

**APPROVED**  
**CANDIA ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF March 22, 2011**

**Present:** Boyd Chivers, Chairman; Judith Szot, Vice Chairman; Frank Albert, Ron Howe; Ingrid Byrd; Amanda Soares, Alt

Chairman Chivers called the public meeting to order at 7:00 p.m. immediately followed by the Pledge of Allegiance.

**Approval of December 28, 2010 Minutes**

I. Byrd **motioned** to accept the minutes of December 28, 2010 as presented.  
F. Albert **seconded. All were in favor.**

**Case 11-585** Applicant: Theodore R. Spooner 429 New Rye Road, Epsom, NH 03234 & Amy M Hebsch, 291 Donovan Road, Candia, NH 03034; Owner: Estate of Dorothy Spooner, 463 Chester Turnpike, Candia, NH 03034; Map 411 Lot 30; For two variances under Article VI Section 6.02 Table of Dimensional Requirements: A variance to create a lot with less than 200' frontage on Chester Turnpike and a variance to permit frontage for a lot on Donovan Road, a Class VI road not recognized for frontage purposes under Section 6.02 and under Article III, Definitions.

Abutters were notified and the following abutters were present: Brian Loszewski, 505 Chester Turnpike, Mr. & Mrs. Rockwell 247 Donovan Road, Jonathon Spooner 487 Chester Turnpike, Amy Hebsch 291 Donovan Road, Russ Dann 1 Tower Hill Road and Mr. Seward 445 Baker Road. Applicants Amy Hebsch 291 Donovan Road, Candia, NH 03034 and Theodore Spooner 429 New Rye Road, Epsom, NH 03234 were present.

Chair Chivers started by summarizing the case. He said the applicant wants to subdivide Map 411 Lot 30 and create two additional lots. The parcel of land has frontage on both Chester Turnpike and Donovan Road, a class 6 road. One new lot is along Donovan Road and there is sufficient frontage, but the road itself is a class 6 road and the Town Ordinances do not allow subdivision on a class 6 road. The other lot the applicants want to create is on Chester Turnpike but they do not have the required 200' frontage.

Amy Hebsch passed out plans to the Board. She showed where they wanted to subdivide the lot to create two more lots. She said it was the wish of her parents that all the children in the family could have a lot. A. Hebsch and T. Spooner showed the Board and abutters where they wanted to create the new lots. There was some confusion on the layout and it was explained that they had one house on the lot at 463 Chester Turnpike and wanted to create one new lot on Chester Turnpike and one new lot on Donovan Road which would result in 3 lots one containing the original home. There was confusion about the layout of the lot and it was clarified. It was explained that 5 houses are beyond the proposed lot on Donovan Road. It was explained the houses were built on lots that were preexisting and were not created from a subdivision.

Chair Chivers asked, if at one time, if this was all one parcel including lots some of the family own now and A. Hebsch said yes. He asked if there was a reason the subdivision wasn't completely done when the other lots were created. A. Hebsch said at the time when each child wanted a lot they paid for the surveyor. Chair Chivers asked about the 53' frontage piece on Chester Turnpike. T. Spooner said at the time the other subdivision was done his dad was told that all he had to leave was the 53' to access the land in the back. His dad was told it would be adequate to create a house lot in the future. Currently there is a woods road they refer to as Sawdust road that accesses the land in back where there used to be a sawmill out back.

T. Spooner said there are currently 5 houses on Donovan Road beyond the building lot they want to create not including Amy Hebsch's home on the corner of Chester Turnpike and Donovan Road.

R. Howe asked how the homes on Donovan Road received approval to build. J. Szot said you can build on a preexisting lot of record on a class 6 road by asking the Board of Selectmen for a building permit. She said an agreement is signed between the homeowner and Town because the home will be on a class 6 road. It was clarified that A. Hebsch had signed an agreement with the town when she built on Donovan Road, a class 6 road, in 1981.

