

**CANDIA PLANNING BOARD  
MEETING MINUTES OF November 1st, 2023  
APPROVED MINUTES**

PB Members Present:; Rudy Cartier, Chair; Mark Chalbeck, V-Chair; Brien Brock, BOS Rep.; Judi Lindsey; Scott Komisarek; Tim D’Arcy; Kevin Coughlin;

Linda Carroll, Alt.; Mike Guay, Alt.;

PB Members Absent: M. Santa, Alt.

\* R. Cartier, Chair; called the PB meeting to order at approximately 6:30PM, followed immediately by the Pledge of Allegiance

**New Business:**

- **Informational Hearing: (Potential Subdivision) Applicant/Owner** – Israel and Linda Willard— 10 Landford Road, Candia, NH 03034. Property Location: 10 Langford Road, Candia, NH 03034 Map 408 Lot 054 **Intent:** Subdivision of lot to create a second lot.

Linda & Israel Willard – 10 Langford Road – I guess what our ask is or what we are trying to accomplish is, we know that we are going to create what’s going to be a non-conforming lot because it doesn’t meet the three-acre minimum, and we are short .31 acres. The intent isn’t to put multiple houses on it, it’s to subdivide for our daughter to be able build a house to hopefully be closer to us as a family, so that in our eventual old age, we have somebody close by that can take care of us. We have spoken with Franklin Associates in town about doing the survey and identifying any of the wetlands and kind of the next steps for them to be able to move forward. Their recommendation was that we come to the board first, find out what happens and then get back with him to.

B. Brock: How much acreage do you have on your lot right now?

Israel Willard: 5.69 acres is what the deed says. The town tax map says 5.25.

T. D’Arcy: What do you have for frontage?

Israel Willard: Lots of frontage on Langford Rd. Off the top of my head, I don’t remember the numbers.

R. Cartier: 715 Feet. There are probably two issues. If it’s less than the three-acre minimum, the board can’t approve a non-conforming lot. We are not allowed to.

B. Brock: We can’t create a non-conforming lot.

Israel Willard: Can anybody?

R. Cartier: The other thing is that you are in a commercial zone and residential structures aren't allowed in a commercial zone. That's in Section 5.02 of our Zoning Ordinances.

Israel Willard: I think technically, our zoning is residential / commercial or commercial / residential. I don't think it's just strictly...

R. Cartier: It's commercial. I checked on it for you just to make sure. I was wondering about it myself when it came through. Your lot and the one right across from Langford Road are the same thing. As Brien had said though, we can't do anything about it because it's in the zoning ordinances that this is the way that it is. What you can do, you can go to the ZBA and request waivers. If the ZBA grants you waivers, then you can submit an application for what would be a minor subdivision, in your particular case because you are only doing two lots and that's it.

T. D'Arcy: The other thing to consider is to do an ADU. Adding a living space onto your existing house.

S. Komisarek: The square footage is 750.

R. Cartier: 750. But again, if you needed something larger for some specific, special reason or anything like that, the ZBA has approved larger ones. Say for example, they had one where there was a handicap accessibility issue. That is definitely one thing we would recommend to people in your exact situation is to consider an ADU.

L. Willard: You can only have one of those on the lot?

R. Cartier: Yes

L. Willard: We already have one.

R. Cartier: You have one? An ADU? Is it attached to your house?

Israel and Linda Willard: No but we had to go through the zoning and all of that to get a couple of waivers. We converted our barn for my elderly parents, they live there.

R. Cartier: Oh, okay, yes, I remember.

M. Chalbeck: This 50-foot ROW from this other lot, if you can buy that.

Israel Willard: The 50-foot ROW is us. I believe public service bought the ROW but it's still part of the lot. It's in our deed that way.

K. Coughlin: Well, that might be the difference in your discrepancy between the 5.69 and the 5.25, right?

S. Komisarek: It's a metes and bounds description? You don't really know until you get it surveyed.

Israel Willard: We've been in town 30 years now so I am guessing the zoning laws must have changed either right after we moved in or over the years cuz the lot originally that was attached to the property that we have, there's a two-acre lot next to us, that was subdivided off.

B. Brock: It was a lot of record back then.

Israel Willard: Do we know when it went to three?

