

**CANDIA ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES OF  
January 26, 2021  
APPROVED**

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

Audience Present: Jim & Terri George, Kayla & Allen Ingham, Daniel & Shannon Chism (George's -applicant), Judi Lindsey (abutter), James Hurley (abutter), Brien Brock (BOS), Granite Hill Materials & Recycling, LLC (Jeff Hill -applicant), Chris Berry (GHM -applicant engineer), Believe Freetown, LLC (Jeff Hill, Bill Scott & Dan Robinson), and town residents.

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

**Case #20-010:**

**Applicant:** Jim & Terri George, 37 Forest Road, Weare, NH 03281; Daniel Chism & Shannon George-Chism, 37 Forest Road, Weare, NH 03281 & Allen George & Kayla Ingham, 470 Silver Street, Manchester, NH 03103; Owner(s): same; Property Location: North Road, Candia, NH 03034; Map 403 Lot 8 & Map 403 Lot 11. For a Variance under Article VI, Section 6.02: Table of Dimensional Requirements; Minimum Setbacks and Dimensions.

**Intent:** *the construction of 2 residential homes, one on each lot (8 & 11), which only have frontage on a cl-6 road.*

B. Petrin starts by confirming that the applicants are present and asks the applicants to tell the Board about the project. The question is posed if there are 2 separate lots at this time and the applicant confirms this is the case and currently have 2 separate deeds for each.

B. Petrin states that the road frontage is the area of interest to the Board tonight and the applicant notes that there is approx. 2200sq ft on each lot. B. Petrin asks what the acreage is on each lot and the applicant notes that the North side lot is 60 acres and 78.5 acres on the South side.

M. Raumikaitis asks who will be maintaining the cl-6 road and if it has been agreed upon by the Town. The applicant notes that they will be maintaining it themselves and signed a waiver in October 2019 with the BOS to this fact. M. Raumikaitis then asks if Fire Safety and the Police Dept. agree to the accessibility to these properties? The applicant asks if Brien Brock (BOS) may speak to this because he has been to the site with Dennis (Road Agent) on different occasions and has seen what's been done to the road. B. Brock states that as far as the road being acceptable for emergency and fire, there are no problems. They have met all the criteria they needed to.

R. Howe asks if this property goes all the way to the Hooksett line and the applicant says no. He confirms that the Selectmen have already approved this. He wants to know where they stop on this road. They have already added and now this is the 3<sup>rd</sup> addition. B. Chivers says that the cl-6 Road Policy has a limit of 600 feet from the nearest cl-5 road. In this case, the George's did request and were granted a waiver for this. R. Howe asks what about the property on the other side of them and the applicant notes that there is an unbuildable lot because of the large amount of existing water. B. Brock notes that at the public hearing of the BOS, one of the owners of the abutting property did attend that meeting and stated that he was in support of the George's case in the event that he ever wanted to build.

B. Petrin asks if there are further prospects for subdivision and the applicant says no. J. Szot notes that the law currently prohibits this so the road would have to be brought up to cl-5 or better for any subdivision.

B. Chivers states that in his opinion in all fairness, they owe these people this variance. They came before the BOS and announced their objective to build 2 houses on a cl-6 road, they were granted a waiver and were told they would have to go before the ZBA. In the meantime, we allowed them to spend substantial money to upgrade that road and have a real investment there now. In light of the investments they've made after the BOS approved this project, they have gone out of there way to settle the deed issue and now have 2 separate deeds and if the BOS signed the permit and authorized the building of the 2 houses, this Board should support that decision.

**\*B. Petrin closes meeting to the public at 7:14pm**

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 because they've already signed a waiver releasing the Town from any liability if they are unable to respond to any emergency there and they are upgrading the road to the Towns standards. **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 throughout our ordinance, there has to be fairness and equity. We try to do that as a Board and a Town and believe that is being done by granting this variance. **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** because of all the work the applicant's have already done to improve the property. **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 there are not any currently around them. They will be making improvements. **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 find that it would be an unnecessary hardship** because it is clear based on the facts stated in the discussion noting what the applicants have already done. **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 applicant to build on the properties which only have frontage on a cl-6 road, with the condition of no further subdivisions. M. Raumikaitis **seconded. All were in favor. (5-0) Motion passed.**

**Case #20-011:**

**Applicant:** Granite Hill Materials & Recycling, LLC., 231 N.H. Route 27, Raymond, NH 03077; Owner(s): Believe Freetown, LLC., 231 N.H. Route 27, Raymond, NH 03077; Property Location: N.H. Route 27, Raymond, NH 03077; Map 407 Lot 66 & Map 407 Lot 71. For a Variance under Article V, Section 5.01(A)(1): Use Regulations; Sand, Gravel & Burrow Excavating Operations.

