

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
September 28, 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: Roland & Greg Grimard (applicant), Jason Franklin (Grimard Rep.), Scott & Ann Nerney (applicant), James Shankle w/daughter Amanda (applicant) and town residents.

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

Case #21-007:

Applicant(s): Roland & Sherry Grimard, 178 Deerfield Road, Candia, NH 03034; Owner(s): Roland A. & Sherry M. Grimard & Trustees of Grimard Family Revocable Trust, 178 Deerfield Road, Candia, NH 03034 and Peter D. Foti & Laura L. Short, 184 Deerfield Road, Candia, NH 03034; Property Location: Deerfield Road, Candia, NH 03034; Map 406 Lot(s) 69 & 71; For a Variance under Article II Section 2.02(E)(5): General Provisions: Non-Conforming Uses and Structures -Use of Non-Conforming Lot and for a Variance under Article VI Section 6.02: Dimensional Requirements: Table of Dimensional Requirements -Minimum Setbacks and Dimensions, Maximum Heights Allowed.

Intent: *To correct past encroachments, abutter lot line disputes and due to health and safety concerns that have arisen with their properties septic system failures along with the state requirements for repairs, the owners request to reduce the size of the non-conforming lot 71 (approx. existing =1.139 acres) by 0.089 acres to a proposed non-conforming lot of approx. 1.050 acres and increase the size of the non-conforming lot 69 (approx. existing =0.728 acres) by 0.089 acres to a proposed non-conforming lot of approx. 0.817 acres.*

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

The reason this case is before the ZBA is because the encroachments on these lots have happened over the years between the various properties because people didn't have proper surveying done and did not technically know where their lot lines were. The lots in question are all non-conforming lots and all have property line issues going back to basically the inception of the lots, and currently one of the owners of one of the lots are having septic failure issues. This particular septic system is between lots (because of the property line issues), so a LLA is needed to gain acreage to the lot for this to happen. Because these lots are non-conforming, a ZBA approved variance is required before the PB can move forward with this case.

J. Franklin states that the applicant is intending to adjust the lot lines between the Foti's & Grimard's because they need to replace their leach field and because of the past encroachments on these lots, the leach field is currently on the Foti's property. They will adjust the lot lines that match current occupation lines to give them enough room to put the new leach field in.

The Board asks J. Franklin to show them on the plan where the existing system is vs. where the new system would be placed.

B. Petrin confirms that the smaller lot, owned by Greg Grimard will not be changed with this adjustment and it will not.

J. Franklin states that the existing septic tank is currently on the corner of the Foti's property so the line will adjust to fit that onto the Grimard property.

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 7:06pm**

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 ant "fair and substantial" way.

Boyd moves the Board agree because their request is for the health and safety of the applicant and abutters due to septic failures. **All were in favor. (5-0)**

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

B. Chivers **motioned** to grant the Variance for relief under Section 2.02(E)(5) & Variance under Article VI Section 6.02 for 178 Deerfield and 184 Deerfield Road (map/lot(s): 406-69 & 71). J. Szot **seconded**. **All were in favor. (5-0) Motion passed.**

Case #21-008:

Applicant: Scott & Ann Nerney, 284 High Street, Candia, NH 03034; Owner: Scott R. & Helen Ann Nerney, 284 High Street, Candia, NH 03034; Property Location: same; Map 405 Lot 14-3; 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 610 square foot accessory dwelling unit within an existing space in our home.*

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

A. Nerney starts by explaining to the Board that during the covid confinement, they determined they needed extra room in their home since their kids and themselves were working and going to school from home. They started the addition project and when their 18y old son decided he wasn't going away to college, they wanted to give him his own area with some independence. The intent is a small studio apartment area for him with its own bathroom, kitchen, entrance and exit.

B. Petrin asks if this is existing or new construction, and the applicant notes it is new construction. The Land Use Office Coordinator notes that this piece was originally just an open area in the plans but because of the change in their sons plans, the kitchen area is being added and that changes it to the ADU status. So, though it is new construction, it is part of the existing construction that has already been approved. They need the ZBA approval to move forward with the plans to make it a legal dwelling unit.

