

CANDIA ZONING BOARD OF ADJUSTMENT  
Minutes of August 28, 2018  
UNAPPROVED

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; Dennis Lewis, Road Agent.

Approval of Minutes: July 24, 2018

**MOTION:**

I. Byrd **motioned** to approve the minutes from July 24th, 2018 and the Non-Public minutes of July 24<sup>th</sup>, 2018 as presented. B. Petrin **seconded**. **All were in favor. Motion carried (5-0-0).**

**Request for Rehearing re: Denial of the Variance in Case 18-633 on July 24<sup>th</sup>, 2018:** 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); wife Andilee Colprit-Huckins; legal counsel, Mr. Brett Allard.  
Abutters Present: None

B. Petrin said so the proceedings go something like this. It's a matter of the Board to decide to hear you again. We don't at this time take public input or hear any arguments about it. We have in our possession the letter from Mr. Nicosia's counsel, Mr. Allard. Is that you sir? Mr. Allard replied yes. B. Petrin continued we take note of these, we will have some discussion. Again, it's not a public session so we're not taking input on those items. Agreed? Mr. Allard agreed, yes. B. Petrin said Mr. Nicosia's counsel is suggesting that we should consider rehearing the denial of his variance from last month where we told him he could not run a business out of his residential property. Citing various other things that I'm not certain how applicable they are with the classification of his business being erroneous. I'll recognize it that was an erroneous classification. I don't know what bearing that has on the denial because we made the denial based on not meeting five criteria.

J. Szot replied I think from what I've read in here, Mr. Nicosia is saying through his attorney that he should have been sent to our Board to ask for an appeal of administrative decision rather than a variance because he contends that he does not fit under the classification that he was placed which is heavy equipment. I went through the entire ordinance today and there is no place in the ordinance that says anything about trucking. There is however a statutory provision that states, we talked to the attorney today, "[A] permissive zoning ordinance is intended to prevent uses except those expressly permitted or incidental to uses so permitted." So Mr. Nicosia is saying that he doesn't fit under heavy equipment. There is no other place in the ordinance, which means that we don't allow trucking anywhere in Town. He has also references the fact that he was not helped sufficiently by our Administrative Assistant and our Building Inspector. I believe that our Administrative Assistant filled out his application for him; I know that they spoke with him on the phone many times. I know that our Building Inspector spoke with him many times on the phone. I believe that that statement is erroneous. He's basing it on the fact that he did not receive adequate representation and that is legally challengeable in the State of New Hampshire.

B. Petrin said but what's before us now is do we grant or deny a rehearing. J. Szot said so what we need to look at is have we made an error. B. Chivers said can we ask the applicant's counsel what his

contention is, he has a six page letter here, so we can't ask him any questions. J. Szot replied you can't, it's not a hearing. I. Byrd added it's not a hearing. J. Szot said you have to go by what he said. If you allow him, you have to allow everyone to speak and it has to be noticed for people who would want to be here and it's recommended in our handbook that appeals of decisions are meetings and not hearings and no new information is added.

B. Chivers said I've read this letter and studied it and I can't see where the counsel for the applicant here raises any valid arguments as to our interpretation or application of the law. We don't have a provision in the zoning ordinance for trucking so we had to classify it the next best way we could, which is heavy equipment. We applied the five variance criteria to the case and he failed in each one of them. I don't see any new information here that would cause me to consider rehearing this case. I. Byrd added even if there was new information, it would not be appropriate because this hearing is whether we made a mistake in what was presented to us at the time. And that letter was not presented to us at the time.

B. Petrin said right but now on the opposite side of that coin, he's considering presenting us with drawings and concessions he's willing to make with respect to fencing and such. If that is not something that was available to us in the first meeting do we need to grant him that opportunity? I. Byrd said no. J. Szot added if you read the handbook it says if he does not adequately prepare, it's not our responsibility to grant him a second hearing because he didn't adequately prepare. Irrespective of all of that, he can fence what he wants but the premise is he's running Class 8 or A (*unintelligible*) trucks out of that residential area. Semi-tractor trailer, tri-axels, this is not appropriate on a 2 acre residential lot in a quiet residential neighborhood. Fencing is not an issue. The issue is the trucks. He's running a trucking business in a residential area and fencing isn't going to change that. B. Petrin said do you think if we were to rehear this we would get any information that would allow for the five criteria to pass. I'm not convinced that would happen. B. Chivers, R. Howe and I. Byrd said I don't think so, I don't think that would happen. J. Szot added we've been down this road before and it's gone to the Supreme Court. The Supreme Court upheld the Town with Steven's Trucking. They told him that he had to move his trucks off his property. Let Bart have at it. If they feel that they have information that can rebut the kinds of things that we've done and say that trucking belongs in a residential area when in fact the courts have upheld the Town in a previous case when we have denied trucks in a residential area, they can take it to court. B. Petrin said we were advised to stay true to the ordinance. J. Szot said we were advised to stay true to our ordinance and there's no place in our ordinance that allows trucking.

I. Byrd said I'll make a **motion** that we vote on the issue.

B. Chivers said before we do that I'd like to make the record clear that this Land Use Office rendered assistance to the applicant at every step of the way. Andrea filled out his application. She reminded him last week that he had to get the appeal in before tonight (*actually before the 23<sup>rd</sup>*). Dave has assisted this guy in trying to work through this process so I just want the record to be clear that we have fulfilled our duty to offer assistance to this applicant.

