

CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
December 28, 2021
APPROVED

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

ZBA Members Absent: Bob Petrin, Chairman; Ron Howe

Audience Present: Todd Goodman (applicant), Eric Mitchell (Goodman Engineer), Richard & Cassandra Abood (co-applicant) and town residents.

*Judy Szot, V-Chair called the meeting to order at approx. 7:01pm immediately followed by the Pledge of Allegiance.

Case #21-011:

Applicant(s): Todd Goodman, 656 North Road, Candia, NH 03034; Owner(s): Todd Goodman & Bokyoung Mun, 656 North Road, Candia, NH 03034 and Richard L. & Cassandra S. Abood, 654 North Road, Candia, NH 03034; Property Location: North Road, Candia, NH 03034; Map 402 Lot(s) 17, 18 & 19; For a Variance under Article II Section 2.02(B): General Provisions: Non-Conforming Uses and Structures -Change and Expansion, a Variance under Article II Section 2.02(E)(4): General Provisions: Non-Conforming Uses and Structures -Use of Non-Conforming Lot, a Variance under Article VI Section 6.01(E): Dimensional Requirements: Areas Included in Table of Dimensional Requirements -Lot Width and for a Variance under Article VI Section 6.02: Dimensional Requirements: Table of Dimensional Requirements -Minimum Setbacks and Dimensions, Maximum Heights Allowed.

Intent: *The adjustment of an existing non-conforming lot that currently has 15.5 feet of frontage and lot width to be increased to approximately 84 feet of frontage and lot width.*

J. Szot starts by confirming that the applicant(s) are present, and they are in person as well as his Engineer & cousin, Eric Mitchell. She explains that the Chair and another member of the Board, R. Howe are absent tonight, though T. Steinmetz, Alt. is sitting in as a voting member, the applicant has the right to either move forward with the hearing or continue until the next scheduled meeting in January. The applicant decides to move forward with the hearing tonight. J. Szot then goes through each of the applicant's variance requests and asks them to explain their project to the Board.

E. Mitchell states that the applicant is intending to adjust the lot lines between the Goodman (402-18 & 19) and Abood (402-17) properties and to then subdivide the Goodman's land (map/lot 18) into 2 separate lots (map/lot 18 & 18-1). The new lot 18-1 will be for the applicants' parents to build a new home and will be conforming to regulations, with the required frontage and lot size, but the original lot 18 that currently has 15.5ft of frontage will end up with 84ft of frontage after the project is complete. The applicant's engineer notes that the change will make lot 18 "less non-conforming" than before the LLA and therefore just.

E. Mitchell states that looking on the existing plan, lot 17 is a long lot owned by the Abood's, lot 18 has 15' of frontage on North Road and remaining acreage in the back and that is where Todd and his wife live and there is also lot 19 in the front that is owned by Todd and his wife. They are proposing to do 2 things. They have an application pending with the PB for a hearing next month. They went before the PB on 10/6/21 for an Informational meeting to discuss the project and get some input from them. We are trying to create the additional lot here for the applicant's parents to build a home and live closer to them. The 1st thing that the applicant is doing is a LLA with the Abood's. T. Goodman will be purchasing the back portion of land from the Abood's (lot 17) and also adjusting the lot line of lot 18 in the front. When this is all done, the Abood's land will be approx. 3 acres, lot 18, which is Todd's house is 37 acres, when we do the LLA it will be 49.8 and on the next plan when we plan to subdivide off, it's 11.7 acres so the end result is it will be 38 acres. Lot 19, with the existing house on it that's currently 4.5 acres, we going to make that 3 acres with the LLA. What we're proposing to do on the subdivision with lot 18-1 (new lot) will have 200' of frontage, lot 17 frontage doesn't change (still 200;) and the frontage for lot 19 is about 300'. The reason it's not 200' is because the existing house on the property needs to maintain the setbacks. The purpose of us going before the PB is to do a LLA with the Abood's to reshape the lot in the front and then to subdivide lot 18-1 (proposed new lot w/11.7 acres) so that will be a substantially sized lot. The 15' on lot 18, and the proposed frontage for lot 18 will be 84'. The current frontage on this does not have the required 200' for the lot out back (lot 18) but they will

