

CANDIA ZONING BOARD OF ADJUSTMENT  
Minutes of February 27, 2018  
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; Dean Young, Fire Chief; Dennis Lewis, Road Agent

Approval of Minutes: December 26, 2017

**MOTION:**

B. Chivers **motioned** to accept the minutes from December 26, 2017 as presented. B. Petrin **seconded**. J. Szot, I. Byrd and R. Howe were **in favor**. **Motion carried** with a vote of **(5-0-0)**.

**Case 18-627** Applicant: John Seidner, 15 Langford Road, Candia, NH 03034; Owner: same; Property Location: 410 High Street: Map 405 Lot 26; For a Variance under Article II Section 2.04: Driveways and a Variance under Article VI Section 6.02 Table of Dimensional Requirements; Lot Width and Frontage. Intent: To allow for a lot with 368.05' of non-contiguous frontage (181.93' and 186.12') where 200' of contiguous frontage is required, and a lot width of 158.35' where 200' width is required.

Present: Applicant John Seidner of 15 Langford Road, Candia, NH 03034.

Abutters Present: Holly Haas of High Street; Jenny Tyler of Jane Drive; Charles Bowman of High Street.

B. Petrin said to Holly Haas we did receive your notation and I'll read that for the record. B. Petrin read from an email received from Holly Haas: (*Sent: Friday, January 19, 2018*):

*Dear Selectmen and Planning Board,*

*I am writing you today to let you know of our displeasure on the plans for our neighbor to our right to subdivide his property and have houses built in the back of his estimated 57 acres. Although our 27 back acres of land are in conservation and can never be built upon, we are deeply concerned about numerous issues that will arise if the planning board allows this to happen.*

*Although at this time, people can access our conservation land for hiking and observation of wildlife (NO hunting or motorized vehicles are allowed) – we will be forced to close the land for public use and use it, as permitted to do, for agricultural purposes. Our concerns are real and are numerous. How many children will walk through our land and come up to our animals and feed them without our knowledge or worse? How many will dump debris and tires on our land illegally? How many will illegally dump their grass clippings and landscaping debris over the wall? How many will not like our manure piles which are and will continue to be composted on the right side down the full length of the wall, and complain about the smell? How many will complain when we use our tractor at 5 AM in the morning to do our farm chores? Will people walk up to and scare our rescued farm animals and make them bolt and injure themselves? How will all this affect our homes value? With all those wells and septic systems put in, will it dry out our underground water reserve when they drill and use for all those homes? Who will be responsible for breaking our waters underground reserve if that does happen? Will they walk in the woods and illegally cut down trees or take fallen trees for their fireplaces? How many signs will we have to put up or security cameras do we need around our land so we can monitor this and they know not to feed the animals, dump on our property, trespass or damage our land? How many times will I have to call the Police for trespass or illegal dumping?*

*Above all, there is a real danger in putting the roadway the “only place where DOT will allow it”. This area on High Street has “rollercoaster” hills. It’s hard enough coming out of my own driveway and seeing the cars are speeding mph up or down the street with these hills, but adding a new blind drive is ludicrous. If allowed to build this sub-division, how many accidents will arise from putting a neighborhood access road there is to be seen, but we, and many neighbors believe there will be numerous accidents. We live here, we know the road.*

*When we purchased this land in 2014 we loved the fact that we had back yard privacy and that the neighbors preserved their land as well. That, along with the historical property is why we moved here. We were unaware of the plans in progress from our neighbor. He has told us nothing and we are getting bits and pieces from the tenants who live there now for over a year now. In fact, I know of only two neighbors, ourselves and the Lemay’s who know about this possible land division and we both are not happy. Had we known about his plans three years ago, we would have definitely looked for another antique home elsewhere. I have never met the neighbor (Landlord) but I do know that he lives on Langford Road on numerous acres. Apparently, as this is just an investment venture for him, perhaps he should rethink where he wants this development and put it in his own Langford Road backyard.*

*I understand that the town needs more affordable homes in the area but putting them on both a watershed area and a historical area to inconvenience the neighbors should not be an option. We will be consistently against this subdivision.*

*With this said, I would like to be notified, and I believe all surrounding neighbors should be notified and invited personally to this pending planning board hearing. I would like to know the date, time and place this will be heard. So far, I have heard nothing from the planning board and I did hear it’s been scheduled. If giving neighbors no information on upcoming hearings that affects them is the norm, than I do believe that should change as it not only affects the value of our property, but it affects the headaches we will all have with such a big development in the surrounding area.*

