

**CANDIA ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES OF  
August 25, 2020  
APPROVED**

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

Audience Present: Matthew & Melody Evans (applicant), Jeff Philbrick (JRHS -applicant), Dave Murray (BI), Kevin Gagne (BI), Dennis Lewis (Road Agent).

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

**Case #20-008:**

**Applicant:** Matthew & Melody Evans, 199 Podunk Road, Candia, NH 03034; Owner: Same; Property Location: Same: Map 402 Lot 49-1; For a Variance under Article VI Section 6.02: Table of Dimensional Requirements; Minimum Setbacks and Dimensions.

**Intent:** to construct a 33' x 27' barn approx. 33' on the left side & 41' on the right side from the required front setback of 50'.

B. Petrin starts by confirming that the applicants are present remotely via zoom and asks if there are any abutters present but there are none. He asks the applicants to tell the Board about the project. The applicant states that they want to build a 3-stall barn with a tack room and a hay loft upstairs. The location will be by the hillside on their property and be approx. 20+ x 30+ ft.

B. Petrin confirms with the applicant if this proposed structure will be sitting between the leach field and the road and because of the angle of the building, that's why there is 33' on one side and 41' on the other. The BI provides the Board with the larger full-sized plans to view the proposed structure relative to the property and why it is necessary to build in the specific location due to ledge and sloping of the land.

R. Howe asks the applicant how big the lot is, and they note it's 5 acres. He states that though there is extra land, the applicant can not get to the back to use it. B. Chivers agrees with R. Howe and notes the existing buildings, leach field and natural obstacles prohibiting the construction elsewhere on the property.

B. Petrin asks the applicant if they will be bringing water and electric to the barn? The applicant says they would like to have both but need to figure out the best way to do it.

J. Szot confirms that this is a 2-story structure? The applicant says yes. J. Szot asks if the barn will be 2 stories plus the hay loft and the applicant notes the hay loft will be the 2<sup>nd</sup> story. R. Howe notes that it's built like a bank barn and the applicant confirm this is true.

M. Raumikaitis asks if the applicant is planning to have any space under the main barn floor like a basement and the applicant says no. B. Petrin confirms with the applicant that this is a foundation, not a pole barn.

B. Chivers asks D. Murray if he's been to the site? D. Murray states he has not been to the actual site according to the plan but has been there before. It is pretty limited to try and do something out back and this is their best case of making it work. He says the Road Agent will verify this property abuts Bear Brook and is the last house on Podunk Rd. and there is never going to be anything further for any road situation. B. Chivers asks the Road Agent his opinion and he confirms what D. Murray said and includes that it's a 1 lane dirt road and can never be changed because it shares a property line with Bear Brook State Park all the way to Allenstown. He further notes that the applicant is trying to take advantage of the slope of the land. If you go out back, there's all ledge and a pond out there, the leach field is beside the garage, there's no traffic going by so it isn't going to impact anyone and there will be plenty of room for the snow.

**\*B. Petrin closes meeting to the public at 7:12pm**

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. (5-0)**

**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 applicant has tried to observe the ordinance. **All were in favor. (5-0)**

**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** and to permit this variance. **All were in favor. (5-0)**

**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 because the State Park will not be affected negatively as the abutter. **All were in favor. (5-0)**

**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 based on the obstacles of the land, there are no other areas to build the structure. **All were in favor. (5-0)**

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

B. Chivers **motioned** to grant the variance under Article VI Section 6.02 permitting the construction of the barn within the 50' setback on Podunk Road with no conditions. R. Howe **seconded**. **All were in favor. (5-0) Motion passed.**

**Case #20-009:**

**Applicant:** Jesse Remington High School, P.O. Box 473, Candia, NH 03034; Owner: Candia Congregational Church, Candia, NH 03034; Property Location: 15 Stevens Lane, Candia, NH 03034; Map 405 Lot 9; For a Variance under Article VI Section 6.02: Table of Dimensional Requirements; Minimum Setbacks and Dimensions.

**Intent:** to construct a 16'x 16' pavilion on school campus for student lunch seating & recreational use approx. 34' from the required front setback of 50'.

B. Petrin starts by confirming that the applicants are present remotely via zoom and asks if there are any abutters present. He also asks if there are any more detailed plans of the structure, but the applicant does not have anything else.

J. Philbrick starts by explaining to the Board that currently there is a foundation that they proposed to build on several years ago and did not meet the requirement and they did not build there and moved it, and is a structure they use still today. The foundation sits on the school campus and is just used as an open deck area

on the lawn. He notes that they have built other pavilions around town that have made for great shared space for people. They would like to put a timber frame structure such as in the plan for general student gatherings, lunch time and recreational use. It would not only enhance and help to make a beautiful property but use our buildings a little bit better. A weather shield to get a few more weeks out of the hot forum for the students.

B. Petrin confirms with the applicant that this space is currently the pad in the lawn area with 2 picnic tables on it.

R. Howe asks the applicant what the difference is now than when they were before the Board in the past and it was denied? The applicant states that it's a smaller structure, different purpose and utilizes only half the total space. R. Howe asks what the reason for the denial was and the applicant notes that it sits to close to the road. J. Szot notes that the denial was because it was to close, and they had other areas they could've used. J. Philbrick notes that this is utilizing the same space with a different and smaller structure. J. Szot states that it's still within the setbacks, didn't comply then and doesn't comply now and doesn't fall under the dimensions of equitable requirements.

There were concerns discussed with the applicant that there were no permits given for the original project and that is a reason the Board denied the applicant to move forward.