I. Byrd said I'll **withdraw my motion**.

J. Szot added I've sat on this Board for over 25 years. I have never ever, never seen this Board send out a letter to an applicant that says your time for appealing is approaching and I'm not going to be in the office so you need to get it in by such and such a time and if you have any questions, please call Dave and he'll answer anything. Never. We have denied many cases and had many cases go to court and never ever sent a letter to an applicant that you're time is drawing close; make sure you get your paperwork in if you want to appeal. So to say that we haven't helped him, I've never seen it. B. Chivers agreed. I'd like to add that not only is that claim without merit, he owes Andrea and Dave an apology for making it.

### **MOTION:**

I. Byrd **motioned** to deny the request for a rehearing. R. Howe **seconded**. **All were in favor to deny a rehearing. Motion carried (5-0-0).**

B. Petrin said you've been denied a request for rehearing and Mr. Allard knows the next steps if he wants to take that, is that clear sir? Mr. Allard agreed, yes.

**Case 18-635** Applicant: Sirron Development, LLC of 1361 Elm St., Suite 106, Manchester, NH 03101; Owner: Timothy & Barbara McKinney, 860 Howe St., Manchester, NH 03103; Property Location: Douglas Drive, Candia, NH 03034; Map 410 Lot 50; for a Variance under Article X Wetlands Protection: Section 10.06B Buffer Provisions. Intent: To build a single family dwelling within the 100' wetlands buffer setback for very poorly drained soils.

Present: Applicant Sirron Development, LLC represented by Norris Viviers and owners Timothy & Barbara McKinney.

Abutters Present: James Levine of 117 Douglas Drive; Robert & Diane Caron of 108 Douglas Drive; Matt and Emily Pattison of 118 Douglas Drive; Mark Raumikaitis and Amy Ackroyd of 34 Douglas Drive.

Others Present: David Batzdorf of 18 Pine Ridge Drive; Scott Cunan of 85 Flint Road.

B. Petrin said you've got some drawings. N. Viviers said we submitted drawings. B. Petrin said this here. N. Viviers agreed, yes. B. Petrin said so we want to discuss some setbacks relative to the poorly drained. N. Viviers agreed, poorly drained, yes. Mr. Chairman do I need to address the five issues? B. Petrin said no sir you do not. Just tell us what you have in mind. It's a 100' buffer zone, how far are you going to encroach upon that please. N. Viviers replied if you look at the site map provided, you can see the house sits way to the back of the lot. You can see the setback lines and the building envelope, basically coming up that westerly boundary. That's the area than can be built upon so if you look at the area of the proposed house, that's not hashed in red, that is the limit of the building area. The building envelope is right there where it says proposed 26' x 48', 3 bedroom house top foundation. That's the building envelope we have here. It's the only place on this lot that can be built on. B. Chivers asked how big is the lot. J. Szot replied 1.7 acres. N. Viviers said you found that quick on the legend. B. Chivers asked that's the minimum lot size in that district? An audience member said its 136 (*meant 1.36?*). J. Szot said it was subdivided in the early 1960's early 70's. N. Viviers confirmed actually the plan was recorded or approved by the Candia Planning Board on February 27<sup>th</sup> of 1973. B. Chivers said with the exception of that building envelope the rest of that lot is wet? N. Viviers replied no, it's not that it's wet. What you have here is a poorly drained soil because there's essentially a brook that runs... so the protection for the 100' is protection from that brook. B. Chivers asked is that poorly drained or very poorly drained? N. Viviers responded I believe it's very poorly, which is why it's the 100' versus maybe 50' of a typical wetland. B. Chivers asked and how close are you coming into that? N. Viviers replied well the area that it shows that it's encroaching; you have the hash marks going through that area, yes. B. Chivers asked so that circle represents a 100' radius around the house? N. Viviers replied no, the circle is actually the proposed well because you have to show the well radius to be a certain distance from the septic system which is over to the left side of the site. So the septic is as far as it can be away from the wetland. Essentially you have a house there with not even a gable end that's going to be dripping onto that side of the house, it's a gable end. It's the only place on this lot where you can put a house. The driveway is long; it's a pretty lot, a pretty site. R. Howe asked what's on this lot now. N. Viviers replied it's vacant.

B. Petrin said I'm still not clear on how far; what kind of distance we're talking of this 100'. N. Viviers replied it's going to vary. Up to the front of the house the distance on the encroachment, this house being 48' probably a 40' encroachment on that side and on the back a little bit less. You can see the lines drawn, the hash tag through the house. So I would say it's an encroachment of 40'. B. Petrin said so approximately half the structure would be on that buffer. N. Viviers agreed, yes essentially if you look at it, if you took out the hash tag part of the house that's there, you can build a triangle of a house there. That's why we're here to get relief. B. Petrin replied to get relief so you can get onto that a bit more. Does it require you to bring in a lot of fill? N. Viviers replied no, it's a pretty simple site to work. It's not going to be arduous as far as any site work that needs to be done.

B. Petrin said so how do we speak to runoff if water is accumulating in the area, not just the lot, in the area. The neighborhood if you will. How do we handle runoff from roof and driveway and clearing, there's a lot less vegetation to suck up moisture. Where's this water going to go, how do we account for that. If we allow this to go through, where's the water go? N. Viviers replied unfortunately he didn't put the topos on this but I believe this lot also slopes to the back and side. It's a good question. I don't want to pave the driveway so creating another impervious surface I don't think is a good idea on the site so without paving the driveway we aren't going to have an issue with that. Essentially we can direct it to a footing drain or something of that nature if the Board... J. Szot replied but where does that go. B. Petrin said we don't know if there's a plan to put in a French drain and make it go in another direction or is another direction feasible? Where is it going to go and we don't want to aggravate an already wet situation. N. Viviers agreed, right. Without calculations as to how much is going to be created and that sort of thing, it's going to seep into the ground for the most part. I don't see it as being a massive amount of water being moved but based on the storms we've had this year.

