

CANDIA ZONING BOARD OF ADJUSTMENT

Minutes of November 27, 2018

APPROVED

Place: Town Hall; Meeting room

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

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

Present: Mark Raumikaitis, Alternate; Dave Murray, Building Inspector.

Approval of Minutes: October 23rd, 2018

MOTION:

B. Petrin **motioned** to approve the minutes from October 23rd, 2018 as presented. B. Chivers **seconded**. **All were in favor. Motion carried (5-0-0).**

Request for Rehearing re: Denial of the Variances in 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 Richter; Attorney Justin Pasay of Donahue, Tucker & Ciandella, (DTC) PLLC of 16 Winslow Lane, Exeter NH 03833.

B. Petrin commented be advised this is not a public hearing so we will not be hearing arguments this evening it will be amongst the Board to decide if we will grant a rehearing.

R. Howe recused himself and B. Petrin asked alternate Mark Raumikaitis to sit on for Ron Howe on the Board. Mark is a newly appointed member of the Board currently sitting as an alternate and he has full powers as Ron has recused himself in this particular case. What we're doing here is discussing the merits of a rehearing. It gives the Board the opportunity to reconsider any errors in judgment we might have made in hearing the case the first time. If that's the case we would proceed unless we decide that we didn't make any errors based on the evidence we had at the time and no new evidence has been brought forth so then we would decide if there is any merit to rehear.

B. Petrin continued I would like to start off by saying that the original denial was not based on the Richter's character; they're upstanding people and they had some glowing endorsements of their character and how they want to stay in Town and build on this particular lot. So they weren't denied because they're not good people, it's not an emotional basis for a denial. My recollection of the proceedings were that the proposed lot with 105 feet is not currently a lot of record so making that 105 foot lot is creating your own hardship. We also discussed that if we allow this to happen then everybody with 200 feet of frontage can come say hey can we cut this in half and have 100 and 100 and build some more lots. Based on those kinds of criteria we have to say no I don't believe we can do that. If we give 5 feet to somebody we have to give 105 to someone else.

I. Byrd added our decisions and reasons were reviewed by the Town attorney and he felt that we did the right thing.

J. Szot said two things that our attorney said which were points that we made during the hearing. Irrespective of how long you've lived in Town, whether you've lived here a day or a month or a year or 10 years or your family's been here for 200 years, I would like to think that this Board treats everyone the same way, irrespective of how long you've lived here so I think your comment about not taking that into consideration how long the family; we know they're a family that's been here a long time. We wouldn't treat them any differently than someone who came here last week and bought some property and wanted to do this. One of the points we made is that we have to evenly apply the zoning ordinance to everyone. It protects our Town from an equal rights lawsuit. As Bob said, if you give someone 5 feet, why can't you give the next guy 10 feet or 20 feet? He's getting 95 feet, we can't do that. Also, there's nothing unique about this property that makes it different than any other piece of property that would allow us to grant a hardship. This property can be used; they need to put in a road. Our attorney has advised us that we were just and reasonable and there is no reason for us....the state gives us this opportunity to look in case we've made a mistake and gives us the opportunity to rectify any errors that we've made, that's the reason for this; if something comes to light and we realize that we didn't consider things properly. But I think we have considered things justly and properly and there is no reason for us to reconsider our decision.

B. Chivers commented this decision may not be the one the Richter's wanted but it's the one that was required by the facts in our deliberations and the one that's required under the statute and demanded by the courts. We could have reached no other conclusion after our deliberation.

B. Petrin said they also have another option and that is to put in a road to ease the hardship there inflicted on themselves by having, creating a parcel with 105 frontage. Two parcels; one would have 200 (*meaning 200 feet of frontage*) and the other 105 (*feet of frontage*), thus creating their own hardship.

MOTION:

J. Szot **motioned** to deny the rehearing based on the reasons that are stated. I. Byrd **seconded**. B. Chivers and B. Petrin **were in favor**. M. Raumikaitis **abstained**. **Motion carries with a vote of (4-0-1)**.

