

CANDIA ZONING BOARD OF ADJUSTMENT
Minutes of September 25, 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; Dean Young, Fire Chief; Al Hall, Vice Chair of Planning Board.

Approval of Minutes: August 28, 2018 and site walk minutes from September 8, 2018

MOTION:

I. Byrd **motioned** to approve the minutes from August 28, 2018 as presented. **B. Petrin seconded. All were in favor. Motion carried (5-0-0).**

J. Szot wanted to add to the site walk minutes the amount of trees that needed to be cut. Trees are on the slope. That all of the work would necessitate further incursions into the wetlands. The well is on the slope and there are a lot of trees that would need to be cut for the drilling rig to access it. The drilling rigs going to be on a slope. The disturbance of all of those soils. This is my copy of the minutes and I wrote them on here, I'll give you this. I had a concern about the amount of damage to the soil. Loosening that soil; getting in there to cut and remove the trees is going to cause that water to flow onto those two back properties. B. Chivers clarified that J. Szot was amending the site walk Minutes. J. Szot agreed.

MOTION:

B. Petrin motioned to approve the site walk minutes from September 8, 2018 as **amended**. **B. Chivers seconded. All were in favor. Motion carried (5-0-0).**

Continued 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: Timothy & Barbara McKinney; Legal Counsel, Daniel Muller of Cronin, Bisson & Zalinzksy, PC of 722 Chestnut Street, Manchester, NH 03104.

Abutters Present: Robert Caron of 108 Douglas Drive.

B. Petrin said this was a continuation so the abutters weren't notified a second time from the original noticing. A. Bickum agreed, correct. B. Petrin continued is the applicant present this evening. No, the owners are present but is anyone here to speak for the applicant? Alright. What are our choices here, we don't have anybody to talk to. The applicant has not sent in a designee. Normally we would approve something, deny it. An applicant would withdraw. I don't know if we have the power to close without finding or do we continue.

B. Chivers said well the applicant was notified that this meeting was going to be continued, Andrea is that right? It's their choice not to be here. Did they call to excuse themselves? A. Bickum said Dave found out this morning that he's traveling. B. Chivers said is he on his way here? A. Bickum replied no, he's

traveling, I don't even know if he's in the country. I don't know where he is. B. Petrin said do we have the power to close something without finding? J. Szot asked didn't he make a statement that he wasn't coming back? A. Bickum replied he told me that the day after the last meeting when I spoke to him on the phone that he wasn't going to come back but that he said he would let the lawyers deal with it. J. Szot said did he designate someone. B. Petrin said there's no designee here. A. Bickum replied we just got the letter from the law firm for the McKinney's. B. Chivers asked is this counsel for the applicant? J. Szot said no for the owner but the owner's not the applicant. B. Chivers said what do we do. J. Szot said we close the case without findings because we have no applicant here. I. Byrd agreed. B. Petrin said we can't continue it because we didn't agree on a continuance. It's got to be both, a two party agreement correct. J. Szot replied well he didn't ask for a continuance. Usually a continuance is granted because the applicant asks for a continuance but it would have been easy...did you write him a letter that he had to designate someone as....A. Bickum said I sent that to his real estate agent who was asking about it. B. Petrin said I think he knows the rules so do we have the power to close it without finding and then if it comes to pass again, they have to start the process over. J. Szot responded yes, I agree.

MOTION:

I. Byrd **motioned** to close the case/hearing without a finding due to the applicant not appearing for the continued hearing. B. Petrin **seconded**. **All were in favor. Motion carried (5-0-0)**. Hearing/case was closed without a finding.

T. McKinney said excuse me. We're going to postpone this another month? B. Petrin replied no sir; we just closed it without finding. The applicant has not shown to continue the case. We have a two part agreement; the applicant is going to meet with us to discuss the merits of the application. J. Szot said and you're the owner but you didn't apply for the variance. T. McKinney replied you might notice for me to walk is a little tough. J. Szot replied we understand that sir but you didn't apply and the applicant is not here and the applicant has made statements that he's not coming he's leaving it to his lawyers and I believe the letter said he had to have a written designation if I remember correctly and I might not but I believe the letter stated specifically. Our rules require, if the owner does not come to the hearing then the owner has to designate someone and has to have a notarized letter stating that this person represents them. Because we have had people come before the Board to talk about property and then had the owner come in the next meeting and say I didn't send this person, why are you talking about my property? T. McKinney says everybody sues everybody, I understand that we live in that type of world. J. Szot said but you are not the applicant sir so we can't hear the case because you didn't apply. I. Byrd said it had to come from the man who applied who's traveling.

