

CANDIA ZONING BOARD OF ADJUSTMENT

Minutes of June 26, 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; Ingrid Byrd; Boyd Chivers, and Ron Howe.

Present: Dave Murray, Building Inspector

Approval of Minutes: May 22nd, 2018

**MOTION:**

B. Petrin **motioned** to approve the minutes from May 22nd, 2018 as presented. B. Chivers **seconded**. R. Howe and J. Szot were **in favor**. I. Byrd abstained. The **motion carries** with a vote of **(4-0-1)**. (*Ingrid had motioned but she was not present for the May 22<sup>nd</sup>, 2018 meeting*).

**Continued Case 18-630** Applicant: Jeaninne Boisclair, 176 Currier Road, Candia NH 03034; Owner: Jeaninne & Lindsay Boisclair, 176 Currier Road, Candia, NH 03034; Property Location: 176 Currier Road; Map 402 Lot 86; for a Special Exception under Article XV Section 15.04E Accessory Dwelling Units. Intent: To refinish the lower level (basement) into an in-law apartment.

Present: Applicant Jeaninne Boisclair; Lindsay Boisclair.

Abutters Present: None

B. Petrin said last time there was some question of mapping and some other details and you've got that with you now. J. Boisclair agreed. B. Petrin said there was question at the time about the 750 square feet and have we identified that area on the map? J. Boisclair replied it's just finishing off the basement area and here is the bathroom that's existing here. Right in this area here, that comes out to 600 square feet. B. Petrin said 25' x 50'. J. Boisclair corrected 25' x 24'. 50' is the whole house.

L. Boisclair (*Lindsay Boisclair for the record*) commented this is all existing. Everything, including that wall. This isn't new construction. All of this exists. J. Szot replied I understand the whole space exists but there are some walls, do these walls exist now? L. Boisclair replied correct, this is all existing. When we bought this property, this was all existing, however when we purchased it, this was all carpeted and we'd like to refinish that to newer flooring. There's no new construction going in. J. Szot said the only problem that we have...L. Boisclair said the square footage. J. Szot continued you are limited by the 750 square feet which is a state regulation. So you're saying you're going to use this area here and not this area is that correct. L. Boisclair replied no we're going to be using the area with the bathroom. J. Szot reiterated the area with the bathroom so there's no bedroom here, just a kitchen area, a bathroom and no bedroom. L. Boisclair said correct. J. Szot said and there is a wall here right is there going to be a door here, how do you block off the rest of this area? L. Boisclair said we would just need to put in a door. These walls are already existing. Those are the stairs. J. Szot said this area here can't be living space. If you've got 600 feet you could convert another 150 square feet and put a bedroom in but in order to do that you would have to have the permit from the state about the septic system, which I understand it was difficult to get an appointment with the septic engineer. J. Boisclair agreed. J. Szot continued they have to certify that the septic system can be expanded in that are if in fact the septic system failed. If you put in another bedroom that it could in fact be expanded, you're septic system. In order to put another bedroom in here you would have to have that certification from that engineer and you could only use another 150 square feet and it would have to be blocked off over here. If you chose to put a

bedroom in here. L. Boisclair replied even though there's an existing bathroom? J. Szot replied yes. The septic systems have to do with bedrooms, they're rated by the number of bedrooms you have in your house. If you build a house with 3 bedrooms, you're septic is designed for 3 bedrooms. So if you put 5 bedrooms in you have to have a different sized septic system. In a case like this where you're adding this unit, what the state says is you have to have that system checked to make sure that the system is operational and good and also that a septic engineer will certify that if this system that you have now fails, you could build a system for...yours is for a 3 bedroom house, you could build a system that would be certified for a 4 bedroom. L. Boisclair asked so what if we don't put the bedroom in? J. Szot replied then you don't need to do anything, you're fine. L. Boisclair and J. Boisclair said okay. B. Petrin clarified and it's currently a 3 bedroom correct? L. Boisclair agreed, it's currently a 3 bedroom yes. We just want our own area. I. Byrd asked I don't understand why if you have a 3 bedroom house you want to put another living space down in the basement without a bedroom? It doesn't make sense to me. L. Boisclair replied a studio apartment doesn't necessarily have a bedroom. She's only here for 6 months out of the year. She's in Florida the rest of the time. So she doesn't necessarily need...she just wants her own space. J. Boisclair commented a pull out couch is good for me. I. Byrd replied well I would think she would want a bedroom with her space. L. Boisclair said if it makes it easier for her to just have an open area that is hers privately and she can do her own thing in. J. Szot said and if she wanted she could put a twin bed or a daybed in the corner and that would be sufficient. L. Boisclair agreed, correct.

B. Chivers said so last time you were here we didn't have a plan. Were there any other deficiencies the last time you were here? J. Boisclair replied I don't think so. L. Boisclair replied it was just about the septic but if it's going to be an issue then we won't do the bedroom. *R. Howe and J. Boisclair discussed the floor plan regarding wall location and an open entrance area to the 600 square feet proposed in-law area.* J. Boisclair mentioned it was a modular home brought in with two halves and they put posts in.

B. Chivers said so you want an in-law apartment without a bedroom. J. Boisclair replied yes. L. Boisclair reiterated most of this is just updating however we want to do it...J. Szot said you can do this. If you decide to put in a bedroom in here, then you'd have to see the building inspector, you would have to get the certification from the septic engineer that you're system can be expanded and then you're limited to another 150 square feet but it has to have a wall built. It has to be identified if you wanted to add a small bedroom. L. and J. Boisclair both replied okay.

R. Howe said my only concern is I understand now what you want to do and how you want to do it but my concern is this is a huge space down here, 1200 square feet in this basement and what's to stop this whole 1200 square feet becoming a full apartment and living space. I'm not saying you're going to do that but once we issue this it goes with the place. B. Petrin replied that could be said for any house in Town though. R. Howe agreed. Yes it could. This one makes it so easy to do it. B. Petrin said it would require a building permit and an inspection correct Dave. D. Murray agreed. B. Petrin said there's our check and balance. J. Szot commented the other thing Ron, I know this happened in Manchester that people expanded and put extra apartments in and the city came in and said take them out and made them rip them out. So if they expanded this and put 3 bedrooms down there, the building inspector...it will be picked up when they come into do the re-vals (*re-evaluations*). R. Howe said that was kind of my question. When they do the re-evaluation, do they have a list of properties that we've given variances on? J. Szot said it's on their tax card. R. Howe said so it's obvious when they go in and see an apartment that's now 1000 square feet instead of 600, that's the only check and balance you're going to have. Once an occupancy permit is issued, we have no reason to be back in that house except for re-evaluation. J. Szot said that's one of the things we've done is to make sure that Andrea puts that on the cards and also references the case.

B. Petrin said to satisfy the concerns, if we go through the criteria and we decide in favor, the issue will be with the building inspector to follow up with that upon completion. That's all we can do.

B. Chivers read Section 15.04E - Accessory Dwelling Units ordinance:

1. *There shall be no more than one accessory dwelling unit for any single family dwelling.*
2. *There shall be no more than two bedrooms in the accessory dwelling unit.*

3. *Adequate sewer and water service shall be provided. One septic system shall serve the entire property and the adequacy of the system shall be certified by a licensed septic installer.*

B. Chivers asked did they meet that criteria. R. Howe said they haven't added a bedroom. J. Szot said they do have a letter that the septic system was inspected and it did say that it needs to be cleaned in 2011. They haven't had that. L. Boisclair replied I have a receipt from Kent that the septic was pumped and inspected. J. Boisclair said it was this fall. J. Szot said but the person who cleaned that is he a licensed septic installer? B. Petrin said the date from Kent is November of 2017. J. Szot said he cleans the septic. L. Boisclair responded but they also do inspections when they pump. They check to make sure there's nothing failing. I. Byrd said it's not an inspection. J. Szot replied well it says he's an inspector but the difference is this one was done in 2011 and this is what he gave you. L. Boisclair replied when we bought it. J. Szot continued this is a receipt for cleaning the system which is different than this. J. Boisclair said that is the same person, Kent. J. Szot agreed but different operations. This is inspecting the system and this one is cleaning the system. L. Boisclair replied but when they clean it they also do an inspection. J. Szot said we need one of these. J. Boisclair replied that's fine. B. Chivers asked are you sure on that. J. Szot replied yes. B. Petrin reiterated are we sure? J. Szot read *adequacy of the system shall be certified by a licensed septic installer*. D. Murray commented but they're not adding a bedroom. It's not a failed system. J. Szot reiterated it still says adequacy of the system. D. Murray replied if you're adding bedrooms, yes. J. Szot replied it doesn't say if you're adding bedrooms. D. Murray replied that's certainly the intent. R. Howe said we've never required that of anybody before. B. Chivers agreed. J. Szot said yes we do. I. Byrd said we have in the past but then we've never had anyone come in with as huge a space that's not going to be a bedroom. I tend to look at what could it be because it may not get inspected for 5 or 6 years or revalued. B. Petrin replied but if the system fails it's on them to replace it. Is it our duty to tell them they need to pump and inspect. J. Szot reiterated but it says *the adequacy of the system shall be certified by a licensed septic installer. One system shall serve...* B. Petrin asked what time frame? J. Szot says this is 2011 and this is 2017. B. Chivers replied nothing's changed since 2011. It's a 3 bedroom house. J. Szot said but between then and now you don't know how old this system is, it only lasts so many years. The thing is they go through and they check everything. It says here clean yearly with whatever the filter is. J. Boisclair said we do because we don't want a problem. L. Boisclair said every year, that's a big mess for us to clean up if we don't as homeowner's take care of our septic system. That costs us money, not you guys. J. Szot replied I understand. But this is what we need.

B. Petrin said I'm not clear on the time frame is on this. I recognize that's it's got to be adequacy but it's not specified. If we had something certified and it was recently pumped and it didn't fail and it's still in use and as Boyd said, it's 3 bedrooms with the same amount of use and we're not adding a bedroom.

B. Chivers said we've never asked anybody to certify the adequacy of their system. J. Szot replied this is all new Boyd. These are all new regulations that came down when this law was passed. B. Petrin commented but it doesn't give us a time frame that I need to know the adequacy within 12 months. I need an inspection that's not more than 3 months or 6 months old, there is no time frame set on this. I. Byrd said the last one was 2011, that's seven years. R. Howe responded this is a 1,500 gallon septic system. That's huge. L. Boisclair agreed, correct. J. Szot said we had a 1,500 gallon septic that failed after 15 years. They last 15-20 years. D. Murray said mine's going on 30.

