

CANDIA ZONING BOARD OF ADJUSTMENT

Minutes of December 26, 2017

APPROVED

Place: Town Hall; Meeting room

Call to Order: 7:00 pm following the Pledge of Allegiance

Members Present: Bob Petrin, Chairman; Judith Szot, Vice Chair; Boyd Chivers, Ron Howe, Ingrid Byrd.

Absent: None

Present: Dave Murray, Building Inspector

Approval of Minutes: October 24, 2017

MOTION:

B. Petrin **motioned** to accept the minutes from October 24, 2017 as presented. B. Chivers **seconded**. J. Szot and R. Howe were both **in favor**. I. Byrd **abstained**. The **motion carried** with a vote of **(4-0-1)**.

**Case 17-626** Applicant: Ronald and Susan Purdy, 54 Tower Hill Road, Candia, NH 03034; Owner: same; Property Location: same; Map 411 Lot 079-1; For a Variance under Article VI Section 6.02; Intent to build an attached breezeway with an open porch connected to a 24' x 24' attached garage within the front setbacks.

Present: Applicants Ronald and Susan Purdy of 54 Tower Hill Road, Candia, NH 03034; Tim Peloquin of Promised Land Survey; Mark Desharnais of Spruce Builders.

Abutters Present: None

T. Peloquin introduced himself, I'm Tim Peloquin. I'm a licensed land surveyor. My company is Promised Land Survey and the one who did the plot plan. I. Byrd asked NH certified? T. Peloquin replied yes, license #827. I've had my company for 20 years in New Hampshire, in the Derry area. The Purdy's, I did not fill out any application, I didn't do any of that work, I just did the plot plan and I'm here to help represent. So basically, they've lived on this property on Tower Hill Road, it's a gravel road in this section, have lived on this property for 20 years. Mr. Purdy is a disabled Veteran and he's eligible for a Veteran scooter and hence the reason for this whole thing. They're looking to put a garage attached to their property along with a long breezeway that will be an ADA accessible breezeway in an area that will heated for charge of his scooter and then access into his house. So it's an important function for the Purdy's to be able to put this garage, long breezeway that meets the ADA requirements to ramp up into the house and have a charging station for his scooter. They have 4-1/2 acres and the question might be obvious, why can't they do it here, here, here, various places because it's a high and dry property. But if you look at the configuration of the gravel driveway that comes in, you look at the septic system that sits in the front yard; they're very limited to do anything different. Especially within the ADA, what they're looking to do. The obvious spot is to extend onto the house a breezeway and then a 24' x 24' garage. When doing that, it puts us 37.3 feet to the front lot line, a.k.a. right of way line, where 50 feet is required. I want to point out that that's the right of way line. You still have another approximately 13 feet to the gravel drive at that point. Its 50 feet to the gravel drive, from the gravel drive to the new proposed garage corner. What I'd like to say is that I believe it meets the spirit and the intent of the ordinance if you will from where it calls for a 50 foot setback from the road. In this case, I'm calling it the actual physical road and if you would be so kind and lenient to see this case as such. The Purdy's have provided pictures of their house. There's no snow on the ground; various pictures of the house as it exists today. There is no

garage attached to the house at this point. They have a small breezeway that would not suffice in terms of step up and other things. The darker part of the breezeway is much more long and narrow than what is being proposed, it's a separate addition behind. R. Howe asked this is all existing? T. Peloquin replied yes. The Board continued to review the photos.

T. Peloquin said you'll also see a stone retaining wall in the front to the left side of the driveway as you come up. I want to point out that any construction...a gravel drive in the front, this front area doesn't work based on the septic and the retaining wall. A garage at the back doesn't work because he can't really get into the house and configure so the intention is to have an ADA acceptable breezeway to get him into the garage. The builder is here too, Spruce Builders, Mark Desharnais, he has floor plans he can show you how that will work from an ADA standpoint if you want to see that but it's a breezeway that gets them into their house from the garage and allow them to park into an enclosed garage as they plan their future.

B. Chivers asked the length of the breezeway is determined by the ADA requirements for the pitch of that ramp. T. Peloquin replied yes. It also needs to be a heated indoor area where he can charge...it's a Veteran's requirement because the scooter's been given to them but they have to meet certain requirements.