T. McKinney asked is he allowed at the next meeting to come. B. Petrin replied no we had an appointment to continue it tonight and he's not here to hold his portion of it. J. Szot added if he couldn't be here he could have asked for a continuance. If he knew that he was not able to be here because he had previous plans to be out of the country, he could have called the Board and said I've forgotten that I made other plans, I'm unable to be there, can I continue for another week, meeting. I. Byrd corrected another month. J. Szot continued and our Board would have given a continuance if he had asked for it but he didn't ask for it. T. McKinney said this is my attorney right here I'll let him. B. Petrin said I'm not sure if you can say anything germane to the proceedings.

Attorney Daniel Muller replied I understand what the Board is saying and I will explain to the McKinney's outside what the Board's position is so everybody understands. I know what you're saying, you need essentially all Boards require an affidavit if someone is going to represent the applicant and act as their representative and you need that for the file and you do not have that. The Board agreed, correct. J. Szot added because then Mr. McKinney could have kept this case going. D. Muller replied understood.

Abutter B. Caron asked if this process starts all over again, all the abutters will get notified correct? Board agreed. That's correct. I. Byrd said it would start all over.

Case 18-638 Applicant: Matthew & Krystal Richter, 28 Deerfield Road, Candia, NH 03034; Owner: Arlene Richter, 34 Deerfield Road, Candia, NH 03034; Property Location: 34 Deerfield Road, Candia, NH 03034; Map 406 Lot 23; for a Variance under Article VI Table of Dimensional Requirements: Section 6.01E Lot Width and Section 6.02 frontage; Intent: To allow a lot with frontage of 105 feet where 200 feet is required and to allow a lot width of 105 feet where 200 feet is required; in order to permit the subdivision of Map 406 Lot 23 into two distinct parcels to create one new buildable lot.

Present: Applicant Matthew & Krystal Richter; Owner Arlene Richter; Attorney Justin Pasay of Donahue, Tucker & Ciandella, (DTC) PLLC of 16 Winslow Lane, Exeter NH 03833.

Abutters Present: Denise Richter of 28 Deerfield Road, Candia, NH 03034.

Ron Howe recused himself; I'm too close to the family. B. Petrin said we do not have an alternate to appoint so we are going to proceed with four Board members if you're in agreement with that. J. Pasay agreed no objections. B. Petrin asked have the abutters been notified? A. Bickum replied yes. B. Petrin asked who's talking about the case the Richter's or are we being represented by counsel.

Justin Pasay introduced himself. I'm here on behalf of the Richter's from the law firm of Donahue, Tucker & Ciandella out of Exeter. We have a letter of authorization from Arlene Richter who is the owner. J. Szot said but she's here. J. Pasay agreed, she's here so we have all our bases covered. I. Byrd asked your law firm has represented me and my husband in the past; Charlie Tucker and one of the other gentleman, is that going to be a problem for anybody? J. Pasay replied first thank you very much for your candor. If a Board member having been represented by Charlie Tucker disqualified me from representing clients before land use boards I wouldn't have any work because the man represented half of New Hampshire. I'm comfortable with it and my clients are comfortable with it so thank you. The first thing I want to do is give you a blown up version of..oh it looks like you already have one. This was exhibit one to our application but I blew it up to make it more accessible. J. Szot said I left all my paperwork at home in my rush to get out I'd like to just call my husband to see if he could bring it down if that would be okay. I've made notes and gone through a book from the state and I wanted to have my notes. I'll call him and ask him. B. Petrin asked if it would be okay to proceed. J. Pasay asked if he didn't mind to wait for J. Szot so everyone would be on the same page.

Board agreed to wait and took a short break waiting for J. Szot to come back.

J. Pasay said again, I'm Justin Pasay with DTC, here tonight with Matt and Krystal Richter who are the applicants and Mrs. Arlene Richter, who was a long time member of this Board who is the underlying property owner. The property is 34 Deerfield Road; it's assessor map 406 lot 23. It's in excess of 12 acres, 12.9 acres in size. It's 2/10ths of a mile from High Street on Deerfield Road. It's within sort of that area that's been designated and talked about as part of the Four Corners or Central Village District zoning initiative. I. Byrd commented which hasn't passed. J. Pasay agreed, correct I know it's been a subject of discussion with the Town over the last year or so. I. Byrd confirmed several years. J. Pasay continued in general the property is surrounded by other, as you're heading out of Town you're heading up Deerfield Road and you're surrounded by other residential properties, many of which are significantly smaller and many of which have significantly less amount of frontage on Deerfield Road as the property we're talking about, which has 305 feet of frontage on Deerfield Road. And the proposal that we're talking about is depicted in this lot that Jim Franklin prepared for us is to subdivide Miss Richter's, Arlene's existing property into two distinct lots so that Matt, Arlene's grandson, and his wife Krystal can build a house. It's not always a case that needs types of matters we can discuss or the equities but the equities behind this case is the fact that Matt who grew up in this Town and his wife Krystal want to establish themselves in Town. Want to lay roots even more than those that are existing with the Richter family who have been here for generations and want to start a family here. This is the way they can do it. Like many young people they're faced with this dilemma of wanting to go home and raise kids where they grew up but with property values the way they are, frankly I'm in the same situation, it's difficult.