B. Chivers asked can you estimate what percentage of that 1.07 acre lot is considered wetland. N. Viviers replied I don't have that calculation. It's limited to this very low area here. This low area here dictates the red area here. This dictates this lot. If you follow it up to here, that's the setback to that area. J. Szot said there are no contour lines so you can't tell what's going on. R. Howe asked this lot was sold as a building lot? N. Viviers said it was sold as a building lot, it's been taxed as a building lot, essentially it's been treated as a building lot. B. Chivers said our zoning ordinance requires now 3 acre minimum lot size but requires 1.5 acres of contiguous buildable area so this lot wouldn't even qualify as a building lot. N. Viviers replied by today's standards, no. I don't disagree.

J. Szot responded half of an acre would be a half acre and there isn't even that. Here's the problem I see. No one builds a house and then stops their development at the end of the house. An example of that, a place up on 27 we allowed them to build in a wetland area and go down there now. They have grass that goes forever and then suddenly there was a pool where wetlands were filled and you start to live on something that's wet and a little bit of fill gets trucked in here and there because you want to have a place for a grill and to do this and that and you're encroaching on the wetlands. The purpose of the setbacks in the wetlands are to protect the wetlands because the wetlands are important. The majority of the wells in Candia have a really low recharge rate. Protecting the water system, the wetland which helps to recharge our water is important. They're going to want to have grass and things so now you have fertilizers, chemicals that are leaching into those soils; you've only got an acre there. This is a site I'd like to see and see where it's all flagged. I read this and this is all flagged, flagged by the soil scientist. I think our Board should go out and take a look at it. Where the house is going to be, how close are you going to be; this is a good time to look at it, it is wet.

N. Viviers responded that's a good point, a valid point. Whether or not somebody has a variance and are built within a setback or if they just abut a wetland. Anybody can encroach on a wetland and can start doing these sorts of things; putting utility trailers on it, growing lawns; all that can be done. What I would recommend with this site is to post it. Post it on the trees, this is wetlands, it's protected and this area is not to be disturbed. You post it and you sell it with that covenant. Wetlands exist, the Pilgrims took all the good land this is what we have left. These people bought some land, I'm a developer this is what I do. J. Szot replied the problem is, first of all in order to build the house, you're saying you're going to encroach this far into the wetlands. But in order to build that house, you're going to disturb property beyond the footprint of your house. You're going to be driving heavy equipment around that area, not only are you going to disturb this, however many feet, you can't really tell, you're going into the wetlands, you gotta get around here so now you're getting even closer to that wetlands. N. Viviers responded no, there is no approaching or touching any wetlands. Even with this driveway; this driveway is a good 100' from the nearest point. J. Szot said but you're getting father into that buffer. That 40', you're going to be another 10' into that buffer by the time you get your trucks and equipment in and you're pouring foundations and all that. N. Viviers replied you made the best suggestion; go to the site because you'll have a better understanding. This site has a beautiful drive into it already so you don't need to start ripping up land. We'll install silt fences. But there's a beautiful driveway already there in place. I.

Byrd commented the driveway is not where the house is going to sit. The driveway approaches the house and the house and all the construction equipment are outside of the driveway and I think this is Judith's concern. B. Chivers asked could you stake out where the house is going to do for us. J. Szot said it's supposedly staked, it was supposedly all flagged. N. Viviers replied I believe it was staked for the benefit of looking at it before or I guess after in this case. B. Petrin said let's take some public input.

T. McKinney said I'm Timothy McKinney and my wife Barbara and I are the owners of the property. I bought the house next door and an option on the lot which I subsequently closed. It was grandfathered in. It was our problem. When you think of wetlands, that area when it's not raining out is as dry as this carpet is. You ask how the water... (*unintelligible*) storm event... a valid question. It's really a feed from a lot across the street. It's not fresh water by any means. It's runoff. That pipe that created the pond or the water was dug before I ever got involved in it. Bob and Diane Caron, you can attest that you've never suffered any water damage or those things. Incidentally, you've been a great neighbor for what is it, 35 years? R. Caron replied 40.

Abutters Robert and Diane Caron of 108 Douglas Drive. R. Caron said we're the direct abutters beside that. The brook actually crosses my property. In the beginning you stated that the acreage was 1.7, that's incorrect. It's 1.07. J. Szot said you're right. R. Caron said so just that it goes down on the record as that. Now the tax map indicates that that property is 1.34 acres. I don't know why there is such a discrepancy. B. Chivers said we'd be happy to adjust that. R. Caron continued it's not mine. To what Judy was saying before, my well in my front yard is 690 feet. We've run out of water before. D. Caron commented twice. R. Caron reiterated twice. So I'm concerned with the blasting that will need to be done because of the amount of ledge over there. I believe when they put in their swimming pool in the back yard, they had to blast and it cracked the foundation of their home. And as far as runoff, that road is narrow. You can just about get a car through there and that's going to have to be widened out. And now I'm concerned, we have, speak to the Road Agent; we've got water coming down off of that hill right now coming into my yard. I dug all kinds of... I don't need any more issues. The wetland should remain a wetland, that's what it's designed to do.

David Batzdorf of 18 Pine Ridge Drive. D. Batzdorf said I'm the farthest downstream from the brook. All that runoff ends up in my yard and Dick Therrien's driveway. Pine Ridge Drive is crowned extremely to one side as it is, to the west side so it all follows down that. So it comes down Christine and floods down Pine Ridge Drive and comes into my brook. I don't have a problem with the brook, it's built up enough so that it doesn't do any damage but all the water coming down the road, is a problem. I'm damaging my equipment as far as my lawnmowers and everything else because the road's being eaten away and ending up in my front yard. And my back yard floods on really good days. Dick Therrien's driveway, right next to me, is trashed because of all the water coming down that road. We don't need any more water coming down that road.