B. Petrin said I'm not comfortable or clear with the time frame. J. Szot replied I would be happy to approve it with a condition that they get the certification. B. Chivers said that sounds reasonable. R. Howe commented I'd buy into that. We've got three more cases in the same situation. I. Byrd said for me it's the issue of size that's not part of the unit. It could be 3 more bedrooms. You could decide you'd rather live in Florida and the next person turns that space into 3 more bedrooms. L. Boisclair replied but what's stopping anybody in Town from doing that? D. Murray and B. Chivers said nothing. I. Byrd said the guy sitting there in the first row had better be on the ball in that case.

B. Petrin closed it to the public. B. Chivers continued with the criteria;

4. *There shall be a maximum of 750 square feet for the accessory dwelling unit.* B. Chivers said they have 600 and something.
5. *On-site parking for one additional vehicle shall be provided.* L. Boisclair said it's a 9 acre lot.
6. *All existing set back requirements shall be met.*
7. *The accessory unit shall be within or attached to the main dwelling unit.*
8. *Architectural enhancements will be employed for the purpose of maintaining aesthetic continuity with the principal dwelling unit resulting in both units appearing as a single family dwelling unit.* Don't need those as it's in the basement.
9. *Either the primary or the accessory dwelling unit shall be occupied by the owner of the property.* It is.
10. *The current State Building and Fire Codes for two family dwellings shall apply.* D. Murray said its pre-existing it's not being built on.

B. Chivers said so you meet all the criteria for an accessory dwelling with the exception of this one question about the adequacy of the septic system. Judith suggested if we do approve this we can do it with conditional approval. J. Szot said we need to go through the special exceptions first.

J. Szot read the special exception standards in section 15.02:

1. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
2. *No detriment to property value in the vicinity or change in the neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;* None of that applies.
3. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;* That doesn't apply.
4. *No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;* Does not apply.
5. *No significant increase of storm water runoff onto adjacent property or streets.* Does not apply.

B. Petrin said we're going to determine by that that they've met all the standards. B. Chivers said having met all the special exception standards then we could then make a motion to approve the Special Exception subject to the condition to follow.

J. Szot said the Board approves the request for an accessory dwelling unit with the following conditions that the home-owner provides the building inspector with a letter from a certified licensed septic installer attesting to the adequacy of the septic system. I'm not sure if we need to add something about this extra bedroom. We've approved the 600. I. Byrd said I'd like to include something because of the total range of space that would be a possibility. J. Szot said we could put that the approval was for 600 square feet and that if the applicant wishes to add another bedroom or use the extra space or convert into another bedroom, they're limited to another 150 square feet. I. Byrd commented and the rest of the space may not be used for living space. I think that needs to be clear for everybody. If I were in your shoes and I had 1,000 square feet down there, I'd want to know why the hell I can't have a pool parlor and a bedroom and a hot tub.

### **MOTION:**

J. Szot **motioned** the Board approves the request for a 600 square foot accessory dwelling unit with the following conditions; that the home-owner provide the building inspector with a letter from a certified licensed septic installer attesting to the adequacy of the septic system; if the applicant wishes to add another bedroom or use the extra space as a bedroom, they're limited to another 150 square feet; the rest of the space may not be used for living space. R. Howe **seconded**. J. Szot reiterated so the two things; one is the septic and the other one is the limitation to the rest of the space, 600 feet and that if they wish to put in the bedroom, it can be no bigger than another 150 square feet. **All were in favor. Motion carries (5-0-0).**

B. Petrin said you folks will get a notice of decision and then you'll be working the rest of it through Dave Murray the building inspector.

**Case 18-631** Applicant: Dennis Belliveau, 496 Brown Road, Candia NH 03034; Owner: Dennis & Tammy Belliveau, 496 Brown Road, Candia, NH 03034; Property Location: same; Map 414 Lot 33; for a Special Exception under Article XV Section 15.04E Accessory Dwelling Units. Intent: To create an in-law apartment on the first level of the existing home.

Present: Applicant Dennis Belliveau of 496 Brown Road, Candia, NH 03034.

Abutters Present: None

Dennis Belliveau introduced himself to the Board. B. Petrin asked so what are you going to do over there. D. Belliveau replied I want to convert the one family small house, 2<sup>nd</sup> floor, has a bedroom up there. Convert the first floor here which exists now. Very little will be done except for separating it from the 2<sup>nd</sup> floor. J. Szot said so are you making another unit upstairs? D. Belliveau said no there's already a unit, that's where we live. J. Szot confirmed so you are living upstairs and someone will be living downstairs. D. Belliveau agreed. Yes. B. Chivers said so you have 764.2 square feet. J. Szot replied but the stairwell is 48 square feet. B. Chivers said so you subtract that from 764. B. Petrin commented so we're under 750. B. Chivers asked about the septic system. D. Belliveau replied I have an approved septic plan for a 5 bedroom. B. Chivers asked how many bedrooms is the house. D. Belliveau replied it's got 2 bedrooms right now. J. Szot said so this will be a third one? D. Belliveau replied no, this is already a bedroom, nothing's going to change here, and it's going to stay the way it is. The bedroom upstairs is pretty big, a foyer, my grandson, we need a little more room. This is what's already here. J. Szot asked so is there a kitchen upstairs also? D. Belliveau said well I'm building an addition for us. B. Petrin asked is that associated with the accessory dwelling? D. Belliveau replied no, it's totally different. This is already existing on the first floor so we're converting that layout into an in-law apartment, separating it from the 2<sup>nd</sup> floor which is a totally different matter.

R. Howe asked who's living on the 2<sup>nd</sup> floor. You are. D. Belliveau said we are, my wife and I. R. Howe continued you're not going to be, you're adding an addition too, I'm a little confused. D. Belliveau replied I need more room so in order to do so I've got an addition that's already under construction right now. J. Szot said I think this map explains it (*viewing septic plan*). This section right here is the part that you're talking about, this little section here will be the in-law apartment and this is the new construction. D. Belliveau replied the breezeway, existing garage, construction in progress. The existing 2 bedroom house to be converted into a 5 bedroom house. The other bedrooms are going to be in that addition that's under construction. J. Szot said I was correct then, this is the existing 2 bedroom house. D. Belliveau agreed, yes. J. Szot continued and this is the addition you're putting onto the existing house. D. Belliveau replied and the breezeway. Basically over the breezeway and half of the garage is the bedroom to be. J. Szot said is this going to be two stories or one story? D. Belliveau replied the garage is underneath the bedroom. What used to be the breezeway is now our living room to be. There's a bathroom over here, a kitchen, a dining room and a spare room. J. Szot so you'd be living in the downstairs and the upstairs. D. Belliveau said yes, of the addition and the 2<sup>nd</sup> floor of the house is included in that. J. Szot confirmed all of this area will be the area that you're going to be living in; this is the area that will be the accessory dwelling unit. D. Belliveau confirmed only the first floor of that. J. Szot reiterated only the first floor of that. The second floor will be connected to all of this. I. Byrd confirmed and that's going to be yours. D. Belliveau said yes, it's very large, that space. I inherited my grandkids so I need the room.

B. Petrin asked have entrance and egress been addressed are we all set on that? D. Murray said it's missing a lot of that on here. There are big double doors in the back right? Double doors there and at the end of the hallway here. D. Belliveau said that door is going away. That foyer is going to turn into a closet because that's the in-law. D. Murray said you have the front door here and the double doors here. D. Belliveau agreed. There's a door to the 2<sup>nd</sup> floor at the top of the stairs. D. Murray said which wouldn't be used for egress. I. Byrd asked is there an exit from the upstairs to the outside? It's a fire issue question for

me. D. Murray confirmed they come out of that main door and come out into that new section; this breezeway section here there's a door there and a door in the back. D. Belliveau replied the 2<sup>nd</sup> floor has a door, a 36" wide door going into the addition from the second floor of the house. I. Byrd reiterated my concern is if there's a fire downstairs, can you guys upstairs get out. D. Belliveau said yes, we have three doors. The front door, the back door on the first floor and the front door on the first floor and the garage, if I wanted to go out through the garage. I've got more egress than I can shake a stick at. J. Szot asked Dave one of the requirements for a special exception with the accessory dwelling units says *Architectural enhancements will be employed for the purpose of maintaining aesthetic continuity with the principal dwelling unit resulting in both units appearing as a single family dwelling unit*. Do you have any plans in the office that you could show us as to how this all goes together? D. Murray asked do we have a picture of the finished product or anything, I don't think so. D. Belliveau said I trashed, cleared all my pictures off my phone so I can't show you anything. B. Petrin said nobody does that. D. Belliveau replied the phone talks to me, it shuts off, and it's out of control. From the front, the street, you just have a main entrance that's glass doors and lights and roof over it. It looks just like the rest of the house. J. Szot said we don't have any of that. I. Byrd asked about the number of parking spaces. D. Belliveau said I've got maybe about 15 if I wanted to. D. Belliveau said I've got 14 grandchildren but only 2 under my roof right now.

J. Szot said so you have the existing garage, are you putting something on the side of the garage, another garage or something. D. Belliveau replied no, I had excavated 11,000 square feet of hill out of there. I have a baseball field now in the back yard and there's plenty of room for parking. J. Szot said my concern is that we can't really see how this all goes together with the house. There's the existing garage, are you adding something to the side of the garage? D. Belliveau replied no, the garage is staying like it is. J. Szot said it's hard to know what's going where. D. Belliveau said this is the street here, the driveway; the breezeway is the entrance to the addition. The garage is a two car garage, staying the same. This is a little shop, existing. None of this is being added. J. Szot confirmed so this is the only area being added is in the back. D. Belliveau said there's a room here, kitchen here, big long porch that goes the full length of everything. Garage. J. Szot said so there's stuff going above the garage and the breezeway. D. Belliveau said yes, above the garage and above the breezeway and including the breezeway. Where the breezeway is a big entertaining place for people and there's a back door here. There's a door here to the first floor, there's a front door which goes over the 2<sup>nd</sup> floor as well and a front door here.