What has been proposed in working with Mrs. Richter is to subdivide her lot as depicted on this plan. And the result of that subdivision will be two lots. One will be Mrs. Richter's lot which will be conforming in all matters to the zoning ordinance. We'll have sufficient lot frontage and sufficient lot area. The setbacks are all satisfied. In all respects it will be a completely conforming lot. Matt and Krystal's lot, the proposed new lot, as is depicted on this plan will be non-conforming as to the frontage. The amount of frontage will be 105 feet and the lot width. As this Board is well aware the zoning ordinance requires 200 feet of frontage and a depth of 100 feet of the minimum amount of frontage so we don't meet either of those requirements and Matt and Krystal sat down with Mr. Murray, the Building Inspector who sent the letter which we included in our application which essentially said if you want to do this you need this relief from the Zoning Board. That's my last point; this has been a process that's taken several years to come into fruition. As we talked about in our application, Mrs. Richter herself was before the Planning Board in 2016 about this same issue, what can we do, there's a right of way, there were some questions about whether the parcel was once parcel or three parcels. We've resolved those issues, it is one parcel. After that Planning Board meeting, an informational that Matt and Krystal attended in July of this year, it was determined that this is the only route for them if they want to lay roots in Candia and start a family here.

I. Byrd asked what the Planning Board determined because I'm sure you asked for the right to divide the parcel. What was the Planning Board's answer? J. Pasay replied there was discussion and the minutes from that meeting are in our application, we included those. There's a long discussion about other areas in Town where there are rights of way traversing over property to access land locked properties in Town and I think there's a description in the minutes of like 10 or so properties in Town that meet that description but ultimately what they said is you need to talk to the Zoning Board and our regulations require 200 feet of frontage on a Class V or better road. You don't have that here so the only route you can go is the ZBA route and get a variance from the frontage requirement. Then on the 21st of August when Matt and Krystal sat down with Mr. Murray, he explained in further detail the specifics of section VI of the zoning ordinance which was you need relief from 6.01E the lot width portion and you need relief from 6.02 which in the residential district you need 200 feet of frontage. So that's how it all boiled down but it brings me to my last point before I turn it over to Matt and Krystal briefly so that they can give you more of the content and substance of what their proposal is. And that is, this is just the first step. If we are fortunate enough to get the relief that we're looking for from this Board, Matt and Krystal really have to go on with Jim Franklin and go to the Planning Board and start the whole subdivision process again which you know will require them to present plans and do the topography and wetlands analysis. Our view of the property is that it's very favorable for residential uses. It sort of slopes up to the west as you go back towards the end of the lot. There's a really pretty wall about half way back, the lot which will be the new, end line for Mrs. Richter's lot if it is subdivided. It's well suited for residential property but they'll have to go through that whole process with the Planning Board. So this is just the first step and we think that on the equities but also on the actual law, the variance criteria, that we satisfy the elements and we hope that ultimately we get the variances today. J. Pasay turned it over to Matt and Krystal.

B. Petrin asked he seems to allude that you don't have any plans drawn up yet so it's premature to ask you about building envelopes and what are the plans with the property. Assuming you're building envelope is in the center of this lot back here, there are no wetlands, no other... M. Richter replied that's a wide open area back there. B. Petrin continued and there wouldn't be any development along what would be this roadway. M. Richter replied our intention is to have that be a driveway or a right of way to the actual property and put a house on the larger square portion of it. K. Richter said I believe when we filled out the application I believe the house would be give or take 2,000 square feet, around there.

I. Byrd asked are you sure about there not being any wetlands because I know there are wetlands on the school's portion of the back land. Does that by any chance extend into yours? M. Richter replied as our attorney had mentioned, the wetlands analysis is still something we're going to do from being up there, growing up on this property, there's one section, I don't even know if you can call it, he's seen it with us, it's not necessarily a wetland but a poorly drained area per se. The portion that's wet at the school runs on the left hand side of the property and continues towards Deerfield Road. In my perspective it

wouldn't be an issue at all to us. It's very dry, it's on the uphill side and this whole area where the print is is where we're looking at setting it.

J. Szot asked Matt that land that's wet is that the little brook that runs across the street. M. Richter agreed, it goes under the street into the fire pond. J. Szot said and there's a little barn fairly close to that little brook. M. Richter agreed, correct. On the opposite side of the street, yes.

