

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
July 28, 2020
APPROVED**

ZBA Members Present: Bob Petrin, Chairman; Boyd Chivers; Ron Howe; Mark Raumikaitis; Anthony Steinmetz, Alt.

ZBA Members Absent: Judith Szot, V-Chair

Audience Present: Dave Murray (BI); Chris Lewis (applicant); John Bisson (attorney for C. Lewis), Walter & Colleen Shields (applicant); David Springfield (abutter) and town residents.

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

Case #20-006:

Applicant: Walter & Colleen Shields, 94 South Road, Candia, NH 03034; Owner: same; Property Location: same: Map 410 Lot 115; For a Special Exception under Article XV Section 15.04(E): Specific Special Exception Uses: Accessory Dwelling Units.

Intent: to construct a 24' x 24' addition to the existing home.

B. Petrin starts by confirming that the applicants are present remotely via zoom and asks if there are any abutters present. Davis Springfield is an abutter and is also present remotely via zoom. B. Petrin notes that the applicants are proposing a 24' x 24' structure. He asks if they've been thru the application process with the BI and that is confirmed by the D. Murray (BI), and it was determined the applicant would need to go before the ZBA for a special exception.

B. Chivers asks the BI if the application meets all the requirements of the statute and that is confirmed. The BI states that the ADU is approx. 576sq ft., they have an approved septic plan on file with DES for the extra bedroom, is attached to the main house, plenty of setback room, a shared well and plenty of parking.

B. Petrin asks if there are any comments from the abutter? D. Springfield ask where the addition will be located on the house? The applicants note that it will be attached to the small shed that already exists on the left side of the home, closest to his property. The Land Use Secretary shows a picture of the existing home with a drawing of the new addition location and he is satisfied with that. The abutter notes a concern of who may be living in this new space and the applicants confirm that it will be for C. Shields' parents.

***B. Petrin closes meeting to the public at 7:06pm**

B. Petrin requests that the Board go through the criteria to meet the terms of Article XV Section 15.04E, **Specific Special Exception Uses**, and the Board will vote on these terms. **All agree.**

Section 15.04E – Specific Special Exception Uses -Accessory Dwelling Units:

1. *There shall be no more than one accessory dwelling unit for any single-family dwelling. All were in favor*
2. *There shall be no more than two bedrooms in the accessory dwelling unit. All were in favor*
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. All were in favor*
4. *There shall be a maximum of 750 square feet for the accessory dwelling unit. All were in favor*
5. *On-site parking for one additional vehicle shall be provided. All were in favor*
6. *All existing set back requirements shall be met. All were in favor*
7. *The accessory unit shall be within or attached to the main dwelling unit. All were in favor*
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. All were in favor*
9. *Either the primary or the accessory dwelling unit shall be occupied by the owner of the property. All were in favor*
10. *The current State Building and Fire Codes for two family dwellings shall apply. All were in favor*

***In this instance, the Board votes based on the Special Exception Standards and to make sure they are met, instead of the 5 criteria.**

B. Petrin suggests a motion be put forth to approve or deny the request.

MOTION:

B. Chivers made a **motion** to approve the applicants request for a variance under Section 15.04E and grant them permission to build an accessory dwelling unit. M. Raumikaitis **seconded**. **All were in favor. Motion passed.**

Other Business:

B. Petrin notes that B. Chivers has been sworn in for another 3-year term on the ZBA.

Old Business:

Case #20-003 (Motion for Re-Hearing):

Applicant: Susan & David Bowie, 4 Healey Road, Candia, NH 03034; Owner: same; Property Location: same: Map 405 Lot 122; For an Appeal from an Administrative Decision from the Building Inspector under Article II Section 2.05: Buildings on one lot, Article XV Section 15.04(E): Specific Special Exception Uses: Accessory Dwelling Units and Article X Section 10.06(B): Buffer Provisions.

Intent: to be allowed to have Tiny Homes on the property.

B. Petrin starts by confirming if the applicants are present remotely via zoom but they are not in attendance. B. Petrin states that the Board will not be taking questions or comments as this is a discussion amongst the Board and they will vote as to whether they will approve or deny the Motion for Re-Hearing.