B. Petrin said we've gone off and talked about the other addition; I'd like to get us focused on the first floor. J. Szot said the only reason I brought that up is part of the requirements is how it fits aesthetically into the rest of the house so that everything looks like a single family home. R. Howe asked Dave you've obviously part of this operation, you've seen it. D. Murray said the additions and all that, yes. R. Howe said the scale is small you can't really see what you've got. You've obviously seen it, other than the strict legal question here, do you have any problem with this; what he's attempting to do. D. Murray responded I don't. Luckily it worked out; he was just adding onto the house but then life changes and he stepped up to the plate for the family and that's when this came into play. He's going to lose part of his house to do this. But it all works out. Egress is good. Separation is good. Architecturally it looks good. Parking is fine. B. Chivers commented it's a 5 bedroom leach field and septic system. D. Murray said yes a plan on file if it fails, which is all we need. J. Szot confirmed said so you're not putting in a new septic system you just have your approval for it. D. Belliveau said I may opt to do that when I'm all done. I don't feel like making any more mess than I've already done. J. Szot said but you have the approval and that's what we need. B. Petrin closed it to the public.

B. Chivers read Section 15.04E - Accessory Dwelling Units ordinance:

1. *There shall be no more than one accessory dwelling unit for any single family dwelling.*
2. *There shall be no more than two bedrooms in the accessory dwelling unit.*
3. *Adequate sewer and water service shall be provided. One septic system shall serve the entire property and the adequacy of the system shall be certified by a licensed septic installer.*
4. *There shall be a maximum of 750 square feet for the accessory dwelling unit.*

5. *On-site parking for one additional vehicle shall be provided.*
  6. *All existing set back requirements shall be met.* I assume they have been. J. Szot said it's all behind the house.
  7. *The accessory unit shall be within or attached to the main dwelling unit.*
  8. *Architectural enhancements will be employed for the purpose of maintaining aesthetic continuity with the principal dwelling unit resulting in both units appearing as a single family dwelling unit.*
  9. *Either the primary or the accessory dwelling unit shall be occupied by the owner of the property.*
  10. *The current State Building and Fire Codes for two family dwellings shall apply.* Dave it meets all those? D. Murray replied yes.
- J. Szot read the special exception standards. It has to meet the standards which we talked about before;
1. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
  2. *No detriment to property value in the vicinity or change in the neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
  3. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
  4. *No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;*
  5. *No significant increase of storm water runoff onto adjacent property or streets.*

B. Petrin said so we're ready for a vote then on that to approve without conditions.

**MOTION:**

J. Szot **motioned** to approve the accessory dwelling unit without conditions. I. Byrd **seconded**. **All were in favor. Motion carries (5-0-0)**. B. Petrin said you will receive a notice of decision in the mail.

**Case 18-632** Applicant: Frank and Myra Reynolds, 296 High Street, Candia, NH 03034; Owner: same; Property Location: same; Map 405 Lot 16; for a Special Exception under Article XV Section 15.04E Accessory Dwelling Units; a Variance under Article VI Section 6.02: Table of Dimensional Requirements and a Variance under Article V Section 5B (b-2); tourist home, hotel, motel. Intent: To create an in-law apartment within the existing home within the front setbacks and with the potential for short term rentals.

Present: Applicant Frank and Myra Reynolds of 296 High Street, Candia, NH 03034

Abutters Present: One abutter was present but did not have any comment.

F. Reynolds said the intent is to create an in-law apartment by special exception. It's within the existing home; there are no changes to the home to do this. Everything is already there. Dave has been there and said everything looks good. From within the existing setbacks; the home was built to my knowledge in 1777 and so I think one corner of the house is within the setback and the other corner is a little bit less than the setback. B. Petrin asked and you have a map with measurements on that? F. Reynolds replied no. B. Petrin asked how are we going to know what the setbacks are. Dave has been there but the house was built in 1777. I. Byrd said you still have to have the paperwork. B. Petrin said what we need to know is what is the setback. From the front it's supposed to be fifty. But we don't know what the number is? F. Reynolds replied one of the questions I've asked is what is the required setback and where to you measure from? I'm told it depends on whether it's a state road, a Town road that there are differences. Do you measure to the white line and so I measured from the corner from the front of the house. One corner is about 53' and the other corner is a little less than 50'. I. Byrd replied from the corner of the house to what. F. Reynolds replied to the white line on the road. I. Byrd said that's the center of the road. The Board disagreed. J. Szot said the white line on the side of the road. F. Reynolds said if it's to the center of the

road then I'm well within the setback. To the white line on the edge of the road. One is a little over. J. Szot said it's from the right of way and the line doesn't designate the right of way. B. Petrin agreed, correct. D. Murray replied it is from the right of way but he's not adding onto the house. It's pre-existing since the 1700's. Route 27 was probably a goat path at that time. B. Chivers agreed. D. Murray continued I don't think the setback from the road is an issue. J. Szot replied we understand that. It's probably an opportune time to correct that by granting a variance that says that his is a pre-existing, non-conforming use. We've had situations where things were closer and then when someone buys the house and comes to get a mortgage and they say wait a minute you're within the setbacks you need a variance. So if there's a variance associated with the property now then that takes care of everybody. Considering that the house was built in 1777, it's not a new construction. We could make him do all kinds of plans but it's sort of moot because it's pre-existing and you're going to just give him the variance and say. Although we don't know what the exact measurements are that's the thing. I. Byrd added and we don't know the exact edge of the road is. The white line is not necessarily the edge of the road; it could be the stone wall. B. Chivers said we can still grant a variance regardless where that line is. J. Szot said but you don't know how much you're granting the variance. Is there a stone wall in front of your house? F. Reynolds said not in the front yard. There's a stone wall on the right side and the left side. There is no stone wall in the front of the yard. J. Szot said the stone wall would be the definitive property boundary. R. Howe said we've been through this with Dennis before. Roads get moved within a fifty foot right of way because of a big rock here or something and back then they just shoved the road over to one side or the other. It's always a hassle and I'm never comfortable but neither is anyone else.

B. Petrin replied if the state road for example is 12' from the center line. The two foot shoulder, call that 14', it doesn't matter, as Judith said, if we going to create that variance we can just call it from the right of way, irrespective of what the right of way is. 12' or 14'. So can we go ahead in that fashion? J. Szot reiterated irrespective of what the measurements are, you gotta grant the variance because the house pre-exists zoning.

F. Reynolds said on the drawing in yellow, that shows specifically the space that we're looking to be approved as the in-law apartment. It all exists presently; there are no changes inside or outside the house with this. That's the first piece with the variance. And then there is the potential for using that space in the future for short term rentals, specifically Airbnb. B. Petrin asked are there any restrictions with zoning on that do you know. B. Chivers said yes you need a variance, 5.02 I think on that. J. Szot said yes it's a hotel, tourist...B. Chivers said 5.02. J. Szot said rentals are not allowed in that area. B. Petrin said b-2. J. Szot reiterated tourist home, motel and hotel so that's a tourist home. Where do the people come in? This is your home. You're living in this part. This is the part for the Airbnb. D. Murray had a couple of pictures. F. Reynolds said this is 296 High Street and the driveway comes here. This is the rock wall patio in the back. There's pavement here and then there's gravel parking here. J. Szot said so this is the patio with double doors that go out. There's a window here. F. Reynolds said all of these windows are ground level. *J. Szot and F. Reynolds reviewed the plan; windows and wall locations.* J. Szot said there's a wall here now and a door that goes into this part over here. F. Reynolds replied yes, that all exists now and that (door) we can lock off. J. Szot continued and same here. F. Reynolds agreed. J. Szot continued so this is the front entry, the other side of the building that faces High Street. So they come in here, up the drive here and park presumably over here. F. Reynolds replied parking for 4 cars here and a 2 car garage. F. Reynolds said this extends and past this point is gravel for parking, so we prefer not to park on the pavement, park on the gravel and use the pavement for turning around. That pavement goes beyond the garage itself. J. Szot said so they walk into the living room and there's the bedroom. F. Reynolds said there's the front door. J. Szot said this is the side of the house and this is all in the back here.

R. Howe asked what is Airbnb, I don't have a clue. I don't use the computer. F. Reynolds explained across the country and around the world now, there are people who can go on online if they're going somewhere and they want a place to stay. There are places on the computer that they can look up in that location; Candia New Hampshire, Manchester NH, San Francisco, anywhere; actually most anywhere in the world today. There are two checks. One is they can read reviews on the people who are renting their space and you can read reviews on people who are wanting to rent your space before you tell them, yes,



you can come here. So if they don't have good reviews. R. Howe replied so this is a short term, weekend or week or two week type things. F. Reynolds replied the norm would be a night or two with Airbnb. I. Byrd asked could they stay longer with you if they chose. Would that be part of your service? F. Reynolds replied if they chose. I. Byrd continued so if they wanted to spend a month in NH that would be okay with you? F. Reynolds agreed, yes you can do that in the Airbnb. I. Byrd said no with you. F. Reynolds said yes. So if somebody comes for vacation to NH, yes they could stay if we looked up their review. M. Reynolds added and they were good guests. I. Byrd said and the space you provide, provides a kitchen. F. Reynolds replied yes, the kitchen already exists. I. Byrd said and that's separate from your living quarters. M. Reynolds said yes it is, the doors are locked. B. Petrin asked for comments from abutters. No comments.

B. Petrin asked I think we ought to just start with special exception 15.04E and go through that one. Settle that. Go through the variance for the setbacks and then the last one, which was the Airbnb, the ability to rent.

B. Chivers read Section 15.04E - Accessory Dwelling Units ordinance:

1. *There shall be no more than one accessory dwelling unit for any single family dwelling.* Meet that.
2. *There shall be no more than two bedrooms in the accessory dwelling unit.* Meet that, there is only one.
3. *Adequate sewer and water service shall be provided. One septic system shall serve the entire property and the adequacy of the system shall be certified by a licensed septic installer.* B. Chivers asked do they have that. B. Petrin said its existing and no change. J. Szot said but don't have the certification about the septic system. R. Howe asked is this bedroom here existing as a bedroom now. F. Reynolds replied yes, everything exists; it's existed that way. B. Petrin said we may have a condition for you to have that checked and present it to the building inspector. R. Howe said obviously this was a mother-in-law apartment type of thing in the past at some time.
4. *There shall be a maximum of 750 square feet for the accessory dwelling unit.* F. Reynolds said if you did more than the yellow, the longest width and length its 744 but this section here is not part of it and is included in the 744. B. Chivers said so you're clearly under 750.
5. *On-site parking for one additional vehicle shall be provided.* You've got parking for 4 cars.
6. *All existing set back requirements shall be met.* That's why you applied for the variance just in case you're less than 50 feet to the highway.
7. *The accessory unit shall be within or attached to the main dwelling unit.*
8. *Architectural enhancements will be employed for the purpose of maintaining aesthetic continuity with the principal dwelling unit resulting in both units appearing as a single family dwelling unit.* Don't need them; it's already there in the building.
9. *Either the primary or the accessory dwelling unit shall be occupied by the owner of the property.* You and your wife occupy.