B. Petrin asked and this breezeway is going to pitch upward from the grade of the garage up to the deck height is that correct? T. Peloquin agreed, yes. B. Chivers said because you lose elevation between the house and the garage that means you have to have a longer ramp for it. T. Peloquin replied you're allowed a 2% slope, you're allowed 1 over 12. 1 foot over 12 foot rise in 20 feet and then you need a 4 foot landing is what I understand. B. Chivers continued and in order to qualify for that scooter, he's got to build that ramp to ADA specifications. S. Purdy reiterated and it has to be stored in a heated area.

B. Chivers asked Dave (*Building Inspector*) have you been to this site. D. Murray said I did a drive by. B. Chivers asked there are constraints imposed by the site itself that require this thing to be laid out in this fashion. D. Murray said absolutely. I looked it over quite a bit today. He doesn't really have a lot of options. My first thought was to shorten up the breezeway but that's not feasible because of the retaining wall and where the septic is. You wouldn't want to disturb that. B. Chivers commented but he also has to have that length for that ramp too. D. Murray replied he does, there's no changing that. The garage is pretty modest, 24 x 24. As far as turning it, he's got the well there; it's a little wet in the back. B. Chivers said you probably couldn't have a much smaller garage there and still have a two car garage. D. Murray agreed.

B. Petrin asked Mr. Peloquin on the length of the breezeway, am I seeing 11, 2, 8, 4 and 4 feet. Is that the total length of the breezeway? M. Desharnais replied 27' 6". B. Petrin replied 27' 6" looks like it's going to the house, not the deck is that correct? T. Peloquin agreed. B. Petrin asked what becomes of the deck; does the deck become part of the breezeway? T. Peloquin, S. Purdy and M. Desharnais agreed, yes. B. Petrin said so it becomes enclosed then where now it's an open deck. T. Peloquin replied no, part of it is like a farmer's porch, on the front. B. Petrin reiterated but what we're seeing as a deck will be enclosed as part of the breezeway. M. Desharnais replied correct. B. Petrin asked so does the deck configuration change? This is sloped but the deck is not sloped is that correct. M. Desharnais replied correct. So the deck that exists now at line of existing deck so we're enclosing part of the deck, not the whole thing. That way they can have a deck in the front.

I. Byrd asked about the stairs going up to the deck. Will that remain? M. Desharnais responded no that will be part of an enclosed area. I. Byrd and the stairs are going to be gone or still there. M. Desharnais said gone.

R. Howe asked how high is the stone retaining wall. R. Purdy replied 3 feet. R. Howe replied my thought was if you brought the garage next to the house and made the ramp enclosed in the garage but you still wouldn't make it with the grade.

M. Desharnais said the way it's drawn now is the way the driveway is. It's not like we're going beyond anything. B. Petrin commented you're not looking for a lot, 12' 9" I believe. M. Desharnais agreed.

B. Petrin asked you're not asking for much but if this garage were slid back, the breezeway remains the same and this slides back do we diminish that setback? T. Peloquin replied the answer is yes but you're getting very close to the well in back. You see that on the plot plan. R. Purdy replied there's also drainage that goes through there, just so you know. The drainage will be right in front of where that garage and addition are going to go. It comes off that hill and the drainage comes off the back side of that slope and goes down on the left side of my property and drains into a drainage area.

B. Chivers asked I'm curious why they put the house at that angle. Is that to get southern area, it looks due south? R. Purdy replied if I'd have built the house, I'd have built it 800 feet from where it is now but that's not the point. It is where it is. I have no idea why they built it that way. If you look at the property, we're built down clear in the corner of our land. They couldn't have built it any further down. But that's the way it is, nothing you can do about it.

B. Petrin asked for any other comments from the audience. If there are no other comments, we'll excuse you gentlemen, we'll close the public session and we'll have a brief discussion over the criteria.

R. Howe said it's pretty obvious there really isn't any other option. I don't see it as a big problem to begin with. I. Byrd and B. Petrin agreed. B. Chivers agreed. It would be easy to tell this guy to re-design and put it someplace else but practically speaking because of the constraints of the site, where the well is, the retaining wall, and in order to make this ramp ADA compliant, he needs that length. Plus he wants to tie that building in square to the house so when you put it all together, it works. The site demands this configuration right here. I. Byrd suggested that ADA requirements should be overruling over anything. B. Petrin said I don't think they're asking much for relief of 12' and inches.