B. Petrin asked for any public comment.

Dean Young commented I'm Dean Young, Fire Chief and citizen, I think everyone knows me here. I know the area very well growing up down the road. I'd like to speak in favor of this proposal. I've known Matt since he was a little kid. I know his dad, mother and grandmother. Matt started out liking fire and he's grown up to be a, I don't mean that in a bad way, he's matured to the point where he is a full time fire fighter in Hooksett and I was thrilled, he's a great employee there. It's tough for us to get young people to come back to Candia and want to make their home here and actually be on the fire department. I'll say this candidly, that if I was trapped in a burning building, he's the guy I'd want to come get me hands down because I know his character, his experience and knowledge. Beyond that, his medical knowledge is terrific. He worked for AMR for quite some time. He would be a tremendous asset to the citizens of the Town of Candia hands down, no question. Being that close to the station as he was when he was at home, he was at 90% of the calls. I know it's tough because there are rules but looking at the size of the piece and where the driveway would go I don't think it would be a problem sight wise from my standpoint for safety, not that I'm a policeman but as a fireman, familiar with accidents, I think it's a nice big piece of property that they could make their home and it would be an asset to the Town of Candia to have some young people want to come in, back to Town. My son's coming back to Town. He lives in Massachusetts and he's got some property here in Candia and he's coming back, same as Matt. They're the people who will be sitting here in a few years to take over.

Resident Mr. Al Hall of Adams Road said full disclosure I am Vice Chair of the Planning Board and also one of Candia's commissioners for Southern New Hampshire Planning Commission. I do not speak to either of them tonight. I speak as a person. From what I've seen in Planning Board and SNHPC helping to develop a new village area, of planning, in my opinion, this lot is ideal for what is being planned for.

Abutter Denise Richter of Deerfield Road said I'm Matt's mom. I just want to speak...full disclosure. I think it would be a tremendous opportunity for Matt and Krystal to raise a family on land that's been in our family for many years and it's definitely something we support.

M. Richter said it wouldn't hurt to be that close to mom and grandma anyway.

J. Pasay said Mr. Chair I was intending to go through the variance criteria too I don't know if you want me to do that so you can ask questions. B. Petrin said we will do that at the end. J. Pasay said I'll have an opportunity to address? I want to argue why I think we meet the criteria. B. Petrin said you may make your argument. J. Pasay replied okay, do you want me to do that now? B. Petrin replied if you don't mind we will get to it, absolutely. J. Pasay replied okay, great.

B. Petrin asked what steps have been taken about a curb cut on a state road. If we were to grant this is that an automatic or how does that work? M. Richter replied currently there's an existing wood road that's there, markers, culverts, that is existing. As far as a continued, a driveway curb cut that would be something we'd need to go to the state for. B. Petrin asked Dave Murray if he saw any problems with that on an official capacity. D. Murray replied he'd have to apply for a driveway permit from the state of NH DOT. B. Petrin said line sights are good on that road that sections pretty flat and straight. M. Richter agreed, very much so. B. Petrin asked what about any perking out in that area for septic, it shouldn't be a problem it's not all granite or something? Do you know of that? M. Richter replied it's very sandy surprisingly. B. Petrin said but you didn't get to that stage yet. M. Richter agreed, correct.

B. Petrin turned it over to Mr. Pasay to let him run through the criteria before the Board votes on them.

J. Pasay said I'll quickly address something relevant to the wetlands question and the septic question which is the topography. I was looking at the state maps, I don't think I put it in the application itself, but the lot essentially rises to the west as you go towards the back, about 100 feet. It's a nice gentle

