

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
April 23, 2019
APPROVED**

ZBA Members Present: Bob Petrin, Chairman; Judith Szot, Vice Chair; Boyd Chivers; Ron Howe; Mark Raumikaitis Alt.

ZBA Members Absent: Ingrid Byrd

Audience Present: Dave Murray (BI), Norris Viviers (Sirron Development), potential new owners of 114 Douglas Dr. property, James Argeriou as well as other town residents.

Bob Petrin, Chair called the meeting to order at 7:00 pm immediately followed by the Pledge of Allegiance.

Case #19-002:

Applicant: Sirron Development, LLC, 1361 Elm St., Ste. 106, Manchester, NH 03101; Owner: same; Property Location: 114 Douglas Drive: Map 410 Lot 50; For a Variance under Article VI Section 6.02 Table of Dimensional Requirements; Lot Width and Frontage.

Intent: to construct a 12'x 12' covered deck with stairs within the required 25' rear setback area.

For the record, Mark Raumikaitis, Alt, is an abutter for case #: 19-002 and therefore will not sit or vote as a member of the Board in this particular case.

N. Viviers starts his presentation by stating that the potential buyers of the property have asked that a deck be added to the current home in order to enjoy their home and outside living area. He provides the Board with an outline of his presentation, so they are able to follow along.

As he continues, he shows the Board 3 different pictures that he has blown up in size, which depict the layout of the land in correlation to the abutting neighbors.

The 1st picture shows land with some trees and a brown colored home that he says sits very close to a brook that runs through the area. The home sits back behind the trees in this picture. He states that the subject property sits off between more trees and then there is another home you cannot see clearly on the pic.

The 2nd picture is a view from the back of the houses looking towards Douglas Drive, where the subject property is on the right side and the abutting neighbor (Karen Edgerton) is on the left. In this picture, the trees are completely cleared and there is nothing separating the two homes as far as privacy goes. N. Viviers thinks there is quite a bit of distance between the houses and there should be no adverse effect if the deck were to go on the house.

The 3rd and last picture he shows is an aerial view of the subject property, K. Edgerton's property and another close abutter, Amy Ackroyd. N. Viviers does mention this picture is not to scale. In this picture, the 3 homes make an upside down triangle shape, with the subject property as the point of that triangle. The houses look very far away from each other and there are many, many trees separating them from one another. J.Szot makes a point that this 3rd picture is not true to what the area currently looks like. The homes are much closer, and the trees have been almost completely cleared between the neighbors.

N. Viviers states that there is a hardship for the new buyers because when the house was built, he had to build within a very small space, and it was difficult to fit the character of the neighborhood and be appealing to potential homebuyers.

The Board mentions that there is 1 absent member of the ZBA tonight and gives the applicant the option to be heard and voted on tonight or continue the hearing and come back when there is a full 5-member Board to vote. N. Viviers said the Board decision to go forward with 4 members is acceptable with him and the potential buyers in the audience agree to move forward tonight as well.

R. Howe questions if there is any door that comes out the back of the house and initially N. Viviers says there is not. He goes onto say that the current window on the back side of the house will be replaced with a door

that opens onto the potential deck. R. Howe asks if the door and deck will open up and come out at or just around ground level and N. Viviers says No, because there is a garage and the grade is higher in back and then is more at grade coming around to the front. It will be a raised deck and the stairs will be in a westerly direction.

R. Howe states the concern that when the applicant came before the ZBA in the past with the plan to build this home, he was told that this was the maximum space he had to build due to setbacks and no mention of anything extra was added to the plan for approval and now he's back asking for an additional 12 feet.

He asks D. Murray (BI) if the applicant were to build a patio in the back at ground level, that would not be affected by the ordinance or need a permit?

D. Murray (BI) agrees that it's not a structure so no permit would be needed and that would work.

R. Howe asks how much the applicant is encroaching into the 25-foot setbacks with the deck and D. Murray (BI) states that the whole 12 feet of the proposed deck is within the setback.

J. Szot shares a concern about the lack of privacy the neighbors already have since all the trees have been cleared and the fact of the deck being a covered deck. The concern that it will eventually become screened in and then could end up as an addition to the existing home. N. Viviers says the buyers are agreeable to having an open deck and to have that stipulated as a condition of approval.

B. Chivers asks D. Murray if the building exceeds 35 feet in height and D. Murray says that from grade it does not exceed the height.