B. Chivers said so you meet the criteria for the accessory dwelling unit. B. Chivers read the special exception standards:

1. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
2. *No detriment to property value in the vicinity or change in the neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
3. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
4. *No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;*
5. *No significant increase of storm water runoff onto adjacent property or streets.*

B. Petrin said so does this Board find that they meet the special exception standards. Board agreed. I. Byrd asked do you have to limit to the number of people you would rent to. F. Reynolds said most likely it would be 2. If they had a child, they could sleep on the couch in the living room. M. Reynolds said up to 3 maximum. F. Reynolds said it needs to be in this space. I. Byrd said but if somebody came and they have 3 or 4 kids with sleeping bags they could stay. F. Reynolds said no, we would probably say no to that, that doesn't work for us. M. Reynolds said there's not enough space for that. F. Reynolds said and it probably wouldn't work for them, it's too small so I would probably say no.

**MOTION:**

B. Petrin said we should vote to approve the special exception. **All were in favor. Motion carries. (5-0-0).**

B. Petrin continued next is the variance relative to the setbacks. I'm not sure we even need to read anything Boyd because we are going to vote to allow or disallow the variance based on the setbacks to the right of way, whatever that may be. B. Chivers said we need to give a citation on that. B. Petrin said it's 6.02.

**MOTION:**

B. Chivers **motioned** that we grant a variance for the setback; just in case they don't meet the front setback, we're not sure if they do or not; in the unlikely event that they don't, they already have a variance that covers this building that was built in 1777. I. Byrd **seconded. All were in favor. Motion carries (5-0-0).**

B. Petrin said lastly is the variance to operate the tourist rental portion of it; 5B (b-2). J. Szot said it just says tourist home, motel, hotel and they are prohibited in the residential district. B. Petrin said it's that simple. F. Reynolds said I think there was something, when we were working through this that there was something you needed to clear up because there was contradiction in one statement and another statement somewhere. B. Chivers replied that may very well be but it doesn't apply in this case right here. You're in the R district and according to this right here tourist home, hotel, motel, which you could argue is what you're going to have there is prohibited. Now it's allowed by right in the C and mixed use district but it's with some kind of language in there that's quite confusing which is what we're going to try to straighten out. A. Bickum added the other one was boarding house or rooming house but that wasn't available for transient guests. That's just renting a room versus an apartment.

J. Szot said if you read the law 674:72 which is the law that created the housing, accessory dwelling units; we called them in-law apartments; but the last section of it says: *An accessory dwelling unit may be deemed a unit of workforce housing for purposes of satisfying the municipality's obligation under RSA 674:59.* J. Szot said so the purpose of creating this is to provide work force housing, not tourist units. B. Chivers said I don't think you can make that argument. J. Szot replied it's completely different. One is a business, Airbnb is a business. If you're renting an apartment, that apartment is for a living unit; for long term rentals. This is a business for short term rentals and it's a completely different situation. It's not someone who's living there, it's their primary residence. I know the state is looking at this and trying to decide what to do but I think this is something that our Zoning Revision Committee needs to look at. I think that granting this variance sets us on a slippery slope because who do you deny for this; for having this anyplace in Town? That's the problem with granting...we basically change the ordinance without the input from the citizens of Candia. B. Chivers replied but we do that every time we grant a variance. I don't see any difference from this gentlemen renting this place out 2 weeks or 3 weeks at a time or one day at a time through Airbnb or rent it out to some guy for 2-3 weeks at a time and then he moves on. J. Szot replied it's completely different.

B. Petrin asked how is this business is it a sole partnership or an LLC, how do you report those incomes. Because you could rent an apartment, it's a rent; it's not a business per se so you don't have to report that income. How do you report that income for guests? F. Reynolds replied the state is discovering more intentionally discovering who is doing Aibnb so that they can get the taxes. It's required to have a

number with the state if you do Airbnb and they charge taxes on that. If it's just over a half a year rental, they do not charge tax on that. It's not exactly a half a year, it has to be a few days more, and they take the 365 and its 180 days or something. But it's a little more than a half a year for rent that's not considered transient with the state. So the state charges, it's under the room and meals tax part of the state. Airbnb has changed with some states and I think with NH now, the people pay Airbnb. It goes through them and they put money in your account, whatever account you tell them to put it in. Now Airbnb is paying the state the taxes instead of the individual paying the state the taxes, Airbnb is taking the responsibility to do that in the State of New Hampshire. B. Chivers said I think Bob's question was how do you report the taxes; the income. That's irrelevant. B. Petrin replied that's correct but is it a business? It doesn't appear to be a business. He's not a sole proprietorship, he's not an LLC. He's working for a subcontractor for Airbnb. I. Byrd said he's making money. I don't care how he does it that makes it a business. You're on High Street; we have a place up the road where you can stay overnight, for one night, for a week or whatever, the Inn. M. Reynolds said the bed & breakfast. I. Byrd said that already exists and we don't know if they do Airbnb or they work with travel agencies so how could we say no to these guys when we already have tacit approval of the same kind of operation. J. Szot said it's not the same because there are no separate units in the bed & breakfast. You rent a bedroom which sometimes has its own bathroom and sometimes doesn't, but you're renting a bedroom. Here you are renting a whole part of the house with a bedroom area, living area and kitchen area, it's completely different thing. Secondly, when you think about this state law that allows accessory dwelling units is this thing about long term rentals. This is someone's home; you are renting this from a home. When you are renting it for a day or two days or whether it's in a bed & breakfast, it's not a home. It is a business. It is not a dwelling; you are not renting a dwelling unit it's to live there long term, it's a whole different thing. The state said it, if it's over so many days we don't tax it. The state does not tax rooms and meals tax. If you rent apartments, the state will not tax your apartments but the state does tax bed & breakfasts, they tax Airbnb because it's a whole different kind of thing and the regulation that the state passed was for housing accessory dwelling units for long term housing, not for short term housing; two or three days. I see a problem because once you allow it how do you say to the next person, that they can't do it. I. Byrd replied but that's the boat we're in. Some members of the Board are proposing to say no to these guys but we've had a tacit approval of the Inn up the street for what 30-40 years. R. Howe replied no. J. Szot replied it's a different thing Ingrid. I. Byrd said they have rooms with baths they feed you breakfast; there is a dining room downstairs. R. Howe said I was on the Board when we approved that, it wasn't any 30 years ago. J. Szot said I was on the Board when we approved that and it was 10 or 15 years ago. R. Howe agreed, it hasn't been that long but we as a Board did approve them. I. Byrd said it's been approved, it exists.

J. Szot said it's different from an accessory dwelling unit that approving an accessory dwelling unit and then saying oh and yes you can rent it on Airbnb. B. Chivers commented I don't know how you can deprive these people the right to rent that out on Airbnb. If you approve that in-law apartment, they have the right to rent it to anybody they want. J. Szot said on a long term basis. B. Chivers said what's the public interest in requiring them to rent it on a short term basis as opposed to a long term basis; what's the harm to the community. J. Szot replied the harm to the community is that you're changing the zoning without letting the people have a view in this. The Town has zoning ordinances and we regularly deprive people of the right to do things on their property because we say this area we zoned to be such and such and no you can't run that business in this area. I. Byrd stated but zoning is voted by the voters. J. Szot retorted let me finish. INGRID LET ME FINISH. I. Byrd repeated but zoning is voted by the voters. J. Szot responded INGRID LET ME FINISH. I. Byrd replied don't yell at me Judith you know it pisses me off. J. Szot retorted then don't interrupt me, let me finish. I. Byrd apologized to the audience, sorry folks. J. Szot continued we regularly deprive people of the right to do things on their property. The guy next to you could decide to put in a pig farm and have 500 pigs on that farm and he may have 3 acres and the Town will say no you can't do that because and they'll give you reasons why because it's not allowed so we regularly do that. You can't say oh we're depriving someone we do that all the time that's why we have regulations to say we want or community to run in a certain organized way.

B. Chivers asked assuming everyone's been heard can we go over the criteria for granting a variance. R. Howe commented there's somewhat of a legal issue here and that's what it really comes down to. It's a pretty narrow issue but I'm wondering if what would make sense is we've approved 2/3rds of this and so they can have their in-law apartment. B. Petrin asked what is the legal question Ron. R. Howe responded run this to Bart and get his opinion and come back based on that and then come back here and deal with this last section of it. B. Petrin replied so understanding your concern we have to ask him a question, what would that question be? I'm not sure what the question is Ron. R. Howe replied I'm not sure, basically what Judy was just saying the difference between...J. Szot said is there a difference between short term rentals, Airbnb and a bed & breakfast. Does the Town have the right to regulate that and say where they can be or should we be looking at some ordinance that says it's allowed every place. B. Petrin said you ask a valid question because we're comparing it to the bed & breakfast down the road but that was before accessory dwelling rulings came down. Maybe the legal landscape has changed enough it's prudent to ask the question and table this particular item. R. Howe said table this part of this.

B. Petrin asked are we in agreement that we seek legal counsel on that? J. Szot replied well especially since the law specifically states that it meets, when they state that these accessory dwelling units meet the Town's requirements for workforce housing, which is a concern all over the state that housing is terribly expensive in the state and we don't have workers because we don't have places for workers to live. So now they've passed a law that allows for this and we're saying well we're not really going to put workers in there we're going to have it as a tourist home and that wasn't the intent of the law. B. Petrin asked would you be able to craft the question for legal. J. Szot replied I'll call Bart and talk to Bart.