slope and for water runoff purposes, it's a good lot for residential construction and good for septic construction. That's just to answer some of these questions that came up and just briefly I thought I would address the variance criteria. As the Board is aware the Supreme Court has really merged the analysis under the first two criteria those being whether or not the variance will be contrary to the public interest and whether the spirit of the ordinance will be observed by granting the variances. The test is whether or not granting the variances will in unduly and in a marked degree violate the ordinance's basic zoning objectives. Under that the analysis is really twofold. The first question the Board has to ask is whether will alter the essential character of the neighborhood and then secondarily whether or not the variances will be a threat to the public health and welfare. We would submit that the answer to both of those questions is no. It's not going to alter the essential character of the neighborhood. If you look at the plan it's clear. This if anything is going to make the neighborhood more consistent. There won't be this large parcel, the frontage of the surrounding residential properties will be consistent and the size of the lots themselves would be consistent or more consistent with the majority of the surrounding lots, which averaged together, the surrounding residential lots are about 3 acres and we're at 12.9 as it sits today. I think the essential character of the neighborhood will benefit by the granting of the variances it won't be to suffer by it. Secondly there's no threat to the public health and safety and welfare. Generally in a frontage type situation where you're going for frontage relief, you're thinking about things like traffic safety. As the Chair noted and as the Fire Chief noted as well, as you're headed out of Town, Deerfield Road is sloping up, the sight line is straight and I drove by it tonight to confirm my recollection the first time I met Matt and Krystal there. There's an existing wood road; it was historically used, I think Matt and Krystal will have to go through DOT District 6 process to get a curb cut but as a preliminary matter there's no threat to public health or safety here. It's going to be consistent with the many curb cuts on the small residential properties in that area of Deerfield Road. So then jumping towards whether or not substantial justice is done by the variances the question there is whether or not the benefit of granting the variances to Matt and Krystal is outweighed in some fashion by a detriment suffered by any individual or by the public itself and that's not the case. There's a huge benefit to Matt and Krystal to having these variances granted. They can come home, they can lay down roots and start a family in a place they otherwise wouldn't be able to do. There's a benefit to the public because there's another property on the tax rolls. This type of subdivision is consistent with the idea or at least the ideas that are being kicked around by the Four Corners area. It sounds like from the Chief's perspective, the public will benefit by Matt being here and spending more time as a volunteer firefighter here. On the other side of things, I don't discern any detriment to anyone; any public member or any individual themselves that would suffer by virtue of the granting these variances. Certainly there's no evidence of that here tonight and we can't surmise any. Twisting, turning towards the fourth element which is whether or not they'll be any suffering of the property values surrounding this parcel again we would submit that that's not the case here. There's no evidence that surrounding property value would suffer and I would submit that in all likelihood the construction of a brand new single family home in this area of Deerfield Road would have the effect of raising the property value of surrounding properties. Finally the hardship criteria, which as this Board is aware for an applicant to show that there is a hardship and to get a variance they have to show that do and owing to special circumstances of their property that make it distinct from other properties in the area, there's no fair relationship between the zoning ordinance and its application to the property. Certainly I think that that's the case here. As we discussed, the property is unique. It's very large as a residential property compared to the vast majority of residential properties in the area. It's frontage at 305' is significantly more than most of the other ones. I noted it in the application but lot 22, lot 24, lot 25 and 195 all immediate abutters, the most frontage on any of those lots is 130' and lot 25 has 60' of frontage. So we're proposing to make two lots, one which will have 200' the other will have 105' and by virtue of the very special circumstances of this property, that being how large it is and how large the frontage is, it doesn't make sense to apply the frontage requirement to this property because the objective of the frontage requirement and the lot width requirement is to have consistent lot sizes and to benefit public health and safety so that there aren't a ton of curb cuts in a specific area. That won't be the case here because the neighborhood already has that; that is the status of the neighborhood now. The last prong of

the hardship criteria is whether or not the use is reasonable and I would say we satisfy that per se. We're proposing a single family dwelling in a district that is for residential uses. To summarize, I think on the law and the regulations we satisfy the criteria and on the equities it makes a lot of sense to be moving in this direction and we hope that you're persuaded by the evidence and our argument and discussion and we thank you for your time.

B. Petrin said should this to get approved as we run through the criteria, how do we make sure that there's not going to be any further subdivision of that 8 acres or you parcel that off somehow for another lot and then somehow get a shared driveway. What kind of comfort do we get that that's not going to happen should this get approved? M. Richter replied legally is there a way for us to lock into a single family dwelling? B. Petrin responded we could put a condition on an approval that you can't do a shared driveway; you can't further subdivide the 8 acres and say you're going to put another house out there now because you're kids are going to want to live somewhere someday too; generation five. M. Richter agreed, correct.

J. Szot said or the condition could say if it was further subdivided there had to be a road built so if your children wanted to live there and you further subdivided, to put in a road. I. Byrd added to Town standards.

B. Petrin said I bring that up in the event we go forward and approve it that we know that it's not going to get subdivided yet again. If this would be considered fair and equitable to grant this relief could we just call it a day now and there will be no more subdivision from here. M. and K. Richter agreed, yes. B. Petrin continued and if you think you can live with that, there's a measure of comfort.

J. Pasay said certainly New Hampshire law recognizes just statements made by applicants before Zoning Boards so no matter what, if they decided to do that, there would be additional zoning relief that was required but it doesn't sound like there's any objection at all to a condition that says no further subdivision.

B. Petrin replied very good.

J. Szot replied as the devil's advocate could you look at this as a self imposed hardship because the original lot had the frontage and because of the way they subdivided, they took away their frontage. I'm thinking of the Spooner's, remember? Sis will, we denied them a variance because of the way they subdivided their property, did not leave them...they subdivided and put a house in the middle and they didn't have frontage on either side to have another thing. Is it a self imposed hardship that you don't have that frontage because the lots that they cut out of that big lot you would have had the frontage? I. Byrd added there have been other parcels in Town that asked for the same sort of thing and were turned down by the ZBA. J. Szot said the possibility that if the Village District goes through than this is all moot. If the Planning Board can get their act together and get something done, some planning done, then perhaps the Village District could become a reality and then the chances of the Village District having 100' frontage requirement would make all of this moot. You wouldn't need a variance because you would have...the problem with that issue is you have to wait for the Planning Board to get working.