Scott Cunan of 85 Flint Road. S. Cunan said I live at the top of the hill so I'm not affected as much as everyone at the bottom except for getting in and out of the neighborhood. As you hear from everyone here, the water is the big issue. If we take down the trees, we have more water to deal with when it does rain. When you do go for the site inspection and Dennis will tell you this, Dennis Lewis is constantly over there fixing the roads and dealing with phone calls from people because we can't get in and out of the neighborhood because of all the runoff coming from the upper part of the hill. So when you go over for the site view look at Douglas Drive, just before you come to the property, and you're going to see all the erosion from the upper part of the hill that's washing down the road. That's all washing down the road and going into this property and going into the drainage you see on that map, and eventually going to everyone else's property. It's not really a question of whether or not the lot is grandfathered, it's a question of what happened and why do we have this much water. A lot of it is because of the subdivision on Manseau Lane which I was a proponent for. I am okay with building if it's a great buildable lot in this Town but that lot I do not think should ever be developed. I would have bought it myself when it was for sale if it was. I bought multiple other houses in the neighborhood and I said no way. That's all I have to say. B. Chivers asked do you think developing that lot will make the drainage issue worse. S. Cunan replied I think the water runoffs a lot worse going onto the road and into that area

where all the water goes, into the Caron's. The Caron's are greatly affected by it because they're right there. And Dave as well way outside the neighborhood, he's the house with all the Christmas lights all the time. You know which house is his. I walked by just last week or the week before and he had a river in his yard; it was crazy. I don't know why all of a sudden the water moved, it's going a different way. Years ago at the top of Douglas Drive a culvert was filled in and it's hard for Dennis to dig it out now because they put power, they redid the power in that area so it's high voltage lines in the ground and we don't want Dennis to die because we love him. All of that property is ledge. That whole subdivision is ledge, so there's no place for the water to drain into the ground. We need the trees to suck it up.

T. McKinnon said I pay my taxes every year, I've never been late. What am I to do if not build on that property? All the drainage issues that have been raised so far exist whether the home goes in or not. Like I say, we checked with the Secretary of the State about 20 years ago, no problem. Now when I bought the lot, the taxes on the property were about \$120 a year. We just sent a check in for over \$2,000. What I'm saying to you, I don't want to get the flag out but I'm a disabled Veteran. Four years in the Air force and a year and half with an outfit in the Army. I've got two honorable discharges. I was there when my country asked me and now I need government, all of you represent authority, now if that variance is not granted, it would be not granted for the wrong reasons. I didn't do anything to create the poor drainage and the gentleman was right. But that's a Town issue. That's something that someone in a position of authority someday is going to have to address. B. Petrin commented well maybe we're going to address that at some point through this Board. Thank you for your commentary.

Abutters Matt and Emily Pattison of 118 Douglas Drive. M. Pattison said we purchased the house from the McKinney's so we're uphill from the vacant lot. I think what the map doesn't really reflect is how steep the grade is into the brook. It's very very steep so it would be difficult to get any equipment, any type of foundation structure built on that property.

I. Byrd said my question is how can we make a decision of any kind on this when we have three different acreages. 1.0, 1.7, 1.3. We don't know what we're talking about. You can't make a decision until you have that information number one. Number two, a wetlands is a wetlands for a definite reason. It got voted to be a wetlands to protect everyone and that includes you in your first house; it includes everyone. You don't have the right to demand or to ask that 50% of that wetlands be kind of changed because you want it to be changed.

Abutters Mark Raumikaitis and Amy Ackroyd of 34 Douglas Drive. M. Raumikaitis said the top of the proposed foundation is 13' above the low point of that lot that gives you an idea of the steepness. The driveway that's been mentioned is narrow, it's held in place by a loose stone retaining wall that will require a significant amount of work to make that a driveway. When you walk the lot, look at the slope and where the driveway will be. The turnaround will require a significant amount of fill to make that a usable lot. Going forward, it's listed for sale, it's actually under agreement for sale, that this particular property has a 4 bedroom septic design and it's listed as a 3 bedroom house so they're already planning, once the developer builds this building, they're already planning on having this changed. The other thing, I want you to look at the slope, that's the most important part of this discussion. I think you're aware that twice in this Town in the Master Plan has voted these wetland buffers and also a wetland conservation survey done in 2011 that the Conservation Commission put together. That document is available for you to review and it talks a lot about Hook Brook; 1.9 miles long and the wildlife in that area and a riparian buffer in that area for wildlife. When you walk that, please pay attention to the slope.

Abutter James Levine of 117 Douglas Drive: J. Levine said I'm across the street from where the proposed house is. It seems there would be a reason why there were no house built in the past there. Why during the whole development building time, no houses were built on that lot. It doesn't seem feasible.

N. Viviers commented the owner wasn't ready to build.

Dennis Lewis, Road Agent said we all know the drainage issues exist in that subdivision. They're hard to fix because of the utilities in there haphazard. Some are a foot down, some are three inches down, there's no rhyme or reason to it. The amount of water that passes through this lot is tremendous when you get a flood situation or like we had this summer with 2-3 inches of rain. If you were to approve and grant this variance I think there should be engineered drawings from a licensed engineer showing where the

water is going to go, how it's going to get there, what amount of fill, exact encroachment of the wetlands, it should show all that in detail. A site walk would definitely be a plus because there are steep slopes. That driveway is very narrow and I think an engineered set of drawings would be in order here. There should be no net gain of water exiting that lot if there were to be a house built there.