B. Petrin asks if there are any other comments from the Board but there are none. He briefly summarizes the outcome of the case and the denial by the Board based not only on sanitation and safety issues, but the fact that tiny homes are not allowed on the property as any type of housing unit.

B. Petrin suggests a motion be put forth to approve or deny the request.

MOTION:

B. Chivers made a **motion** to deny applicants request based on review of the Motion not providing any new evidence or facts since the prior hearing. B. Petrin **seconded**. **All were in favor. Motion passed.**

Case #20-005:

Applicant: Chris Lewis (Brady Sullivan Properties), 670 North Commercial Street, Manchester, NH 03101; Owner: Brady South LLC; Property Location: 366 South Road, Candia, NH 03034: Map 410 Lot 147; For a Variance under Article II Section 2.02(B): Non-Conforming Uses and Structures; Change and Expansion.

Intent: to allow for the expansion of the existing residential use, to include an accessory dwelling unit within the existing structure.

B. Petrin starts by confirming if the applicant is present remotely via zoom and they are. They are also joined remotely by Attorney John Bisson.

B. Petrin summarizes the meeting from 6/23/20 and states the issue of excessive square footage of the ADU proposal. The Board then asked the applicant to go back and adjust the size of the dwelling to conform more to the ordinance. He asks the applicant to give the Board an update on this. C. Lewis notes the owner would like to utilize the building that currently resides on the property as is. They have not made new plans to reduce any of the space to be within the 750sq ft requirement. The applicant states that they are still looking for relief on the square footage requirement.

B. Petrin reads out the ordinance and asks if the applicant or their attorney has any comments. Attorney Bisson states that there will be no change in use but to use it as an existing residential use that is already there with an additional structure. M. Raumikaitis confirms with the attorney that he is saying this is not a change in a non-conforming though this is a LI-2 area which they want to make residential again, so that is a change and a change to the size, so are those not a change in the non-conforming use? Attorney Bisson states that it's not a change in use as the existing use is currently residential and it will remain residential. It's not enlarging as it is staying a single residential use as opposed to a multi-family use. C. Lewis notes that the square footage that exists now is all they will be using. No new footprint will be created. The Board and applicant discuss

the question of if there is a change of use being done in this proposal, but it is determined that there is no change of use.

R. Howe notes that he asked last meeting about the LLC and that the regs. state the owner has to live on the property. Who will be living in the property? C. Lewis states that he spoke to Mr. Brady and he intends to have family members live in both the main and accessory dwelling. He will be transferring ownership from the LLC to those individuals who will permanently reside in the property.

T. Steinmetz asks the applicant if there is an approved septic design with the State and the applicant confirms this. He then asks who will be doing the work, but the applicant does not have this information as it is not being done yet. D. Murray states that it's a State approved plan and a licensed installer will put this in. M. Raumikaitis asks that the applicant confirm that there is a design already submitted to the State and it's approved for a 5-bedroom installation on the property and the applicant does confirm this. He then asks the BI to confirm that this is on file and he does confirm the approval is on file but not definite a 5 bedroom. M. Raumikaitis notes his concern that there may not be a certified septic at this time. The BI states that before he issues a permit, the approval has to be done by the State.

B. Chivers asks the applicant if the property is currently unoccupied and how long it has been this way? The applicant states that since the property was purchased last year. Attorney Bisson notes that it was purchased in August 2019.

B. Petrin notes that from the discussion it has been determined that the footprint will not change, intent to upgrade the septic and no new construction will alter the outward appearance of the property. It seems that the structure is not being enlarged or extended correct? The applicant confirms this. B. Petrin says the question is whether the applicant is changing the non-confirming use and the Board agrees that they are not. After more discussion, the Board then notes the next question is the expansion, which is the addition of the ADU itself, within the existing structure.

D. Murray notes that this property has always been a residential use, its commendable of the owners to keep it a residential use, and I'm sure the abutters are more than happy to keep it a residential use as there are houses all around. This is a great idea. B. Petrin notes he can see both sides and M. Raumikaitis adds that the Board has a responsibility to explore the issues.