R. Petrin states that the intent of setbacks are to provide owners room between the edges of their properties. The ZBA does, at times, grant variances to add a shed for example, but is not encroaching upon the privacy of any abutters. When you start asking for things like decks, for example, which could potentially become living space in the future, what's being granted is a place for people to continue their enjoyment very close to the property line and then abutters may have a diminished sense of enjoyment of their properties in return. Variances get granted but this request is unique but still a place for activity enjoyment.

A Ackroyd of 34 Douglas Dr. (abutter) is concerned about the diminished value of the property.

N. Viviers adds that the concerns for future issues may arise but things can be created to assist with privacy.

R. Petrin gives options of vegetation or something built to alleviate privacy and/or noise situations that may arise. N. Viviers that something being built would be the better option.

***B. Petrin closes meeting to the public at 7:25pm**

B. Petrin requests that B. Chivers read through the variance criteria and the Board will vote on each as they are read out. All agree.

B. Chivers read as follows:

Under *RSA 674:33*; the Zoning Board of Adjustment shall have the power to hear, authorize or appeal specific case variances from the terms of the zoning ordinance if 5 criteria are met:

1. The variance will not be contrary to the public interest

For a variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?

Boyd moves the Board find that it is contrary to the public interest because the house was built first to maximum available space w/out deck and now the owner is coming back after to ask that a deck be built. Whole plan should've been proposed with deck and sought the approval prior to development. The process was deceptive. **-All were in favor**

****7:28pm -N. Viviers and the potential new owners of the property left the meeting after the 1st criteria and decision were read.**

B. Chivers continues with the criteria:

2. The spirit of the ordinance is observed

To be contrary to the public interest,...the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives.

Boyd moves the Board disagree because the setbacks are 25' on sides and rear and by building the whole deck in these setbacks, they are not observing any section of that ordinance. **-All were in favor**

3. Substantial justice is done.

...perhaps the only guiding rule is that any loss to an individual that is not outweighed by a gain to the general public is an injustice. A board of adjustment cannot alleviate an injustice by granting an illegal variance.

Boyd moves the Board disagree because the clearing of all the trees and privacy around the property for current owners as well as neighbors has been a loss for all involved. **-All were in favor**

4. The values of surrounding properties are not diminished.

The ZBA members may draw upon their own knowledge of the area involved in reaching a decision on this and other issues. Because of this, the ZBA does not have to accept the conclusions of experts on the question of value, or on any other point, since the function of the board is to decide how much weight, or credibility, to give testimony or opinions of witnesses, including expert witnesses.

Boyd moves the Board find that the values are diminished because the clearing of trees have resulted in many privacy issues as well as loss in worth of the actual homes and land. **-All were in favor**

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. The property owner needs to establish that, because of special conditions of the property, the application of the ordinance provision to his property would not advance the purposes of the ordinance provision in an "fair and substantial" way.

Boyd moves the Board find that it would not be an unnecessary hardship because not having a deck on a house is not a hardship. The house was originally planned and built w/out a deck, although does include a door off the back of the house/garage to come out in the back yard and may build a patio area if they want outside space. **-All were in favor**

B. Chivers suggests a motion be put forth to deny the variance.

J. Szot **motioned** to deny the requested variance based on the reasons listed. R. Howe **seconded**. **All were in favor. Motion passed (4-0-0).**

R. Petrin requests that M. Raumikaitis, Alt. join the Board for the 2nd case.

Case #19-004:

Applicant: James Argeriou, 174 Main St., Candia, NH 03034; **Owner:** same; **Property Location:** same: Map 409 Lot 15; **For a Variance under Article XV Section 15.04E Accessory Dwelling Units.**

Intent: to convert an attached barn into living space.

J. Argeriou starts his presentation by clarifying that only a portion the garage, which measures 731 square feet, will be converted and then presents the Board with additional sketches and pictures of the subject property. He explains where he will be inserting windows so his mother can have natural light, and because he wants to keep the character and look of the barn, he will be keeping the barn door itself and putting an insert in it so it matches the door on the main house and ties them together.

B. Chivers asked if the 736 sqft is all the space he has to work with and J. Argeriou states that is a 3-tiered area. The lower floor and loft area that will be worked on and converted into the bedroom for a total of 731 sqft. The top area of the barn will not be part of the project.

R. Howe asks what the total available square footage of that building and J. Argeriou states it's aprox. between 1150 to 1200 sqft.

B. Chivers states that the project is less than 750 sqft, it's attached to the principal dwelling unit, plenty of parking, and asks what the capacity of the septic system is for the land. J. Argeriou says he contacted Bench Mark, which installed the system, and was told he has a larger 1500-gal tank, 20x40 stone pipe in a 3 acre loading. In the worst soil condition, they are at a fraction of what's allowed. The paperwork he was provided with to confirm this information was current and dated 4/22/19.