B. Petrin closed it to public comment. B. Chivers said I think Judith had a good idea, we continue this and do a site walk in a time convenient for the Board and the public. J. Szot said I don't know if Len Drew is still around. Len built that original subdivision and all through this thing I was thinking, as Mr. Levine was, why was this...there a couple of places in that subdivision that were just lots. There were reasons why they left them that way. They left them because of the significant water and they didn't build on them because of the significant water. They built everywhere up on that land why did they leave these lots, where they never built on there and it doesn't seem to make a lot of sense that if these were viable lots; it would be interesting to hear from Len, if he's still around, to hear his take on if these lots were left for a specific purpose or left because they were non-buildable because of drainage. If you go up Flint Road across from Mr. Batzdorf, water runs through that lot, right across behind the Kelso's. That area is all wet. It's obvious why it's never been built on there's not a dry piece when you look at this one acre lot. It would be interesting to know what the square footage of that triangle is that's buildable land. That might say why it's never been built. Is it 5% or 10%?

J. Szot asked Mr. Viviers the part that's actually buildable here, what is the percentage of the lot? N. Viviers answered I don't know, it's a very small building envelope, that's why we're here. Essentially somebody could design a house that shape and put a house there and not come to this Board. If you want a tiny house there, that can be done. It can be done and it can be done without coming to this Board. We're trying to put a house in the neighborhood here that fits the character of the neighborhood. If you want a tiny house, we'll put a tiny house. Done. B. Petrin said Mr. Viviers we're going to decide how we're going to proceed at this time and if we're going to do a site walk or not. J. Szot said I would like to recommend that we do a site walk that we continue this hearing....N. Viviers interrupted I've never been to a ZBA meeting where the Board didn't go to a site walk before the meeting. What's this about? I'm sorry. I. Byrd said I don't like your tone of voice. N. Viviers replied well it's extremely unprofessional. B. Petrin said I guess we don't see what we need to see on the drive by I guess. J. Szot said honestly, it's a little hard to see, this tiny little map. There are no contour lines on this map. People have brought up problems...you're finding fault with us. N. Viviers continued I would have provided anything you wanted. I went by the guidelines of this Town. If the Town had said put topos on there, gladly I would have complied. If the Town wanted 24 x 36 maps, I would have gladly complied. The problem is the Town has no specs as to what I'm supposed to present to you; if there is no spec and no guidance....B. Petrin asked but you are willing to work on this with us yes? N. Viviers replied this is something we work together. There is a Zoning Board of Adjustment for specific cases. This is a textbook case of why the Zoning Board of Adjustment was created to begin with. There's an owner here who hasn't built on his land because he's chosen not to. That's why the site hasn't been built on. He's chosen not to build on that site until now. Now he's aged, he doesn't want to be in the country, he wants to be in the city. I bought this lot. I bought it as a building lot. It was approved by the Town of Candia as a building lot. There's no restriction in the deed. There's nothing on the plan that says it's not a building lot. This man bought a lot; these people bought a lot thinking that someday they may build their dream house. They don't want to be in the country anymore. Here they are. So here we are and everybody's problems with everybody's drainage with their house, the neighborhood, the roads, the poorly designed roads, are all relative to this lot? Really? I'm sorry, no.

B. Petrin asked for a motion. J. Szot said let's continue this to our next hearing and set up a time that's convenient for everybody to go on a site walk. You're purchasing this lot from the McKinney's and building; it's not going to be their house. N. Viviers continued correct it's going to be a spec house. A three bedroom house. The realtor listed a piece of land and she listed the piece of land with the owner having information from an engineer that said there was a 4 bedroom septic design. So she listed it in MLS saying that there was an expired 4 bedroom septic design but once upon a time there was an approved plan on the site. No, we're not trying to bury anything. We're not trying to hide anything. We're

not going to change the plan as I've already been accused of. Talk about hostility. R. Howe commented I don't think there's anybody hostile here. Could I ask a question? Is there any reason why you can't turn this house 90 degrees? N. Viviers replied if we went into that building envelope and that's what I'm looking at doing, I've done this in Manchester before and it ends up being the ugliest thing in the neighborhood. We can work within....R. Howe replied but nobody's going to see it, from what you're saying. N. Viviers replied there's one neighbor to the north, he can look at it and that's fine. R. Howe said but if this was turned 90 degrees then you wouldn't have a setback problem. N. Viviers said no it would be tiny house; it would be an odd design, an odd shape. R. Howe said ok. J. Szot said what I asked is what percentage of this one acre lot that's buildable and it's this tiny part. This is the only part that's buildable land. N. Viviers replied that's why we're here. J. Szot continued so if you ask yourself why was this lot never built on, why did they leave this lot. R. Howe replied I don't understand why this lot wasn't divided into half and made part of two other lots and that's not your problem or the owner's problem. N. Viviers said that's a valid point. I did some research. When did this 100' setback come into play? J. Szot said its state law. N. Viviers said in 1973. J. Szot said no. N. Viviers said there's your answer as to why it hasn't been built on. I. Byrd said its state law and you have to abide by it no matter when it came in. Right now is what where talking about. J. Szot commented you have to abide by what's in play at the time you're wanting to build. You can't come to us and say this was subdivided in 1973 I have to go by the rules of 1973. You can't. N. Viviers commented I understand the restrictions. I understand the restrictions get more difficult but that's why there's a Zoning Board of Adjustment. That's why the Supreme Court created the Zoning Board of Adjustment to create relief to zoning issues and that's why we're here. If you've got a suggestion on how this site should be developed or could be developed, great. All the neighborhood's problems are not relative to this lot. It sounds like there are some very poor design issues for whoever the engineer who designed this thing, did a terrible job. J. Szot commented you're looking for relief look at the relief that you're asking for, 50' setback to the poorly drained soils and you're asking for 40' of that 50' and that's just for the building not to anything else. If anybody is going to walk around that building, they're walking in the poorly drained soils. N. Viviers replied no, no they're walking in a setback. We're 60-70 feet away. J. Szot continued, in the setback, okay. There's 10' from the poorly drained soils and 60' from the very poorly drained soils. N. Viviers said no, no okay. J. Szot continued if it's 100' and you're going 40' in, it's 10' from poorly drained and 60' to the very poorly drained. N. Viviers said if you approve it, great, I'll build another house here. If you don't, I won't. This is just more...

