

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

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

ZBA Members Absent: Ron Howe

Audience Present: Beverly Cole (applicant)

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

**Case #21-010:**

**Applicant:** Ronald W. & Beverly C. Cole, 95 Diamond Hill Road, Candia, NH 03034; Owner: same; Property Location: same; Map 409 Lot 161; For a Special Exception under Article V Section 5.02A(2): Table of Use Regulations: Type of Land Use -Residential.

**Intent:** *to legalize, per the Town of Candia's Zoning Ordinance, the previously constructed 652 square foot accessory dwelling unit within 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.

B. Cole starts by explaining to the Board that she purchased the home with the apartment already established in the basement over 20 years ago. She doesn't rent the apartment out, but family stays occasionally when they visit. She was renovating the home and adding a shower in the main level to have an added shower to the bathtub and make it easier for her and her husband.

During an inspection for the renovations, the Building Inspector became aware of the (ADU) apartment in the basement. After some research in the office, it was determined that there is no record of the original house permit or the ADU and that the apartment had been built without obtaining the required permits or ZBA approval for the dwelling unit. The owner was informed they would need to come before the ZBA to legalize the unit if there were going to have someone living there as they planned (the applicant's daughter will be living in the unit).

The applicant notes it's always been a 3 bedroom and 1 bathroom since she bought it and the downstairs always had the kitchen, bathroom and bedroom. They haven't changed anything since they moved in.

B. Chivers asks if the septic system can accommodate another bedroom and the applicant says it's not another bedroom because her house has always had 3bdrms (2 upstairs and 1 downstairs). B. Petrin confirms with the applicant that the bedroom downstairs is part of the ADU.

B. Chivers confirms there is sufficient parking for the additional dwelling unit. The applicant notes there is extra parking spaces on the side of the home, and it has its own entrance in the back.

B. Petrin asks if there are any questions/comments from the Board or audience and M. Raumikaitis asks if the Building Inspector has been out to see the unit and the applicant confirms this. He wants to know if the ADU meets the requirements of today's code, since they are approving it to become legal today. In addition, he notes that he believes there is a requirement that the applicant show in writing the septic system is approved for the number of bedrooms for this house. It was built in approx. 1986 and the Board would need to see what the original septic design was or a new design showing the system is large enough for the current number of bedrooms. The Board has always had some kind of documentation that there was a septic design for the home and if the current system did not meet those requirements, the applicant would be required to have a new design on file with the State in case they current system failed. His concern is that the system meets the requirements and if someone else moves into that house, and utilizes it differently than they do, would it be sufficient for the home. The applicant asks if someone else moves in in the future, wouldn't it be on them to get the update done and M. Raumikaitis states that it's part of the ZBA approval process to have that documentation so it would be the applicant's responsibility to provide that now to the Board. B. Chivers asks if you can assume that the original permit and septic was for the 3 bedroom 1 bathroom and M. Raumikaitis states that he does not feel comfortable making that assumption. He is hopeful and optimistic that this is a 3 bedroom approval, but

they do not have that in front of them and have not seen that. The applicant asks why they don't have it and says it's not her problem, she has been in the home for 25 years and bought it that way. M. Raumikaitis states that he would disagree with the applicant in that statement because as the homeowner, it's her responsibility to bring that information to the Board as part of the application. The applicant asks if it would be "grandfathered" since it's been there for 25 years and the Board agrees that is not the case. J. Szot states that they need to know if the original permits and septic were for a 2 bedroom or 3 bedroom home. The LUO Coordinator notes that there are no permits in the system or building files for this home or the ADU. M. Raumikaitis notes that he understands the owner wouldn't have the original building permit info. because she bought it after but it's usually with the original builder. J. Szot notes that the septic paperwork would state that if they have a system that is currently working, they do not have to replace the system, but have a new design on file. The LUO Coordinator notes that the septic design paperwork will state on it if the system is designed for the home plus the ADU because the ADU is considered 1 ½ bedrooms. In addition, the Town of Candia is not a Town that's required to keep the designs on file so it's not their responsibility to provide it during the application process. M. Raumikaitis asks the LUO Coordinator that if there is an ADU, the bedroom design has to be 1 ½ bedrooms and the LUO Coordinator states that is what the State usually notes on the approval. It is also noted that both the LUO Coordinator and the applicant have spoken to Jason Franklin (licensed septic designer), and he has stated their system is not large enough (current system = 1000 gal >> required = 1250 gal) for the 3 bedrooms up to today's required standards and would need a new design on file. M. Raumikaitis asks if this is a Town requirement or State and it's confirmed it State req's. The applicant asks what the design process is and M. Raumikaitis explains the process and notes that there are options the designer can work with to accommodate their property. The requirement is not that they will have to replace the system, but to have the updated design on file in the event the current system fails.

It is noted that if the applicant decided not to move forward with the design after getting the approval by the ZBA and someone is found living in the unit, they shall be asked to leave, as it will not be considered a legal dwelling unit based on the Town's requirements.

B. Chivers asks for the consideration of a conditional approval in this case provided she meets the State requirements, and the Board agrees that would be acceptable in this instance.

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 7:22pm**

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 under Section 5.02A(2) to legalize the existing accessory dwelling unit, with the condition that the applicant will provide proof within 90 days to the ZBA by a licensed septic designer of adequate sewer and water service for the property located at 95 Diamond Hill Road (map/lot: 409-161).

M. Raumikaitis **seconded**. **All were in favor. (5-0) Motion passed.**

### **Minutes -September 28, 2021:**

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

### **Other Business:**

- The Board briefly discusses whether the State requirement language should be added to the Town Regulations regarding the septic requirements and the Board agrees to keep it the way it is and reference the requirements at the time of the case because requirements change, and they do not want the Town to be stuck with the outdated information in that instance. They agree to check with a licensed septic designer and continue the discussion of the septic system requirements at the next meeting.
- The Board briefly discusses the dimensional requirements of an ADU. Whether the measurements are the exterior or interior walls. The Board agrees to check with the BI and NHMA to see if there are any legal guidelines or codes that must be followed and continue the discussion at the next meeting.

### **MOTION:**

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

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