



TOWN OF NEW LONDON, NEW HAMPSHIRE

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ZONING BOARD OF ADJUSTMENT (ZBA) MEETING MINUTES Tuesday, April 18, 2022 Whipple Town Hall, 6:30pm

MEMBERS PRESENT: Michael Todd (voting), Ann Bedard (voting), Katharine Fischer (voting), Heidi Lauridsen (recused), Lauren Snow Chadwick (voting), Frank Anzalone (voting)

MEMBERS ABSENT: Steve Root

OTHERS PRESENT: Adam Ricker, Zoning Administrator, Debbie Stanley, Neal Harris, Geoff Lizotte, Elizabeth Harper, Tom Cottrill, Amy Hedison, Harry Hedison, Gail Baade, Hal Baade, Sue Venable, Mathew Broas, Pete Lauridsen, Patricia Goodlin, Pam Perkins, Jim Brus, Chris Titus, Jeffrey Christensen, Michael Chiarella

Call to Order– Michael Todd called the meeting to order at 6:30pm and called the roll.

1. Public Hearing(s): Application for a variance

Case #	ZBA 23-01
Owner	Deborah Gilman Sunapee Trust and Nicholas Gilman Sunapee Trust
Address	Davis Hill Road
Parcel ID	068-006-003
Zone(s)	Agricultural Rural Residential
Summary:	<ul style="list-style-type: none">• #ZBA 23-01 – The Deborah Gilman Sunapee Trust and Nicholas Gilman Sunapee Trust are applying for a variance from Article XIV, Section C.1 to construct a new driveway on land with slopes in excess of 25%.

Jeffrey Christensen attended the meeting and is representing the applicants. The proposal involves a property on 309 Davis Hill Road that was part of a subdivision that was approved in April 2022. The applicants intend to construct a residence on the property. The lot is oddly shaped as it is narrow at the top and almost curved as it widens and swirls down towards the water. The land has a considerable amount of steep slopes in the middle of it. The slope exceeds the 25% grade so the zoning ordinance prevents any building on it at all. If the slope is between 15% -25% it requires an erosion and sediment control plan. Mr. Christensen stated the only structure that is going to be in this steep slope area is the driveway. This driveway leads to the building lot that is down by the water. The driveway will be gravel and about 14 feet wide with a 1 foot shoulder on each side. The driveway looks long but it goes along the slope using a switchback style. The slope of the driveway will be less than 15% even though it is in a steep slope section that is over 25% steep slope. Work has been done to minimize the amount of area that is impacted to the extent possible. There is no other way to access the building site at the bottom.

The driveway has been specifically designed to account for the steep slopes. The plan that was submitted was prepared by Horizon Engineering and included erosion and sediment control. This is a simple but necessary request since it is a driveway for a residence that

cannot be built because of the steep slope areas. The driveway is necessary to access the building site and because the steep slopes bisect the property there is no way to get around it. Due to the shape of the lot there isn't a lot of area up front by the road and even still you would need a way to access the water. There is no harm to the public and no alteration of the essential character of the neighborhood. There is no impact on crowd concentration of population and the environmental concerns that underlie the steep slope restrictions are addressed by having the erosion and drainage controls put in place. There are no health or safety concerns as it has been carefully designed to account for those steep slopes. There is no reason to deny this variance.

Ann Bedard stated if this was approved in April, 2022 why wasn't this discussed with the Planning Board at that time? Mr. Christensen responded it wasn't discussed at that time, but this is the lot that was approved and does require this variance in order to build the residence. The variance isn't to build the residence, only for the driveway to get to the residence. There is a building site on this lot. Ms. Bedard stated the site that was approved by the Planning Board was above the steep slope or it would have been brought up. He responded that he can't speak to what the planning board would or wouldn't have done as he wasn't involved then, but even if they built above the steep slope, access to the waterfront on this property is an essential component. If you built above the steep slope, you'd still need some way to get down to the waterfront. Even if it is just for pedestrian access, a walkway would still need to be built in the steep slope. Pedestrian access wouldn't allow for getting a boat into water and the walkway would be a bigger intrusion for neighbors and a bigger issue for drainage and erosion. It's less safe during inclement weather and is more difficult for people with physical disabilities getting access to the water. Not having access to the waterfront on this property is a significant impairment of the utility of the property which goes beyond what is necessary for a variance for finding a hardship. It's reasonable for someone to want to access the waterfront on this lot. The fair and substantial relationship between the purposes of the zoning ordinance and preventing access to the waterfront just aren't there.