I. Byrd asked the Chairman for a decision. B. Petrin said there are two ways we can go, we either go for a site walk or vote on it now. J. Szot said I think it would be fair to go and look at it. R. Howe said I think we owe it to these people to do a site walk.

N. Viviers stated I look forward to hearing from you. I gotta go and left the room.

J. Szot said we have to set up a time and the abutters are welcome to be at the site walk it's a public meeting. The Board discussed a time and date to do a site walk of the site that would be a good time for abutters to make it as well.

T. McKinney said may I clarify a point. The reason that the lot doesn't have a house sitting on it right now. We have four children that we raised in Candia and I hoped one day to give them the lot so it was a matter of just choosing not to build it and inevitably nobody wanted to live next to their parents.

J. Szot said so for the abutters you will not get noticed for next month that this hearing will take place but it's on the fourth Tuesday which is the 25<sup>th</sup> of September at 7:00 and the 8<sup>th</sup> at 9:00 in the morning we will be walking.

### **MOTION**

J. Szot **motioned** to continue this case to next month, September 25th and we schedule a site walk on Saturday, September 8<sup>th</sup>, 2018 at 9:00 am. B. Chivers **seconded**. **All were in favor. Motion carries (5-0-0).**

**Case 18-636** Applicant: Phil Borriello, 304 Raymond Road, Candia, NH 03034; Owner: Lawrence Stacy, 91 Deerfield Road, Candia, NH 03034; Property Location: Old Candia Road; Map 410 Lot 164; for a Variance under Article VI Table of Dimensional Requirements: Section 6.02 Lot Area-Acres. Intent: To build a metal shop within the lot area for the manufacturing of metal products on a 1.4 acre lot in the LI2 district.

Present: Applicant Phil Borriello; Owner Lawrence Stacy

Abutters Present: None

Phil Borriello introduced himself and said I'm the purchaser; I'm buying the lot from Stacy. We're going to put a metal building up and run my fabrication shop out of it. We make after market airplane parts, race car parts. I. Byrd asked wings? P. Borriello replied no we make parts like bell cranks, we have a machine shop, sheet metal type shop. B. Petrin asked what is the nature of the material you work with. P. Borriello replied mostly aluminum, steel. B. Petrin said cutting, grinding, disposing. P. Borriello agreed, yes. All of the above. B. Petrin asked finishing, coating? P. Borriello said no we don't do any painting, it's sent out for that. J. Szot asked what kind of chemicals do you use on the site. P. Borriello said we don't use any chemicals. B. Petrin asked no etching? P. Borriello replied we use welding type gassing and we use cutting oil in our milling machines. B. Petrin asked how is that contained, in the machine itself? P. Borriello replied yes, it's all biodegradable solvents that we buy. Anything we get rid of is safety cleaned. We use strictly biodegradable stuff. B. Petrin asked is this whole lot wooded? I don't see big openings there. P. Borriello said mostly wooded. It has some wetlands in the corner. I. Byrd asked where exactly on Raymond Road is this. P. Borriello said its right at the entrance to the city barns. B. Petrin confirmed the DOT shed. P. Borriello agreed. B. Chivers asked so Mr. Borriello so you're here because you're 6/10ths of an acre short. (*Unintelligible*)...2 acres and 1.4 acres. P. Borriello agreed, that's what it comes down too. J. Szot asked so is this your property right here, the 30' x 172'. Is this the corner of the steel place over here, there's no locus map. P. Borriello said the steel place is across the street. B. Chivers said the use your contemplating conforms to the L1 district so there's no other variance required here, just because your 6/10ths of an acre short. Any wetlands on that property? Do you meet all the setbacks? P. Borriello replied there are wetlands. We don't meet all the setbacks but we wanted to get through this part and then if it doesn't meet the setbacks for the wetlands, then that's another situation. I don't want to keep throwing money at this project. If I don't get through here then there's no sense in spending money to do the wetlands. It's already been flagged. R. Howe asked how much land is there here. The Board replied 1.4 acres. B. Chivers asked how did that lot ever come to *be (unintelligible)*. P. Borriello said I think it's an existing lot. I. Byrd and J. Szot said it has to do with the highway, cutting across it. An audience member said they cut the corner off of J.C. Boatworks when they did the highway.

B. Petrin said the issue appears to be just the lack of land. J. Szot asked how is the issue of the wetlands going to be addressed. B. Chivers replied we don't know because we don't know what they have there so take one issue at a time. J. Szot said there's nothing here so is that something the Building Inspector's going to address? D. Murray said this is a lot of record. J. Szot agreed. D. Murray continued as far as the wetlands go, this will have to go to the Planning Board for a site plan and everything else. This is yay or nay on the lot. J. Szot said so our issue is that it's a pre-existing, non-conforming lot. B. Chivers agreed. B. Petrin said we've been here before with others and determined that it wasn't necessarily a problem to grant such a thing. It's a reasonable use of land. R. Howe said it is and what else could you do in that piece of property.