B. Chivers read the criteria from 14.02 C: The Board must find that the application meets five criteria:

1. *The variance will not be contrary to the public interest.* **All Agreed.**
2. *The spirit of the ordinance is observed.* **All Agreed.**
3. *Substantial justice is done.* **All Agreed.**
4. *The values of surrounding properties are not diminished.* **All Agreed.**
5. *Literal enforcement of provisions in this ordinance will result in an unnecessary hardship.* **All Agreed.**

#### MOTION:

B. Chivers **motioned** that we grant the applicant, Ronald and Susan Purdy a variance to allow construction of the garage and breezeway within the 50 foot setback on Tower Hill Road. I. Byrd **seconded. All were in favor. Motion carried (5-0-0).** B. Petrin concluded you'll receive a notice of decision.

#### Other Business:

B. Petrin there's a potential for a new application. Patrick Lord of 878 High Street, Map 404 Lot 046 has inquired about running a Home Shop to repair firearms (allowed under SE under 5.03B) and to prepare the background checks and paperwork required of a Federal Firearms Licensee in order to transfer the firearm to the purchaser. B. Petrin said Andrea leads me to believe it's related to e-commerce. I. Byrd asked is this an application that has been before this Board before, even two or three years ago. D. Murray said no, these are people that just moved in within the last year.

B. Chivers said I think we have to be careful here we really can't discuss an application. A. Bickum replied I just wanted to know what the variance would be for the second part because I don't know how to notice it if he's going to come in.

B. Petrin said it's a two part question. First off to run a repair shop which would be allowed under special exception. The next is the paperwork part of it. Is that a business, do people come in, does he have a window and a desk and says give me your \$40 here's the paperwork or is it e-commerce and he gets paid somewhere else and people are merely picking up paperwork? J. Szot said in order to transfer to the firearm to the purchaser, he's selling guns, and he's running a business to sell guns. B. Petrin replied that's ambiguous I'll disagree with that technicality. He's going to prepare paperwork in order to transfer...somebody has to have approved paperwork in hand in order to take receipt of a firearm. He's

not saying he's transferring it, he's preparing the paperwork. I don't want to get hung up on the fact that he's selling guns, because he may not be. He may be supplying paperwork, which is the background checks and the appropriate Federal paperwork. I. Byrd suggested we send this to your attorney for phraseology. This is new and we don't want to do a misstep. J. Szot disagreed. When you purchase a firearm and they go through, you go in, you fill out the paperwork, they call the information in to the State Police, they call back and say yes or no. You cannot leave that gun shop without an approval from the... B. Petrin said I believe its e-commerce. I. Byrd said is he the middle man between John A over here and somebody in Georgia. B. Petrin replied as Boyd said we have to be careful not to talk about it, it's not an application. So let's defer to legal counsel. R. Howe said what are we being asked here? B. Petrin replied can he do the paperwork part of it. B. Chivers said its part of running a business.

J. Szot said under our ordinance is he allowed to run a gun shop in a residential area. R. Howe said that's my question. I. Byrd replied he's asking for two different things, the gun shop, which he may not be able to do but the e-commerce of passing the paperwork of guns, one here, one here and he's just passing the paperwork. R. Howe said we don't know what he's doing. D. Murray said is he selling guns or not. R. Howe said and if we approve something can it be something else down the road that we don't even anticipate. J. Szot said this is in a residential area and I know we've had cases like this before and we've turned them down. D. Murray said was it selling guns? I. Byrd replied yes, they wanted to sell and repair and have a target range for sighting in guns. If we say no to that part of the business, what about the e-commerce part of the business, what does that imply? Let Bart make the decision. We said no to the guy that wanted to do all that. D. Murray said no shooting. J. Szot if you're repairing them, you need to test them to make sure they're firing correctly.

B. Chivers said this says it's allowed under special exception under 5.03 B to repair firearms. D. Murray said is he crossing that line and selling them? I. Byrd said I would like to know more.