*Thank you for your time,*

*Holly Haas, 392 High Street, Candia NH 03034*

John Seidner introduced himself. I’m petitioning to be able to subdivide this parcel into two lots. The existing lot that the current tenants have requested to buy from us and the other lot, a single lot, not for subdivision, so that we may continue to conserve that land. And we’re here before you requesting a variance because we believe we have a hardship by way of the subdivided lot in the middle of the frontage of the original acreage that was deeded off in the 1950’s before there were any regulations to that effect. We have created two parcels; one that is 5 acres, the back width of which is 560 feet and the total frontage approaches 360 feet. On the downhill side, 168’ from the adjoining property up to Dave Buck’s property and then it continues all the way over and around the existing structure. We have another 181.93 feet. So it’s a u-shape that gives all that frontage to this one 5 acre lot. It prevents any further road development or subdivisions. We’re asking for access along this path here in an area that gives us 200 feet of frontage and allows us driveway access at the only point that we can put a driveway in and meet state DOT requirements. I have a state permit granted for a single residence, residential driveway access at this point. Again, not for a subdivision or a multiple house development, I can only put one house on this property and realistically it’s just for access to gain access to the hunting and forest land that we use for recreating. B. Petrin asked how many acres is that? J. Seidner replied it is a total of 58 after subdivision. The new lot would be 58 and the existing lot would be 5. They’re farming that land they raise horses and chickens and do some growing on it so we wanted to give them a substantial enough lot of land that they can continue to work with that. The lot layout preserves on their side of the property a shed that they use to house their horses in now. B. Petrin said currently this is an area for horses? J. Seidner said pasture, correct. J. Szot asked so that shed is almost on the boundary. J. Seidner replied correct and that’s dictated unfortunately by the angle of the lot line coming off there and preserving the 200 feet frontage all the way back to meet the setback requirements in the zoning regulations.

B. Petrin said if you can gain access to this property, the intent is to build a single family dwelling. J. Seidner said not at the moment, no. We intend to conserve the land. R. Howe asked does that mean you intend to actually put this in a conservation easement. J. Seidner replied that’s in our thought process but we haven’t moved in that front because we haven’t had a subdivision but that would be something that we would be interested in doing.

B. Petrin stated but it would be a buildable lot. J. Seidner replied it would be a buildable lot, yes. R. Howe said but a buildable lot with one house. I. Byrd said and a sub-dividable lot too. J. Seidner replied I don't believe it would be if we are not granted access for a residential road by the state, they wouldn't approve that. B. Petrin confirmed so you have a curb cut for one driveway. J. Seidner replied correct. J. Szot asked this electric fence that's around here now is that on this proposed lot that you're subdividing off is that where your neighbors have their horses now? J. Seidner said that's correct. J. Szot continued will that be removed or is it alright there until something else happens there. J. Seidner replied we've discussed leasing that field to them so they can continue to use it until they developed their own fields because we have no intention to develop that land so we have no need to access that space there, not on the short term anyways. We told them they can use it for the next few years until they're ready to move their horses downhill.

I. Byrd asked of the remaining parcels, what are the continuous road frontages? J. Seidner replied there's 200 feet of continuous frontage on the uphill lot and 180 and 186 dis-contiguous frontage on the downhill lot for a total of 360 feet. There's 180 feet of frontage on the uphill side in front of the house and then the lot wraps around to the downhill side to the western boundary of the lot and it goes around this one acre lot that was deeded off in 1954 where there's another 186 feet of frontage. There's a total of about 360 feet of frontage but it's divided in half by Dave Buck's house.

B. Chivers said except for the 13½ feet on the downhill side, you wouldn't even be here. J. Seidner agreed, correct; on the uphill side. B. Chivers said so that's what we're talking about here is 13½ feet of frontage on that downhill side going from 186 to 200, you'd have access right there; there's you're conforming lot right here. It wraps all the way around this other lot in the center. How did that lot in the center get carved out of this thing? J. Seidner replied back when the prior owners had been there, they had 3 generations in that house and they wanted their family to stay on the land and they were going to build a house next door immediately adjacent to the existing farmhouse so they just deeded off an acre lot and built a little house on it. B. Chivers asked before zoning. J. Seidner replied long before zoning, 1954. B. Chivers asked are you willing to commit to a conservation easement on the remaining 58 acres is that your representation here tonight. J. Seidner responded I'm not sure I'm ready to make a legal commitment to it. Conservation's at heart, we have over 70 acres of land we're protecting on Langford Road and we bought this property with this intent of protecting the land. We were originally going to farm it but it didn't come to fruition, it wasn't practical so we're making that work on our own property.

B. Chivers said if you only have 200 feet of remaining frontage you're kind of foreclosing your option there, I guess you could put a 60 foot right of way through there and develop the remaining 58 acres that way, if you ever did want to develop that. You're not foreclosing any options by laying it out in this fashion here. You still have the option of putting a road in and getting back here. J. Seidner replied I guess in theory if the DOT would be willing to grant us a permit for that, it might be able to get done.

B. Chivers said right now your curb cut is just for a driveway. J. Seidner agreed, yes. That's all they would grant us, not that we asked for more. Our permit asked for a driveway curb cut which is what they granted us but we struggled to get that. The site lines are so poor in that area we had to re-survey that entire hillside. And we're going to have to pull back the banks in front of the house and uphill in front of that field in order to get the site lines that are required by DOT. Put a retaining wall in; it was a challenge to get a curb cut for a driveway. You're not putting a road in there; it's not going to happen. I. Byrd asked do you have a curb cut or access to High Street on the other lot. J. Seidner said there are two driveways permitted. This allows for two driveways. Drive 1 and 2. We have a permit to continue to use the existing driveway with the modifications I described of pulling the banks back and changing the site lines and granted a new driveway cut just uphill from that about 30 feet up from the lot line.