R. Howe asks how many total bedrooms will you have when it's all done. J. Argeriou says the total will be 4 and now it's currently recorded with 3. Only 1 bedroom will be in the in-law apartment.

B. Chivers asks D. Murray (BI) if he's looked at the plans and D. Murray confirms yes, he has. He states he has no issues with this project. He says J. Argeriou has covered the septic, parking, etc. and has no issues.

J. Szot asks if his mother has her own access to the space and J. Argeriou says yes, and further shows on one of the sketches where the entrance will be.

R. Petrin asks if any abutters have comments but no one comes forward.

***B. Petrin closes meeting to the public at 7:40pm**

B. Petrin requests that the Board go through the criteria to meet the terms of Special Exception Uses, 15.04E, Accessory Dwelling Unit and the Board will vote on these terms. All agree.

Section 15.04E – Accessory Dwelling Units

Any single family dwelling unit in the residential or mixed use districts may be converted or constructed to provide for one accessory dwelling unit subject to conformance with Section 15.02, Special Exception Standards and any additional requirements imposed by the Board of Adjustment under Section 15.03, Special Exception Conditions and subject to the following restrictions:

- 1. There shall be no more than one accessory dwelling unit for any single family dwelling;*
- 2. There shall be no more than two bedrooms in the accessory dwelling unit;*
- 3. Adequate sewer and water service shall be provided. One septic system shall serve the entire property and the adequacy of the system shall be certified by a licensed septic installer;*
- 4. There shall be a maximum of 750 square feet for the accessory dwelling unit;*
- 5. On-site parking for one additional vehicle shall be provided;*
- 6. All existing set back requirements shall be met;*
- 7. The accessory unit shall be within or attached to the main dwelling unit;*
- 8. Architectural enhancements will be employed for the purpose of maintaining aesthetic continuity with the principal dwelling unit resulting in both units appearing as a single family dwelling unit;*
- 9. Either the primary or the accessory dwelling unit shall be occupied by the owner of the property;*
- 10. The current State Building and Fire Codes for two family dwellings shall apply.*

Section 15.02 – Special Exception Standards

- 1. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
- 2. No detriment to property value in the vicinity or change in the neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other material;*
- 3. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*

4. *No excessive demand on municipal services, including but not limited to water, sewer, waste disposal, police and fire protection, and schools;*
5. *No significant increase of storm water runoff onto adjacent property or streets.*

Section 15.03 – Special Exception Conditions

1. *Front, side, or rear yard in excess of the minimum requirements of this Ordinance;*
2. *Screening of the premises from the street or adjacent property by walls, fences, other devices;*
3. *Modification of the exterior features of buildings or other structures;*
4. *Limitations on the size of buildings or other structures;*
5. *Limitations on the number of occupants and methods and times of operation;*
6. *Grading of the premises for proper drainage;*
7. *Regulation of design of access drives, sidewalks, and other traffic features;*
8. *Off-street parking and unloading spaces in excess of the minimum requirements of this Ordinance;*
9. *Regulation of the number, size, and lighting of signs more stringent than requirements of this Ordinance.*

In this instance, the Board votes based on the Special Exception standards and to make sure all the conditions are met instead of the 5 criteria.

R. Petrin suggests a motion be put forth.

J. Szot **motioned** to grant the special exception for the construction of this accessory dwelling unit. All the conditions stated in Section 15.04E are met. B. Chivers **seconded**. **All were in favor. Motion passed (5-0-0).**

****R. Petrin notes for the record that in the 1st case of Sirron Development, the applicant left before the hearing was finished and therefore didn't get to hear the next course of action from the Board, where he would've been notified that he has the right to appeal. Since he left before we finished, we could not cover that with him, so he can not say he did not know because he left before the end.**

Approval of Meeting Minutes -March 26th, 2019:

B. Chivers **motioned** to approve the minutes of March, 26th, 2019 as presented. R. Petrin **seconded**. **All were in favor. Motion passed (5-0-0).**

Other Business

- Brief discussion regarding the Candia Crossing project coming before the ZBA. Will be checking with Town counsel with any questions surrounding the authority of PB vs. ZBA in this instance.

M. Raumikaitis **motioned** to adjourn at approximately 8:12pm. R. Howe **seconded**. **All were in favor. Motion passed (5-0-0).**

Respectfully submitted,

Lisa Galica ~Admin. Assist.
Building/Land Use/Fire Dept.
cc: file