

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
May 25, 2021
APPROVED**

ZBA Members Present: Bob Petrin, Chairman; Judith Szot, V-Chair; Boyd Chivers; Ron Howe; Anthony Steinmetz, Alt. (sitting in for M. Raumikaitis)

ZBA Members Absent: Mark Raumikaitis

Audience Present: Stephen & April Holmes (applicant), Christopher King (applicant) and town residents.

*Bob Petrin, Chair called the meeting to order at approx. 7:02pm immediately followed by the Pledge of Allegiance.

Case #21-004:

Applicant: Stephen Holmes, 466 High Street, Candia, NH 03034; Owner: Stephen & April Holmes, 466 High Street, Candia, NH 03034; Property Location: same: Map 405 Lot 29; For a Variance under Article V Section 5.02B (b-4): Table of Use Regulations: Type of Land Use -Commercial and a Variance under Article VI Section 6.02: Table of Dimensional Requirements; Minimum Setbacks and Dimensions.

Intent: *to construct a 12' x 10' garden shed 25 feet within the front setbacks in order to sell flower arrangements and art.*

B. Petrin starts by confirming that the applicants are present, and they are in person and asks them to explain their request to the Board.

Stephen & April start by introducing themselves and S. Holmes continues by telling the Board his wife grows a variety of flowers at their home and their driveway is long, at 500ft. They want to build a small shed that doesn't even need a permit, but because of where they want to put it, they needed to come before the ZBA for setback approval. He says that if it's 50ft back, there is a slope to the land, and no one will be able to see the shed because there is no visibility. Where they will actually build the shed, it's more at 30ft off the road, there's a culvert, an elevation, a rock wall and 2 large 100yr old oak trees on either side so it will be covered but it's about the visibility, so people know it's there. They have a big enough driveway where they plan to have at least 2 dirt parking spaces so no one will have to park on the busy road. There won't be any electricity, no plumbing, it will be an honor system so no one will be manning the shed, a couple jar with flowers in it for customers, protection for the flowers from the sun and other elements and they want the shed in order to lock it when necessary.

B. Petrin notes that the application says 25' but they will most likely need about 30'. B. Chivers and R. Howe question as to where they are measuring from for the setback and it is noted that the former Road Agent, Dennis Lewis has said it was safe to measure from edge of pavement on a State Road. J. Szot asks how far from edge of pavement will they be and the applicant says they just measured today and it was between 25' and 30' but he also notes that there is some brush they need to cut back as well and there is also shoulder with a significant gully that goes up to the rock wall and will be sandwiched in between the 2 oak trees. There will be no threat to anything happening to the structure.

J. Szot asks how close the structure will be to the stone wall and the applicant says about 5' from that. R. Howe asks if it will be in front of the wall and the applicant confirms it will be behind it.

B. Petrin says the question lies with the Table of Use Regulations and where they fall on that. The Board asks what months she operates and the application states from June thru November. The applicant states that she will not be making arrangements, no orders will be taken, and no one will be at the shed manning it, it's all an honor system. J. Szot notes that the Master Plan talks about encouraging the agricultural community of the Town and the Board agrees this is more that intent than any flower shop business. The Board briefly discusses the criteria for the variance request under 5.02B (b-4) and it is determined that this intent falls under agricultural use and is permitted by right in the residential zone and therefore, the variance is not necessary. The Board will only be voting on the variance request under 6.02.

R. Howe notes that under (b-1), the setback only has to be back approximately 20' back but the Board decides to act upon the general residential zoning ordinance setbacks of 50'.

B. Petrin asks about signage, and they do have a small sign for her business “April Showers Flowers”. It is noted that the residential zone requirements are 2’x2’. They also have already filed a Residential Use Permit with the Building Dept. so that is taken care of as well.

B. Petrin asks if there are any further questions/comments from the Board or audience and there are none.

***B. Petrin closes meeting to the public at 7:15pm**

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 that the spirit of the ordinance 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 will not be 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 an “fair and substantial” way.

Boyd moves the Board agree because their request is an accepted use in the residential use district. **All were in favor. (5-0)**

*The Variance under Section 5.02B (b-4) is no longer needed since the Board determined this intent falls under agricultural use and is permitted by right in the residential zone.