have shared access to the back of the lot. It would be difficult whatever they did for the frontage to come down through because there are other wetlands to cross around there. They are proposing a common driveway for lots 18 & 18-1 and the PB (though it was only a conceptual, seemed to be receptive to that part of it). The reason why we're here, although there are 4 variances that were talked about, it's basically, we have lot 18 that is going to add 84' of frontage where it currently has 15.5' and we're required to do the 4 variances because it's less than the 200' of frontage. The 1st variance is Section 2.02(B)-deals with change of use on a non-conforming lot, that you cannot expand it. We have applied for it to make sure everything is covered. We're not really expanding the use or changing anything that doesn't comply, it's not like a building is too close to the lot line, we're not doing that, but the frontage is only going to be 84' so we wanted to cover the basis because this is a non-conforming lot. The use will still be the same but it's going from 15.5' of frontage to about 84' of frontage. The 2nd item is variance 2.02(E)(4)-deals with non-conforming lots and they can only be enlarged to become a conforming lot. We are making lot 18 bigger by about an acre or so and it was non-conforming because the frontage was 15.5', so that requires us to have a variance. The 3rd variance was for section 6.01(E)-deals with lot width and whatever the frontage is required (200' in Candia), it has to be maintained 100' back from the road as well. Lot 18 will not have that; it will only have the same 84' back as the new frontage of 84'. Lastly, 6.02-says frontage has to be 200' and we're proposing it to be the 84' that we have shown.

E. Mitchell states that they will go through the criteria for each variance, but first asks if there are any questions from the Board about what they are trying to do. M. Raumikaitis asks the engineer to point out where the new home will be situated on the proposed lot, and it will be towards the back left corner of the property. J. Szot asks how much of the new lot will be made up of wetlands and the engineer doesn't have the specific number but says it's around 11 acres so looking at what they have, they determined approx. 25% or so. B. Chivers asks if they are seeking a variance from section 6.01(F)-requires that lots shall be compact and regular in shape? E. Mitchell says they didn't, and the reason is that when they were before the PB for the Informational, they had a different plan, and they had the lot line come down and follow the driveway. The PB asked that they straighten the lines out further to make it more uniform/regular in shape. So, this new lot is more uniform compared to the last shape. They wanted the lines to be straighter and not waiving back and forth. M. Raumikaitis says obviously the lot doesn't have the correct frontage (200' required), but was any consideration given to putting a short road in there and having that satisfy the frontage requirements as part of the subdivision. E. Mitchell says it wasn't, and the main reason was that putting a road in with a hammerhead or cul de sac, there really isn't enough room to do it in there. T. Goodman notes that the new lot has the 200' of frontage so it's the existing lot. M. Raumikaitis confirms and thanks the applicant for that clarification.

E. Mitchell states that there are 5 criteria that they have to give information to the Board for the variances. B. Chivers asks if the Board can hear them individually based on each variance and E. Mitchell states that he would say that with the 5 things that they have to meet are pretty much the same for each one because they all deal with frontage having to deal with 200' or the lot width having to be 200'. B. Chivers says very well and lets him continue his presentation.

E. Mitchell starts to review the 5 criteria requirements and explains to the Board why this project satisfies each item:

1. Granting the variance(s) would not be contrary to the public interest:
 - Lot 18 is an existing lot which has an existing house on it and is about 1,800' from the road currently and the proposed lot would be about 38 acres. All the lot would be at least 300' away from the abutting lot lines. Any building through the new lot would be at least 300' from any of the abutting lines.
2. Granting the variance(s) are consistent with the spirit of the ordinance:
 - No houses or driveways will be placed close together along the road and that the new house and existing house cannot be seen from the road.
 - Frontage is something they look at and the Town doesn't usually want the house to close together. In this case, we are not adding any houses to North Road or any additional driveways and the houses that we have won't be seen from the road and they will be at least 300' from the neighbors so they don't have an impact on the abutting properties or on people driving up and down the road looking at houses that are very tight together.

3. Granting the variance(s) would be substantial justice:

- The applicant does not believe there would be any benefit to the owner which would be outweighed by a perceptible loss to the public. Generally speaking, there has to be an even balance between what the applicant is seeking and what the Town is trying to do with their ordinance. In this particular case, it's pretty much even and we don't see any perceived loss to the Town.

4. Granting the variance(s) would not diminish the values of surrounding properties:

- The existing and proposed house will be at least 300' from all the adjacent properties once the LLA is complete and cannot be seen from the road, so they are not crowding the land.

5. Not granting the variance(s) would result in unnecessary hardship:

- The special conditions of the property that distinguish it from other properties in the area:
 - There is no fair and substantial relationship existing between the general public versus of the ordinance provision and this specific application of that provision to the property because the lot currently has 15.5' of frontage and the lot width is also 15.5' and it will be less non-conforming having 84' of frontage and lot width;
 - The frontage for lot 18 will go from 15.5' to 84' and no houses will be seen from the road and no additional driveways will be going off the road for the project.