**Intent:** *to allow excavation for reclamation purposes in the residential zone.*

B. Petrin starts by confirming that the applicants are present and asks them to approach and lay out their plan.

C. Berry starts by explaining that there is a past to this property, and they want to put that behind them and find a way of developing this property in a responsible manner and this is a step in the process to make that happen. They had a meeting with the BOS almost 2 years ago with a proposal for retention development for the site and were asked to go back and put together a reclamation plan, which would essentially clean the site up and make it ready for development moving forward. They went back and prepared a complete reclamation plan of all the areas that needed to be reclaimed. After filing an AOT permit, they came back before the BOS again and were asked to go before the ZBA because the reclamation permit would propose blasting of materials within a residential zone for the purposes of reclamation, and that is not permitted under the Town's zoning because the removal of the material is not a direct impact of direct development. Because it's not a direct impact or result of development, they do not fall under the 155(E) exception and therefore are required to come before the ZBA for relief to allow for the reclamation to take place on the site.

C. Berry briefly notes the history of the site and the previous owner. Under prior ownership, zoning regs were not followed, permitting was not followed and a basic mining of the site materials was done in a completely improper way. Today it's completely barren and left in an unsafe condition. The applicants currently run a recycling facility out of the Raymond side of the property and would like to utilize the rest of the property in a responsible manner and develop the rest of the site. When they have proposed development plans for this parcel in the past, reclamation keeps coming back and they are continually asked to reclaim the site. They have put together the reclamation plan that cleans up certain areas (seen in red on physical plans), and because of how the site was left in the past, those areas would have rock removal and revegetation added after the rock is removed. The prior landowner had consultants put together a storm water drainage plan but was never implemented. Part of the AOT permitting costs is to ensure that the storm water that is coming down into the wetland area is treated from both a volume standpoint, a runoff standpoint and a nutrient standpoint. After 2 consultation appts with AOT, it was determined that they would run the stormwater analysis based on how the site looked many years ago, and not take credit for the disturbance that's taking place now. All the pre-development storm water is as if the site has not been touched. That allows us to determine how much increase in runoff takes place from our site once it has been reclaimed and vegetation removed. That then allows us to size the best management practices (BMP) we place on site to help mitigate that storm water. He notes that in his narrative it is discussed the key natural features that we are trying to protect through the BMP. There is a large wetland at the front of the site and a wetland complex that comes down through the 2 parcels and enters that large wetland at the front. There is a haul road that has historically been there for quite a while and the proper DES permit was granted to cross in that location and all the storm water for most of this site comes down and enters that wetland through those methods. The development would have to take place in the areas that we are looking to reclaim. All of the area at the front of the site would be flattened and the slopes that are 1 to 1, and in many cases steeper than that, left in an unsafe position would be laid back so they are safer and more stable, storm water systems would be placed in the direct flow path of the storm water that comes off from those through detention systems and then piping into natural filter strips, prior to discharge into the wetland areas. C. Berry specifically notes that they are not proposing any removal of materials outside the area that has currently been disturbed. We would lay the slope back at a proper 1 to 1 rock slope and make sure it's stable and safe moving into the future. Once that reclamation takes place and that material is removed, 4" of loam and seed would be brought back to the site and allowed to naturally revegetate. All of this work is mostly required because of the damage the prior owner conducted on the site.

B. Petrin asks if all this property they want to reclaim is in Candia and not Raymond and that is confirmed by C. Berry. He then asks if the BOS approved the reclamation plan and B. Brock states that the BOS did not really approve the plan, but they were happy to see an actual plan had finally come to the Board because that is how it was left years ago. To move forward and accept that plan was inappropriate because the BOS could not grant the excavation that was required to reclaim this property, and why they were told to come before the ZBA. As far as the whole plan being acceptable, the BOS did not find it unacceptable and were

encouraged because it was the first time a reclamation plan finally came to them and this has been going on for over 30 years. The BOS were excited to see it reclaimed and for some type of development down the road.

B. Petrin confirms the applicant has had this site since 2012 and asks for what their intent for the site is. C. Berry states they have proposed in the past a driving range, small sporting events and things that would be permitted in the zone. The applicant wants to see it used to the highest and best potential.

M. Raumikaitis asks what the total site acreage is and is told approx. 60 acres, then he asks what the reclaimed site acreage is, and the engineer notes it at approx. 25 acres and finally what will be left for usable, buildable land and the engineer says 40+ acres of the total site acreage.