I. Byrd asked what happens when you manufacture parts, what do you do with the scrap and the leftover and the debris. Do you bring it to the Town transfer station? P. Borriello replied no, the metal gets recycled. The aluminum and steel is recycled. I. Byrd replied I'm asking because we've had a history of somebody doing metal fabricating business and it ended up being a complete boondoggle. Where is your debris going? P. Borriello replied I'm a clean guy, I like everything neat. I. Byrd said as long as it's not the Towns problem. R. Howe said the scrap would probably go in a couple of dumpsters. P. Borriello corrected they go in 55 gallon drums and then the guys in Northwood come down and pick it up. Harding.

J. Szot went through the variance criteria following it up with an explanation for each one from “The Board of Adjustment in New Hampshire November 2015 Handbook for Local Officials”

1. *The variance will not be contrary to the public interest.* All agreed that it's not contrary to public interest as the business is allowed in the area.
2. *The spirit of the ordinance is observed.* All agreed.
3. *Substantial justice is done.* All agreed.
4. *The values of surrounding properties are not diminished.* All agreed.
5. *Literal enforcement of provisions in this ordinance will result in an unnecessary hardship.* This land was subdivided at a previous time and because of the highway ended up with this characteristic. There is a hardship because it's a pre-existing non-conforming lot. All agreed.

J. Szot said there should be a formal vote. They went back through and agreed (all in favor) to all five variance criteria.

**MOTION:**

J. Szot **motioned** to grant the variance under section 6.02 of the ordinance. I. Byrd **seconded**. **All were in favor. Motion passed (5-0-0)**. B. Petrin said you'll receive a notice of decision.

**Case 18-637** Applicant: Cynthia C Nye, 112 Lane Road, Candia, NH 03034; Owner: same; Property Location: same; Map 414 Lot 148; for a Variance under Article X Wetlands Protection: Section 10.06B Buffer Provisions. Intent: To re-locate an existing 28 x 36 garage from lot 414-150-1 to 414-148. The garage would be approximately 45' into the 100' wetlands buffer setback.

Present: Applicant Cynthia Nye and Doug Nye.

Abutters: Present: None

Douglas Nye introduced himself and said I'm one of the owners of this property, 112 Land Road and Cynthia Nye introduced herself. D. Nye presented a black and white copy of this but we colored it so you could get a better feel of what we're trying to do. We have a garage on the east side of 112 Lane Road it's on lot 414-150-1 and we want to move that to the west side. B. Petrin said 414-148. D. Nye agreed. I had applied for a building permit thinking we didn't have a wetlands issue but Dave pointed out that I possibly would have a wetlands issue. So after doing some investigation we found a site map that was done for the previous owners and it did show that we were into the 100' wetland setback for very poorly drained soil, which is indicated in this, the blue hash marks. The driveway is not paved, it's gravel and existing. There is a grassy area that goes behind it and we are upland of the wetlands. We're not within the wetland area or the drainage area. I would say the very poorly drained soil is about 20% of the entire lot which is 9.9 acres. There is some poorly drained soil and there is a small creek that runs through the middle of the site. B. Chivers asked so is the plan to pick up that garage and spin it around. D. Nye said we talked about spinning it around but it would be easier to just skate it across. We would relocate the doors and the framing would allow us to do that. To turn it 90 degrees would be another set of things that you would have to do. You'd probably have to put it on a truck to turn it around. They'll pick the building up. I've already talked to the Police Department about closing down the road for an about an hour and I think they talked to you (*Dave Murray?*) and you were good with it. So they pick it up and it would be high enough to get it over the stone wall so they put it on steel beams and run it on skates. B. Chivers said so they jack it up and slide it over that wall and set it down. Who's going to do that? D. Nye replied Rick Geddes, Building Movers. B. Petrin asked if it was currently on a slab. D. Nye responded no it's a two story building with a wood floor. B. Petrin asked what will happen with the basement of that once you move it. D. Nye said it will be a walk out. Here's the cross section. This is existing with a wooden floor with a basement underneath. We'll put in a new foundation to code and drop that existing structure right on top of that. There is a retaining wall right here. C. Nye said the grade is higher up here and then it goes

down in the back. I. Byrd asked what are you going to use it for. C. Nye replied we don't have a garage. The garage is across the street to park our cars. I. Byrd said I was thinking of horses. C. Nye replied oh no. B. Chivers asked so you'll fill in that old foundation then. D. Nye replied yes, so this is facing the new location. This is facing south, towards Raymond. If you go towards Crowley Road that is the view and you can see this large retaining wall there right now. So we want to bring it as close to that retaining wall, put a foundation in there, fill in around it but maintain the walkout. We're not going to disturb the existing green area that's there now. It will be disturbed during construction and we'll put up silt fences and everything that we need to do but where this grass area behind it is will be maintained. J. Szot asked those trees are going. D. Nye agreed, those trees are going. I call them the widow maker; they almost took out my suburban. Couple of big logs have fallen off those trees. B. Chivers asked what is the maximum encroachment to the buffer. D. Nye said we'd like to line it up with the edge of the 1738 house. We're about 45' feet, the back of the structure, would be about 45' into the wetlands. C. Nye corrected wetlands setback. B. Chivers replied where you're required to have a 100' you're going to satisfy with 45'. D. Nye continued we've got 55' that we're going to maintain and we're also keeping the new location within the 50' setback from the front of the property. B. Chivers said so to meet that 50' setback it has to be that far back. D. Nye replied no, it doesn't have to be that far back but for aesthetics and lining it up with the edge of the building. I. Byrd commented keep it in spirit with the house. D. Nye continued and also from a driveway flow. One of the main reasons we want to move this thing is we're 7 feet off the existing road. If you look at the south elevation you can see how close we are to the road. This is the tape (*measure*) from the foundation to the pavement and it's at 7'8". Pulling in there in the winter and if you've been on that road, it's a straightaway is where they open up their cars to get to Raymond. R. Howe said this existing house, an old house, is already in the wetlands setback. B. Petrin said I don't think you satisfied my question about what is going to happen with the basement of that after you move it. It's a sheer drop at 7'. D. Nye said it is there now, whatever the Town recommends we do. I can build and continue the stone wall that exists there now, fill it in or put a guardrail up. Currently that slope is very severe right there. B. Petrin said and it goes down to another structure in the hole here. There's another garage down in there, do you own that as well. D. Nye agreed. It's steep now to begin with. From a safety standpoint it would make sense to put a stone wall in there so if someone veered off. B. Petrin said and you don't need access to the other structure here. D. Nye said there's another driveway that comes down through here and back out on Crowley Road. B. Petrin said so you would use that to access that and you wouldn't need to change the grade. D. Nye replied no, I would probably just continue that stone wall right through. Board agreed. J. Szot said there seems to be a patio over here. D. Nye replied there's a stone retaining wall and a set of stairs that come up to the side door of the house and I'm not disturbing that. J. Szot commented and that's why you can't push it over more. D. Nye said those trees they would be in the way for me to do it there. The idea is to pick this thing up and go straight across if we can. Discussion ensued between D. Nye and J. Szot about the trees. D. Nye said we could take down these two massive trees and then bring it over and come across. We could do it but for the sake of ease we discussed it with the building mover. We'd still within the 100' setback. I don't even think if we put the building tight to our house we'd be in the 50' setback. J. Szot said no, I can see the setback line and this is the 50' poorly drained soil.