R. Howe asked have you considered a lot line adjustment with this other piece of property to gain your 13 feet. B. Chivers said you wouldn't have 200 feet. J. Szot said you'd be creating another non-conforming lot. R. Howe said I realize that but I wondered if that's an option maybe it isn't. J. Seidner responded it hadn't come up for discussion because the lot line is so close to the next door driveway that it didn't seem to be a feasible thing to consider. I. Byrd said wouldn't you be swapping one non-conforming lot to another non-conforming lot. J. Szot said on your locus map here on the side, the

Hooksett side, it lists Peter C. Bowman as the owner I believe that is incorrect. J. Seidner replied that was updated after that correction was brought to the attention of the surveyor by Andrea. J. Szot said I went in and looked at this and saw that and I told her that I believed that Charles Bowman owns that land. J. Seidner said the notification lists were changed but we need to update the map. J. Szot said that map needs to be updated because that is incorrect. J. Seidner replied yes, thank you for bringing that up Judith.

Abutter Charles Bowman asked to come up and look at the map. He asked if there was a conservation easement on this and J. Seidner replied not at this time. *A smaller map was passed around.*

B. Petrin asked are there any stipulations with conservation people such as Bear Paw for example that there is any kind of ruling on land locked pieces, because this would be land locked, that back section. Oh no it wouldn't because it's still attached. I. Byrd stated it's contiguous. J. Seidner replied but it lends itself nicely to that because we heard that the neighbor's property, the back half is in conservation and that's sort of our thought process; it's a wildlife corridor back there and to be able to protect that whole area would be a real benefit to the area. We're active members of Bear Paw so that's something we've given a lot of consideration to for estate planning.

C. Bowman asked where is it that you want to build. J. Seidner replied we're not building. Our proposal is to put a new lot line in here and bring it over to the westerly boundary to give the current tenants in the existing house the ability to buy this lot and own it. Allowing us to continue to maintain conservation of this property and hunt it and log it. So this would be a 5 acre lot, the existing farmhouse, and this would be a new 58 acre lot. This isn't usable back here with runoff etc. you might be able to put horses back there. This would give them a nice big area to do that (*have their horses there*).

Abutter Holly Haas introduced herself and I just want to let you know that I have been talking to the tenants. The tenants and I have been good friends for about 3 years. The plans are as far as I know unless things have changed, is to subdivide it to build houses beyond and that's why I wrote that letter. If I'm mistaken...Dr. Seidner has made a comment to the tenants; slandered me by saying I was a nasty neighbor for writing that. He also said that I was selfish, that's not the case. My concern is first of all the road. It's a very...try to get out of Bonnie's driveway right now. It's near impossible without closing your eyes and just going but having another driveway there, and it's probably going to be a roadway because there were plans to build. To me that's very dangerous, it's a dangerous place to put a road.

D. Murray said I have the tax maps here that might give the Board of what happened here in 1954 where they put Eddie Brock's house smack dab in the middle of this lot. I find it curious here, you had this surveyed right. J. Seidner replied yes, the original numbers on the Town's maps are incorrect. D. Murray said yeah the tax map here shows 250 feet on that lower section where it being surveyed it is 186. I wonder if Mr. Seidner bought this property going by the tax map thinking he had more property than he actually did. J. Szot responded who did that survey? Gunnison? D. Murray said I don't know. J. Szot replied I cannot tell you how many boundary line adjustments we've done where he made mistakes. B. Chivers said the tax maps show that that parcel had over 200 feet of frontage. D. Murray clarified on the lower part, yes, 250 feet it says on the tax map. I. Byrd asked who was your surveyor. J. Seidner said we used Sanford Survey. B. Chivers said that explains a lot to me. The fact that the tax maps show 250 feet but the actual survey shows 186 feet; that changes a couple of things.

Jenny Tyler of Jane Drive said I do have a couple of questions because I do have horses and do live in a neighborhood in Candia that experiences significant water problems. I am familiar with this property, very much so because of the horses and this is a trail I go on regularly and as somebody with livestock, it's extremely dangerous. I live on Jane Drive to take your horse from Jane Drive to this area I've almost lost my life a couple of times it's not a safe street at all, especially for livestock. I was wondering what ideas you had for mitigating the water because you do have a wetland back there and I know the current tenants experience severe water, especially in the horse paddock and if you decide to sell off that one small lot where the tenants are currently, which is such an awkward lot, you're going to have to rip up trees and all kinds of stuff to put horses there because it's not set up for horses at all. J. Seidner replied to be very frank and honest that calculus has not entered my thought process; it wasn't something that was ever brought to my attention as a consideration so I don't have an answer for you at this time. J. Tyler responded as somebody who just got sued by neighbors because of water, I will tell you right now

it's a serious concern. J. Seidner replied there are environmentally conscientious ways of clearing land using animals and not excavators which could probably temper a lot of that problem. J. Tyler replied I have two Belgians if you'd like to use them.