T. Spooner said it was his understanding that prior, to 2007; variances were given to build homes on lots of record. F. Albert said that was true it has been a practice in the past to allow people to build on one lot of record only. F. Albert said he has been on the Board for twenty years and they have never allowed a subdivision on a class 6 road.

D. Lewis said a signed agreement with the town is needed and he said the frontage has to have always existed on the class 6 road.

J. Szot asked if lot 411-30 was originally part of the other lots owned by the family that abut this lot. T. Spooner said at one time it was one large parcel. After looking at the frontages on the lots and adding the frontage, she said originally there was over 1000' feet on Chester Turnpike. She said this is sufficient frontage for 5 legal lots. She felt because of the choices that were made when subdividing they did not leave enough frontage to further subdivide on Chester turnpike.

A letter from abutter, Matthew Fillinger 231 Donovan Road, Candia NH was read into record, *“Candia Zoning Board, RE: Estate of Dorothy Spooner Case 11-575. I would like to go record in opposition to the proposed creation of 2 lots. The first proposed lot off Chester Turnpike would allow the possibility of a building permit very close to my boundary in the woods. It would adversely affect the privacy I enjoy now with the trail I have to my back land. I also enjoy being able to hunt in the back of my property. The seconded proposed lot off Donovan Road, again would allow for a building permit on a privately maintained road. Certainly, if this is allowed, I would expect the same consideration if I should decide to subdivide my land frontage. Respectfully, Matthew Fillinger 231 Donovan Road Map 411lot 33.”* A. Hebsch said she wanted to go on record Donovan Road is not a private road but a class 6 road.

Brian Loszewski, 505 Chester Turnpike asked how the subdivision would affect his property value. He said he believe that in 1979 the Town passed a law that no subdivisions would be allowed on class 6 roads. He said he would like to go on record he is against the subdivision as it would adversely affect his ability to hunt and felt it would affect his property value.

R. Howe said since this issue involves the Selectmen, Planning Board and Zoning Board of Adjustment that maybe the applicant should meet with all three Boards to discuss this. D. Snow suggested the applicant request a joint meeting with the BOS, Planning Board Chair and ZBA Chair. Chair Chivers said the question now is should the Board should deliberate the case or have a joint meeting with the Planning Board and Selectmen, assuming that D. Snow is correct that the applicant can request this. Chair Chivers asked if there was a motion to continue this hearing for a joint hearing. F. Albert **motioned** to have the hearing continued to a joint hearing. R. Howe **seconded**. J. Szot asked if this would change what the Board does. She said the Subdivision regulations state no subdivision on a class 6 road. F. Albert said it is not a lot of record. She said the Planning Board has the authority to grant a waiver to the subdivision but first the Zoning Board of Adjustment would have to grant a variance before the subdivision can be granted and said the applicant needs a variance for a subdivision. F. Albert withdrew his motion. R. Howe withdrew his second.

T. Spooner said when they originally approached the Town with the subdivision; they were told they had to go to the selectmen first to request a driveway for the lot. He said the Board of Selectmen said that was not the case and that they had to go to the Zoning Board of Adjustment to get a variance in order for them to approve a driveway at a later time. Chair Chivers said if they had gone to the Selectmen for just the lot on Donovan Road then the

Selectmen's policy would have been to have a waiver signed and then the Selectmen would authorize a building permit according to the Selectmen's policy. T. Spooner said if you go back to the Selectmen's minutes he said they discussed this and told them that if they wanted the lot on Donovan that they had to come to the ZBA first.

Chair Chivers said the issue before them involves the Selectmen, Planning Board and the Zoning Board of Adjustment. He said the selectmen have jurisdiction over building permits on class 6 roads but do not have jurisdiction over subdivisions. The Planning Board has jurisdiction over subdivisions but do not have jurisdiction over building permits on class 6 roads. Chair Chivers said the Zoning Board of Adjustment has no jurisdiction over subdivisions or building permits. Discussion ensued on which Board the applicant should see. The Board concluded that a variance would have to be requested in any case for the lot on Chester Turnpike and the lot on Donovan Road. The Board did not want to see the applicant going back and forth. The Board said they would decide tonight on the variances requested by the applicant.