R. Cartier: Probably the best person to talk to would be Jim Franklin.

B. Brock: Probably the early 70's is when the zoning changed.

Israel Willard: So I guess our next steps are go to the ZBA.

R. Cartier: The first thing is talk to Jim to make sure you've got everything as far as far as your property straightened out.

B. Brock: Yes, you might want to get the acreage and all that verified so you'll know what your request is going to be.

R. Cartier: Because if you do have 6 acres and you do have the division so that there is three on each, that's not a problem because it's going to be a conforming lot. The other item for which you would have to go to the ZBA is to build a residential structure in the commercial zone.

### **Old Business:**

- **Case# 21-006: (Major Site Plan) Applicant/Owner** – Mountain States LLC – 106 Mount William Pond Road, Weare, NH 03281. Property Location: 291 Raymond Road, Candia, NH 03034 Map 409 Lot 131 **Intent:** Discussion.

R. Cartier: First, I apologize for not being able to be here last week.

T. D'Arcy: Before we go any further on this, I would like to put forth...a decision was made on this with a unanimous vote and I am not sure we want to reopen discussion on it, since it's been done and completed. All other issues aside, I know I personally don't want to reopen the discussion on it, that's kind of my take. I put forward a motion that we not reopen discussion on this case.

M. Chalbeck: I'll second.

R. Cartier: Before you do that, we have a letter from the attorney.

B. Brock: Yes, I read that.

R. Cartier: And basically, he said: "...to allow a deviation from the requirement, which is Section 403L, the Board needs to consider a waiver. I would recommend the Board "reconsider" its decision within 30 days (November 18, 2023) to allow the deviation without a waiver or further site plan approval. Now both the attorney and the town engineer Bryan, who just got me this late Monday, it says: "Hi Rudy, I've reviewed the change and agree that this would constitute a major change and would / should require a resubmission and abutter notification. So we have recommendations from our lawyer that the board reconsider it because he feels that it didn't meet the intention of what our regulations say.

M. Chalbeck: How did our attorney find out?

B. Brock: Before we go any further? You made a motion?

T. D'Arcy: Yes

B. Brock: Did that get seconded?

M. Chalbeck: Yes.

B. Brock: So, we can have the discussion. And the motion was to not discuss it.

T. D'Arcy: Again, I think this board reviewed it, felt that it wasn't a major site change in our view, and this was a change that was required for unforeseen circumstances out of the applicants control and the towns and the utilities. And it was also discussed that since the power up the street is above ground, the power at all the surrounding properties are above ground, and that the abutting landowners were here and had no problem with the issue. We felt that it was a nonissue.

M. Chalbeck: That it was a reasonable request.

T. D'Arcy: That it was a reasonable request. Now if there are particular documents that need to be put in a folder, then that's fine, those can be filled in but I speak for myself, but it was a unanimous vote and I'm sure that there are other people that would feel as I do with this one.

M. Chalbeck: And I don't think we need to drag the applicant back in here two more times.

R. Cartier: So, the feeling is that the board wants to go against what the town attorney is telling us we should do.

B. Brock: Exactly.

R. Cartier: As well as the town engineer.

B. Brock: Exactly.

S. Komisarek: Well, Rudy, what I'd like to know, just knowing some of the history. I would like to know the context of the conversation that you had. In other words, what we've seen in the past, when we want a particular outcome and you're approaching town attorney, I would just like to know how that conversation went. Because it's my feeling that if you had the conversation and said, "Ya know, we're trying to work on behalf of the applicant and the town, we're going to create absolutely no value, we're protecting both, there is no liability." I've seen you in the past Rudy and we've passed, as a Board, something that didn't adhere strictly to the rules. Where you were sitting there and you said, "Hmmm, let me think about this for a minute. Yeah, you know what, I think we can do that." When I looked right at the reg and knew it couldn't be done. But did I call the town attorney, did I call Brien and say call the town attorney, we weren't supposed to do that, cuz you know what? It served the best interest of the town and the applicant, and I think you knew that, so you went along with it. So now we can't just pick when we want...I know that rules are very important Rudy and you've gotta follow them but sometimes common sense prevails and I've seen this before Rudy in other cases, where you had a particular agenda and you contacted town counsel, which I was privy to...you contact the attorney and tell the Board, "Oh the attorney said that." And I remember somebody saying, let's