M. Raumikaitis asks what the timeline is for the reclamation and C. Berry states approx. 2 years. In the interim, they would be working on development plans so they would be ready to go once the reclamation is complete.

M. Raumikaitis asks for clarification on the storm water plan comment from earlier and C. Berry states that what the storm water drainage analysis assumes is that the site has not been touched. They can never reclaim the site to what it was. In a storm water analysis, there are 2 models that we have to run. In any development site, we 1<sup>st</sup> run an existing condition model to determine how much water comes off that site today and then you run the model on what you're proposing. It's unfair from an environmental aspect for us to say we are going to use the existing site for our existing conditions model because it's already been de-vegetated and there are rock faces that are exposed, so it's unfair for us to take credit for that work that has been undertaken because it was done illegally and improperly. We assumed in the existing condition that the entire site was wooded and vegetated as it was in an actual condition. That decreases the flow in the existing condition that comes off the site, so that the difference, the delta, in your proposed flows is increased so that our detention systems that are designed assume the site had not been touched before we got there. M. Raumikaitis says he reads that to mean it's calculated for less water coming off the site and C. Berry says, in the existing condition, yes. In the proposed condition, it assumes more flow. M. Raumikaitis says the retention pond and drainage is calculated on the more flow and C. Berry confirms this.

B. Chivers says there is about 60 acres and looking at the topo map, the highest point on that property is 370 feet. I assume if you're going to develop that property, you're going to bring it down to somewhere around the elevation of Island Road, which is 220 feet. C. Berry says no, to develop the property we would have to make a sense into the property to get to these development zones. B. Chivers says if you brought it to the Island Road, there would be a 150ft truck in there. I'm trying to determine if this is a quarry for the purpose of extracting rock and selling it, a reclamation plan or to develop this property. C. Berry states that the intent is to develop the property. If we were proposing a quarry, we would be dropping the site substantially more than we're proposing currently. We have designed the reclamation around the existing pit floor elevations that are there and basically peeling the material back from that. We are proposing the pit floor that's there now be re-shaped and re-sloped to match the grade that's out here in the haul road now. We taper that in a reasonable fashion and then lay that slope back.

B. Chivers asks if the applicant has a business plan that demonstrates the amount of site work they need to have done to develop a 60 acre parcel to provide them with a return on their investment, taking into consideration the \$1.4mil they already paid for it. C. Berry states that the Town of Candia is not allowing them to move forward with development plans until they have cleaned this site up in an appropriate manner and this is the 1<sup>st</sup> step that has to be taken. The material that has to come off this site to make sure that happens, there is additional loam, seed and other reclamation matters that have to take place after that. The material that leaves will be bought and sold by individuals, but there is material that has to come back. Though there is an export of material, we have to bring loam and seed back, so there is a compensation there.

B. Chivers refers to a letter from town counsel dated 2/15/00, stating that "the Town should emphasize to the engineers that a restoration plan should not be used simply to disguise additional excavation". He then states that the applicant is coming to the Board and asking to do this work in the residential district, which is prohibited in our ordinance. This is in conjunction with another business right on Rte. 27, which I assume have been approved by the Raymond PB. You guys are in the materials business and obviously this is the same type of granite you have already crushed in Raymond, so you know the value of the material that is on this site, and it seems this is an expansion of the Raymond operation into Candia under the cover of the Reclamation Plan to develop 60 acres with no road frontage, so you'd have to build a road to it as well in order to develop it. C. Berry confirms this and notes that there's also infrastructure that's been expended to get to this point, so just because it doesn't have road frontage, doesn't mean it does not have access to a road.

C. Berry confirms that there is a recycling business that takes place in Raymond and materials are brought to that site on a daily basis. Mr. Hill operates a demo business where he demos buildings and those buildings are brought to the Raymond site where they are sorted, crushed, removed and recycled on site. They have heard from abutter that they are happy they operate this site.

J. Szot asks if feasibility studies have been done on the site for what their intent is for development and C. Berry says no, they proposed a development plan but were asked for a reclamation plan. She states that if it was the intent to actually develop, they would have a plan but don't have any of that. She then asks the owner if he has ever developed another site like this. B. Scott asks the Board if any of them have walked this site and states that a walk should be one of the 1<sup>st</sup> things being done. He encourages everyone to visit the site and see what is being done to improve it. He notes his frustration regarding the process going back and forth between the different Board and states that they can't get past the 1<sup>st</sup> step to get into the development phase. B. Petrin states that feasibility is a fair question and B. Scott says they did show development plans to the BOS but it wasn't what they asked for, they wanted the reclamation. A couple ideas they have for potential uses are a soccer field, baseball field or other athletic activities such as small driving range.