E. Mitchell states he is done with their criteria and asks if there are any additional questions. T. Steinmentz asks if the 15' will become nonexistent if this goes through and E. Mitchell confirms this but then J. Szot states that this access will still be used as the common driveway between the existing lot 18 and the proposed new lot 18-1 and E. Mitchell confirms this to be true.

J. Szot asks about putting a road in so the applicant can satisfy the requirements and E. Mitchell states that there is a utility line that comes across the lot and in order to put in the road they would have to go under the utility line, come out and go back through the wetland buffer, which is fairly close to the lot line and possibly have to do a cul de sac but then you have to get from that road a driveway, back over to this house and crossing the wetland again. What they tried to do with their plan was minimize the environmental impacts. A road to be built through there could be built but would not be cost effective for the owner and would not meet the wetland setbacks so they would also need a wetland permit. B. Chivers says to E. Mitchell, but you are acknowledging that it's possible if you had the permits and E. Mitchell says that something he's heard is that anything is possible; if you want a bridge to Hawaii, we can make it and engineer it, but it doesn't mean it's all feasible. In this particular case, to put a road in for 1, 2 or even 3 lots, the expense for doing that plus the environmental impact is much greater than any benefit that would be out there to try to do a subdivision.

J. Szot asks if Mr. Goodman has thought about an accessory dwelling unit (ADU) instead of a full house for his parents. He could easily put in an ADU and not have to do any subdividing. She also notes that the State regulations for a hardship says that a hardship that is shared by everyone, is not a hardship. So, if everyone in this area/town shares this same hardship (town zoning ordinance requirements), it's not a hardship. E. Mitchell says the hardship has to be inherent in the land itself and the fact that they have an existing lot with only 15.5' of frontage, where 200' is required, that itself is part of the hardship. The frontage is only 15.5' feet and by making it 84' even though we don't have access through it, we are making the lot less non-conforming than it was before.

J. Szot asks if E. Mitchell or Mr. Goodman know how that lot with 15' was created and neither of them have that info. The applicant says the house was built in 1986 but does not know about how or when the actual lot was created.

E. Mitchell states that in dealing with the hardship inherent in the land itself, if you look at the way everything is shaped out through the property, we're dealing with 30-50 acres of land out here with almost 600' of frontage along the road. It's just short of that 600' by about 10' existing between the existing house lot and adding the 15' to it. Because of the wetland locations, the power/utility lines, and the way the lot is shaped, it makes it reasonable why the relief from the zoning ordinance should be allowed here because of the uniqueness of what the site looks like. We wouldn't be here with the frontage if we could make it all have 200' of frontage. The house on lot 19 is already here and they can't put the lot line on the other side because it would go right into the middle of the yard. He says he realizes that this plan looks a little strange but it's the reason they are before the Board because it's not standard. What they are trying to do is very unique and they

are trying to create a lot. The new lot they will be creating meets the requirements for zoning. They are taking the existing frontage for the existing lot 18 and making it less non-conforming by going up to 84' of frontage and width.

B. Chivers says they have confirmed there is approx. 600' of frontage and there is a total of 3 dwelling unit on the properties and E. Mitchell says it's just under 600'. M. Raumikaitis notes that the frontage is approx. 588' for the Goodman properties and approx. 202' for the Abood's property.

B. Chivers asks if there is enough frontage for the road, then please explain why they can't put in the road. E. Mitchell reiterates that there are a lot of wetland issues on the property as well as having to make a new driveway on the existing property instead of the 15.5' access they want to use as a common driveway for lot 18 & the proposed new lot 18-1. That process of obtaining the wetland permits, installing the road and a new driveway would be very costly to the applicant. M. Raumikaitis asks if they didn't do the road on the proposed 84' but where the existing 15.5' is, what are there thoughts on that options and E. Mitchell again states that there would be many wetland impacts, they would be in the wetland buffer/setbacks, the shape of the lot, the land topography is not all flat and it is not cost effective to the applicant.

B. Chivers asks the E. Mitchell how they intend to access lot 18 once this proposed project is completed and he says there will be a 30' easement with a common driveway where the 15.5' frontage is currently. B. Chivers then asks how the applicant will overcome Section 2.04 (Driveway Requirements) of the ordinance and E. Mitchell states that when they were before the PB in the Informational, they talked about the possibility of a common driveway and the PB seemed receptive about that concept, so they did not apply for that particular variance. B. Chivers asks that the applicant if they felt comfortable enough with the feedback provided from the PB to satisfy that requirement and not need a variance and they said yes, they did.