B. Petrin reiterated 4 aye, one abstain; the motion carries that there will be no rehearing. If I recall you're the attorney representing the Richter's sir? J. Pasay agreed, correct. B. Petrin continued so you know any possible next step you may want to take. J. Pasay agreed, correct. B. Petrin said you will receive a notice of decision on that as well.

Ron Howe took his place back on the Board and alternate Mark Raumikaitis stepped down. B. Petrin thanked Mark.

Continued Case 18-639 Applicant: Timothy & Barbara McKinney, 860 Howe St., Manchester, NH 03103; Owner: same; 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.

A. Bickum commented they did have their lawyer email; Sirron Development had submitted a house plan that actually fits the building envelope of the lot so they are not in the wetlands buffer anymore. They meet all the setbacks. They basically have withdrawn the application.

B. Petrin said for the record the applicant is not present this evening and they made a formal withdrawal that we have in writing. There's nothing for us to vote on because they've withdrawn.

B. Chivers asked Dave Murray if he's reviewed the plans. D. Murray replied I have. Everything's good except they have a couple of issues. They have a 2 bedroom septic plan with a 3 bedroom house so he has to correct that. It's probably the same septic plan but just a typo but I have to get that before I issue a permit and a driveway permit from Dennis. It meets all the setbacks.

R. Howe asked we have no control over this and you don't either but one of the suggestions they made was that they not hot top the driveway. D. Murray said I don't think this builder has intentions of hot topping the driveway but down the road....R. Howe said that was one question and the other was the location of the well and the fact that it was down over that hill. I have no problem and I'm glad they worked something out but given a choice, like to see them not cut many trees over the crest of that slope. Anything you can do to limit the number of trees cut and keep the driveway dirt. I don't know. D. Murray said I can do what I can but as far as the well goes, the driller would have to do his due diligence on that.

J. Szot said I have concerns about water runoff. They can't increase any water if they build so it goes on any of the other properties; Mark's, Pat Larkin's or Bob Caron's property. D. Murray said they are supposed to keep any water that they are creating on their property. B. Petrin said it's out of our hands now. J. Szot replied but it's going to be incumbent on Dave to really be on this case because I can see that once you cut those trees, especially on that slope, it's going to affect Mark's, Pat Larkin's and Bob Caron's property too.

B. Petrin said from the standpoint of the Zoning Board of Adjustment this case is withdrawn and I opt to end the discussion and move on to approve the minutes of October 23rd. B. Petrin asked Andrea if she made corrections to the minutes based on the attorney's notations on his letter? Mr. Pasay had made some notes saying *the only changes that have been made are entirely non-substantive and are as follows: 1) The reference to "Ms. Boyd" in the quoted paragraph on page 5 has been changed to "Mr. Chivers" and 2) Arlene Richter is now referred to throughout the motion as "Sis" instead of "Arlene."* But when I went back to the minutes, I didn't see those things.

A. Bickum replied I didn't change anything. I think those were his changes in his submission, not my minutes.

Other Business:

J. Szot said I want to talk about the Zoning Review and Revision Committee and the ordinances that are going there. A. Bickum said December 19th is the Public Hearing on it.

J. Szot said I went to the meeting and spoke at the meeting, there were no changes on anything that's there and I got a copy of the minutes. It seems that Boyd doesn't understand exactly why I oppose this and I want to refer to our meeting when both of these cases, one about Airbnb and the other about trucking. In May when we talked about all of this and Mr. Chivers suggested this. What he said was that the "Land Use Office wanted to identify any contradictions or discrepancies in the zoning ordinance and maintain an ongoing log so we can present our concerns from Dave and Andrea to the Planning Board every year on a regular basis so they can make up some of these typographical errors or contradictions or deficiencies in the zoning ordinance that are hard to administer. So Andrea has a log so that we can meet every month and we can identify the ordinance that can be fixed and present our recommendations to the Planning Board." And then he said "We're not going to propose any zoning changes." And now we have several sections that are whole cloth zoning changes. The meeting where I was not able to go and Boyd was there, he didn't understand that I oppose this. I oppose this because when both of those cases; Airbnb and the trucking case; in both cases our attorney advised us that these are commercial uses in a residential area. Bart is never going to tell you that you cannot change your ordinance. He'll say if you want to have commercial in residential and vote on it that's up to your Town but what he said is most people want peace and quiet in their residential areas; they do not want commercial uses. He said both of these; Airbnb and trucking were commercial. We discovered with the issue with trucking; it's not allowed