J. Szot asked the applicants if they went to the Building Inspector for a building permit and the applicant did and were denied. The denial letter is in their folder.

Chair Chivers asked if the applicant, abutters and Board if they had any more questions or comments.

T. Spooner explained the variance criteria for the lot on Chester Turnpike. Criteria #1, he said less than 200' is not contrary to public interest because it is a single lot and the driveway will be improved that will allow equipment to reach the home in back. The new home would be a tax revenue increase. On criteria #2 he said they satisfy the criteria because, even though it is 53' at Chester Turnpike, the lot does open up to a standard size lot. On criteria #3, he said substantial justice would be done as the variance would allow the wishes of the parents for the children to have an equitable piece of the land. Criteria #4, he said values to surrounding properties would not suffer and said there is enough area that the new homes would give privacy to existing homes. Criteria #5, he said literal enforcement of the ordinance cause a hardship for the estate to be settled. If the subdivision cannot be done the estate would have to be divided differently and most, if not all, of the children would be financially damaged.

T. Spooner explained the variance criteria on the Donovan Road lot. He said the variance meets the first criteria as the road has been maintained for years with 5 existing homes beyond the proposed lot. On the second criteria it would be within the spirit of the ordinance as it is similar to what is existing. Criteria #3 he said substantial justice would be done if the variance is allowed per the wishes of the parents for the children to have an equitable piece of land. Criteria #4, he said values would stay the same as any other building lot in town and would be a tax revenue. Criteria #5, he said literal enforcement would make long time resident, his sister Gail of Candia who is disabled not able to secure adequate affordable housing if she could not build on Donovan road. T. Spooner thanked the Board for their time and asked the Board to give their request consideration.

F. Albert **motioned** to grant a variance to create a lot of legal record on Donovan Road by waiving section 6.02 dimensional requirements and definition of frontage, contiguous land along a class 6 road. R. Howe **seconded**. Discussion continued. The Board discussed the variance criteria for the proposed lot on Donovan Road.

*"1. The variance would not be contrary to the public interest"* Discussion followed and the Board found that subdivision on a class VI road is contrary to public policy in Candia and would engender similar developments under similar circumstances.

*"2. The spirit of the ordinance is observed."* The Board found that both variances sought by the applicant would circumvent the spirit of the ordinance requiring residential development along approved roads with sufficient frontage.

“3. *Substantial justice is done.*”The Board found nothing in the application to suggest injustice that could be rectified by the variance.

“4. *The values of the surrounding properties are not diminished; and*” The Board found it likely that the value of surrounding property would be diminished by granting of a dimensional variance allowing the creation of a lot behind an existing residential lot.

“5. *Literal enforcement of the ordinance would result in an unnecessary hardship.*”The Board found a fair and substantial relationship between the public purposes of the ordinance and their specific application to the subject property. The applicant, moreover, has enjoyed reasonable use of the property and can continue to do so. Any limitations imposed by the ordinance are a result of the applicant’s own design and previous actions. Any hardship resulting from the configuration of the subject parcel is self imposed.

Chair Chivers said the motion technically fails since it did not meet all 5 criteria.

B. Chivers, R. Howe, I. Byrd, J. Szot **were not in favor**. F. Albert abstained. **Motion failed**

J. Szot **motioned** to deny the variance to allow frontage on Donovan Road a class 6 road.

I. Byrd **seconded**. **All were in favor**.

The Board discussed the criteria for the variance under section 6.02 to waiver the dimensional requirement of 200’ on Chester Turnpike. F. Albert stated the frontage is 52.35’ and a lot requirement is 200’.

“1. *The variance would not be contrary to the public interest*” The Board found that allowing frontage of 52.35’ would be contrary to public policy in Candia and would engender similar developments under similar circumstances.