Chair Todd confirmed with Mr. Christensen that he had nothing to do with the Planning Board appearance in March, 2022. Mr. Todd shared that board members have reviewed the application that was submitted with respect to this lot. The drawings were dated February 2022 and he asked if these were the most recent drawings and Mr. Christensen stated yes, that is his understanding. Chair Todd called his attention to the drawing showing the lot with access stopping prior to the steep slope. The Planning Board approved this with comments from the Fire Department that required a cistern up by Davis Hill Road that would make it a safe house site because the Fire Department could access that road with it being only a 15% grade. Chair Todd stated after this was approved in April, 2022, this lot was put on the market for sale and stayed on the market, unsold until about two months ago. Now they are before the Zoning Board and want to change the house site after the Fire Department has already given an opinion on how it would be feasible with the length of driveway discussed previously.

Mr. Christensen stated to establish a need for a variance is not dependent on whether there is an alternative. This is not a valid consideration for a zoning board and is an older standard. The question is not whether this is the only possibility for using the property but is it a reasonable request that does not create any of the issues that the zoning ordinance is trying to prevent. The applicant would like to build their house down by the water. The house that would be built would be compliant with the zoning ordinance so that is not what the variance is for. The variance is simply for the driveway.

Frank Anzalone asked Adam Ricker if the Planning Board imposed any conditions that restricted where they could build a house on the lot. Mr. Ricker stated there were no additional conditions. Mr. Anzalone asked if the Fire Department requested a specific location for the cistern. Mr. Ricker stated the Fire Department agreed on a location that provided the best access for the area.

Chair Todd stated based on the Planning Board approval, it seems to be a reasonable conclusion that the proposed building site would be at the end of the driveway, not down by the water. Mr. Christensen stated there is no requirement that it has to be there and an applicant can come before the board to change it if they choose. Chair Todd commented that if this had been made apparent to the Planning Board at that time, they may have not agreed on proposed lot lines. Mr. Christensen stated he can't speak to what the Planning Board might have done. As for the questions raised by the Fire Department he is unsure as this is the first time he is seeing it, but some of it can be addressed by the board with conditions on approval. If there are issues the board considers essential to the driveway design, Mr. Christensen stated he would be willing to have an engineer attend a meeting to address those questions. Chair Todd responded that would mean continuing the hearing to a date certain so the engineer could be present. Mr. Anzalone would also like to hear from the Fire Chief regarding the location of the cistern and concerns about the driveway.

Lauren Snow Chadwick stated she has heard that steep slopes are shared with many other properties surrounding this lot and she hasn't heard what the special conditions are of this lot as presented to distinguish it from other lots. Mr. Christensen responded the shape of the lot is unique as it is not square. The steep slope bisects the property which prevents access to the buildable site down by the waterfront. The standard for uniqueness set by the New Hampshire Supreme Court is not whether this lot is completely different from every other lot in the world, but whether the conditions that this lot suffers from are not shared by all the other lots in the district. The standard for hardship is whether there is a reasonable use that is being prevented by the zoning ordinance and whether the purposes of the zoning ordinances are being served by preventing it or whether there is no fair and substantial relationship between the goals of the zoning ordinance and preventing this application. The zoning ordinance is designed to prevent certain harms, it's not to control just for controls sake. The applicant has a constitutional right to use its property in a reasonable manner that is not harming their neighbors or the general public. None of what is being discussed refers to a return on investment. They are discussing the utility of the property and the ability to enjoy the property fully. Chair Todd stated the petitioner is trying to prepare the lot for sale so that is an important consideration. Mr. Christensen responded the return on investment certainly exists and being able to sell your property now or in the future is always a concern. The fact that someone might sell their property is not a reason to deny a variance.

Patricia Goodlin attended the meeting and asked if it would be useful to the board to go back to the Planning Board because it was her understanding that for the subdivision to be approved, all four lots had to indicate a feasible driveway route. The maps that were part of the original application did show feasible routes for a driveway. For this particular lot, that did not involve any of the area for where a variance is now being sought. It strikes her as being odd that this is just being looked at now.

Michael Chiarella attended the meeting on behalf of Bruce and Kristin Cerullo who are neighbors. Mr. Chiarella stated a letter was sent in and confirmed it was received so it is part of the record. This letter stated their concerns. The Cerullos did support the subdivision and that was based on where the driveway and house were located on the original plan. With this

new site, the house would be right next to theirs and they believe it would cause the value of their house to decline. A realtor has advised them that it would be a 5-10% reduction in total property value as they lose the element of privacy. Mr. Chiarella would like to reiterate what they put in their letter and that they agreed to the subdivision based on what was presented at the Planning Board.

Elizabeth Harper, Executive Director of the Lake Sunapee Protective Association attended the meeting. She stated they have serious concerns about this proposal, especially about erosion and runoff issues from having a driveway on such a steep slope. There are also concerns about the impact of runoff on abutting properties. It seems unnecessary to have a driveway of that length when it is possible to build on other areas of the property. On their end, it seems contrary to public interest.