M. Raumikaitis discusses briefly another option placement for a road on the properties and again E. Mitchell reiterated to him that with the requirements of the road, wetland setbacks and the potential of needing at least 600' of road this way, it would not be an option they would look into for the plan.

J. Szot asks if there are any questions/comments from the Board or audience and John Adkins (abutter-North Rd.) asks about a potential 2nd driveway and M. Raumikaitis says that conversation was moot because he was trying to solve the frontage issue so there is no 2nd road/driveway.

J. Szot asks if there are any further questions/comments from the Board or audience and the applicant says that he really loves the rural nature of Candia and it's a big reason they moved here and want to keep it that way, which is why they are trying to have this house away from any neighbors, not impact the neighbors at all, separate it from his house too so they all have a lot of space still. They are just trying to get a house for his parents to take care of them, since they are older now. B. Chivers tells the applicant that he has the right to an ADU on his current home, which is very common in town since a lot of residents have the same concerns and objectives. The applicant says his parents think the size of the ADU standards (750sq ft max.) is too small.

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

***J. Szot closes meeting to the public at 7:51pm**

J. Szot requests that B. Chivers read through the 5 criteria for each of the 4 variances 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) Article II Section 2.02(B): General Provisions: Non-Conforming Uses and Structures -Change and Expansion:

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 disagree that it is not contrary to the public interest. M. Raumikaitis **-Yes. All others were in favor. (1-3)**

- B. Chivers states that the reason this is contrary to public interest is that it is in violation of this section of the ordinance of an expansion of a non-conforming use, it is in the public interest to defend that in this case, it's been applied in all cases and it's consistent and it would be a nay for me. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot states that she agrees with B. Chivers' statement. M. Raumikaitis states that he doesn't think it's contrary when it does not threaten the health, safety, or general welfare of the public.

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 disagree that the spirit of the ordinance is observed. **All were in favor. (0-4)**

- B. Chivers states that the spirit would not be observed by granting this variance and it would be a nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot states that she agrees, the Board has consistently upheld this, and it does not observe the spirit of the ordinance which we've always dealt with everyone the same way that has come before us. M. Raumikaitis states that this is obviously a tough situation and as a public board charged with maintaining the laws that were voted by the citizens of Candia, and they voted for 200' frontage and 3 acre lots and in this particular case, there has been a consistent precedent set by this Board that the spirit of the ordinances have to be maintained, and he says no on this as well.

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 disagree that substantial justice has been done. **All were in favor. (0-4)**

- B. Chivers states that we have to think of the last case that came before this Board with a similar request, and we have to think of the next case that will come before this Board with a similar request, and he thinks it does substantial injustice to everybody to deny the last case and approve this one, and who knows how we'll vote on the next one. He thinks the Board has to be consistent with its application of this ordinance and substantial justice would not be done by granting this variance, he would say nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis states this is probably the strongest one here. In order to maintain justice for every member of the community, those that have come before us in the past and those that will come in the future, and the role of this Board is not to legislate from a judgement point of view but interpret the existing zoning. I don't think substantial justice would be done by approving this, I have to vote nay on this on as well.

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. (4-0)**

- B. Chivers states that he agrees with the applicant and his engineer. They will not diminish anybody's value by subdividing this property so I think they would meet that criteria. T. Steinmetz agrees with B. Chivers' statement with aye. J. Szot agrees with B. Chivers' statement with aye. M. Raumikaitis agrees with B. Chivers' statement with aye.

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 disagree that it would be an unnecessary hardship. M. Raumikaitis-**Yes. All others were in favor. (1-3)**

- B. Chivers states that he disagrees with that because there are alternatives available to the applicant. Alternatives such as an ADU, which the applicant already indicated would be too small, Mr. Mitchell has acknowledged they could build a road back there and subdivide but it wouldn't be cost effective. He disagrees that it would result in an unnecessary hardship so he would say nay on this. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis states that in his case he thinks there's a hardship here caused by the land, which he thinks was Mr. Mitchell's point. There is a hardship here that is beyond the area and it's specific to the lot, and he votes yes on this.

J. Szot suggests a motion be put forth to **deny** the variance(s). **All were in favor.**

B. Chivers **motioned** to deny the Variance for relief under Section 2.02(B) because the applicant failed to meet all the criteria requirements of Section 14.02(C). M. Raumikaitis **seconded. All were in favor. (4-0) Motion passed.**

2) Article II Section 2.02(E)(4): General Provisions: Non-Conforming Uses and Structures -Use of Non-Conforming Lot:

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 disagree that it is not contrary to the public interest. **All were in favor. (0-4)**

- B. Chivers states that a variance would clearly be contrary to the public interest expressed in 2.02(E)(4) and he says nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with no.

