docks. Mr. Cibotti
161 responded that his number one concern was safety and security, if those who are interested in taking
162 things make those things not visible, they are less likely to be taken, by taking away the temptation.
163 Also, he then stated that he is not allowed to build around his dock due to DES regulations.

164 Mr. Cibotti brought up again that the land has been surveyed by a surveyor by the name of Randy. Vice-
165 Chairman Claus stated that if he were to build 26 inches from the edge of the road he may not even be
166 on his property. Mr. Cibotti responded that he had discussed with Mrs. Pollari as to where the fence
167 would go to comply if this was accepted. He wanted to hear the regulations and wants to follow them.
168 He is willing to move the fence down the slope. Vice-Chairman Claus reiterated that he may want to
169 have a surveyor tell him exactly where those 24 inches are so that the town doesn't come by and say
170 that they need to tear it down.

171 Chairman Simpson asked, and Mr. Cibotti responded that he has not looked at any of the emails sent to
172 the Board by the public or Mr. Hazelton. Chairman Simpson stated that it was pointed out that Mr.
173 Cibotti had constructed a structure without a permit and that he has been removing trees without a
174 permit. Chairman Simpson stated that that seems to contradict what Mr. Cibotti had just stated about
175 wanting to comply with regulations.

176 Mr. Cibotti responded that he had been told that there was a preexisting structure there and that he
177 had put it back right where it had originally been. Chairman Simpson stated that there was evidence of a
178 pre-existing structure at that location, but there was no pre-existing structure in that location, and if
179 there was you have to rebuild within two years under the town grandfathering regulations for it to be
180 replaced following the Ordinance, which he had not done.

181 Mr. Cibotti stated he had spoken with Mr. Landry a long time ago and he had not interpreted that
182 correctly back then as that was something he had always expressed interest in repairing. He also stated
183 that as far as he knows he followed the regulations as far as the tree cutting was concerned through the
184 town and DES.

185 It was then asked by the public again if the location of the fence is below the height of the road would
186 the applicant be able to build a taller fence to be 6 feet above the road. Chairman Simpson state that
187 that was something that the Board would have to deliberate on.

188 Mr. Hazelton suggested to Mr. Cibotti to look into a shore or dock privacy fence. He said he only brings
189 this up because if they do end up building a 12-foot fence along the road that there is still going to be a
190 lot of negative impact from the plows and snow build-up. Mr. Cibotti asked about the 50-foot rule from
191 DES, Mr. Hazelton responded that he would need waivers, but they are possible.

192 **Chairman Simpson closed the hearing to the public.**

193 Vice-Chairman Claus stated that his concern has to do with the wording of the application. Permitting a
194 6-foot fence 26 inches from the edge of the property line. It's on page 4 of the application that it states a
195 6-foot fence above the road height.

196 Chairman Simpson stated that his biggest concern is that he still wanted to see a survey that shows
197 where the end of the right of way is. He stated that without it he doesn't feel comfortable voting on this
198 application.

199 Vice-Chairman Claus pointed out inconsistencies with the verbiage from the actual title and the
200 descriptions given within the application. On the application title, it states 26 inches from the property
201 line but in the description, it says 26 inches from the asphalt. He also asked if it was truly necessary to
202 have a survey for this application, he suggested that they require a survey as a condition on the motion.
203 Chairman Simpson responded that half of the criteria for this special exception pertains to the location
204 of the structure.

205 Mrs. Silverstein stated that the second half of the criteria is that it will not adversely affect the
206 neighboring properties. As the applicant has focused heavily on security, she thought that it will
207 negatively impact the neighboring properties because town services will be impacted by this fence. They
208 have heard from the town that they will not be able to move the snow to maintain the roadway, and
209 that would negatively affect the neighbors.

210 Vice-Chairman Claus stated that he would agree if the applicant put the fence up 26 inches from the
211 road, but if they put it 26 inches from the property line the snow would still get moved, the owner
212 would have to deal with fixing a fence every year.

213 Mr. Hazelton tried to interject, Chairman Simpson stated that they were in deliberation, and he was not
214 able to comment. Ms. Silverstein stated that it was a concern of public safety and that she feels that the
215 applicant is putting his family's safety at the expense of the neighbor's safety.