D. Young commented I've known John and Jen before they came to Candia. I worked on their home on Langford Road and John's in our Fire Department now and he's a paramedic and a very valuable part of this Town and if what they say; what he says is going to happen, I would trust John and Jen with my life. If he says he's going to subdivide, they'll be one lot and maybe, maybe one house someday, you can take that to the bank; I would trust my life on that. And remember you might be trading one house for 20 here because I think Boyd has looked at this, probably all of you have looked at the way this is laid out, if he doesn't do anything, he has frontage at the top of the hill and enough room at the bottom to put a loop road in there and probably put 20 to 25 houses out there. He wants maybe one, maybe one someday. Maybe not, maybe just wild land. I think I'd trade 1 for 20 any day. Their character is top notch. J. Szot replied Dean I agree with you about the Seidner's but if they sell this property then all bets are off because the new owner can come in and do whatever they choose. If they choose to come in and put a road in on that 200 feet of frontage, they could still put some kind of subdivision unless the land is sold with a conservation easement. There are two things to think about. D. Young said once you lose that bottom loop, it makes it much more expensive to go in to a cul-de-sac and a hammerhead and we have regulations about that. So even the loop option is much smarter. You could say the next owner could do that but it makes it terrifically hard and expensive to do that and probably too expensive to do that. J. Szot replied that's true until you run out of land and then they come up with solutions, it might be expensive but they would come up with a solution to that.

B. Chivers said to summarize for a minute the 58 acre lot conforms to the zoning ordinance in every respect; 200 feet of frontage, 200 feet of depth, 100 feet from the road. You have a curb cut for a single family driveway. The only issue before us now is this lot that goes around the Brock residence and but for 13 feet of frontage over there, you wouldn't even be here. J. Seidner agreed. B. Chivers continued the tax maps show 250 or 251 feet of frontage. You could argue that you relied on that tax map when you bought that property and I think you'd have a pretty strong argument right there. If our tax maps are inaccurate to that extent and you come back with a survey that shows they're considerably off, I think you're entitled to some consideration from this Board. J. Seidner replied I think that falls under the hardship category. B. Chivers continued this little house of Brock's right in the center of this messes this whole thing up. That never would have been approved by today's...so we have to deal with that. That's a historical fact that we have to work around today.

B. Petrin said I agree with you Boyd but I have some reservations about the driveway cut. So we agreed he's got a permit for a driveway cut because that's what he asked for. That's not to say that he can't go back and petition the state for a road cut because he never asked for a road cut, he asked for a driveway cut and he got approved. B. Chivers said we have to consider the application that's before us not the one we could speculate on two years from now. B. Petrin said if we approve this change there is nothing to keep him from going back to getting a road cut...B. Chivers said that's fine...B. Petrin continued unless we put a stipulation on it. Saying yes we're approving it based on a single residence driveway cut, not a road cut. If that would give some relief to some of the abutters I don't think it's unreasonable. J. Seidner replied I have no objection to that because like I said I'm of the mind of conservation and I have no intention of letting this lot get developed so I don't have a problem making that concession.

*There was some confusion among some of the Board members regarding the 5 acre lot and if it was a new lot line or where the boundary lines were from the original lot. Discussion ensued to clarify the plan.*

I. Byrd asked can we go back to the conservation easement. Would you consider making that part of this proposal? J. Seidner answered my reluctance about doing that is that I don't have information about the best way to proceed doing that. Is that something I want to leave in my will or is it that something I want to go the Town and see if I can get some remuneration for the loss of value of the property if I were to sell it to another person to put a house on. I don't know the best way to handle that so

I want to leave my options open there. I. Byrd replied in other words if this gets approved and six months somebody comes along and offers you two to three times as much as what you paid for it, it could go to a development. B. Chivers said no because he's willing to stipulate that that's only going to be a single family driveway right there. That will be a condition on this variance and it will become a permanent condition upon this land so that's all you'll ever get is a single family driveway. J. Seidner replied which is as far as I'm concerned is the equivalent of...B. Chivers said a conservation easement.

I. Byrd asked is there another spot on the frontage where a driveway for a 60 foot right of way could be put in by some other future owner. J. Seidner replied the only way that could happen is that the 5 acre parcel gets bought back by the same owner that owns both lots and then they could do it. Short of that, I don't see how you could do it. B. Petrin asked Dennis could a future owner petition for a roadway. D. Lewis replied if there's only 200' of frontage, they'd have to tear the existing house down in order to make that happen because you'd only have 200' of frontage which would be the requirement for the house that's left. If you took 60' off of that and put a road by it you still probably wouldn't have the depth you'd need for the lot and the acreage. So you'd have to tear down the house. I. Byrd asked wouldn't the house have frontage on the new road. D. Lewis replied it wouldn't have acreage enough left. Even with 5 acres if you took a 60' right of way down the whole site of that lot, you wouldn't have your 3 acres left. You could maybe purchase the 1 acre lot and that house and remove it and go in that way if no one else had ever built on that lot. If they built on that lot, that frontage would be used up too. Our zoning could change and require 150' of frontage and 2 acre lots, a lot could happen, there are a lot of what if's in that question.