see that in writing. So we've got what I call a history here. So yeah, when you have a board, when you are the Chair of a Board and they're seven – nothing, for you to run up to the attorney and say and you kind of guide them or say this is the outcome you want. I'm sure if you would have said to him, "Hey Tim, what do you think? You think this is okay? I'm cool with it." Tim probably would have been, "Yeah, I don't think there is a problem with it Rudy. I think that is the problem we have here... It is my understanding that the counsel and the engineer are advisory. The Board has the discretion to make the call.

R. Cartier: When this was on the agenda last meeting, it was supposed to be for discussion. There was nothing in there saying request for a waiver. This discussion never happened. I told Mark that the way the regulations say that section is specific in what you can and can't do and how you're supposed to do it. Obviously that information never got to the board. So when I found out that it was in there, when town counsel had called me up about the other issue we discussed in attorney meeting, I asked him at that same time about his opinion. I basically told him what I thought, and he said, I'll send you an email because everyone wants everything in an email. So, I sent it in an email, sent it out to all of you. So don't give me that crap about me running to the attorney and circumventing things. I talked to him and did it the way everyone said they wanted it to be done, which is in writing.

S. Komisarek: That's the way it should be done but we have a history Rudy, that you have abused that power. The power of you interacting with the attorney and the town engineer. That's undeniable. I have been a party to it Rudy. So that's why when we are sitting here, and we don't know how that conversation went. When you've got a board and you're the Chair, you're the leader, and you throw seven members under the bus...

J. Lindsey: Scott, I think you're getting a little too heated and offtrack.

R. Cartier: Did you get the information that I asked Mark to send you last meeting? About this? This is exactly what I told Mark to bring you to the board meeting when I couldn't get here, that I was going to bring up. You obviously didn't have the information that I was going to give you before I had any discussions with the town attorney. Part of my job and part of everybody on this Boards job is to look at the regulations, understand them, and don't make decisions erroneously because you didn't follow the regulations the way that they're written. You did not follow the regulations the way that they're written. This has happened before.

S. Komisarek: Sure, it has. I've seen you vote for things that didn't follow it.

R. Cartier: I voted no.

S. Komisarek: What I am saying is, you have a commonsense Board here. They decide to do something. Then we come back, we have to call the applicant back.

K. Coughlin: An email was sent from Amy on the 25<sup>th</sup>, which was a week ago today, saying, from Rudy. The week before that, we did this vote. So, I was not aware of what you wrote. One of the things I think...Tom came in and put forth a very straightforward argument that made perfect sense to us and one thing I think is important we keep in front of us is, there is nothing

easier than spending somebody else's money. And every time we make people go spend more of their money, for no reason. This literally...its up, its working. There is a temporary occupancy permit that says he can have it. Getting a transformer is out of his control completely. It makes perfect sense to say, keep it as it is. Don't incur a whole bunch of additional costs. My understanding is when Tom came in, he said you requested a Major Site Plan be redone, which...what does that cost?

T. Severino: Not reapply, just do a plan but go through the Major Site Plan process. Notify abutters.

R. Cartier: The same thing we did for the additional area that was added in.

T. D'Arcy: There is regulation there that says we can make adjustments to the site plan for extenuating circumstances as long as they do not majorly change the originally approved site plan.

R. Cartier: That the proposed modifications do not significantly impact the original proposal.

M. Chalbeck: 120/208 Volts, whether it's above ground or below ground. If you want to talk electricity, I'm your buddy.

R. Cartier: Now I've got a question for Tom. In the original site plan that was approved by the town, there were electrical conduits that were supposed to be installed during the site work. Did they get installed?

T. Severino: No. We were waiting for the transformer, so they didn't get installed.

M. Chalbeck: Well, there is underground that goes to the buildings from the poles. So those are there. So that's basically where the pad would have been placed over when and if that pad mount ever shows up. So, you have to have the concrete. The concrete would go over that. So the pipes are there.