B. Petrin said folks you understand what our concern is. When we go ahead and do something, we set a precedent and because of the accessory dwelling rulings that came down a year and a half ago, that portion of the landscape has changes so to speak and we have to make sure we're going down the right road and not saying yes to you and creating problems further down the road. We just have to explore it from a legal standpoint, I hope you understand. So do we approve one and two or table the whole issue until we find out about number three. I say we table everything. I. Byrd agreed. B. Petrin continued it's moot to say let's approve one and two if three doesn't go or we find out there's an issue. B. Chivers said if we can't approve the third one, we've still given tentative approval for the first two. He could still have an in-law apartment it would just be longer term rentals. B. Petrin agreed. B. Chivers said why don't we just approve what we all agree on so far. R. Howe agreed. B. Petrin commented agreed, good point, let's do that. One other point was on the first item we were going to put a condition on there for septic inspection is that not correct. B. Chivers said yes they're going to get is it *some sort or subsurface (unintelligible)* certification. B. Petrin asked do you understand on that point? F. Reynolds said uh huh. B. Petrin continued and then you'll present that to Dave Murray, yes? Ok. J. Szot added and it has to be a licensed septic installer. B. Chivers so he's got conditional approval for the in-law apartment, accessory use dwelling subject to that septic inspection. And a variance from the front setbacks. And you're going to get a legal opinion B2 here. J. Szot reiterated I'll call Bart tomorrow.

RECAP of previous two motions with condition now added on the Special Exception below:

### **MOTION**

B. Chivers **motioned** to grant conditional approval for the in-law apartment, accessory use dwelling subject to the septic inspection by a licensed installer. I. Byrd **seconded**. **All were in favor. Motion carries (5-0-0)**

J. Szot read the five variance criteria for the setback variance 6.02:

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

**MOTION**

B. Petrin **motioned** that the variance be granted to the right of way. I. Byrd **seconded**. **All were in favor.**  
**Motion carried (5-0-0).**

B. Petrin said Judith will seek legal counsel and the case will be continued to next month. J. Szot said the fourth Tuesday of the month. B. Petrin said because there were three separate issues, you will get notice of decision on the first two and then perhaps we'll see you back here next month. We'll iron it out one way or the other, in your favor or not, we'll wait and see how that goes.

J. Szot and B. Petrin discussed legal counsel on 674:72 section 10 identifies workforce housing and how is that different from a B&B and can you use an accessory dwelling unit for Airbnb rentals.

**Case 18-633** Applicant: William Nicosia, 676 Old Candia Road, Candia, NH 03034; Owner: same; Property Location: same; Map 413 Lot 57; for a Variance under Article V Section 5.02C (c-2); heavy equipment. Intent: To operate and run a hired hauler small trucking business on this property.

Present: Applicant William Nicosia (Max); Andilee Colprit-Huckins, William's wife.

Abutters Present: Yes but they did not speak so were not identified.

William Nicosia introduced himself, you can call me Max. This is my wife Andilee for the record. B. Petrin asked this is a scaled drawing yes. Max replied pretty scaled yes, it might be a little bit off, I apologize for that, it's been awhile since I drew some real plans. B. Petrin confirmed we can assume its pretty close. Max agreed. I should have all the measurements on there as well. B. Petrin replied negative, road measurements is all you have but let's proceed and see what happens. So you submitted a letter that identified your case, is there any high points that you wanted to bring out.

Max replied I moved to Candia about 3 years ago just about, love the Town by the way. Thank you very much, beautiful place. I. Byrd said keep it that way. Max replied exactly, that's what I'm trying to do, I'm trying to improve my property but I'm not here to make it look any worse or anything like that. I take very good care of my property; I take a lot of pride in that. I consider myself to be a pretty good citizen, community member and what not. When I had bought the property and I'll say it up front, I probably should have come to you guys first but not knowing, I was a little ignorant. There was a prior business run out of there from what I was told from everybody so I bought the property because I had a small trucking business. Right now I own a 6 wheel dump truck and I own 3 tri-axles and one tractor trailer. Two of them are being sold. I. Byrd asked 3 what's? Max responded tri-axle dump trucks, big dump trucks. Two are being sold. I. Byrd asked are you going to replace them. Max replied no. Two are being sold. So my plan right now is a little bit different that what's here. The employee situation is extremely horrible out there. Which I guess was one of the problems. I was approached by David a couple of months ago and I've been speaking with him back and forth. My business was a little too big for where I'm at. I had two employees at the time, I can't include myself, sole member, I live there, so I had two employees and I'm down to one employee now. I have no future plans on growing I'll tell you that right now because the help, the workforce is absolutely disgusting, scary but it's hard to find help. I would have liked to stay with *3 trucks running (unintelligible)*, which would give me two employees, I would like to have a variance for that just in case I have a truck wash or I don't drive my truck one day and somebody else goes in it. I feel that I don't cause any more traffic coming in and out, I'm very respectful. My employee and anybody I've had in the past couple of years I've hired they have to be respectful of my neighbors. When they come in their quiet, a couple of guys have had motorcycles, creep right in, park it and don't disturb my neighbors as much as possible. I tend to take very good care of everything; I'm on the corner of Old Candia Road and Chester Turnpike so it's an extremely busy road. Trucks alone, not mine, go by here consistently all day long, a lot of truck traffic. So my trucks come in once, they leave

once. My employees come in once, they leave once and that's the extent of my employee business there. I go out; I don't store any materials there. I don't sell any materials on the contrary of what has been told to me because I've done a lot of landscaping on my property; everything that's been brought in has been used there. I have pictures. The place was kind of falling apart so I wanted to dress it up and make it look good, it's a beautiful area so that's why I'm consistently improving it. So I'm here to ask for a variance, sorry I'm a little nervous and it's hot in here and I don't do this too much I've been under a lot of pressure with all this. I'm just trying to do the right thing and make a living. I really respected the fact that I was donating to society, not donating but giving back. I had employees, they had families. I was helping to support them and their families. I need to make a living and that's all it is.

Max continued I have actually spoken with all my abutters. There are a couple here I believe. I have signed letters that we drafted from all of our abutters except for two, one of them is here, I don't know if that's changed but he did tell me that he didn't have a problem but he wanted to come and see what this is about. The other gentleman Sam is in Connecticut all the time and he said he doesn't have a problem but he's not going to sign anything. Some people don't like to sign things. Max handed out copies...these abutter letters also acknowledge in there along with the letter that I drafted, that there was a prior business ran out of this property for several years. I heard he was a wonderful man, I'm sorry I didn't know him. B. Petrin asked what business was that. Max said it was Timberline Tree Service, also called Dubois. He ran it out of there. I. Byrd said he was outstanding. Max replied I heard that about him, I'm sorry for his loss. But he did run a business out of there for many years and nobody bothered him. I. Byrd replied well he didn't do any business there. He did it at the home-owners site. Max replied and I don't either. I do the same thing. I don't do any business at my house other than my home office where Andilee runs the office and takes care of my paperwork because I shouldn't be in there. I don't do any business on my property. Everything I do, I drive my trucks out, and I pick up at Pike, or Brook Hollow or Continental and take it to the customer's home.

B. Chivers asked do you plan to build a shop there someday. Max replied I'd like to have a garage in the future; I would be able to put a garage in place of the lean to. I have an existing garage now that's got an up and down. I redid the walkway. It's a detached garage with a walkway to it and off the back it has a lean to. I. Byrd said the problem with the back is that it's a lot lower than the base of the house so if you build anything down there it would be a concern.

B. Chivers said did you state that you were going to limit this to one outside employee? Max replied yes, one outside employee. B. Chivers continued so how many trucks would be on-site. Max replied I have one truck that stays on-site for 7 months out of the year; it's a plow truck, a six wheel dump truck/plow truck. I plow for the State of NH. That gets parked at the state shed 6 months out of the year. Then I have the tractor trailer and then I have my other tri-axle dump truck, once the other two sell, those are the only ones that are there. B. Chivers confirmed so one tri-axle and a tractor trailer and that's a dump trailer. Max replied yes. I keep well maintained stuff, it's parked nice.

A. Colprit-Huckins said those photos that are printed out on the paper are of the old property. Google maps doesn't have updated photos of our property, that's why I got those printed out. Max said so we have before and after showing the improvements that I've done. I also have a copy from the Police Department saying that they've never had any calls or any problems with me. I spoke with Mike McGillen today. B. Chivers asked you have no problem getting that tractor trailer out onto Route 27? Max replied actually its 43 right there. I'm on Chester Turnpike and 43. B. Petrin asked they call Old Candia Road 43? Max said I could be wrong. J. Szot said it's actually not an arterial road on that part of it. I looked that up today. It stops at Brown Road. The arterial road goes from Brown Road towards Raymond. It's all residential. B. Chivers asked so do you come out on Chester Turnpike and then you turn? Max agreed, yes. I. Byrd said do you turn right or left. Max replied it depends on the schedule. A. Colprit-Huckins said most often its right. I. Byrd said so towards Auburn. Max replied yes, no, towards Candia. B. Petrin said towards the highway, Exit 3. A. Colprit-Huckins said towards the gas station. I. Byrd said if you come out of the property if you turn right you go towards the gas station and left towards Auburn. Max replied yes, the property has 2 driveways so it's the back one that we leave from. It would be a left on Chester Turnpike and most often it's a right at that stop sign. B. Chivers so those trucks are parked

behind your house most of the time. Max said I landscaped the property, there's enough room, and I try to keep enough tree coverage there. I've never had a problem with any of my neighbors. B. Chivers asked about outside fuel. Max replied no, we do have a bulk container that I'm trying to get rid of because I only use it now if I have to do a repair I actually put fluid in. *Cann Brothers (unintelligible)* was one place, I have a couple of other places I take it because they have a multi-fuel burning system so it's all clean stuff. I give it to them so they can heat their shop in the winter. B. Chivers asked is that agent oil or the fuel? Max replied I don't have any DF. It would be diesel or V oil. J. Szot asked how big is the bulk container. Max replied 500 gallons. J. Szot reiterated 500 gallons. Max replied yes, Dave and I have spoken about that, we didn't know if I was going to have to figure out a different plan for this or whatever but if I have to get rid of it I can; if I have to get a contain...J. Szot said it has to be contained for spillage. B. Petrin added quantity plus 10% I think. Max continued he was going to let me what all that was. B. Chivers asked are you willing to make that improvement. Max replied oh absolutely, I've offered...I've spoken with Dave a couple of different times. If I have to, I'll put a fence up. I could be wrong but I'm not assuming, there's been somebody's who's complained, which is why I'm here obviously. I'd rather not go this route but I mean somebody has stopped in front of my property and my driveway and almost caused an accident and staring in and stalking me. I have video cameras, I have 8 at my house and they cover my whole property and feel like I've been harassed lately and discriminated against too. I'm just trying to make a living, I'm not trying to make waves, I'm not that kind of a guy. I just want to make a living.