“2. *The spirit of the ordinance is observed.*”The Board found the variance sought by the applicant would circumvent the spirit of the ordinance requiring residential development along approved roads with insufficient frontage.

“3. *Substantial justice is done.*”The Board found nothing in the application to suggest injustice that could be rectified by the variance.

“4. *The values of the surrounding properties are not diminished; and*” The Board found it likely that the value of surrounding property would be diminished by granting of a dimensional variance allowing the creation of a lot behind an existing residential lot.

“5. *Literal enforcement of the ordinance would result in an unnecessary hardship.*” The Board found a fair and substantial relationship between the public purposes of the ordinance and their specific application to the subject property. The applicant, moreover, has enjoyed reasonable use of the property and can continue to do so. Any limitations imposed by the ordinance are a result of the applicant’s own design and previous actions. Any hardship resulting from the configuration of the subject parcel is self imposed.

Ingrid Byrd **motioned** to deny the variance under Section 6.02 Dimensional Requirements allowing 52.5’ frontage for a house lot on Chester Turnpike because variance 5 criteria were not met. F. Albert **seconded All were in favor**.

Chair Chivers said both variance requests have been denied and they will receive a Notice of Decision in the mail within a couple of days. Chair Chivers said if the applicant is aggrieved by the decisions tonight they can request an appeal within 30 days. T. Spooner was sorry the Board did not give the request consideration and thanked the Board for their time and appreciate the time they spent listening.

**Other Business**

**Discussion Proposed By-Law Changes**

Chair Chivers said the proposed changes are changes in the State Statutes that would allow the Zoning Board of Adjustment reimbursements to charge administrative fees similar to what is in place for the Planning Board. The Board finalized the amendment proposed addition to read as follows:

*“ARTICLE XI REIMBURSEMENT FOR ADMINISTRATIVE EXPENSES*

*1. The Board may impose reasonable fees to cover its administrative expenses and costs of special investigative studies, review of documents, cost of copying documents, mileage, and other matters which may be required by particular appeals or applications.*

*2. Any fees required by the Board will be paid in advance based on an estimate agreeable to both the Board and the applicant. Said funds will be held by the Town until services are rendered and payment required.*

*3. The Board shall require and provide the applicant with detailed invoices showing reasonable task descriptions for services rendered. Upon request, the Board shall promptly provide a reasonably detailed accounting of expenses or corresponding escrow deductions with copies of supporting documentation.*

*Source: RSA 676:5 IV, et seq*

*RENUMBER ARTICLE X TO XI*

*RENUMBER ARTICLE XI TO XII*

*RENUMBER ARTICLE XII TO XIII”*

I. Byrd **motioned** to accept proposed By-Law changes to be accepted by the Board to be brought to public hearing on April 26, 2011. F. Albert **seconded. All were in favor.**

**Reappointments of Boyd Chivers and Amanda Soars**

I. Byrd **motioned** to send a letter to the Board of Selectmen requesting the reappointment of Boyd Chivers as a member of the Zoning Board of Adjustment and Amanda Soares as an Alternate to the Zoning Board of Adjustment to be signed by Vice Chair Judith Szot. F. Albert **seconded. All were in favor.**

**Appointment of John Easter**

F. Albert introduced John Easter and the Board discussed being a Zoning Board member. F. Albert **motioned** to send a request to the Board of Selectmen for the appointment of John Easter as a Zoning Board of Adjustment Alternate. J. Szot **seconded. All were in favor**

**Nomination for Chairman and Vice Chair**

B. Chivers **motioned** to nominate J. Szot as Vice Chair. I, Byrd **seconded. All were in favor.** I. Byrd **motioned** to nominate B. Chivers as Chairman. J. Szot **seconded. All were in favor.**

The next scheduled Zoning Board of Adjustment meeting is April 26, 2010.

R. Howe **motioned** to adjourn at 8:30 pm. I. Byrd **seconded. All were in favor.**

Respectfully submitted,  
Sharon Robichaud  
Recording Secretary