J. Szot said Boyd I disagree with you about the hardship relating to the purchase of the property and the difference in the frontage from the Town map. B. Chivers commented why don't you save that for our deliberations. J. Szot continued I feel the ownness is on the owner to have that property surveyed and know what he has and I don't think you can use that as an argument to say that there's a hardship because our tax maps were wrong. Should have, could have, had a survey and known what the frontage was so I don't think that enters into our arguments.

B. Petrin closed it to the public.

R. Howe said as long as this wasn't going to be developed, I don't see any problem with it. I get the feeling that the public feels the same way. The concern is the potential development rather than putting one house in there at some point. I. Byrd commented is somebody going to write up something for the condition that we talked about. B. Chivers said yes, but we need to do the five criteria first. B. Petrin said I agree with Ron that the major concern is multi-unit development and it appears that if we proceed in allowing this it would be the driveway cut as is and may or may not result in a single family dwelling with no proposed development in the back that would go to conservation because there's no easement to develop that. Unless maybe if you buy the house and destroy this as Mr. Lewis alluded too but I rather doubt it; I'm comfortable at this point considering that possibility. J. Szot said there are a lot of ifs.

J. Szot read the criteria from the *Board of Adjustment OEP Handbook November 2015 version*:

1. *The variance will not be contrary to the public interest:* What that means basically is that they must show that there is no harm to the public interest if it's granted. *For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?* B. Petrin said I don't believe that it does. **All Agreed.** *It has to merely show that there will be no harm to the public interest if granted.* J. Szot said the only problem with the traffic and if it ends up being developed there's the harm. B. Chivers replied but that's a state highway and they will determine it and prescribe whatever remedy is necessary to mitigate those hazards. I. Byrd said the state has already said that the applicant needs to do some work.
2. *The spirit of the ordinance is observed.* And that means: *The courts have emphasized in numerous decisions that the characteristics of the particular parcel of land determine whether or not a hardship exists. The variance must unduly, and in a marked degree conflict with the*

*ordinance such that it violates the ordinance's basic zoning objectives.* B. Petrin said he's missing 13 feet, how many times can you say if he had that 13 feet he wouldn't be here. B. Chivers said he's got 368' it's just not all in the same stretch. J. Szot commented we have turned people down for 2 feet. B. Chivers said I agree that this application meets the spirit of the ordinance. **All Agreed.**

3. *Substantial justice is done. Any loss to the individual which is not outweighed by a gain to the general public is an injustice. Whether the proposed development is consistent with the area's present use.* B. Chivers said I think the loss to the applicant is greater than the loss to the public in this case if we turn this variance down. **All Agreed.** J. Szot said because there is no injustice to the general public.
4. *The values of surrounding properties are not diminished.* True. **All Agreed.** J. Szot said it's up to the ZBA to make that determination.
5. *Literal enforcement of provisions in this ordinance will result in an unnecessary hardship. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed.* J. Szot said what is the characteristic of this particular parcel that makes it different from every other parcel around. B. Chivers said that's easy; they cut that little piece out in the center in 1954. That's a hardship right there. They've got 368 feet of frontage it's just not all in one contiguous line. There would be a hardship, there is no hardship here. There would be a hardship if we didn't recognize it. I. Byrd said it wasn't created by the applicant. B. Chivers continued and I don't think you can overlook the fact that the tax maps were off by 64 feet. J. Szot said but you're assuming that the applicant didn't know that when he purchased the land and that may not be a valid assumption. I would assume that Dr. Seidner's intelligent enough to have a survey on the property done. B. Chivers said I doubt he had it surveyed before he bought it. I. Byrd said you look at the tax maps, everybody relies on tax maps. B. Petrin asked how long have you owned the property. J. Seidner said close to 5 years, maybe 6. J. Szot continued *by its basic purpose, a zoning ordinance imposes some hardship on all property by setting lot size dimensions and allowable uses. The restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different (of the land) from others can unnecessary hardship be claimed. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.* B. Chivers said I think the applicant meets the hardship test. B. Petrin said there is the characteristic of the land that is prevalent. R. Howe said I agree with that. J. Szot said so what characteristic of the land, not what people have done to it, sometimes it's the fact that it's wet or that it's rocky that you have to make that determination. B. Petrin said but that doesn't exclude the characteristic that it has two different frontages that aren't contiguous. J. Szot said but that's not characteristic of the land it's what people have done. That's a self imposed hardship. The Board said but not by the applicant. J. Szot argued but it was self imposed on the land. R. Howe said it was before zoning existed. B. Petrin said is there a hardship? B. Chivers replied if the applicant meets the hardship test, enforcement of this provision would result in an unnecessary hardship. I. Byrd agreed. J. Szot said for the record I know that it's going to go through but I disagree because I think the hardship is self imposed and I know he's going to get his variance. I disagree on that.