J. Szot notes a concern that when winter comes, the building is going to be closed in. The applicant states that there are no intensions for screens or sides and says the Board can look at the other pavilions they have built around town, that's all they want to do.

J. Philbrick states that in the past they did not check the setbacks, had a building permit, the BI at the time did not check their setback but someone did and they had to move the project but did not proceed without a building permit.

B. Petrin asks if they are going to run electrical out to the structure and the applicant says no. He then asks how the structure will be secured to the pad? The applicant says there is a full concrete foundation right down to a frost wall so there's plenty of anchoring possibilities.

There are questions by R. Howe as to the details of the past case and the Chair points out that if it's not germane to the current application we should stay on task and move forward. The applicant states that they are aware they were wrong, they changed it and now yes, they are seeking a variance to put the new structure on a foundation that just sits there. It doesn't do us much value, and this would add value and a few more weeks a year to use that space for different gatherings. B. Chivers notes that he respects the way the school respected the Boards past decision. They had already poured the concrete, they came in for a variance, the Board turned them down and they stopped doing everything without complaining, legal action or defying the ordinance since then.

D. Murray notes that this case is a good compromise. The applicant cut the size of the building in half and if you do the math, they are technically 51' from the pavement on Stevens Ln. There is an upgrade in the stone wall and a very large easement on the side for that road of 21' from the edge of the road to that stone wall. D. Lewis says the pavement may not be centered in the easement, but we usually measure from the wall. D. Murray states that it is half the size and they did shut it down before and try now to sit out there for lunch times or even outdoor classes and it needs to be a pretty nice day for anything like that. B. Chivers notes that this lot has constraints from Rte. 27 and Stevens Ln., so there's about 100' of distance they are already being deprived of on that lot. D. Lewis notes that Stevens Ln. has very little traffic so it's not going to impact anyone or anything there. B. Chivers notes that a structure like this would be an asset to our community.

M. Raumikaitis asks the applicant if the area is currently always used in a supervised situation? The applicant states that it's only used when school is open. The primary use will be mostly lunchtimes, but meetings can be scheduled as well and there is the possibility for use by people during off hours, but that is not the intention. M. Raumikaitis' notes a concern that we may be creating a situation where we have student closer to the road and this is about supervision and safety. The applicant notes that it will draw more body traffic in that area but not a huge amount. It will add value to us though.

R. Howe states that this is a nice-looking building and can see the potential for someone to do a small wedding or a concept like that there. Has that been thought about? The applicant notes that a couple have been done at the site already but hasn't been a thought specifically for the new structure yet but could become a question. It is not the intent of this project.

J. Szot asks what about the hardship? What makes this piece of property different from any other piece and different than it was last time? B. Petrin notes that it's sandwiched in between Stevens Ln. and Rte. 27 and has a limited amount of room. That pad could've been spun a different way originally and may have met the requirement but it's in now. Unless we want to dig into the archives to find out what's different, we

can do that. J. Szot asks if there was no reason to grant a variance and the lines of the property haven't changed, why would there be a reason to grant a variance now? The applicant says the drawing is fundamentally different. We are using a portion of it and we are trying to take our campus and make it better in any way we can. It's a little lot and in order for us to put this up, it would require your permission to do that and it would be better use of what we already have. R. Howe asks how far away is this from Rt. 27? J. Szot says it notes approx. 33'.

R. Howe asks what kind of legal situation this puts the Board in to change a decision that was made 16 years ago? B. Chivers states that this is an entirely different proposal. D. Murray notes that they gained 10' on the setbacks, and B. Petrin says 10' on each side and it's no longer a building as much as a structure. R. Howe asks if the old building was going to be a full structure and the applicant says it was going to utilize the 2 sides of it as well, but now it's a different construction. R. Howe notes that that isn't really any other space you could put the structure than where it is and B. Chivers says or where it could be functional.

J. Szot asks if we give them permission to put in a pavilion, do we give them permission to close it in? The Board notes that they can and do propose a condition be added to it so not to be sided in any manner, solid or screened, or expanded. R. Howe states that it can be referenced to the drawing and it will not be changed from that presented.

**\*B. Petrin closes meeting to the public at 7:33pm**

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:

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**Boyd moves the Board agree** that it is not contrary to the public interest. **All were in favor. (5-0)**

**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** that it is observed. **All were in favor. (5-0)**

**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** that substantial justice has been done. **All were in favor. (5-0)**

**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. **All were in favor. (5-0)**

**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 ant “fair and substantial” way.*

**Boyd moves the Board agree** that it would be an unnecessary hardship. J. Szot-**No. All others were in favor. (4-1)**

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

B. Chivers **motioned** to grant the variance under Article VI Section 6.02 to permit the construction of the facility within the setbacks on Stevens Lane with the condition that the structure remains as depicted in the architectural drawings submitted in support of this variance application. B Petrin **seconded. All were in favor. (5-0) Motion passed.**

Other Business:

- Dave Murray tells the Board he is retiring as the Building Inspector at the end of the month and expresses his appreciation for the years they have all worked together. He introduces the incoming Building Inspector, Kevin Gagne to the Board and Kevin states a bit about himself, tells them he looks forward to working with them and thanks them for their time.

Old Business:

- Approval of Meeting Minutes -July 28, 2020:

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

**MOTION:**

B. Chivers **motioned** to adjourn the ZBA meeting at approximately 7:38pm. B. Petrin **seconded. All were in favor. Motion passed.**

Respectfully submitted,  
Lisa Galica  
Land Use Secretary  
cc: file