B. Petrin asks if there are any other comments from the applicant or their attorney and Attorney Bisson states that it is a residential use and it's staying that way. It's not becoming a rental unit or multi-family, and no one has asked to change it to something other than single family.

B. Petrin notes that this property is residential. R. Howe notes that it is not zoned residential though. B. Petrin states that it is within the non-conforming use of the property and as such, should be allowed to also have an ADU like any other residential property. Attorney Bisson notes that a majority of abutting lots are residential, and this is consistent with that, the diminution of value is not negatively impacted.

***B. Petrin closes meeting to the public at 7:39pm**

B. Petrin requests that B. Chivers read through the 5 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 agree that it is not contrary to the public interest. **All were in favor.**

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 agree because the property is a pre-existing residential use. **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 agree because it is a pre-existing, non-conforming residential use and it should be allowed to have an ADU like all other single-family dwellings are allowed. **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 agree the values are not being diminished and may actually enhance the surrounding property values with the upgrade. **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 be an unnecessary hardship because it is a pre-existing, non-conforming property with an established footprint so not being able to utilize this puts a hardship on the owner. **All were in favor**

B. Petrin suggests a motion be put forth to **approve** the variance. **All were in favor**

B. Chivers **motioned** to approve the variance under Article II Section 2.02(B). M. Raumikaitis **seconded**. **All were in favor. Motion passed.**

Case #20-004:

Applicant: Chris Lewis (Brady Sullivan Properties), 670 North Commercial Street, Manchester, NH 03101; Owner: Brady South LLC; Property Location: 366 South Road, Candia, NH 03034; Map 410 Lot 147; For a Variance under Article V Section 5.02A(2): Table of Use Regulations; Type of Land Use -Residential and Article XV Section 15.04(E): Specific Special Exception Uses: Accessory Dwelling Units.

Intent: to allow an accessory dwelling unit to be created in an LI-2 zone with an increased square footage area above the maximum.

B. Petrin starts by stating that at last month's meeting the applicant's plan proposed excess square footage over the 750sq ft that is allowed for an ADU and notes that he's not sure the Board has room to change that. He asks the applicant if they can come back to the Board with a design that is at the 750sq ft or less? The applicant states that because of the way the property is currently set up; the main house is the 1st structure you come up to then you go to the carriage house and then the garage. You have the end of one of the primary residences in the beginning (the end of the carriage house) and then the garage at the end. Based on the fact that this is an existing footprint/area, we're asking the Board to utilize it. The applicant references the ordinance and says if the Town allows an ADU to have 2 bdrms, why would it only be 750sq ft? I think your own ordinance says if you have 2 bdrms the min. size is 850sq ft. I'm not trying to be critical of that but just saying in this particular case, the spirit of what we're doing is not in conflict with residents when utilizing that space.

B. Chivers asks the applicant what size is he asking to build and what is the available amount of space that you are looking to build? The applicant says the gross square footage, the existing footprint is approx. 1600sq ft and of that, approx. 420sq ft is the garage. We are asking the balance of that space to be the 2 bdrm dwelling. He notes that he thinks they can lose additional square footage on the 2nd floor where the loft area was supposed to be. B. Chivers asks if the applicant can make the garage larger and minimize the dwelling footprint to the 750sq ft? The applicant says yes, that's possible, but there already is a 2 car garage attached to the main dwelling and the one we're discussing and further down there is a large barn that was mentioned. There's really no need for another parking garage.

M. Raumikaitis says there was a comment made regarding the ADU's being allowed 2 bdrms but being allowed a max. of 750sq ft, which was suggested that that's in conflict with 2 bdrm in a 2 family with a min. of 850sq ft. This ordinance was approved at the Town Meeting and that's why we have it. This is the voters of the Town of Candia approved this and the State Legislature made the rules on this. My question is why are we not looking at a 2 family rather than an ADU that has these limitations? The applicant says the State Statute says in NH that the State has allowed municipalities to establish their own min. and max. sizes for ADU's and their regulations say they can restrict the size, but no less than 750sq ft. When I read that, I think that's the min. you can do, not the max. M. Raumikaitis agrees that is what the State says, but the Article that went before the Town and was approved said 750sq ft.