The Board confirms the square footage is under the 750sq ft requirement and it is as well as the septic being large enough to accommodate the extra unit and that is also confirmed.

B. Petrin confirms that there is adequate parking available for the extra dwelling unit and the applicant notes that there is an extra space under the garage to accommodate the space.

T. Steinmetz asks if the bonus room/ADU area is separate from the extra bedroom and the applicant confirms that it is. The extra bedroom is their daughter's room that is being enlarged to give her extra space as well when she is home from college.

B. Petrin asks if there are any further questions/comments from the Board or audience and J. Szot asks if the ADU is open to the 2nd floor at all and the applicant confirms that this whole piece of the project addition is all on the 2nd floor.

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

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 the relief under Section 5.02A(2) to construct an accessory dwelling unit at 284 High Street (map/lot: 405-14-3). J. Szot **seconded**. **All were in favor. (5-0) Motion passed.**

Case #21-009:

Applicant: James Shankle, 370 Chester Road, Candia, NH 03034; Owner: James & Renee Shankle, 370 Chester Road, Candia, NH 03034; Property Location: same; Map 414 Lot 80; For a Special Exception under Article V Section 5.02(E-2); Table of Use Regulations: Type of Land Use -Public and Institutional.

Intent: *to allow the establishment of a cemetery on their residential property for private burials.*

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

J. Shankle start by introducing himself and explaining to the Board that his intent is to have a family plot to bury his wife on their land in a place that she loved the most. The cemetery will be private and very well maintained. He notes they are well within the setbacks and in fact, did the measurements from the rock wall on the property instead of the actual property line, which is farther out for additional setback footage.

B. Petrin asks if there is going to be a licensed funeral director handling all this, to include the vault and all details of the burial and the applicant confirms this. He then asks if they have done anything for the State permitting and the applicant says they have not. The Land Use Office Coordinator notes to the Board that she has spoken with the funeral director directly and they have taken care of all required permitting for the burial and will be submitting it to the Town of Candia for filing. B. Petrin notes that there needs to be a record on file that records the plots with the Sexton & the Cemetery Committee.

B. Petrin asks if there are any questions/comments from the Board or audience and R. Howe asks if they intend to limit this to the 1 burial or is it going to become a family cemetery and the applicant states it will be for family. The applicant notes that the area is figured for approx. 12+ plots. R. Howe ask if there is something in their deed that there is a limit to the number of plots? B. Petrin states that the allowed room is very specific per burial plot, and these are whole body plots vs. cremation plots and can be a different number based on these details. He goes on to note that someday, when/if the property sells, there will be an easement required for the cemetery, so the family has access to it in the future. J. Szot notes that this easement should be a part of their deed for the future to protect their access for their family. T. Steinmetz asks what the setback are, and the applicant notes that it is approx. 107 ft from the side and approx. 121 ft from the front or the property.

B. Petrin asks if there are any further questions/comments from the Board or audience and there are abutter comments:

- Karen Reis (351 Chester Rd.) asks what a special exception is and the Board states that it is something that the zoning ordinance permits only under certain special circumstances. She then asks to see the proposed layout of the plot and the Board invites her up to the table to look at the cemetery plan placement. Karen shows the Board pictures of a whole that was dug close to her property and the concern she & her husband have with why the large pvc pipe is running in the ground. B. Chivers states that what happened at the site was during excavation for the grave site, water started filling the hole and Dillon O'Connor dug a perimeter drain around the area so there is no water in the grave. J. Shankle states that they dug down to hard pan, which is about 8ft deep and then they filled that with stone to make sure there is no water. D. O'Connor notes that they provided sufficient drainage for this site. K. Reis asks where the water drains to, and the applicant states it goes out to his tree line. She says that would go under the culvert and onto her property, so this is just water? Amanda (applicant's daughter) notes that the vaults that are used for the burials are concrete boxes that are filled with the caskets and then sealed. Though it is not a requirement of the burial, this is something they are doing for their cemetery. Karen notes that she is concerned about contamination but wanted more clarification details to make sure the drainage is sufficient. The Land Use Office Coordinator notes for the audience that this is all regulated by the State and has certain requirements/guidelines the owners must follow. Karen reads a letter from her husband into the record with further concerns/comments (see attachment).