T. Severino: The pipes are there from the transformer to the buildings. Not from the transformers to the drop pole. So because the transformer didn't come, the transformer would have sat in a different location because per the site plan, we would have gone underground to the buildings. There was no transformer, no transformer, no transformer...so we didn't run those lines. When the third building goes in, which is another phase of this job which was separate. We will run underground from that pole, up the side of the road to that building. It's not like we were trying to avoid it, it was just that, literally, in the last minute they said you're not going to get it, so you probably can't, what do you want us to do? This is one month, and they have contracts for people that are in that building and they said, "well what can you do?" They said, we can put a pole in the back and hang cans on it. That's the best we can do for you right now. Again, at that point, we are thinking maybe it's temporary. They are all making you make this decision within 30 days. So no, we didn't run the conduits because we were waiting for that answer. Since we are discussing it, I guess, I just wanted to bring up that this whole process started. I just want to make sure it's clear, these guys a year ahead of time Rudy and this is the

discussion we had when you weren't able to be here two weeks ago. But these guys did their job. They showed me the paperwork a year and half earlier, put their paperwork in a year before the building had commitment, a year. You don't get your engineer unless you write a check. They wrote the check. They weren't trying to not abide by their site plan. They did everything they could do and then when they tell you, it's right down to the wire, this all just happened. It isn't like it was anything that was planned. And I understand what Stantec is saying, and I understand what the attorney is saying and believe me, I respect what you are trying to do because it's nice to follow the rules so that no one can say anything later and I respect that. But in this particular circumstance, the attorney is answering a question as a whole. Should you get a waiver from overhead power? If you're asking about a subdivision and I just ran overhead down my whole Landing Way and he said, "oh no, don't worry about it." And people were asking why there are overhead wires everywhere, all the way down this. The context of it, it's hard for that person to understand. I physically lived and worked there and can see that building and in the context of it, there is, literally, a nest egg of wires down 27 and you cannot even see this one wire going from the drop, and it's overhead from there to the drop pole. One wire going from that building, no complaints about it, no nothing. In the whole context of how the board absorbs this is that no one cares about this. Yes, I agree from your standpoint that there could be fallout from this. Someone could take action on it. This is zero liability. No one cares about it. Went out of the way to have the residents come by and directly look at this and have no problem with it. That's why I said, why am I going through all this. There is no reason to go through all that process for this. So I asked if administratively and it was due to Covid, so numerous things have changed administratively and through anything in the planning board changed due to Covid. So, this particular case, adding all that up with the Covid implications of this problem, to me, it's warranted, the vote that was taken two weeks ago. I have been in this town for over 50 years and have seen a ton of this and this is not extraordinary of an ask, quite honestly. That's my opinion.

B. Brock: I am just glad we didn't discuss it.

T. D'Arcy: With all due respect, I mean with all respect, we did consider all of this stuff and that was the reason.

R. Cartier: I am not denying.

B. Brock: I don't want to go any further with this.

R. Cartier: I am not denying that but I wanted to make sure that the board is fully aware that you are operating well outside our regulations and that this could have been done very easily, very low cost, if the plan was submitted the way that it should have been.

B. Brock: Any cost would be unacceptable.

R. Cartier: The site plan that was approved by the board has everything underground. The way that the regulations say, you can come back and request a waiver for any regulation we have in our site plan regulations. However, there is a process to do it. What the board did two weeks ago, is they blatantly ignored that process, and that's what I am bringing up. I'm not saying that the board would say no, don't do it. But the things that concern me is the fact that underground

pipng was never put in three years ago, when it should have been put in and it looks like you never had any intention of putting in because you came back here.

B. Brock: Enough. You are out of line. You are insinuating things that aren't true.

K. Coughlin: Their business is installing underground lines. Their intention was entirely to go underground, per the regulation, but there is no reason to dig a trench if there is no transformer.

R. Cartier: But the transformer is going to come in eventually and you had a temporary line in. We bent over backwards to get the process done so they could get a better price on their buildings. I remember working very diligently on their part to make sure that we could get the approval done before the end of the year so they could save a ton of money by getting their buildings ordered before the end of the year and the prices were going up. I am not saying it was done purposely or your fault. I am just saying that if the lines had been installed in there, then eventually when the transformers were available, then that temporary line could have been changed to the permanent line.