R. Howe asks if this property is any part of Raymond and B. Scott notes that this piece is all in Candia.

R. Howe asks for an estimate of the materials that will be moved from the site and C. Berry notes approx. 420k cubic yards that will be blasted, crushed and moved. B. Chivers states that these are the issues because this is in a residential zone. People buying homes around here think they are safe and you can't ask the 5 of us (ZBA Board) to rezone. If we allow this, there's going to be a project that lasts at least 2 years and thousands of truckloads of material coming and going out of this property. C. Berry states that they are not asking for re-zoning, they want to be allowed to use this property as intended in the natural zone.

B. Scott asks about impact. He asks the Board approx. how many trucks are in that area (come off Rt. 27 and either take right or left) and run through there every day and impact their lives. He notes that neighbors next to the recycling business would be here but due to COVID they could not be. They would attest their operation runs well and with no complaints for the machinery running such as the crusher or the trucks in and out. He notes that he's been doing this for approx. 4 years and has had no complaints because they do the job right. He states that there is no impact on Island Road, there is no entrance over there, we don't run trucks down there, we run trucks off Rt. 27 and into the site that way. J. Szot asks if they will be using the exit in Raymond (exit 4) or exit 3 in Candia and B. Scott says Raymond.

J. Szot notes that she had a few questions like where would the trucks be going, what size trucks, how many a day, how many additional loads daily than the regular average you already have. B. Scott notes that average is approx. 30 such as today. J. Hill states the Board can double that for this project.

B. Chivers asks for confirmation that Island Road would not be used at all and D. Robertson states that is a misconception and says it's not an option to drive the trucks on that road.

B. Brock states that the BOS were concerned when the plan was brought forward, and if approved, the extent of the project was at least 2 years and how was that going to impact the neighbors again based on the history. He goes on to note that they are not experts to determine how much material is required to reclaim that. We are taking their word on the reclamation plan that it requires moving that much material in and out to reclaim this. The BOS' thought was that they were happy that someone finally moving forward to do that because if not, the Town is still stuck with it in this condition. In my opinion, if this applicant will clean it up and a variance has to be granted to excavate this, it's a win-win. The Town still has to look at their plan to develop as well so it's not like it's being approved carte blanche.

R. Howe notes some concern from neighbors in the past regarding the blasting and wants to know how the applicant will be able to mitigate that so that is not a problem in the future. C. Berry states that the blasting plan is part of the AOT permit and is very specific.

B. Chivers notes that out of the many (32) abutters that were noticed for this project, maybe 1 is in person and possibly 1 on ZOOM. If there were more opposition, it would show here.

D. Critchett (resident) notes that he is for the project and cannot hear anything from the business. If the blasting can be controlled, he may not even hear that.

M. Raumikaitis asks the applicant if the Board puts a restriction/condition on the approval that they cannot process the product/material in Candia, would that be objectionable to them and they say that's agreeable.

J. Hurley (abutter) notes the only concern he has is blasting or loud work being done on the weekends. Other than that, he has never heard any of the crushing from the business.

**\*B. Petrin closes meeting to the public at 8:01pm**

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. J. Szot-No. **All others were in favor. (4-1)**

**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 and improvements will be made. **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 and may in fact be enhanced. **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 agree** that it would be an unnecessary hardship. **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 V, Section 5.01(A)(1): Use Regulations; Sand, Gravel & Burrow Excavating Operations and permit the excavation activity on these two lots of record in the residential zone for reclamation purposes only, with the conditions that there will be no processing of any materials in Candia, NH and Island Road will not be used as any access way. R Howe **seconded. All were in favor. (5-0) Motion passed.**

Other Business:

- B. Chivers mentions to the Board that the Land Use Office Secretary's title has changed and is now the Land Use Office Administrator.
- The Land Use Office Administrator noted that terms are coming up in April for Mark, Bob & Ron. They will need to submit letters of interest to the ZBA if they would like to continue as members for another 3-

year term. Once received and voted on by the ZBA, they are put before the BOS as recommendations for appointment.

Old Business:

- Approval of Meeting Minutes -August 25, 2020:  
B. Petrin **motioned** to approve the minutes as presented. B. Chivers **seconded**. **All were in favor. Motion passed.**

**MOTION:**

B. Chivers **motioned** to adjourn the ZBA meeting at approximately 8:13pm. R. Howe **seconded**. **All were in favor. Motion passed.**

Respectfully submitted,  
Lisa Galica  
Land Use Office Administrator  
cc: file