J. Pasay said I was going to respond to the issue of self imposed hardship and I would just note that a lot of case law in New Hampshire around self imposed hardship deal with contemping these decisions made by the same applicant who has on the one hand benefited by a land use decision by the Town but on the other hand goes before and seeks relief in a short order. The underlying conveyances and consolidation of the lots that led to the configuration of the property as it is today are decades and decades old and it wasn't Matt and Krystal, it was predecessors in title of even Arlene so I would just note that this is a little distinct from the type of cases out there where there's discussion about self imposed hardship. This is really a family trying to help itself and give them an opportunity that wouldn't otherwise be there.

B. Petrin asked are there any other public comments? If not I'll close it to the public and we'll review the variance criteria. B. Petrin closed it to the public.

B. Chivers read through the variance criteria. This is RSA 674:33 Zoning Board of Adjustment shall have the power to authorize upon appeal in specific cases a variance from the terms of the zoning ordinance if there's five criteria:

1. *The variance will not be contrary to the public interest.* B. Petrin added and I think we should vote on that now as we go through them agreed. J. Szot said so that means does the variance alter the essential character of the neighborhood or does it threaten the health and safety or general welfare. B. Petrin said it does not. B. Chivers agreed, it does not. I. Byrd agreed. **That's 4 in agreement. Vote of (4-0-0).** (R. Howe had recused himself).
2. *The spirit of the ordinance is observed.* B. Petrin said it is. B. Chivers said it is. You're looking at an area where most of those lots have less than 200' of frontage. So you're adding one more lot there with 130', excuse me 105'. But if you look at this map, every one of those lots has an equivalent amount of frontage, that's a tough one. J. Szot said there's something in our book on the Board of Adjustment and it says: *another example consider the question of frontage, most zoning ordinances specify a minimum frontage for building lots to prevent overcrowding of land. If a lot had ample width at the building line but narrowed to below minimum requirements where it fronted the public street, a variance might be considered without violating the spirit and intent of the ordinance, because to do so would not result in overcrowding. There are many other variations of lot shapes and sizes that might qualify for a variance; the principles remain the same. The courts have emphasized in numerous decisions that the characteristics of the particular parcel of land determine whether or not a hardship exists.* Basically the courts have said that you might consider this as a reason to grant a variance. B. Chivers said I think they meet the criteria of number #2, the spirit of the ordinance is observed. B. Petrin and J. Szot agreed. I. Byrd agreed but added but only for that area, not for the whole Town. B. Chivers said that's right Ingrid. J. Szot added and with the stipulation that this lot cannot be re-subdivided without a town approved road. **All Agreed. Vote of (4-0-0).**
3. *Substantial justice is done.* B. Chivers said this is the hardest one because when you talk about substantial justice you talk about every applicant that's come before this board that had less than 200' of frontage that was denied. Now we also have to think about every applicant that comes to this Board after this evening with less than 200' of frontage and what are we going to tell them if this is approved. This is the hardest one to meet because if we grant this variance tonight the Town loses its ability to defend that 200' frontage requirement. Could I ask counsel to address that? B. Petrin said I would permit that. Can we permit that Ingrid? I. Byrd replied I don't want to put a gag on the counsel but he's not going to be impartial in his opinion because he's their attorney. B. Petrin replied that's correct. I'm afraid we cannot allow it. J. Pasay said I could address the legal response to that. B. Petrin replied we appreciate the offer but I think we shouldn't do that. B. Chivers continued I agree that there would be substantial justice done in Mr. Richter's case but I'm thinking about the last case we heard and the next one. I. Byrd said this ZBA has said no to a number of applicants who wanted to subdivide something and would have created a lot that is less than 200' feet. People that had 300 whatever feet and by dividing would have created one lot that's substandard. I don't think that's appropriate. We should not be creating substandard lots. If they already exist, that's a different issue but we would be creating something that other people have been told uh huh, can't have it and I have a problem with that because it's not treating everyone equal. B. Petrin said you bring that history that I don't have in Town. I. Byrd said remember the 41 year anniversary. B. Chivers added it's a tough call because the test is whether the benefit to the community outweighs the disadvantage to the applicant here. Ask yourself what's the benefit to the community by enforcing that frontage requirement there. What is the real benefit there? There's no public health or safety considerations; we're contemplating a Village District that would permit 4 or 5 buildings back there at some point in time so what is the benefit to the community that's being sacrificed here. B. Petrin said it increases the tax base. I. Byrd said the Village District right now is the pie in the sky. It needs to be voted by the voters so it's a nice cloud that everybody has opinions on but we can't consider that right now. But we can consider whether we need to treat people equally and for me, that's a real problem. J. Szot said you could say that the loss of the individual is outweighed by the gain to the public. The public gains the property being used but Boyd is right in that, we've turned people down for 5'. They've had 195' and we've turned them down because the thing that Bart has told us is as long as you uphold you're ordinance fairly and you treat everyone the same and you say this is our thing 200' and we're sticking by it. But