B. Petrin asks if there are any further questions/comments from the Board or audience and B. Chivers notes that he's not interested in compounding this tragedy with a hassle. The applicant is meeting all the State and Town of Candia's zoning ordinance requirements and they, as a Board has a duty to move forward. R. Howe asks if the intent is to have a flat stone or something else highly visible from the road and the applicant states they will have a 2ft tall stone with a steal fenced in area and landscaping around it. The actual site is approx. 125 ft from the road, so people are not going to be seeing much of

anything. J. Szot notes that when you think of New England towns, cemeteries are very usual and common all around. This was what people did and have done for many years and it's not up to us to determine what the families desire is to choose for their family memorials.

- Elizabeth Sanborn (312 Chester Rd./Sanborn Farm) states that she is thinking about the Briggs Farm Family Cemetery, and it is very well kept, and she would hope that something in their neighborhood that would not look disgusting. She thinks their neighborhood is nice and many generations of her family has been in town and loves her view looking out her picture window across the field and would hate to have that destroyed.
- The applicant notes that his family bought this property 4yrs ago and if he put this cemetery in and his wife is in there and he didn't take care of it, he would probably be haunted. He has every intention of taking good care of the space for the generations to come.
- Al Hall (Adams Rd.) says following what Mrs. Sanborn said, is there any way there can be any conditions like headstones not being over certain height, etc. J. Szot states that it is not the Boards choice to determine the feelings of the families and the way they honor this person they loved, and if that's what's in their hearts, then who are we to say I'm sorry, but you can only do "this" for that person. It's a terrible feeling when you have to make these choices for someone you love and care for and to know someone you don't know has made some regulation that says, you can do this, but you can't do this. It's a personal choice and I don't think it's the purview of this Board or anyone to say what they can do. It's what they feel and how they want to honor the person they love. Al says he thinks that Mrs. Sanborn's concern about the visual aspect should be considered 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 7:43pm**

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:

11. *There shall be no more than one accessory dwelling unit for any single family dwelling;*
12. *There shall be no more than two bedrooms in the accessory dwelling unit;*
13. *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;*
14. *There shall be a maximum of 750 square feet for the accessory dwelling unit;*
15. *On-site parking for one additional vehicle shall be provided;*
16. *All existing set back requirements shall be met;*
17. *The accessory unit shall be within or attached to the main dwelling unit;*
18. *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;*
19. *Either the primary or the accessory dwelling unit shall be occupied by the owner of the property;*
20. *The current State Building and Fire Codes for two family dwellings shall apply.*

Section 15.02 – Special Exception Standards

6. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
7. *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;*
8. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*

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

Section 15.03 – Special Exception Conditions

10. *Front, side, or rear yard in excess of the minimum requirements of this Ordinance;*
11. *Screening of the premises from the street or adjacent property by walls, fences, other devices;*
12. *Modification of the exterior features of buildings or other structures;*
13. *Limitations on the size of buildings or other structures;*
14. *Limitations on the number of occupants and methods and times of operation;*
15. *Grading of the premises for proper drainage;*
16. *Regulation of design of access drives, sidewalks, and other traffic features;*
17. *Off-street parking and unloading spaces in excess of the minimum requirements of this Ordinance;*
18. *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 the relief under Section 5.02(E-2) to establish a private cemetery on their residential property at 370 Chester Road (map/lot: 414-80). T. Steinmetz **seconded**. **All were in favor. (5-0) Motion passed.**

Old Business:

- The Board discusses the idea of changing the ZBA meeting time from 7pm to 6:30pm. This is the 2nd meeting for discussion. It was determined by unanimous vote not to change the start time.

J. Szot **motioned** to keep the meeting time of the ZBA at 7pm. B. Chivers **seconded**. **All were in favor. Motion passed.**

Minutes -July 27, 2021:

B. Petrin **motioned** to approve the minutes as presented. B. Chivers **seconded**. **All were in favor. Motion passed.**

MOTION:

J. Szot **motioned** to adjourn the ZBA meeting at approximately 7:50pm. B. Chivers **seconded**. **All were in favor. Motion passed.**

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