216 Vice-Chairman Claus asked about what the concern of public safety is. The Board discussed the problem
217 is that the road is already very narrow in that location. Vice-Chairman Claus responded that it wouldn't
218 make that much of a difference if the fence is 26 inches from the property line. Mr. Lyons disagreed
219 stating that the application shows a fence drawn right along the road and states within the application
220 that they plan to build the fence 26 inches from the asphalt. They can either vote for or against it or
221 postpone it. Vice-Chairman Claus asked if they couldn't clarify that within the motion, that it would have
222 to be from the property line and not the asphalt. Chairman Simpson stated that even if they move it
223 down the hill, he still has concerns about the height of the fence. The Board then discussed if they could
224 put conditions in the motion about the location and height of the fence. Chairman Simpson stated that
225 they could try that but he's not sure he's comfortable doing that without a proper survey.

226 Chairman Simpson then stated that they also have to take into consideration Section 3.55 in the
227 Ordinance as this is a dimensional special exception because it is within the setbacks. The first thing it
228 asks is "Is this special exception required to utilize the lot?". Mr. Lyons pointed out that the lot has been
229 used for several years without a fence. He felt it doesn't follow the ideals of the Ordinance or Master
230 Plan as putting up opaque walls so you cannot see the lake does not align with the Master Plan. In Mr.

231 Lyon's opinion, the proposal is too close to the road and too tall. If it wasn't so close and so tall the
232 applicant would not need to request a special exception.

233 Ms. Silverstein added that the town and public safety really is the priority here and when looking at
234 Section 3.5 of the Ordinance it states that it will not adversely affect the neighboring properties.
235 Chairman Simpson stated that the town safety is more so covered under a different section of the
236 Ordinance where it states that it should be consistent with the intent of the Ordinance. The Ordinance
237 was passed for public health and safety purposes. Vice-Chairman Claus stated that he still doesn't see
238 the safety concern if the fence is built two feet from the property line. Mr. Lyons stated that that is not
239 the proposal in front of them and if it was, they don't know where the property line is. Chairman
240 Simpson stated that he feels they need more information and would suggest continuing this case.

241 **Mr. Lyons made a motion to deny the application as it's written based on the fence to be built no less**
242 **than 26 inches from the asphalt and that the fence will be six feet above the road so it could be any**
243 **height depending on how far down the embankment it's built, the application and survey are**
244 **imprecise; it affects public safety, and its cumulative impact will be negative.**

245 **Ms. Silverstein made the motion to amend the motion to include that this motion is about Parcel ID:**
246 **0106-0009-0000, Case Number 21-41 located at 1049 Lake Ave. The amendment was seconded by Mr.**
247 **Lyons.**

248 **The original motion was seconded by Ms. Silverstein.**

249 Chairman Simpson stated that he felt that the motion is premature. He felt that they don't have the
250 information, that could be readily available. They don't have it, if they did, they could make a more
251 reasonable decision. Vice-Chairman Claus wondered if they deny this application if the applicant can
252 come back with a significantly different application.

253 **Vice-Chairman Claus voted in favor of the motion; Mr. Munn voted in favor of the motion; Chairman**
254 **White did not vote in favor of the motion; Mr. Lyons voted in favor of the motion; Ms. Silverstein**
255 **voted in favor of the motion. The motion to deny passed with four votes yes and one vote no.**

256 **REQUEST FOR REHEARING**

257 **CASE ZBA: 21-31; PARCEL ID 0118-0051-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION**
258 **3.40(C) TO PERMIT A 27 FT 8-INCH SETBACK FROM THE WATERBODY (PERKINS POND) WHERE 50 FT**
259 **REQUIRED (THE EXISTING SETBACK IS 16 FT 8-INCHES TO THE DECK AND 26 FT 8-INCHES TO THE**
260 **EXISTING HOUSE) DANIEL D. CAVE; 90 BURMA RD, RURAL RESIDENTIAL ZONE W/ SHORELINE**
261 **OVERLAY.**

262 **CASE ZBA: 21-32; PARCEL ID 0118-0051-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
263 **TO PERMIT A 20 FT 6-INCH SETBACK FROM THE CENTERLINE OF THE ROAD WHERE 50 FT IS REQUIRED**
264 **DANIEL D. CAVE; 90 BURMA RD, RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY.**

265 Chairman Simpson stated that the request was filed by Brett Allard of Bern Stein Shur. There is also a
266 copy of the original application in the meeting's provided packet. He reiterated that they are not

267 revoting on this case but voting on if they will reconsider this case. After reading the letter, he saw that
268 there is not just a procedural request but also a substantive request.