B. Chivers said I don't think this Board would require a fence. It'd be hard to fence two trucks back there; it would be a big fence. J. Szot said Boyd have you driven by the property, you should. The question is how large is your lot. Max replied 2.1 acres. So I have the road frontage on both sides. J. Szot replied but half of it is the trucks and the trucking area in the back and the garage; a cloth garage. Max confirmed yes a temporary garage.

J. Szot continued do you repair your own trucks? Max replied yes, I do my own repairs yes. Maintenance, brakes, ties whatever has to get done. B. Chivers asked do you do it outside and do you intend to keep doing it outside? Max replied yes and I'd prefer not to. I've worked outside my whole life. Having that tent, I'm spoiled. I would love to someday put a garage up. A. Colprit-Huckins added which is what we were going to do until this came to the table. Well we're not going to the building inspector for a garage if this doesn't work out. Max said I'd like to put a two car garage up.

J. Szot said we've had this issue before in a residential neighborhood and there were complaints by the people about the noise of the trucks and started. Diesels, have to be started up in the winter time and be warmed up before they can go. Even in the summertime, you have to start them up; people complained they couldn't open their windows because of the fumes and the noise of the trucks. If your truck breaks and you need it the next day, you're working on it that night with impact wrenches. It's a quiet residential neighborhood and its nicely landscaped but my question is about the noise because this has been a question before. You remember the issue we're talking about. R. Howe agreed, oh I remember and there are a lot of other places in Town with the same issue that we're going to open a can of worms here depending on how we go with this. B. Petrin commented we turned a guy down up the road here earlier this year. B. Chivers said the case you're talking about Judith, they processed a lot of loam on-site. That was where that noise was coming from. R. Howe said but there were also the trucks and tailgates banging. J. Szot reiterated her concerns on the smell, noise, wrenches at 2 or 3 in the morning. You have a job in the morning you're going to be up fixing that truck and there is noise associated with that. R. Howe asked you don't have excavators or any other equipment. Max replied no I don't. I. Byrd asked how close are you to abutters' houses. Max said Mark and Holly behind us; trucks are parked middle of the yard, maybe a couple 100 feet. Finney, Lawrence and Kate next door on the other side are about 150 feet. B. Petrin confirmed Chester Turnpike side. Max continued if I may on the tools, I've been there about 3 years now and Finney is a little boy about 2. Lawrence and Kate next door, have a little boy, he love's my trucks. I'm extremely respectful. There have been situations where I've had to fix my truck and it's been late. My cutoff time is normally no later than 8. 9 absolute latest. I stop. There has been a couple of occasions, I want to say it was over this winter, I had to get a bunch of work done on my truck to get it out

on the road but it was mostly quiet work. They may or may not have heard me. I've never had a complaint and I'm always continually asking when they go by, did you hear me is everything okay, I'm not bothering you if am I please come over and tell me. They've never had a problem with me. I have a truck that leaves early in the morning and I've never had a complaint there. They'll hear the tractor leave because that leaves at 3:30 in the morning and runs for about 10 to 15 minutes before he heads out and then he's gone for the day and he's doesn't come back until before 5. Other than that, I'm not out there all night. The shop would be nice if I had a shop because I would build a shop with 2 x 6 walls, 5/8" sheetrock, full insulation and it would cut any of that down, not that I'm going to work all night, I do that enough as it is, I work 8 days a week. I do try to be very very respectful and not run stuff all the time. B. Petrin asked for public input. *Note that NO ABUTTERS spoke.*

Gary York up on Hemlock Drive said we pass the property often. This is a situation in my view here's a situation where a young couple started a business and they've done pretty well and it's turned from what the spirit of the zoning ordinance has for that residential area into a full blown commercial operation. Dick Dubois who was the owner before had a wood storage business where he cut cords of wood and stacked cords of wood back there and he would deliver those in a little one ton dump truck. This is far from a one ton dump truck. This goes against the spirit of rural character as far as I'm concerned. If you can afford to have 5 dump trucks of this size and this cost, it really belongs in a commercial operation. It's a good way to start, one truck and one employee and I'm in favor of that type of business. If this gets approved, we're talking garages and who knows what else. Sam Wovkanech one of the other abutters gave me a call the other night mentioned the fact about the parking area that was filled, the rear end of that land is wetland and he was concerned about that situation. I'm not quite sure what we're trying to approve here. Again, an operation of this size and now there's a park parked right on the street, it's got a for sale sign on it so. This isn't the rural character that Candia's looking to have in my opinion. The zoning rules were set up to help an individual start out a business and have a small start up business and then grow into a commercial area. I appreciate the landscaping the folks have done. He has improved on the front of the house. The back of the house is not what I consider rural character. As far as the traffic is concerned, a stone wall was opened up on the property. In order to make a left hand turn out of the property up Chester Turnpike he's actually gone into possibly the abutter's property or at least the into Town owned property right of way. If you go up and take a right hand turn and head east, I would imagine the front end of that tractor goes well into the westbound lane. That westbound lane, people come up over that hill, there doing considerably faster than 35 miles an hour, before you know it, bang, there's somebody there. When I was leaving two weeks ago, there was a car coming up Chester Turnpike from the Auburn side, I was coming down Chester Turnpike from the Hooksett side and the applicant's truck was coming west from 101. He couldn't go, they couldn't go, and I couldn't go. There was another car coming east, again it's a tight space for a tractor trailer to make *x number (unintelligible)* of turns. I appreciate the individual trying to make a living and starting up that business but not in a residential area. You've got to consider location obsolescence for an operation this size, the effect on property taxes, not only the direct abutters will have if they go to sell their house with a full scale trucking operation going on but the citizens as yourselves are going to pick up the difference in your tax bills as a loss because of the surrounding properties that may be devalued. I've said enough.

Dan Jaskolka of Old Mill Road said when that tractor trailer pulls out in the morning, the traffic on Old Candia Road at 6:00, 5:30, 5:00, the traffic is going up and down that road like crazy. When his trailer is heading east to get onto 101 at Exit 3, that tractor trailer coming from Chester Turnpike pulling out onto Old Candia Road has to go way out onto Old Candia Road and the cars coming on Old Candia Road in the morning are flying like crazy. They're going way beyond the speed limit. There's a good chance of an accident. When they decided to get that big tractor trailer, they dug into the abutter's land, Mr. Wovkanech, on the right hand side of the road. They dug out some of Mr. Wovkanech's property to get the tractor trailer out or to get into the driveway. And they also took down some of the stone wall that Mr. Dubois had for many years because Mr. Dubois had just a little driveway for a little one ton truck. There's no way these tractor trailers can get through a space that was there for a one ton truck. He did open up and did take down some of the stone wall. Thank you.



Max responded wetlands; I do not have any wetlands on my property. Spring runoff, which happens to everybody especially where my property is sloped. I don't have any wetlands on my property and didn't disturb any of that. I was a builder for many years in Massachusetts and I know not to disturb wetlands. There is no truck parked on the street. One of the tri-axle's is for sale, which I'm aggressively trying to sell two of my trucks. I want them out of my hair. The employee thing, I've washed my hands of and I'd like to keep one of them. That is parked on my property, inside my stone wall, up facing, there's a lot of truck traffic so I'm hoping that will help sell it a bit quicker. Regards to the tractor trailer coming and leaving and them stating that there was congestion at that four way intersection. I'm adamant with my drivers if there are people coming and going at that four way, let them go. Yes it is a big tractor so like any other tractor or any of the other 100 that go by every single day; they do have to swing wide. My tractor does not go into the off road. If there was any congestion it's because people didn't realize that my driver's trying to let people go, because I'm very strict about that. I would fire someone if they did not. I can show you my hiring packet that I give them and how respectful they have to be with the neighbors, I'm willing to show that to you. The property that he's talking about that I dug up across the street and cleaned up I did because it happened last spring and I have two bills here. One of them is for the material and the other one is for the skid steer that I rented for the day; if you'd like to see that. I got permission from Sam to go over and dig that up because it was muck and mud; it was all runoff from the top of Old Candia Road, come down the corner and it goes all the way down the street. Sorry, Chester Turnpike, yes. I didn't want people thinking my tractor was going in there and digging this up and tearing it up. I spoke with Dennis and told him I was going to do it and he said yeah not a problem, that's Sam's place, make sure you talk to him. Sam said yes I don't have a problem with that at all. I said Sam do you want me to dig up that ledge hill in front of my driveway, clean that up, it would be easier on the plow trucks too. He didn't care what I did. I haven't done it since but I did, I dug up all the muck that was there. It was all leaves and debris. People pull over and park in there which is where a lot of the ruts were coming from. I dug it all up and put it in my truck and got rid of it. I purchased all new material, rented a bobcat and cleaned up the whole side of the road. Along with all the side of the road up my property. Dennis said it perfectly, "I wish we had more neighbors like you." The bobcat rental, I spent, the entire rental wasn't completely for that but I spent \$800 plus and \$150 in material. Are you going to have any other neighbors that are going to put that into the edge of the road around them? I didn't want to be blamed for digging up the side of the road. My tractor does not go up over the pavement. Stone wall; I did take down part of the stone wall. The tractor used to come in and out of there before I took down the portion of my wall over there but it was a lot easier if I took it down. I didn't want my tractor to have to pull up and then back into the driveway because that's what we used to do. I didn't want any traffic, I didn't want people complaining or being upset so I took it out and it's a nice easy swing to come right in.