he says once you give 5' and the next guy comes in and he has 7', 2 foot difference, how is that different? And the next guy's got 10', well wait, you gave 7' so why not 10'? And then it's 15', there's no frontage requirement because how do you justify it. We do know the Planning Board is talking about the Village District; they were working on it last year. It wasn't suitable and there was a great deal of dissatisfaction with the project that was presented. If we get a Village District there, this would be moot. Because I'd think they'd have smaller frontage requirements than 100'. At this time, he could build an accessory dwelling unit back there. He is allowed by right. B. Chivers said it has to be attached to the main dwelling. J. Szot said it doesn't say that yet. B. Chivers said it says it in the ordinance. J. Szot said I don't think so; they're putting it in the ordinance. It says it can be attached or detached. A. Bickum replied no. The definition is what the issue is. It's the definition. Board agreed, it has to be attached. J. Szot said thank you. B. Petrin said so we're looking at a frontage requirement that is not being satisfied only because the intent is to subdivide the lot. In effect you are creating that frontage issue. How does that compare with lot 22, 24, 25, less than 200'? I don't know what kind of time frame those were subdivided. I. Byrd said a long time ago. An audience member said about 1930; 1939. B. Chivers said getting back to with whether substantial justice is done. In each case you have to consider the sum total of all the evidence and facts. We may have denied someone a variance in the residential district down on Podunk Road where everybody else has 200' of frontage and they only have 195', but here's a case right here where it's probably inappropriate to require 200' of frontage in this neighborhood when nobody else has it. To me that's a deficiency in the zoning ordinance right there that it doesn't distinguish this area right here from the more rural parts of Candia. B. Petrin said it's in keeping with the character of the neighborhood. B. Chivers agreed, that's correct. I. Byrd replied for a lot on High Street that is turned down. J. Szot said we have five of these villages in Town where you have clusters of houses, Main Street and Depot. B. Chivers agreed and they all have 200' frontage requirements. J. Szot continued they do but you combine the houses, one right on top of the other and this is one of the areas where this has happened because you have the village down by the brook. I. Byrd added by the church. For me the problem is that you're creating...you're taking something that is legal and in compliance and creating something that is no longer in compliance and you're not, we have not been willing to do that for other applicants. We meaning the Board, not these individuals but this Board has not been willing to do that to other applicants and I think Bart is right when he says you need to treat people equally. B. Petrin said in the event that this does not get approved is there potential relief down the road with a village concept or putting in a road; I'm not sure what the road requirements say but let the Richter's cut a road into there. I. Byrd said 60 feet. J. Szot replied if you read through the minutes of the Planning Board and I read through all of them and the times that they appeared before the Planning Board, the Planning Board did state they have the opportunity to put in a road and also that they could put in accessory dwelling unit and if in time the Village District is approved, you could expand on that and make the house bigger if you wanted more square footage. I suppose you could ask for variance from the requirement to have it attached. B. Chivers asked if they could continue and circle back or if they wanted to vote on it. B. Petrin said I think we need to address it. I'm sorry Mr. Pasay we did close it to the public and it wouldn't be fair to open it back up, I'm sorry. B. Chivers said I have a hard time with substantial justice is done the way the ordinance is written. Our job here isn't to substitute for the Planning Board and unfortunately we can't resolve these kind of equitable issues that you've raised. I appreciate Matt's service on the Fire Department. I've sat on this Board with Sis for many many years. She was a Chairman for 25 years. We're torn between our desire to help this family and our obligation to be faithful to the law. I. Byrd added and to be fair to all applicants. B. Chivers continued and that's a tough balance right now, there's no harder case in Candia than to sit on tonight with this family right here, with the Fire Chief right here advocating on Matt's behalf; Matt's responded to fires at my house, I understand the sensitivity of all this. We really have an obligation to be faithful to the law. I can see where they conform to meet four out of five but this is the one I have trouble with. B. Petrin agreed. I know Mr. Richter's been to my home for an issue. There has been nothing but positive support for this but as Boyd says we have to stand behind the law. B. Chivers continued there's a

fallback position. I don't want to tell them they can subdivide but they could build a road back there and get two houses out of it; it's up to them to figure it out. Or they can wait until next spring and see what the Planning Board brings forth and see what happens back there. B. Petrin added a plan B. J. Szot said let the people in the room know that the Planning Board needs help. B. Chivers said on criteria #3 I don't see where the applicant has met that criteria. **B. Petrin and I. Byrd agreed. J. Szot agreed. Vote of (4-0-0).**