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

J. Szot **motioned** to grant the Variance for relief under Article VI Section 6.02 to construct a garden shed for the sales of flowers and art at 466 High Street 25’ within the 50’ front setbacks. B. Chivers **seconded**. **All were in favor. (5-0) Motion passed.**

Case #21-005:

Applicant: Christopher King, 86 Critchett Road, Candia, NH 03034; Owner: same; Property Location: same; Map 406 Lot 130; For a Special Exception under Article V Section 5.02A(2): Table of Use Regulations: Type of Land Use - Residential.

Intent: *to allow the construction of a 733 square foot accessory dwelling unit.*

B. Petrin starts by confirming that the applicant is present, and he is in person and asks him to tell the Board about the project.

C. King starts by introducing himself and tells the Board the ADU will be built on the back of his home, and he will be living in it. He was diagnosed with an illness last year and it is becoming increasingly difficult to maintain the property himself so his daughter and her husband will be taking over the main house. He notes that the square footage of the ADU has changed by about 40'+ because he did not count the stairs being part of the living space, so he has to add them but is still under 800sq ft. He said in the original plan he measured it by 19'x24' (456") but now he is doing 19'x28' (532').

B. Petrin notes there looks to be 2 bathrooms on this plan and the applicant confirms and states that the upstairs is the full bathroom for him, and the downstairs is a half bath.

B. Petrin asks about the septic system and the applicant states that he is currently working with Allen Major Assoc. on the septic design and intend to put in the application with DES. He notes that the current septic is working properly, and it has only been him living in the home and potentially it will only be another 2 adults so he thinks it will be sufficient. He states that one of the bedrooms was turned into an office and will not be changing because his daughter will be using it when they take over the house. The Board asks if he has spoken to or met with the Building Inspector regarding the property and it was notes by the Land Use Coordinator that the BI is aware of the bedroom use change, but the design will still need to be on file to cover the ADU because the office does still have a "closet", though it has no door and is used for office supplies. The Board notes that he will need to have the new design on file with DES and to the Building Dept. should the application be approved.

T. Steinmetz asks if the slider door will be up and down, and the applicant notes that it will only be on the 2nd floor that leads out to a small deck. B. Petrin asks if the intent is to have a deck there because he doesn't see it on the plans and the applicant confirms he will have one, so he has extra space when he is more restricted to one level.

The Board reviews the square footage with the applicant in more detail since it has changed from the plans the Board was provided with the application. The original design was 733sq ft without the 1st (42') & 2nd fl (24') stairs added into the living space. The applicant now intends to add that 66sq ft back into the design and that will make the potential total 799sq ft. Although the Board understand why the design would increase in square footage after the addition of the stairs, the maximum allowable is the 750 and they agree that if approved, the applicant will need to redesign the plan to fit it into the 750sq ft allowable. The Board states that if approved, the applicant will need a new plan design provided to the Building Dept. with the permit application that does not exceed the 750sq ft maximum living area. The applicant is agreeable to the requirements the Board has laid out for any approval.

There is an abutter in the audience that notes they had a concern about the water because their wells are all on the same aquifer since a storm damaged the individual ones in the past. After listening to the applicant and now know only 2 adults will be added to the home, they no longer see any concern with a potentially larger amount of water use.

B. Petrin asks if there are any further questions/comments from the Board or audience and there are none.

***B. Petrin closes meeting to the public at 7:34pm**

B. Petrin requests that B. Chivers read through the criteria to meet the terms of Special Exception Uses, 15.04E, Accessory Dwelling Unit and the Board will vote on each as they are read out. **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.

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

B. Chivers **motioned** to grant the Special Exception for relief under Article V Section 5.02A(2) to construct an accessory dwelling unit at 86 Critchett Road, with the conditions that it does not exceed the 750 square foot maximum living area allowed, an updated set of construction plans shall be provided to the Building Department with the permit application and a new septic design application shall be filed with DES and a copy shall be provided to the Building Department to be attached to the permit application. R. Howe **seconded**. **All were in favor. (5-0) Motion passed.**

Minutes -April 27, 2021:

B. Chivers **motioned** to approve the minutes as presented. R. Howe **seconded**. T. Steinmetz **abstained**. **All others were in favor. Motion passed.**

Other Business:

- The Board discusses the logistics of their roll call voting process and if there are any changes that are warranted but they agree the process works efficiently and will stay the same for now. They will revisit the subject in the future if changes are necessary.

MOTION:

B. Chivers **motioned** to adjourn the ZBA meeting at approximately 7:39pm. J. Szot **seconded**. **All were in favor.**
Motion passed.

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