Geoff Lizotte, Watershed Director for Lake Sunapee Protective Association stated he met with an engineer this morning and they came up with several concerns related to water quality. One concern is blasting that they assume will occur since they will need to go through ledge. This leads to persistent groundwater discharge into ditches on either side of the road and will increase runoff volume. They would like to know if a detailed drainage analysis has been done. They have concerns about the lower 750 feet of driveway going down about a 15% grade. There is no storm water control at the end of that driveway and nothing will stop that storm water from flowing quickly down to the lake. It also looks like about 100,000 square feet is going to be disturbed on this property. Because it's near the lake, once you reach above the 50,000 square feet threshold you will need a NH DES Alteration of Terrain permit. DES will ask for a drainage analysis to demonstrate that there is no increase to runoff to neighboring properties. This driveway will also need a lot of maintenance over time.

Mr. Christensen stated they understand that an alteration of terrain permit may be required. They did not receive the letter from the abutters so were not aware of it. In response to the comment about diminution of neighboring property values created by building a house on that site down by the waterfront, Mr. Christensen stated that is not what is before the board. Everyone would love to have an empty lot beside them but no one has the right to require their neighbor to not build a house. The house can be built without requiring a variance. The board needs to decide if a driveway can be built in the location that has been proposed.

Harry and Amy Hedison are abutters. Ms. Hedison stated she attended the Planning Board meeting and recalls that the cistern was specifically placed in that spot in order to enhance fire protection for the entire neighborhood. She stated the lot that was approved has been massively cleared. Ms. Hedison stated the house should be a consideration because a driveway doesn't just lead to nowhere. She asked if anyone has walked the property to see the extent of the steep slope. Frank Anzalone stated he has looked at the survey and it is steep.

Mathew Broas shared that part of the reason they decided on the location of the cistern was due to feedback from abutters on Davis Hill. They wanted it set back and off the road.

Chair Todd asked Mr. Christensen if he was aware that a specialist previously reviewed the entire property to list the different species of trees and shrubs growing on the property as well as the different kinds of wildlife living there. This was to show the importance of maintaining the habitat. Mr. Christensen stated yes, this is pretty standard. He stated every development has some impact on habitat.

Chair Todd asked Mr. Christensen to address the substantial justice element of the criteria. Mr. Christensen stated in this case, there is almost no benefit to the public that outweighs the significant detriment to the applicant of not being able to access the waterfront on this property. The driveway is necessary to access the property and taking that away from the applicant is a significant impairment of the utility of the property. The gain to the public if the variance is denied is negative. There is no harm to the general public if the variance is granted.

IT WAS MOVED (Frank Anzalone) AND SECONDED (Lauren Snow Chadwick) to discuss. THE MOTION WAS APPROVED UNANIMOUSLY.

Frank Anzalone stated they have the right to build a home there and we are denying them access if we deny the variance.

Lauren Snow Chadwick stated she is not seeing the burden coming from the property but rather from the landowner's plight to maximize the property. She is not seeing the uniqueness of this specific lot. Frank Anzalone stated they have a buildable area that they can't access and that's what makes it unique. Michael Todd stated they have a buildable area that was already approved by the Planning Board.

Ann Bedard stated there are a lot of houses that are on the lakes that are not down by the water. This is a very steep slope. Perhaps hiring an engineer at the expense of the applicant would help work through some of these concerns. There are a lot of questions that still need to be answered. The board would like the applicant to satisfy the requirement of the fire department and provide responses to the concerns of the LSPA. They would also like permission for individuals to go onto the property to look at the site.

After discussion, the board made the following motion:

IT WAS MOVED (Michael Todd) AND SECONDED (Frank Anzalone) to continue to the May 16, 2023 meeting. Frank Anzalone: yes, Katharine Fischer: yes, Michael Todd: yes, Ann Bedard: yes, Lauren Snow Chadwick: no. THE MOTION WAS APPROVED.

2. Approval of Minutes – December 12, 2022

IT WAS MOVED (Michael Todd) AND SECONDED (Katharine Fischer) to approve the minutes of the December 12, 2022 meeting. THE MINUTES WERE APPROVED UNANIMOUSLY.

3. Rules of Procedure – The board discussed possible changes to the Rules of Procedure. With regards to public hearings, Chair Todd recommended changes to section 106. He will work on a draft for the board to review.

4. Chair/Vice Chair Nominations

IT WAS MOVED (Ann Bedard) AND SECONDED (Katharine Fischer) to appoint Michael Todd to serve as Chair of the Zoning Board of Adjustment. THE MOTION WAS APPROVED UNANIMOUSLY.

5. Motion to Adjourn

IT WAS MOVED (Ann Bedard) AND SECONDED (Heidi Lauridsen) to adjourn. THE MOTION WAS APPROVED UNANIMOUSLY.

The meeting was adjourned at 8:25PM

Respectfully submitted,

Trina Dawson

Recording Secretary
Town of New London