#### **MOTION:**

B. Chivers **motioned** to grant the variances as requested subject to the following conditions. Lot 405 26-1 (58 acre lot after subdivision) be limited to access for a single family home. R. Howe **seconded**. **All were in favor. Motion passes (5-0-0).**

**Case 18-628** Applicant: Julie Seabury (formerly Julie Hobb-Hagood), 370 Raymond Road, Candia NH 03034; Owner: same; Property Location: same; Map 409 Lot 119; for a Variance under Article II Section 2.02B non-conforming uses and structures: Intent to continue a Residential use on a Light Industrial Lot while allowing auto sales out of an existing 20' x 65' detached heated garage. See Article V Section 5:02 B-11: Establishment for the sales and service of automobiles, trucks, mobile homes, travel trailers, and major recreational equipment as permitted in the L1 Zoning District. For additional information, please call the Land Use Office at 483-8588.

Present: Applicant Julie Seabury of 370 Raymond Road, Candia NH 03034.

Abutters Present: Ann & Bill Holbrook of 372 Raymond Road; Randy & Julie Ladd of 372 Raymond Road; Linda and Israel Willard of 10 Langford Road.

Julie Seabury introduced herself. I'm looking to sell cars out of my, we re-measured its 24' x 65' garage. In order to do that I need a retail dealer's license. All of the stipulations I currently meet as far as the square footage for the State of NH, we just need Town approval for that. Forgive me; it's our first attempt at a plot plan. I have copies of what was drawn out for the Town and we just duplicated it. It's an interesting lot. B. Petrin said it's the one where you can't see the house from the road next to Bilsign. J. Szot said Ingrid the Board has been up in that area before. J. Seabury continued we're right off Route 27. Our property sits way back. That's all trees and rocks. B. Chivers said there's 3 residences back there served by 2 driveways. J. Seabury agreed. The right of way leads to property 408-29. There is a house on that property. B. Chivers asked where do you plan on parking these cars you're going to sell. J. Seabury replied we're not going to be doing a lot, so most of them will fit in the garage. We have room for 5 cars in the garage and I also do a couple of motorcycles. The only other parking available is what would be to the left of the garage. Right now that's where we store our plow truck. B. Petrin asked what kind of conditions has the permitting put upon you as to how many vehicles you can have. J. Seabury replied it depends on the size of the lot. When the state approves for dealer plates they look at the property, the amount of vehicles that can be put on there. I like the look of this property; I don't want a junk yard. We sell very nice cars. I've sold cars for Hobbs Automotive in Auburn for my father for 14 years. That's since closed down. I was left with about 6 cars that I needed to sell and it's been a passion of mine to continue. Walking in here tonight I saw one of my customers who said where are you guys, I need a car for my son. Just need to make a living. B. Petrin responded so the quantity of vehicles has not been determined because that's part of the state licensing procedure that you have not completed. J. Seabury agreed, right. Without approval from the Board it can't move forward with the dealer license requirements because the Town approval is the major one. B. Petrin asked how do you intend to promote this from the road. I see a potential sign is that correct. J. Seabury said right, there is with State of NH dealer license requirements, they require 10" letters. It is not seeable from the road. I have an example; my brother also has a car dealership in Auburn NH. Very similar driveway, it goes far back to his property. He was granted a dealership and he has one little sign on his mailbox but he has the 10" letters on his garage and the state had approved that. I don't want drive by traffic; this is our residence as well. With auto sales, everything is Internet based. Everything is a text message, a phone call. You have people that come to you; they don't come unless they know what they're coming for, until it's an appointment. Even running Hobbs Automotive with 20-30 cars, things were very selective even though that had a lot of frontage and you had people driving by on weekends but it was still very slow. With something like this, again I use my brother's as an example because he's been doing it for 8 years now and he takes a lot of time off. He puts a big sign, CALL. He doesn't get a lot of drive by traffic because it is so far back. Everything is advertised on Craigslist or Facebook.

Abutter Randy Ladd said we're the other residence at the top of the driveway. #29. Basically we met with Ralph and Julie yesterday and we had concerns being a residence that's there. She conveyed the same thing to us that she's conveying now which we're okay with. It is a shared driveway so we had some



concerns about traffic and some of the things you're asking about but it sounds like the intent is exactly what she said so we would be okay with that.

The Board mentioned the amount of slope, rocks and trees. J. Seabury said we like the landscape it's why we bought the house. We love this place because of the privacy. We're the last one in.

B. Chivers asked is the abutter from 408-28 here, Mr. Holbrook. Did you get noticed of this Mr. Holbrook? B. Holbrook replied yes I did. The only concern I have is that the driveway is 500 and some odd feet and if someone is coming down and someone's coming up there's rocks and everything it could create....it's only about 10-12 feet wide. J. Seabury said for one car. Generally when you're coming down and you see somebody you back up and let them go.

B. Chivers but that driveway is shared with 408-29 but not you Mr. Holbrook, you have your own driveway. B. Holbrook clarified I guess they call it a shared driveway but its two separate driveways. J. Szot said it used to be a road. It was a private road and then there was some kind of dispute and suddenly the rocks appeared in the center of the road and then it became a driveway. I know in my mind what this looks like. What I want to see is I want to see the whole picture, that whole parcel. *A. Bickum presented an old plan from a lot line adjustment that D. Murray had found.* The Board reviewed the plan and discussed.