269 Chairman Simpson acknowledged that Mr. Cave was on Zoom but reiterated that this is not a public
270 hearing on this case at this time.

271 Chairman Simpson stated that he believed that, procedurally, they do need to reconsider their vote. Ms.
272 Silverstein stated that she believed that they made an error in not taking an affirmative vote to deny the
273 variance. Chairman Simpson then asked what they thought of the substantive portion, as the applicant
274 stated that they had applied the wrong standard. Ms. Silverstein said she disagreed; she suggested that
275 they grant a rehearing solely with the purpose to allow them to deny the variance with no new
276 testimony. Vice-Chairman Claus added that they feel that their decision was correct. They did not
277 procedurally execute the decision properly.

278 Chairman Simpson asked and the Board stated that they had all read the letter provided and felt that
279 they had adequate time to comprehend it and digest it. There was a discussion within the Board about
280 the procedural changes that have recently been brought to their attention.

281 **Ms. Silverstein made a motion about Case ZBA 21-31, and ZBA 21-32 on behalf of Danial Cave 90**
282 **Burma Road, Tax Parcel ID 0118-0051-0000. She moved to grant a rehearing solely for the purpose to**
283 **allow the Board the affirmative to deny the variances with no new testimony taken. Vice-Chairman**
284 **Claus seconded the motion.**

285 Ms. Silverstein stated that she agreed that they errored in not taking an affirmative vote to deny the
286 variances. This motion will allow the Board to have a rehearing solely for the purpose to issue an
287 affirmative denial.

288 **This motion was passed unanimously.**

289 **MEETING MINUTES REVIEW**

290 September 21st Minutes:

- 291 1) Line 153: change "of the lake" to "to the lake"
292 2) Line 175: Change "proposed" to "proposal"
293 3) Line 366: change "were" to "where"

294 **Chairman Simpson made a motion to accept the Minutes as amended. Vice-Chairman Claus seconded**
295 **the motion. The motion passed unanimously.**

296 October 17th Minutes:

- 297 1) Line 80: Change "Mrs. Shae" to "Mrs. Shea"
298 2) Line 237: Add "with" before "the height requirements"
299 3) Line 439: Remove the second "he" from the sentence
300 4) Line 348: Change "build" to "building"
301 5) Line 459: Change "controlling" to "cajoling"
302 6) Line 526: change "past" to "prior to"

- 303 7) Line 569: Change “wooden” to “woodland”
304 8) Line 591: Change “grandfather” to “grandfathered”
305 9) Line 612: Change “state” to “stated”
306 10) Line 619: Change “evaluation” to “valuation”
307 11) Line 619: Change “then” to “than”

308 **Vice-Chairman Claus made a motion to approve the amended minutes. Ms. Silverstein seconded the**
309 **motion. The motion passed unanimously.**

310 November 4th Minutes:

- 311 1) Line 36: change “seeing” to “reading”

312 **Ms. Silverstein made a motion to approve the minutes as amended. Mr. Lyons seconded the motion.**
313 **The motion passed unanimously.**

314 Ms. Silverstein stated that she believed they needed more time with Council before the re-hearing.
315 Chairman Simpson stated that the Council stated they could meet with them. There was then a
316 discussion of if they could do the meeting in December. It was decided to push this rehearing to the
317 January meeting. Ms. Silverstein stated that Council did not want to meet on the same day at the
318 rehearing. Chairman Simpson stated that they could contact Council about that and figure out a good
319 date. The next meeting will be on January 6th.

320 **Mr. Lyons made a motion to adjourn the meeting at 8:20 PM. Vice-Chairman Claus seconded the**
321 **motion. The motion was passed unanimously.**

322 Respectfully submitted,

323 Sarah Liang