Don Swiatek: At who's cost? Can I say something Sir? At the time you are referring to, the cost of conduit went up like seven times. So even in order to do something we knew we weren't going to be able to complete because they didn't have what we needed, it would have costed us, we would have spent \$55,000 over there and us, my company doing the work for nothing. Just to get the materials to do it and that's what was happening to us. You understand that you saw the prices. 10 times the amount in some instances. And we did not have that kind of money. We are regular people. Some of you people on that board probably have ten times more money than we have. We did this in good faith. It's probably the best-looking commercial piece of property that you have in this entire town and you are still trying to bury us. I don't care if it is \$500 or \$5000, that's a lot of money to us. It is, it's a very lot of money and this situation, we already got a yes. If I had the money, I would have got a lawyer to force that yes vote to become permanent, but I can't afford that. That's why, thank god Tom's here representing us. I've never done anything like this before. Neither one of us have. This is my son. We are just trying to make something, make it nice, make it work, and you're standing in the way. It's been like that, I feel, ever since the beginning. I don't even have a permanent CO. It's unbelievable, three years into the process, I don't even have a permanent CO. Wow! I should have built all this stuff down the road, in a different town and given them my \$15,000 a year in taxes... We are not asking you for anything, we are just asking for a little bit of understanding, that's all. Thank you for letting me speak.

R. Cartier: You're welcome. It is your prerogative to speak tonight, and I appreciate what you are saying. My only problem with this is the process wasn't done properly.

Don Swiatek: But you were just accusing us of not doing things. I don't understand. We are not in kindergarten here. Accusations. Let me tell you something, I don't deal with accusations very well, especially when they are accusing me of doing something that is beneath me, that I would never even consider.



R. Cartier: I apologize for you taking it the way that you did. My thing is if you had come back and said, hey, we are not going to put these conduits in because we don't think we are ever going to be able to get the stuff, it would have been a lot easier.

Don Swiatek: Well next time we know that. We got more buildings to build but if I am going to have to deal with this, I don't know.

R. Cartier: You won't have to. I can guarantee you won't have to.

T. D'Arcy: I think we have beaten a dead horse. I think it is time to take the vote.

R. Cartier: I'm going to call for a vote.

T. D'Arcy: I put forward a **motion** that we not reopen discussion / hearing on this case. Second: M. Chalbeck

**Motion** passed 6 - 1

R. Cartier: The waiver stands the way it was voted on at the last meeting. Thank you for coming in.

You're very welcome. Thank you very much.

R. Cartier: And thank you for building a building in Candia.

Don Swiatek – Raymond Road: The question is, why when going across private property, the town has any say in whether the lines are buried or not.

R. Cartier: It's in our Site Plan Regulations.

Don Swiatek: – Raymond Road: Why? And how do I fix it? To me, if you are building a street that you are going to turn over to the town, I can see the town having a stake in it, saying underground lines are appropriate here, this is the way we want it. But it's going across their private property, anyone's private property, why does the town have any say in whether those lines are above or below ground?

R. Cartier: In the Site Plan Regulations, the town has decided that they wanted to have certain things done, certain architectural standards put in place for buildings and also aesthetics. One of them is, in any new developments, any new site plans or anything like that, anything on site is buried is utility lines, whether it be water, sewer, electric, telephone, cable, or whatever. That's in the regulations. It is possible to change the regulations. It's possible to change anything. All you have to do is submit a request to the board that the regulations be changed, with the suggested change and the board, after a public hearing would vote on whether that would be an appropriate change to any of the regulations in town.

R. Severino: It's all about the intent. It's in there, the intent is to bury all of the lines. Subdivisions. But there are a lot of times we've run into this over the years. You do subdivisions, you have to go into a pole before you can go down. And that's kind of what is happening over there.

R. Cartier: Correct. That's exactly what we would do in this particular case. I believe when we came in with Mountain States Site Plan for that area that they couldn't go underground for the entire facility. So it was agreed in the way it was agreed to that one pole could be put on the site and from that pole, everything ran underground.

Don Swiatek: It's the board that sets the regulation? Is it not a town ordinance?