4. *The values of surrounding properties are not diminished.* **All agreed. Vote of (4-0-0).**
5. *Literal enforcement of provisions in this ordinance will result in an unnecessary hardship.* **It would not. All agreed. Vote of (4-0-0).** B. Petrin said they would have to pursue another plan. B. Chivers said that's hard to argue in my view because they have alternatives here. They could put a road in there to meet Town requirements and put two house lots in there. So the lot is not unusable by virtue of this. B. Petrin agreed, correct. You may have to explore another option. B. Chivers said I feel bad about this but ultimately we took an oath to uphold the constitution in the State of New Hampshire and we're complying with the laws of the state and faithfully executing them.

B. Petrin continued as a result you did not meet the five criteria which means in this case you are being denied. You will get a notice of decision informing you of that.

MOTION:

I. Byrd **motioned** to deny the variances under section 6.01 and 6.02 of the ordinance on the lot width and frontage. B. Chivers **seconded**. **All were in favor to deny. Motion passed (4-0-0).**

Ron Howe returned to sit back on the Zoning Board to approve the minutes and for other business.

The Board discussed since it was closed without finding and that if either Sirron Development or the McKinney's came back, it should be a new application. I. Byrd suggested that the people on either side buy it and split it. J. Szot said Len Drew was here tonight to talk about the property because he subdivided it. I. Byrd asked why did he do it the way he did it. J. Szot replied when somebody buys a plot of land, they take it to a surveyor and say get as many 1 acre house lots on there as you can. D. Murray added squeeze it for all they can.

Other Business:

Consistent Method for Voting on Variances. B. Petrin said we did that tonight. J. Szot said I wrote it up and I forgot it. But when we talk about each section of the variance, we should say substantial justice means so the people understand that and then if we approve it, we don't have to do anything but if we don't approve it, we have got to state reasons for the approval (*meant disapproval?*) like tonight, Boyd stating "we have to be true to the law". Those are the issues that have to be on the paper with the notice of decision, but especially when you deny. You can't say it doesn't meet this criteria; you have to say it doesn't meet this criteria because...B. Chivers said nobody appeals an approval. J. Szot said it's important when we do this if you explain and then.... B. Chivers disagreed. Nobody wants have it explained and be read to. When we get to those criteria it's up to you give you're interpretation of it and I give my interpretation of it. B. Petrin agreed. B. Chivers said it's not up to us to educate the public. J. Szot said but if I read that it helps to remind you what you're doing.

Discussion ensued regarding reading the variance criteria description or not.

B. Petrin said and in the interest of time, we sit here and say we've heard this and maybe they should take some ownness and understand the process a little bit I think. J. Szot said I'll keep it for myself because it reminds me of what we're thinking. I went through this book and went through each of the criteria and thought about each of the issues. Can it pass this test or not? I write down my ideas and I think about those things. I read his pleadings, his letter was in there. I read his whole letter, I read the stuff online. I marked up the stuff from the Planning Board. Put in a road, put in an accessory dwelling unit, wait for the Village District.

The Board complimented the Richter's lawyer and said he was very good. I. Byrd commented he works for Charlie Tucker who specializes in land use and wrote a lot of the land use ordinances in this state. You want to create two lots out of one lot, how do they comply with the zoning and that's what it came down to for me. Have we had decisions like that in the past and how were they made.

J. Szot said I'll hold onto these photos from Bob Caron took photos after the storm we had last week, the stuff going across his driveway.

B. Petrin said we did get an application from Mark Raumikaitis for an alternate and he read the letter.

ZBA Alternate Interest: B. Petrin read the letter of interest.

9/25/18

Land Use Office

Town of Candia

To Whom It May Concern;

I am interested in the alternate position on the Zoning Board of Adjustment. I have been a resident of Candia for 4 years.

I have previous Board experience in another community serving on the Timberlane School Budget committee and on the Timberlane School Board (1990's).

I am a licensed NH Home Inspector and a licensed NH Septic System Evaluator.

I have prior building and sub division development experience with CJR Development (2005-2010).

Thank you for your consideration,

Mark Raumikaitis

34 Douglas Dr

Candia NH 03034

Board suggested to the recording secretary that we forward this letter to the Board of Selectmen with a letter from us saying that we ask you to consider and accept this alternate.

MOTION:

B. Chivers **motioned** to adjourn at approximately 8:13 pm. J. Szot **seconded**. **All were in favor. Motion carried (5-0-0)**. Meeting adjourned.

Respectfully submitted from recording,

Andrea Bickum

Recording Secretary

Cc: file