anyplace in Candia. My assumption, which is obviously incorrect, is that it would be considered, we might add it to an appropriate place in Mixed Use or Commercial. Mr. Chivers' idea instead is that we're going to allow them both in a residential area. Mike and I...I'm very concerned that this is going to destroy our residential area. Five years from now if the Town decides they don't want this, all of the people who've been or are doing this are now grandfathered and you are not going to get rid of them. As long as a business continues at that property and is not left for two years, it's going to stay there and they'll be allowed to be there. I'm very concerned. I spoke about it at the meeting. Even after Boyd spoke at the meeting and said this is coming from the Planning Office, although there's a place where he said the ZBA endorsed it. And then at another time he said the Planning Board endorsed this. Rudy said to me, you presented this from the ZBA, the ZBA endorses this. These are coming from the ZBA, even though it's been said to them several times. I said it's your job to write these things; it's not the Land Use Office, it's not the Secretaries Office, it's the Planning Board's Office and Rudy's words were I like when someone else does it. That's what he said at the meeting I was at. Even though several people on the Board made suggestions that perhaps it needed more study, no one voted to take it off and it is going on exactly as it was. There's a place in here where Boyd was talking about what we do with trucks and he says well I don't know what a Class 6 or Class 8 truck is, let's just make it you can have up to two Class 8 trucks. I asked the Board are you aware of how big a Class 8 truck is, there's a huge difference between a man who is using a Class 5 truck vs. Class 6 to 8, they are enormous. I feel that trucking doesn't belong in a residential area. I don't think you solve these problems because we have someone that came in and needed a variance so oh we'll just let everyone do it. That's my bias. I think people should have quiet enjoyment of their residential property. When you have hundreds of acres and thousands of feet of frontage or several feet of frontage, your house is way in the back, you don't think of these things because it doesn't affect you. But it is going to affect most of the other people in Town who live on one, two and three acre lots. I'm really concerned that these things were written by Boyd and passed off; they only came before our Board because I found out about them and I said it was coming from our logs of what we wanted. We didn't say to write ordinances; we said these are issues you need to address. The Planning Board needs to sit down and think. Do we really want to have commercial uses in residential areas? Do we want to have trucking?

B. Petrin said there's nothing we can fix here now. It's been presented and it's under consideration and all we can do is make our voices heard at the Zoning Board Review meetings through the Planning Board and voice our objections and have them make those changes. The change is up to them to accept. Presented is one thing. Accepted is another.

B. Chivers clarified I did go to that committee meeting and clarified that those recommendations were not presented with the endorsement of the Zoning Board of Adjustment. That they were the initiative of the Land Use Office that were first presented to the Zoning Board of Adjustment as a courtesy but later formally presented to the Planning Board as a recommendation. B. Petrin clarified on your behalf as a Board of Selectmen representative. B. Chivers agreed; that's right. It was a timing issue. We wanted to have the Zoning Board of Adjustment to know what we were doing but I don't think we ever asked for the endorsement of this Board. We presented the information as a courtesy to let them know that these are the initiatives we're taken and we'll present *them (unintelligible)* and somehow that got interpreted as coming out of this Board. I corrected the record when I spoke before the Planning Board. I corrected the record and said these recommendations do not come with the ZBA endorsement. They came from the Land Use Office after careful consideration of the ramification of that Nicosia case we had where we turned this guy down and in his appeal he identified four businesses in Town, similar to his, of which three are currently operating and he wanted to know why this Board is not enforcing the ordinance with respect to those three still in business. He had one that I don't know where he got it. It creates a huge set of problems because we have people in Town running these trucking businesses and electrical and construction businesses out of their house. A commercial use in total violation of the zoning ordinance and what we're trying to do is align the zoning ordinance with the actual use of the property in Candia to the extent that we can do that and have some parameters. No outside storage of material; do it with some restrictions. If you went in there and start enforcing that zoning ordinance to everybody in this Town that steps out of line, you're going to lose zoning in this Town. People are just going to gang up and rescind the whole thing and they have the option of doing that. There's a huge number of people in this Town who are self employed, they're in a trucking business, small landscaping business, plumbers, carpenters and they are operating commercial businesses out of a residential area. We all benefit from that. I can think of a half a dozen Town officials who are in violation of the zoning ordinance if you want to restrict application of it. D. Murray agreed; it's a tough situation to try to enforce it. B. Chivers continued this guy's (*Dave Murray*) been in Town his whole life and knows every one of these people, I understand. What we've been doing is sweeping this under the rug for the last 20 years.