J. Szot said you're talking about on Chester Turnpike where you have those parking spaces. Max replied yes, exactly. So I have gravel spot off this side for employees, well employee now to park. J. Szot continued and those long spaces, gravel area farther down for the trucks. Max said turnaround and all that. Yes to parking for trucks and I have plow equipment that goes onto my truck because I plow with one of my tri-axles and the 6 wheel plow truck that goes out every winter, so I keep my plow equipment over there as well. I guess the last thing would be the difference between our tractor trailer and the other tractor trailers out o the road that take that road consistently throughout the day. I'm not really adding to any traffic. My truck leaves once and comes back once. There are two that leave, one today. A. Colprit-Huckins said at 3:30 am. Max reiterated one leaves at 3:30 am the other one; I'm on nights, I was supposed to be in at 7pm and I'd be back about 5, otherwise I'd leave normally between 5 and 6 in the morning and I'd be back 4 or 5 at night. That's all the traffic that I create.

I. Byrd asked how many trucks are you going to have on-site. Max replied 3 on-site. One stays there just for the summer and it leaves for 6 months. All winter it's gone and it's parked at the state shed. We clear the state roads. I. Byrd said your goal is to expand your business. Max replied no. Believe it or not it was. The demand is there, I felt that I was doing pretty well but the hardest part of the whole thing is employees. It's horrible out there. I pay well. I feel I'm a good boss but it's a nightmare. I don't want to deal with it anymore. A. Colprit-Huckins said the bottom line is we're downsizing and leaving it that way.

Max said I want to stay two trucks, I was better off with my truck and the tractor trailer. I want to leave it at the two, which gives me one outside employee, which hopefully I'm within the guidelines but you tell me as I'm ignorant on the rules. I want to stay with the two trucks; there'll be three on premise with the plow truck that will leave in the winter.

B. Petrin confirmed and the two trucks that will be there are a dump trailer and a tri-axle. It's the black and green one. The red one I'm using and that will come off the road when that sells and I'll go back to my black and green one.

I. Byrd said can that be reflected in the minutes, what he said, he's going to have his equipment on site, his two trucks and the third one is to be there only half the year, in a state shed in the winter. That makes it legally binding. Max said absolutely. If I did grow any further, just so you're aware, we did have plans to grow, I'm not going to lie. The 5<sup>th</sup> truck happened because my 4<sup>th</sup> truck broke and I approached Dave and I told him, I got a truck that just broke and I have to keep my guy going so I had to get another truck which put me in the hole bad. So now I'm trying to dump both of those trucks to get rid of them but the plan was, I don't want to deal with it.

I. Byrd asked aren't stone walls considered legal boundaries? So removing a stone wall that's at the edge of your property. Max said I didn't move it. I. Byrd continued I don't care what you've done; I want to bring it out so it doesn't happen again because they are boundaries. B. Chivers agreed, they are. R. Howe said any stone wall that's a boundary wall it's illegal to move. I. Byrd said especially on Chester Turnpike, that's going to be a boundary wall you can't take any more of that out. Max replied okay, can you educate me on that, I've never heard it. I. Byrd said you just heard it. Don't mess with stone walls, they are legal boundaries. R. Howe said if there within your property. Max replied they are. The Board and A. Colprit-Huckins all said no, it's a boundary wall. R. Howe continued if it's an interior wall on your property you can do whatever you want. I. Byrd said between your property and the road. R. Howe added or your property and another property. J. Szot said you were here for the previous case and we asked him if there was a stone wall and he said no because the stone wall is the boundary of his property. When the stone wall was removed, now you don't know where his property ends. He would have known where the property line was and measured from the stone wall. So now we have to figure out how wide is the state right of way, get it surveyed.

Max replied I took out an additional 10 feet is what I did. B. Petrin asked is that a curb cut on Chester Turnpike. Max said no. J. Szot disagreed. Yes it is. You took it out on the back, that's a curb cut. B. Chivers said a driveway permit from the Road Agent. J. Szot said it is a curb cut Boyd, that's where he drives his trucks and he widened it. B. Chivers said Chester Turnpike is a Town Road. J. Szot said it's a Town Road, yes. I. Byrd said it's still a boundary. B. Chivers replied I understand all that but he doesn't need a permit he needs a driveway permit. I. Byrd continued the history of the Planning Board when somebody removed a boundary, the whole stone wall, they were made to replace it and pay for the replacement and that was on Patten Hill Road. J. Szot said if you drive by you can see what he did. He needed a wider driveway and he took it out. Max said it was already missing a big chunk. I. Byrd reiterated you can't do that again. Max apologized.

R. Howe said further up the road there are a number of pieces of commercial property, the metal place and truck storage. If you had ever considered renting space. Max said I can't afford it. R. Howe said I can understand repairing a truck at your place but to rent storage space. That was one of the issues that finally came about with the last trucking concern we dealt with. They actually found a place to park their 2 ten wheelers and then therefore they weren't going in and out constantly and it ended up solving the issue and the business was still there but it reduced the amount of traffic.

B. Chivers asked have you given that some thought? Max replied it's been mentioned to me but I can't afford it. Everything I have is tied up in the house and this business. I have loans on these trucks, which is why I'm trying to dump the other 2 so quick, if you knew the numbers that I owe, it's huge. I couldn't afford another place. B. Chivers asked how long ago did you buy that property, 3 years did you say? Max answered well I signed on it 2 years ago, yes. A. Colprit-Huckins confirmed a year ago. Max said one year, we were renting there. B. Chivers said so you weren't aware that Candia had zoning restrictions when you bought that property? Max responded I'm aware that every town has zoning

restrictions but I thought because the guy had a business there before and I assumed that was route 43 and it went all the way through. There were businesses; I forget all the mile markers, Auburn and the other side just over the bridge. I'm sorry, I blame ignorance on that and I probably should have...I. Byrd said he had a firewood business and most of the firewood was either stored or delivered to the homeowners right away. Max said I know people look at the big truck but I do the same thing because I don't do the business out of there. I take the trucks out. We don't bring...well okay I'll lie about that. The material is in the trailer because we do metal recycling, the material is in there and we just deliver it back and forth so it does come home with material in the trailer and then we leave with it. It's light aluminum.

B. Petrin said the spirit and the intent is to allow people reasonable use of their land. The question comes in what is reasonable. Is it reasonable to have one truck there? Probably. Two? Still probably. 3? Well I don't know because we are in a residential area. I recognize your statement about a financial burden saying I have to park these trucks somewhere else. Because that's what you're asking, I just want to park them there. We're going to take off in the morning and come back at night; they're going to sleep there. The question becomes is that still reasonable. Is it reasonable to have the trucks in and out? Is the site line from Chester Turnpike or Old Candia Road when you look into the back and see the trucks lined up in that large gravel area, is that conducive to the rural environment we're trying to keep here, is the question? I'm not sure the answer to that. J. Szot said Dan and Gary alluded to the site line because you are coming up a hill to Chester Turnpike.

B. Chivers said can we address our concerns by going through the variance requirements. Section 5.02 in order to get a variance on this prohibition of having a heavy equipment operation in the R district the applicant would have to meet the following criteria. (Boyd started to read from Dave Murray's building permit denial letter but Judith Szot then read the five criteria from Article XIV, Section 14.02 C Powers: Variance:

1. *The variance will not be contrary to the public interest.* All were in favor it would be. (5-0-0)
2. *The spirit of the ordinance is observed.* B. Chivers said it's not if we allow a trucking company in the R district. J. Szot said if you read the beginning of the ordinance it talks about the spirit of the ordinance and preserving the rural character: to conserve land values and amenities, to lessen congestion in streets, to secure safety from dangers. R. Howe commented you have to be a little careful how you say that though. There are a number of other people with trucking businesses and stuff in Town. Max said many. I'm being discriminated against. R. Howe agreed, in a residential area. Some are in a more residential area than others, some are well out. B. Chivers said these cases are tough. Max said I can't apologize enough for this; I just want to make a living. If this doesn't happen I am going to lose everything I own, everything and I'll have to put an employee out of work because I can't afford to go anywhere else. It is because of one gentleman that's been calling you guys. I've been told that. I could be wrong, the one gentleman that's been driving by my property, harassing me is in this room. I have him on video camera, he almost caused an accident stopping...B. Petrin said we heard that story. When you say the called us, they didn't call us but they called somebody. Max replied yes they called somebody but he didn't come to talk to me. Nobody came to talk to me. B. Petrin said we have on record the letters of recommendation.
3. *Substantial justice is done.* J. Szot said it would be nice to allow this to happen in this area. I. Byrd said the substantial justice is to the applicant. B. Chivers commented but what about to the abutters. That's a tough one right there. B. Petrin replied some abutters are yeah and some are nay, then we have to put our own best practice or judgment forward to say it may or may not go. If it doesn't go, you have rights of appeal and so on. J. Szot read (*from the Board of Adjustment in NH Handbook*) any loss to the individual which is not outweighed by a gain to the public is an injustice. The Board of Adjustment cannot alleviate an injustice by granting an illegal variance. B. Chivers said so what is our call by granting the variance, it wouldn't. No; all agreed it wouldn't be.
4. *The values of surrounding properties are not diminished.* B. Chivers said we've already agreed they would be. All agreed.

5. *Literal enforcement of provisions in this ordinance will result in an unnecessary hardship.* B. Chivers said Mr. Nicosia bought the hardship. J. Szot said hardship has to be shared by all property owners. If the hardship isn't shared by all property owners then there's no hardship that exists. Judy read: *Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed.* B. Chivers said Mr. Nicosia you have to meet all five of the variance criteria and you've failed four of them. Substantial justice we really couldn't get our arms around.

Max asked in your variances doesn't it say you're allowed one employee. I'm down to one employee so why don't I meet your criteria. B. Petrin replied because of the area you're in. R. Howe said if you had two vans and were running a plumbing and heating business, it wouldn't be an issue. Max said can I ask, please, I'm not here to upset anybody; what about, like you said and I know because I've already driven around, the many other businesses that are in Town, that are way bigger than I am. B. Petrin asked and they're in a residential area? Max agreed, very residential but I'm not going to name names. J. Szot replied that would be up to the building inspector and code enforcement officer. Go to him and show him where they are. Max replied I don't want to name names. It's not fair. Because somebody complained, the gentleman that's in the room, I made him upset. I delivered material to him one time under another company and he wanted me to dump it under a power line and I would not because you can't go under a power line, you can't do it. I pulled out, I dumped the load and I left. The gentleman owns property down the street from me in another town. Since then he sees me all the time and I don't think he likes me, I could be wrong. So what about all these other businesses? I. Byrd replied we can't deal with all the other businesses. The building inspector, code enforcement officer has to do that. B. Petrin said what's in front of us today is your request. R. Howe replied that wouldn't be an issue until somebody made it an issue. D. Murray replied not necessarily. B. Petrin said I don't know how that is going to change this outcome. Max replied it's not fair, not fair to anybody, this is my livelihood.