B. Chivers asked so how many cars do you think would be parked outside at any one time. J. Seabury replied what we've done in the past month we closed down Hobbs Auto January 30<sup>th</sup>, I moved all my vehicles. Right now I have 3 sitting in this available parking. I have my plow truck that we use. 3 of those that are parked there, 2 are sold and are going to be gone. I have 4 in my garage right now and a motorcycle. I have photos of the cars to show the types of cars. This is not a junk shop, it's not parts hoarding. I've been going to auctions for many years. I only buy things I can drive home. If I can't, they go back.

B. Petrin asked what is your total acreage. J. Seabury replied I think its 6.73 give or take. B. Petrin said and about half is wooded. J. Seabury agreed. Behind the house, there's not a lot behind there and half of this is all woods as well. B. Petrin said so this driveway is only shared by lot 28, 29 and you. J. Seabury confirmed it's only shared with 29. 28 has his own driveway, it branches off. We moved in on June 28 of 2017, we hardly ever meet in the driveway, oddly enough.

J. Szot asked do you do any repairs on cars. J. Seabury said no. I've been doing mainly all the detailing. The mechanic that was with Hobbs, once we're approved, we'll be going through all the insurance, workman's comp. Right now he's subcontracted and he's been helping me organize things. J. Szot said will he be doing work on the cars. J. Seabury replied not repairing. He was originally our detailer but he also knows how to change tires. He was a state inspector. He's an all around general mechanic. I. Byrd asked do the state requirements or rules limit you to a certain number of vehicles. J. Seabury replied they do not. Usually it's a matter of not just what you can fit. I know in the past at my father's lot, which was a much bigger lot, it was a 100 car limit but that was way over what he could ever fit. R. Howe said what's to stop you if we approve this of building a garage 3x the size of that one and bringing in 50 cars to park up there. I'm not saying you're going to but you have to think about the potential of what could happen. If I buy a car, I go to a car lot. I want to look at them; I'm not into the Internet so I don't really understand what you're doing. J. Seabury replied today it's all about the Internet. You need to dress a car, make it beautiful and take amazing pictures. That's what brings people in gets people texting, emailing. It's kind of like throwing your fishing pole in, that's your bait.

B. Petrin asked so when you petition the state for this license do they ask you what did you have in mind, 10, 15, 20...I'm thinking you have to give them something to go on, what would that number be. J. Seabury replied I don't think at any point in time, I'd have more than 10. I don't want to restrict it, if I have cars that are stuck there, but I'm not going to line them up. Right now is pretty much all I want and all I can handle. I'm only one person. I found even at Hobbs when my father became ill and as he went away, I was only one person. I could buy 2 cars a week. We'd recondition them. When you have a bigger crew and things like that and a bigger area you can have more but again I'm only one person. The intent of this is more temporary as well. I'm looking for a big commercial building down the road. But right

now we have to build capital, build equity and I don't have the big bank account that my dad did. I can't buy 60 cars to keep on the lot; I can only afford a couple right now.

B. Petrin said and to be clear, this is already allowed in light industrial so we're looking for to use non-conforming structures. B. Chivers said one's a residential use, that's the problem here. B. Petrin asked is the residence an office. The activity is going to take place between the two structures not just at the garage. J. Seabury replied generally just at the garage. B. Chivers and R. Howe said but it's on the same lot. J. Seabury said with a dealer license, everything has to be stored on the property. One thing I was very good at is to get my customers financing. In order to do that with a retail seller's license that's governed by the NH banking, you have to have very strong security. Your servers have to be protected for people's identity. There are a lot of things that have to meet their criteria as well. It has to be in a secure place.

B. Petrin said should this get approved it becomes in perpetuity. So if she moves out someone else can go in there. B. Chivers asked would you be willing to limit the size of this operation; the number of cars. J. Seabury replied yes, that's all I would do anyway. B. Chivers asked what about a time frame or maybe just put a limitation on the number of cars that stays with the property.

*The Board discussed specifics of a condition.* J. Szot said Ms. Seabury may be meticulous in the way she takes care of it but that doesn't mean the next guy that comes in can store junk everywhere. Once you put that variance on it goes with the property forever. I. Byrd said she is going to be looking for a larger building down the road. We need to impose restrictions on the storage of parts, automobile work, outside. B. Petrin said we still have the restriction on the number of vehicles. J. Szot said so put those restrictions on now so they can't be worked on outside, the parts can't be stored outside. Restrictions for junk parts and stuff. J. Seabury said parts are expensive, you don't put them outside. J. Szot said the parts that you take out and have no use for. J. Seabury said they would just go in the dumpster or metal junk guy picks them up. I. Byrd said the example for me is on the way into the transfer station on the right hand side there is an automobile (*shop*); and they were restricted to no more than 3 vehicles outside. I think there's a few more than 3. J. Seabury said 10 is accurate. It's not just cars; it's a couple of motorcycles, whatever fits. I don't want to store stuff outside because we have a lot of pine trees and that just destroys the exterior of the cars.