I. Byrd said no way along the way did we consider that a company that has 18 wheelers and say they are equal to someone who does carpentry at someone else's house who parks his truck; electrician or a plumber, they usually don't do all the work in their house. They park their vehicle, they have their tools, and they go to someone else's house. You cannot compare those people like was just done with heavy duty equipment. D. Murray said what is the difference? They go to work and business is done somewhere else. I. Byrd didn't have issues with the Airbnb proposal as "it's a way for somebody to make some extra money for their family".

J. Szot said I have no problem with the first two sections talking about plumbers and electricians and their vehicles; a pickup truck or pickup with dump bed or trailer. I have no problem with that. The only thing I have a problem with the last section, third section where they address trucking. We don't allow it anyplace in Town. Should we? That's an issue that needs to be discussed. The difference between a plumber or a carpenter vs. trucking. The carpenter doesn't need an 18-wheeler or 12 wheel dump truck to do his job. He can have an SUV, a painter, an electrician. The trucks they use are usually built on a pickup truck body or a van. If you are a trucking company and you do not have a truck, you don't have a business. Your business is your truck. If you are a plumber, your business is not your truck; it's your way to get there. A trucker needs the truck to do the

work and I really feel that trucking; we need to address this issue, maybe it belongs in commercial or mixed use but it's not the same kind of thing and to say we'll let 6 through 8. There's a huge difference between a Class 5 and a Class 6 through 8 vehicles.

B. Petrin said we can talk about this for five hours and nothing changes. If we want to assert change we have to go to the meetings and say it's time to amend these things and let the Planning Board take action. I don't see a lot of action there but maybe we can influence them to take some action.

I. Byrd said and is the person that made the statement that he likes it when other people do the work is that the Chair of the Planning Board? B. Petrin agreed; it is.

R. Howe asked about the Richter case. Why didn't we at least give them a chance to present what they thought was their rebuttal. B. Petrin and J. Szot said they did, in writing. It's in your packet. B. Petrin said it's not open to discussion; they come back to us and they made their argument in writing. B. Chivers asked was that submitted to our lawyer? J. Szot said yes and you have a copy of that, his response to that. B. Chivers his response was pretty conclusive. B. Petrin said they supported us without a doubt. B. Chivers reiterated but their argument was sent to Bart? J. Szot replied yes. And they responded. I'm sure their attorney understands the process; it allows us the opportunity to correct any mistakes. We have reopened a hearing before and heard more information. It allows us if we've made a mistake to change our minds before it goes to court. R. Howe said they presented in writing, so they did present. J. Szot agreed, it was sent to us, I know I read it online (*via email*) and I also stopped by the office and I read both of those.

MOTION:

J. Szot **motioned** to adjourn at approximately 7:33 pm. R. Howe **seconded**. **All were in favor. Motion carried (5-0-0)**. Meeting adjourned.

There is no meeting for December 25th.

B. Chivers asked has Mr. Nicosia filed anything in court. A. Bickum replied yes, I believe it's a January 15th, court date. J. Szot said and our attorney's have filed. D. Murray said it's a hearing first. I think our attorney would be there. I haven't been subpoenaed.

Respectfully submitted from recording,
Andrea Bickum
Recording Secretary

Cc: file