B. Chivers said I'll read through the variance criteria and we'll vote on each one. The Board of Adjustment shall hear and decide requests for variances from the terms of the ordinance. No variance shall be granted unless all the following criteria are met;

1. *The variance will not be contrary to the public interest.* All agreed.
2. *The spirit of the ordinance is observed.* All agreed.
3. *Substantial justice is done.* All agreed.
4. *The values of surrounding properties are not diminished.* All agreed.
5. *Literal enforcement of provisions in this ordinance will result in an unnecessary hardship.* All agreed. J. Szot said the characteristic of this property is that the house already exists and it's already in the wetlands.

B. Petrin said I'd like to suggest a condition. They were kind to offer or suggest they might continue the stone wall. I would suggest we make that a condition to retain that safety barrier and for the continued aesthetics of that wall in the surrounding area. D. Nye replied I have no problem doing that. B. Petrin said you suggested you might do it anyway and I'd like to suggest it be a condition. D. Nye replied I have no problem with that.

**VOTE:**

B. Chivers said I move that the applicant be recognized as having met all five variance criteria. All were in favor of accepting the variance criteria (5-0-0).

**MOTION:**

B. Chivers **motioned** to approve the variance under section 10.06B of the ordinance allowing the removal of the garage across the street to be relocated provided they agree to continue the stone wall as a safety improvement where the former foundation was. B. Petrin **seconded**. **All were in favor. Motion carried (5-0-0).**

B. Petrin said you'll receive your notice of decision in the mail.

Boyd thanked them for a nice presentation stating he wished more people would present with photo boards, "our job would be a lot simpler if more people used that."

J. Szot said to Boyd the reason I was going through this is because sometimes I don't think the public understands what it means when we say that. I went through our handbook and tried to write out what does it mean when it's not contrary to the public interest. What does it mean when the spirit of the ordinance is observed etc. I. Byrd commented but it needs to be shorter. J. Szot said it's important for people to understand what we're doing. B. Petrin said can we meet in the middle to make it easier for Andrea because she's got to transpose all that. Maybe you could say I'm citing this and she can fill in the blanks. In the minutes she can say "I'm reading from this" and they research that as it's reflected in the minutes. J. Szot said she doesn't have to do them verbatim. A. Bickum replied but I do. J. Szot said I know you do. Or just put explained criteria one and two etc.

**Other Business**

- **Consistent Method for Voting on Variances. Chapter 168 (HB 1215)** requires that a zoning board of adjustment use one method consistently for voting on all variance applications. The board may change its voting method, but any change may not take effect until 60 days after the board has voted to adopt the change and may not apply to any application that has been filed and remains pending at the time of the change. **Statute amended: RSA 674:33, I and V. E.D. August 7, 2018.**

*The Board discussed about consistent voting on variance criteria.* J. Szot commented we can talk about the things but in the end, go through and vote on each one because you have to give findings of fact. Especially in a case where you deny an applicant; you have to have a consistent procedure. B. Chivers said we'd need to amend the bylaws to incorporate the provision. Put it on the agenda for next month. B. Chivers said it's up to us to set up the procedure. We'll look at what the statute requires and do that. J. Szot said your procedure would say the Board's going to read through and explain each section of the variance criteria and after that discussion the Board will vote on each of the criteria. You have to notice it.

- **Review of Budget** – Any changes for 2019 – No budget changes for 2019. Postage is our big thing and we're always under budget on that.

- Finding Alternates. B. Petrin asked resident Becky Hopkins if she was interested in being an alternate. B. Hopkins said I'm just educating myself; 15 year resident on Baker Road. J. Szot said we're looking for alternates so if you are interested, just submit a letter.

R. Howe said I believe next month we may have a case with Sis and Matt Richter and I'm going to recuse myself, Matt's my son's best friend and they live together. You'll be down to 4 people. I told Matt that and he's aware of that.

**MOTION:**

J. Szot **motioned** to adjourn at approximately 8:35 pm. B. Chivers **seconded**. **All were in favor. Motion carried (5-0-0)**. Meeting adjourned.

**Douglas Drive Site Walk on Saturday, September 8<sup>th</sup> at 9:00 am**

Respectfully submitted from recording,  
Andrea Bickum  
Recording Secretary

Cc: file