B. Petrin commented so does he actually apply and we get that information from him or do we go to legal first? B. Chivers asked Dave to find out, give him a call, and have him come in and talk to you and Andrea and lay out this case. What's his intention there? I. Byrd asked why can't we have an informational with him. B. Chivers replied I don't think we do informationals. I. Byrd asked why not, the Planning Board does them, everybody seems to do them. It's a no commitment; we're just listening to what you have to say. D. Murray said we need to know if he's actually selling the guns, if the definition of what he's doing crosses that line. R. Howe said there are too many questions here.

J. Szot said under Home Shop under C it says *customary home shops for the repair of electrical appliances, clocks, firearms, furniture and the like may be allowed by special exception subject to the following: Retail sale of new products shall not be considered a home shop*. So if he's selling, it's not a home shop, if he's preparing paperwork for purchase, it's not a home shop and it's not allowed under 5.03 C. In the R district. This is table of accessory uses. If you're preparing paperwork, why would you prepare paperwork for purchase if you're not selling? B. Chivers replied to transfer the firearms to the purchaser. You're transferring something here. I. Byrd said it might just be paperwork, ownership, title to the gun. The Board deliberated and said we need more information.

Patrick Lord made it known that he was in attendance in the audience. They asked him to come up. B. Chivers said just explain what you're proposing to the Town. I. Byrd asked is this an informational? If it wasn't noticed to the abutters we really can't talk to this. B. Chivers and B. Petrin said you're right. B. Chivers said the abutters are entitled to know what's going on. D. Murray said not for an informational. I. Byrd asked doesn't it need to be noticed? J. Szot said no, not for an informational. I think he can just come in and ask information. I. Byrd asked what's the difference between and informational that you don't notice and a non-public? B. Chivers replied a big difference. A non-public you can only discuss 3 categories of things, you can't discuss a case. J. Szot asked when the Planning Board does informationals, do they notice them. A. Bickum replied no. I. Byrd asked but do they ask questions or simply sitting and gathering information through their ears? A. Bickum replied the applicant will usually present what their intent is and they listen and say okay and they can't really decide anything but they can tell them to come back and do the application and go through the whole process. It's to get a feel for what

the person is doing, if it's even going to be allowed or not. B. Petrin said I think it's appropriate to let Mr. Lord tell us what he has on his mind.

P. Lord said so you're on the right track. Say John buys a gun online; they need it transferred to them legally. They cannot get it to their house. I would take their paperwork before they bought the gun, make sure the background check is done and then it would be shipped to my house and they would pick it up. B. Chivers asked so who is the purchaser of this gun? P. Lord said John Smith. B. Petrin confirmed but not you. P. Lord replied correct. B. Chivers asked do you have to have a Federal license to be this. P. Lord said yes you do. Before I submitted the application I wanted to...J. Szot replied because the FFA is expensive. P. Lord corrected FFLA (*or FLA*), yes. B. Petrin asked who pays you. P. Lord replied the customer does. So basically, they would pay me \$40 or \$30 to have this transferred to them and that's it. B. Petrin asked and it's not all new firearms? P. Lord replied it could be new, used, there are multiple sites they can go online and...B. Petrin said because you heard her mention there's an exception where you can't sell new retail. J. Szot replied so he's saying he's not selling. You come in and say to him I found a gun online in Maine, they won't ship it here, they can't ship it to me, he says okay, he does the background check, contacts the seller in Maine, they ship it to him. The guy gives him \$40, he gives him the gun. B. Chivers asked so you take possession of the gun, he comes in and pays you and then you pay the retailer or the website or wherever he bought it from or he's already done that. P. Lord said he's already done that, he buys it online. R. Howe asked how do they actually transfer the gun, does it come UPS. P. Lord replied UPS, FedEx...it has to be over-nighted. R. Howe asked do you have to physically be there to accept that delivery. P. Lord replied it can be transferred by FedEx home office and I can go pick it up but I have to physically be the person to pick it up. I. Byrd where is this located? P. Lord said 878 High Street on the Hooksett border. D. Murray confirmed you're right across from the old Chase store. P. Lord agreed.