Attorney Bisson notes that they are before the Board looking for a variance so by definition, the Board has the authority to vary portions of the ordinance that are being asked. As Mr. Lewis said at the beginning of the presentation on the 2nd application, the issue is that the existing footprint is unique to this property. It already exists, it's already there, and so that lends itself to the hardship variance criteria when something is unique about the property that suggests the ordinance should be relaxed a bit. That's an appropriate time to think about a variance. It something on the property that we're trying to work with so we're not expanding it beyond what already there. There's a footprint that Mr. Lewis is trying to stay within and if he doesn't it will not jive with the rest of it. By definition, when you talk about being limited by something in the ordinance, we're asking you to vary it, that's why we're here due to the uniqueness of the property. The size proposed by Mr. Lewis is justified by something unique on the property, meaning the existing footprint.

M. Raumikaitis says at the last meeting there was discussion about the square footage, and it was also asked tonight. Please tell us how many square feet we are building. R. Howe agrees with M. Raumikaitis' statement and asks the applicant if he were to go from the beginning of the space to the end, how much living space is in the are before you get to the garage? The applicant states they are proposing 1,160sq ft. R. Howe says ok, that's what we've been looking for. M. Raumikaitis asks if this includes the approx. 400ft in the loft? The applicant says no, it will only include up to the garage on the 1st fl.

M. Raumikaitis asks again why the applicant is not considering a 2 family where they would not have these size restrictions, as apposed to the ADU where we have significant overage to the size restrictions? Attorney Bisson states that the current owner has no desire to make it multi-family. The size that we're asking to increase to is such that the variance doesn't support the request, but with the uniqueness of what's already on the property, it seems to be consistent with a variance request. The Board asks for the larger design plans and review the dimensions of the building. M. Raumikaitis notes that the difference is approx. 400+sq ft. Not to exceed the 1,160sq ft will be a condition of approval. B. Petrin asks if there are any comments and Attorney Bisson reiterates if the Board has any questions or concerns, he is happy to answer them but no one does.

***B. Petrin closes meeting to the public at 8:05pm**

The Board now votes on 2 separate variances:

1. Article V Section 5.02A(2)
2. Article XV Section 15.04E(4)

B. Petrin requests that B. Chivers read through the 5 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.

All were in favor.

2. The spirit of the ordinance is observed.

All were in favor.

3. Substantial justice is done.

All were in favor.

4. The values of surrounding properties are not diminished.

All were in favor.

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

All were in favor

B. Petrin suggests a motion be put forth to **grant** the variance. **All were in favor**

B. Chivers **motioned** to grant the variance under Article V Section 5.02A(2) to allow an accessory dwelling unit in the LI-2 district. R. Howe **seconded**. **All were in favor. Motion passed.**

B. Petrin again requests that B. Chivers read through the 5 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.*

All were in favor.

2. *The spirit of the ordinance is observed.*

All were in favor.

3. *Substantial justice is done.*

All were in favor.

4. *The values of surrounding properties are not diminished.*

All were in favor.

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

All were in favor

B. Petrin suggests a motion be put forth to **grant** the variance. **All were in favor**

B. Chivers **motioned** to grant the variance under Article XV Section 15.04E(4) to permit an accessory dwelling unit with the conditions it is not to exceed 1,160 square feet. R. Howe **seconded**. **All were in favor. Motion passed.**

Approval of Meeting Minutes -June 23, 2020:

B. Petrin **motioned** to approve the minutes as presented. M. Raumikaitis **seconded**. J. Szot **abstained**. **All others were in favor. Motion passed.**

MOTION:

B. Chivers **motioned** to adjourn the ZBA meeting at approximately 8:12pm. R. Howe **seconded**. **All were in favor. Motion passed.**

Respectfully submitted,
Lisa Galica
Land Use Secretary
cc: file