Linda Willard of 10 Langford Road said we're right across the street with the big white colonial. Our concern is that we don't want it morphing onto 27 and we can start seeing vehicles so if that's a stipulation. That's our only issue. So I'm good. J. Seabury said there won't be cars on the side of the road at all. We like our privacy.

Israel Willard said I just don't want to see any crazy car signs that fly around in the breeze. I think we have enough of that along 27, I don't think we need any more. J. Seabury said this is very small. You live there, my kids are there. I gotta live there; I don't want to come home to a gaudy place. I. Byrd asked about the sign and number of letters. J. Seabury said 10" letters on the garage. The company's name is JR Auto Sales, myself and my husband. I'm going to try to get those on the garage and a small sign out front so when people show up they know that that is the correct way to go. With an arrow or something, a sign down by the road.

R. Ladd said as people that live right across from the garage and look out at the garage. We're going on good faith of the conversation that we had. There are a lot of what ifs like the last session but that's just one thing I would consider.

B. Petrin closed it to the public.

J. Szot 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: It has to merely show that there will be no harm to the public interest if granted. All Agreed it's not.*
2. *The spirit of the ordinance is observed. It violates the ordinance's basic zoning objectives or threatens the health and safety of the public welfare.* B. Chivers said it's in the L1 district and a permitted use in the L1 district. J. Szot said the problem with the use is the residence but what's she's proposing is a permitted use. **All Agreed it is.**

3. *Substantial justice is done. Any loss to the individual which is not outweighed by a gain to the general public is an injustice. Whether the proposed development is consistent with the area's present use. All Agreed it is.* J. Szot said it's the residence that's the issue not the car sales.
4. *The values of surrounding properties are not diminished. All Agreed not diminished.* B. Petrin said there is a potential for that. J. Szot said so that's where we come into the problem of making; putting conditions that go with the variance that will stay; that we'll have to think about; how many cars, no storage outside of any car parts or used parts so trash isn't left around.
5. *Literal enforcement of provisions in this ordinance will result in an unnecessary hardship. All Agreed yes.* The house is already there. The business is allowed.

### **MOTION:**

B. Chivers **motioned** to grant the variance as requested subject to the following conditions:

- 1) Maximum number of vehicles for resale is limited to twelve (12).
- 2) No roadside advertising in excess of the state mandated minimum permitted.
- 3) No retail sales within 75 feet of the State Right of Way (Route 27).
- 4) No outdoor storage of used parts or dismantled vehicles.

*Discussion of condition #4: B. Chivers suggested condition #4 as no outdoor storage of used parts or unregistered vehicles, and later debris which prompted a discussion:* J. Seabury said they all have temporary registrations. B. Chivers said how do you say no outside storage of junk. J. Szot asked will all of your vehicles have a temporary registration. J. Seabury clarified when you have a dealer's license everything is covered under the dealer. Everything is registered with the dealership so that's how you can transfer vehicles quickly so you get their titles and transfer them with temporary plates to a customer. You do the title applications for them. There's not going to be plates on anything except when someone goes on a test drive you affix the dealer plate to it and they test drive it. My personal vehicles that we have registered right now our plow truck, my car, my husband's car and one of these days my son might get a license. B. Petrin said we're trying to avoid tires being stored outside. J. Seabury said I bring my car to Town Fair and they do everything. D. Murray suggested what about dismantled vehicles.

I. Byrd **seconded. All were in favor. Motion carries (5-0-0).**

### **Other Business:**

B. Petrin the next item on the agenda were re-appointments for myself, Ron and Ingrid but we decided we need to petition the Selectmen by way of a short note saying by the way we've got these people up and with your permission we'd like to move forward with appointments.

### **MOTION:**

J. Szot **motioned** that we petition the Board to re-appoint Bob Petrin, Ron Howe and Ingrid Byrd to be members of the Board. B. Chivers **seconded.** B. Petrin once we get their blessing we can proceed with appointments and we'll come back on next agenda. **All were in favor. (5-0-0)**

D. Murray asked so you need letters of intent. B. Petrin said yes, she can draw something up that's generic saying how about....A. Bickum asked can I put all three on the same letter, can you do that. B. Petrin agreed. J. Szot replied and we'll consider that at the next meeting.

B. Petrin said I want to go after the Selectmen at the upcoming elections in March can we put paper on the table saying the Planning Board and ZBA are looking for members with contact information. These Boards are suffering. *Discussion ensued about whether that was forbidden or considered politicking or not. It could have been put in the Town packet. Maybe put it on the bulletin board.* A. Bickum confirmed it's on the bulletin board but it was suggested maybe on fluorescent paper.

J. Szot asked about having name placards. B. Petrin said I'm ambivalent but maybe it's elected vs. appointed. I. Byrd suggested they stay anonymous and they don't meet as much as the other Boards.

**MOTION:**

B. Chivers **motioned** to adjourn at approximately 8:26 pm. R. Howe **seconded**. **All were in favor. Motion carried (5-0-0).**

Respectfully submitted from recording,  
Andrea Bickum  
Recording Secretary

Cc: file