R. Howe said you're not going to be doing any gunsmithing? P. Lord replied yes, I would be doing gunsmithing as well. B. Chivers said that's a separate operation from this. P. Lord said but you still need a firearms license to work on a gun. So if you wanted a scope mounted on your rifle and you brought it to me, technically that's considered gunsmithing and you need a license for that. I. Byrd asked where would you sight the guns in. P. Lord replied a bore sighting machine, no firing. No live fire. B. Chivers asked you can fix a gun without firing it? P. Lord replied yes, they have dummy rounds with springs and a cap. B. Chivers reiterated so no gunfire in the back yard. P. Lord replied correct. R. Howe asked have you talked to any of your neighbors about this. P. Lord replied said not yet. I'm close to one of my neighbors, I moved in back in May and I haven't seen him. I. Byrd asked have you done this anywhere else before. P. Lord replied no, this is my first house so just trying to get started. I. Byrd asked so where did you learn how to do this? P. Lord replied the military, the Army.

B. Petrin said so do we just let him apply and then people would get noticed. B. Chivers replied you're going to have to get the abutters in here and make an application. B. Petrin continued and see where it goes from there.

J. Szot said we run it by the attorney to make sure it's covered under that section? The Board agreed. B. Chivers asked Bob to call Bart, how should we handle this, don't ask him to make a decision.

B. Chivers asked what's your title; federal firearms license holder? So anybody that wants to buy a gun on the Internet, they have to come to you, fill out the application, you verify it through NCIC or wherever you do that and then you get the authorization from the Federal Government to sell this guy a gun. J. Szot clarified to pass the gun. B. Chivers replied ok for him to own a gun. P. Lord agreed. B. Chivers continued and the guy comes to your house and he pays you for the authorization for the permit for this weapon, all kinds of weapons or just pistols? P. Lord replied, pistols, handguns, long guns. Person to person anyone can sell anyone a gun, legally, but with me having a Federal Firearms License, I would not be able to do that. I can do long guns, hand guns, shot guns; I can't do machine guns, silencers. J. Szot said that's a specialized license, is the license \$500? P. Lord replied \$200 for a Federal Firearms License. J. Szot said the one for machine guns is \$500 a year isn't it? P. Lord confirmed, correct. Would retail be considered someone buying a sight, like an optic for their gun, from me so I can install it on their gun? B. Petrin replied that would be retail. J. Szot said but it says new. So then you need a variance from that

section, 5.03C:7. *Retail sale of new products shall not be considered a home shop.* If you're selling new products, scopes and things or specialized stocks and stuff...accessory uses are allowed but you would need a variance for the new products. If it's not allowed, you need a variance to allow it. Subject to a special exception; he needs two things; a special exception to run the...to do the licensing and stuff and the you would need a variance, I believe for the sales, because the sales are prohibited. You're allowed to have a shop with a special exception. I. Byrd confirmed the shop being to repair. J. Szot confirmed to repair. R. Howe asked how do you draw the line. J. Szot said one's allowed with special exception the other's prohibited. So if it's prohibited, there's where the variance comes in. When you come in for your meeting, we would do both things at the same time. Hear both things. The special exception would be heard and voted on and then the variance request would be a separate thing and voted on. R. Howe said if you repair a gun and the part you put into it is a new part, you can...P. Lord said that's kind of where I'm going. R. Howe continued you can do that but if you add something that isn't there, now it becomes a sale. J. Szot said its part of a whole. He's making it work again but then to put a new scope on it, that's a whole new thing. If he was repairing the scope that falls under special exception. R. Howe said we're concerned because it's a firearm. If this was an automotive repair shop, you repair all kinds of parts and if someone wanted a new stereo put in their car, you wouldn't think twice and you'd sell them the new stereo and nobody would question it. J. Szot asked I assume you must have some pretty sophisticated gun safes to keep this stuff protected. P. Lord agreed, yes I have firearms myself so I do have a gun safe. B. Chivers said Bob will communicate with Andrea and you can come to the office and make the application and we'll hear you. J. Szot replied and at least we know what things you need to do, with the special exception and the variance.

A. Bickum said (*to P. Lord*) we'll talk to the attorney and see if we can figure out. The deadline would be the first week of January; I need 21 days prior to the next hearing to get everything together. B. Petrin asked if there was a time table. P. Lord replied no but I just don't want to submit my application to the Feds if I can't do it. B. Petrin replied good thinking.

MOTION:

B. Chivers **motioned** to adjourn at approximately 7:41 pm. I. Byrd **seconded**. **All were in favor. Motion carried (5-0-0).**

Respectfully submitted from recording,  
Andrea Bickum  
Recording Secretary

Cc: file