J. Lindsey: The ordinances come into play. You craft one. It's voted yes or no by the people really.

K. Coughlin: At a town meeting?

R. Cartier: No. Site Plan Regulations are done just for the board and then the board presents it to a public hearing, gets public input on it, and then the board votes to change whatever site plan regulation.

M. Chalbeck: Ordinances get voted by the people. Not regulations.

- Nate Miller – SNHPC – CIP

R. Cartier: I know Nate came in last week and presented. It looked good. I talked to Nate and asked him about the presentation of it. I told him, from my standpoint, it's exactly what I need. It just has spreadsheets in it, it has dates in it, things like that. I asked him his opinion on how things could be improved from a sales standpoint. That people might have a better time looking at it and understanding it and agreeing what is in there. If you looked at the one for Chester, Chester has a lot of backup information with pictures and things like that that show a little bit more about why some of these things have been changed and why they need it. Kind of similar to how the police department had done and the safety people had done with the police station itself. So, he said, why don't you talk to the board and see what they might have for ideas. And I said, looking at the ones for Chester, there is a lot of nice information that would be visual. The problem is right now is that I think that people don't really read things, they don't look into things.

T. D'Arcy: You know what might be good, is an executive summary in front. A couple of paragraphs that just summarize everything that is in the document.

R. Cartier: Similar to what we did when we did the HOP Grant. What about putting in some kind of pictures, something like that.

T. D'Arcy: Again, I think if you do a one-page executive summary that has some sort of charting. Bar charts of stuff. Pretty pictures go a long way.

R. Cartier: Maybe a graph. One of the things I saw in the summary, a chart that was in there, there is a difference between warrant articles, capital reserve funds, and grants. If we had something that was a graph that showed, that this is going to be \$300,000 spent in this particular year but it breaks down into, only this amount of money is going to be raised in taxes.

T. D'Arcy: This is not a document that gets voted on. It's an administrative document.

R. Cartier: It gets voted on by us. It's a guideline.

S. Komisarek: Nate did a fabulous job. It is nice to work with someone who is so professional.

R. Cartier: That's why I asked his opinion. He's done these before. I will let him know and if you have anything you think would be good to send him. Give it to Amy and she will get it to Nate.

- Southern NH Planning Commission - InvestNH HOP Updates – Steering Committee

M. Chalbeck: We met. Cam's going to reword some of the survey and get it back to the committee for review.

T. D'Arcy: Are they still thinking about a developer's survey?

M. Chalbeck: We haven't discussed it. I know the Chair and a couple of others wanted to scrap it, whereas a couple others of us, 50% of us say we should have it because it would help this board understand what roadblocks developers have when they come in.

T. D'Arcy: I do agree that the citizens survey is more important because that will take longer to get out, get done, and get back.

M. Chalbeck: Like I said, it's a data collection. There is nothing wrong with sending it out.

### **Appeal Updates:**

- *Foster Farms*, New Boston Road – Still nothing and it's been four months.

### **Other Business:**

- Approval of Minutes: October 4<sup>th</sup>

T. D'Arcy: **Motion** to accept the minutes of October 4<sup>th</sup> with the correction in attendance.  
**Second.** M. Chalbeck. All were in favor. **Motion** passed.

- 10.18.23

S. Komisarek: **Motion** to accept the minutes of 10.18.23 as amended for attendance.  
**Second:** K. Coughlin. All were in favor. **Motion** passed.

- Town Planning

R. Cartier: It's that time of year to look at any zoning ordinance revisions. I have none. I don't know if anyone else has seen anything.

M. Chalbeck: I thought we were going to talk about what we just talked about. Reviewing our regulations, a little bit.

R. Cartier: That's not in the ordinance, it is part of our regulations. Probably the best thing to do on that, we have a bunch of things that need to be done, is to have a subcommittee take a look at all of the things we looked at over the course of the year.

- Any other matter to come before the Board.

R. Cartier: I got an email from Bryan Ruoff that the abutters list software is now up and running on GIS.

One other thing, this is probably going to be my last meeting. I am going to resign from the board. I will give my official resignation at the next meeting.

**Motion** to adjourn, J. Lindsey. **Second:** T. D'Arcy. All were in favor. **Motion passed.**

Meeting adjourned.

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file