B. Petrin replied here's the good news. You came into Town and made some great improvements on the property, you're looking to do the right thing. Maybe there was bad judgment involved with saying I'm going to get this property and buy it and I'll be able to run my business. Max replied I didn't want to leave Candia. B. Petrin responded I understand that but for whatever reason the turn of events brings us here it says can we keep these trucks on the property and based on the legal criteria that we have to follow, it's leaning towards no it's not because you have to meet all five criteria.

Max asked how many trucks can I keep on my property. If I'm an owner operator, I can keep my own correct? B. Petrin said yes, that's correct. What is the number? J. Szot asked Dave can he keep his truck. D. Murray said there's no number. Max asked why is there no number. A. Colprit-Huckins said because there's no limit. B. Chivers asked no number to what Dave? J. Szot said there's no number to how many trucks as an owner operator he can have on his property. I. Byrd asked doesn't it depend on the size of the property. If you had 20 acres, nobody would say boo. B. Petrin asked I don't know the answer to that question, what is the appropriate number of allowed vehicles. J. Szot said that's something to put down for the Zoning Review Committee. That's their job to figure that out.

A. Colprit-Huckins asked I live at the residence, if I got my CDL license and drove one of those trucks, am I allowed to do that; have two trucks because now I drive one? Max replied keep it parked. B. Petrin and J. Szot replied we don't know the answer to that.

B. Petrin asked is another legal question. B. Chivers said I think that was a hypothetical question. A. Colprit-Huckins replied it's actually a very big thought. B. Petrin said it's pertinent, if I'm allowed to keep a truck at my home which is far from the road and can't be seen and you wouldn't know it's there. You can see his from the road. Boyd why is that different, I don't know. Who has the answer, is that a legal question or code enforcement question. If we can't decide we'll have to table it and continue this because I'm not comfortable saying yeah or nay because we don't have the answer. I don't know if it's a legal question, I suspect it is. J. Szot said I'll ask Bart.

I. Byrd asked does the zoning allow one outside employee. J. Szot said the one outside employee has to do with a home office, home business. If you have a home business, you can have one outside employee. Max asked do or do I not have a home business? B. Petrin said I think you do. Max said I have

one outside driver right now. I. Byrd said but if she gets her license. A. Colprit-Huckins replied if we kept our employee, I still have a job in the office but if we lose him, I have no job. Max said it's just me. B. Petrin said how are we going to decide how many vehicles he can have on his property without running a business. Max said so I can park 15 RV's over there, registered and insured and nobody can say anything. R. Howe and B. Chivers agreed, that's right. Max said I have three vehicles, well five but I'm trying to get rid of two. I have 3 commercial vehicles that are parked there on the property that I own. I only have one outside employee. I'm willing to put up a fence, nice shrubs, dress it up. I've gone to David with this, whatever I need to do. I can't afford to lose my business or my home. The Board discussed the number of vehicles allowed and J. Szot said we're pulling it out of a hat because we don't know. B. Chivers said there's no limit as long as they are registered, inspected and road worthy. B. Petrin said only a restriction on unregistered vehicles. B. Chivers agreed. If he wanted to go out and buy 5 more trucks and register them and inspect them...Max said then I can park them there. B. Petrin said then we have to ask is it in keeping of our rural character and all the other diminishing of values and so on. R. Howe commented the problem here is the size, a tri-axle is a big truck and a trailer is a big truck. If it were two vans parked there, we wouldn't be having this question. I have to agree with you a little bit I'm having trouble saying we're willing to accept that but not this. B. Chivers agreed. R. Howe said we can't point to anything that's truly been a hazard because of this.

B. Petrin replied okay here's where we're at. As of right now he hasn't met the criteria. He had to meet all five and he didn't meet them all so at this point it would be no. So then he says no I don't get my request and goes away and goes to work in the mill but the trucks stay on the property because he has every right to park the truck on the property. So why can't he do that? B. Petrin asked how many vehicles does Dennis have. B. Chivers said a 6 wheeler, a 10 wheeler. R. Howe said 2 dump trucks and a pickup. J. Szot said the problem is 5.02 C-2 says heavy equipment operation is not allowed in the residential area. So you can say all these other things but that's what it says, heavy equipment cannot be operated in a residential area. B. Chivers said C-2 doesn't really address this case, it's not trucking. Off site trucking. I. Byrd said he doesn't operate the equipment on-site. He drives in turns it off, goes to sleep, has dinner, has breakfast and the equipment leaves again. There isn't really any operation. B. Chivers said if he didn't have an employee and his wife drove one of those trucks, I don't think he'd be here tonight. There's no sign out front, trucking out of their house. B. Petrin said and as a sole proprietorship, he can do that.

R. Howe asked where his employee lived and could he take the truck home. Max replied no, he's in a condo in Raymond. Max said I've had vandalism problems, that's why I have cameras up now. I've had vandalism at my home. B. Chivers stated the problem is in our own ordinance because it doesn't make provisions for guys like this right here. Max said and there's a lot of them here. J. Szot said we can't fix that; we need to deal with this today. It needs to be fixed.

B. Petrin said we all agree that he didn't meet the criteria and we all agree that he has a right to keep trucks on his property. J. Szot said but we're bound by what's here. B. Chivers suggested going through the criteria again with his wife having her CDL. J. Szot replied but it doesn't address who drives the vehicles. It's about running the company, driving the vehicles off the property, that's the issue, is that you're running the trucking company. The trucks come in, they leave the property and we all agree, they leave in the morning, they come back at night; one at a time. The issue is that it's a trucking business just like the one up on Diamond Hill. His trucks left in the morning and came back at night. B. Chivers added and they brought material home and processed it on-site and that was the biggest mistake. J. Szot said the issue was also the trucks and the noise of the trucks; the issue was he was running a trucking business out of that. That's the issue here. We're bound by what's written here, I can ask Bart tomorrow.

B. Petrin said I'd like to move that we table this and get legal counsel. We can't win. If we vote one way, he loses. If we vote the other way, we may be setting a precedent. I think we can't go forward without legal counsel to clear it up. He has the legal right to use his property in a reasonable manner. J. Szot said but the zoning says he can't use it to operate trucks, unfortunately.

B. Petrin asked can you clarify with Bart if that is the same as him parking his trucks and working in the mill?

R. Howe said I know you said you can't afford to rent space but would we have a problem if in fact that's what he was doing and the only reason the truck came back there was you have to make repairs so it's an occasional thing, once a week.

B. Petrin said we could beat this up all night. Let's stop and go to legal counsel and say what is the difference between this and him not having his business and working for Pike and driving a dump trailer down and park it on the side of the road while he has lunch. The truck is in the area, it's parked there. I'm just not sure that it doesn't make sense. R. Howe said and what if he was working for Pike and brought the truck home and parked it in his yard at night?

Max said I understand the issue, the issue came about because I have a few more trucks than I should have, not knowing obviously. I thought I was going to grow; I don't want anything to do with growing. I'm not growing. I just want to keep it to the 2 trucks.

B. Petrin said I'd like to suggest that we continue this to next month while we seek legal counsel so we can get some guidance on the right way to proceed without approving you or denying you tonight. It was suggested to withdraw his application and get guidance on a new application and under the right code sections. Max said there isn't one for us, I'm not heavy equipment. Normally it's excavators, loaders, processors, that sort of stuff. *The Board discussed the options of withdrawing the application.*

B. Petrin asked can we put that in the notes that we will waive any fees in the next round. J. Szot said let me call Bart and talk to him and asks him what he thinks and if this is the correct citation for this, then you don't have to do it but if he thinks we should do something different, then I can let Andrea know and Andrea can let you know. B. Petrin said and we can wrap it up at the next meeting. R. Howe confirmed so we could table this and then if it turns out that this isn't the right way to go about it. J. Szot said he could come in the next time, withdraw it, present. B. Petrin added or apply under a different application. Let's continue it then.

D. Murray said what's the alternative application? B. Petrin said in case there's something that says can I run a business; it's not about parking the trucks there. No, of course he can run a business. You don't need a variance or special permission to run a business. J. Szot said the problem is the business he's running. He's running a trucking business in a residential area. I'll call Bart and I'll talk to him about the issues and see what he thinks.

B. Petrin said we'll table it until next month; continued to next month. J. Szot said I'll talk to Bart and see if they need to apply under something different and you can call them and if not it will just continue under this and Bart can give us some guidance and notice it differently. If it needs to be noticed differently, we won't charge you for the noticing fees and stuff.

Max said so one last question so if you guys refuse me, I can still go down to one truck. J. Szot and B. Petrin said we don't know that. We're trying to find out what's the difference. B. Chivers said my answer to that would be yes, because that is your *pickup truck (unintelligible)*. B. Petrin said we have to be careful because then you're going to say the guys on the Zoning Board said yes. Max said I understand.

B. Chivers reiterated you don't think the Town of Candia's going prohibit someone from driving their 10 wheeler home and parking it in the yard and having a one man trucking company. B. Petrin said we just have to prove it. We're of the opinion you can do it, we're not against you.

J. Szot said so what I wrote down is if we refuse you can you keep one truck and can your wife have a truck.

## **MOTION**

B. Petrin **motioned** all in favor of a continuance of this case say aye. **All agreed. Motion carries (5-0-0).**

## **Other Business:**

B. Petrin said Ingrid was re-sworn in she is good. There's no other business. Good job on the gatekeeper for getting maps and so on. I haven't had an eyeball on your log list of zoning changes that's in your possession that's a fantastic idea and we should continue to add to that.

B. Chivers suggested to Dave the next time an application comes in a picture means a lot. You can get it off the property tax card. R. Howe said that one with the tiny drawing, you can't see anything. B. Chivers continued we spent a lot of time trying to figure out what's this. If we had a picture or maybe if you took a picture of it with a camera, maybe we'll do that next time.

**MOTION:**

B. Petrin **motioned** to adjourn at approximately 9:31 pm. J. Szot **seconded**. **All were in favor. Motion carried (5-0-0).**

Respectfully submitted from recording,  
Andrea Bickum  
Recording Secretary

Cc: file