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 disagree that the spirit of the ordinance is observed. **All were in favor. (0-4)**

- B. Chivers states that he disagrees with that in any sense of the way by allowing this subdivision, so he says nay on that. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

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 disagree that substantial justice has been done. **All were in favor. (0-4)**

- B. Chivers states that he disagrees with that because there would be no justice in his estimation by waiving 2.02(E)(4) for the applicant or anybody who voted that ordinance in, so he says nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

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. (4-0)**

- B. Chivers states that he agrees with that because the values are not diminished. T. Steinmetz agrees with B. Chivers' statement with aye. J. Szot agrees with B. Chivers' statement with aye. M. Raumikaitis agrees with B. Chivers' statement with aye.

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 disagree that it would be an unnecessary hardship. **All were in favor. (0-4)**

- B. Chivers states that he says nay to that. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

J. Szot suggests a motion be put forth to **deny** the variance(s). **All were in favor.**

B. Chivers **motioned** to deny the Variance for relief under Section 2.02(E)(4) because the applicant failed to meet all the criteria requirements of Section 14.02(C). M. Raumikaitis **seconded**. **All were in favor. (4-0) Motion passed.**

3) Article VI Section 6.01(E): Dimensional Requirements: Areas Included in Table of Dimensional Requirements - Lot Width:

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 disagree that it is not contrary to the public interest. **All were in favor. (0-4)**

- B. Chivers states that it would be contrary to the public interest and says nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

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 disagree that the spirit of the ordinance is observed. **All were in favor. (0-4)**

- B. Chivers states that clearly it wouldn't be and says nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot states that she agrees with Boyd and Tony because we've required this of everyone else and says no. M. Raumikaitis agrees with B. Chivers' statement with no.

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 disagree that substantial justice has been done. **All were in favor. (0-4)**

- B. Chivers says nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

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. (3-1)**

- B. Chivers states that it's clear to him they would not be diminished so he says aye on that one. T. Steinmetz agrees with B. Chivers' statement with aye. J. Szot agrees with B. Chivers' statement with aye. M. Raumikaitis states that in this case if you think about the rule, we have a depth issue here and when you have that narrow/deep lots, the spirit of the ordinance was to eliminate those types of lots. That could diminish the property values, understanding full well it's actually an improvement over the existing condition but technically it could diminish. B. Chivers notes that Mark's point is a good one but when asked if he wanted to change his vote he did not.

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 disagree that it would be an unnecessary hardship. **All were in favor. (0-4)**

- B. Chivers says nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

J. Szot suggests a motion be put forth to **deny** the variance(s). **All were in favor.**

B. Chivers **motioned** to grant the Variance for relief under Section 6.01(E) because the applicant failed to meet all the criteria requirements of Section 14.02(C). M. Raumikaitis **seconded**. **All were in favor. (4-0) Motion passed.**

4) Article VI Section 6.02: Dimensional Requirements: Table of Dimensional Requirements -Minimum Setbacks and Dimensions, Maximum Heights Allowed:

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 disagree that it is not contrary to the public interest. **All were in favor. (0-4)**

- B. Chivers states that this clearly would be contrary to the public interest to allow a variance in this particular case and says nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis states that in case precedent and maintaining the spirit of the ordinance, he has to vote no.

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 disagree that the spirit of the ordinance is observed. **All were in favor. (0-4)**

- B. Chivers states that clearly it would not be by allowing frontage less than 200' and says nay to that. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

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 disagree that substantial justice has been done. **All were in favor. (0-4)**

- B. Chivers states that by granting the variance it would not be done and says nay. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

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 disagree the values will not be diminished. **All were in favor. (0-4)**

- B. Chivers states that based on Mark's reasoning, they would be diminished by allowing this kind of density along North Road and says nay to that. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis agrees with B. Chivers' statement with nay.

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 disagree that it would be an unnecessary hardship. **All were in favor. (1-3)**

- B. Chivers says nay to that. T. Steinmetz agrees with B. Chivers' statement with nay. J. Szot agrees with B. Chivers' statement with nay. M. Raumikaitis states that using the same reasoning, he thinks there is a hardship here created by the lot and votes yes on this.

J. Szot suggests a motion be put forth to **deny** the variance(s). **All were in favor.**

B. Chivers **motioned** to grant the Variance for relief under Section 6.02 because the applicant failed to meet all the criteria requirements of Section 14.02(C) . M. Raumikaitis **seconded**. **All were in favor. (4-0) Motion passed.**

Minutes -November 23, 2021:

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

Other Business:

- The Board briefly discusses the Short Term Rental ordinance (section 5.02(A-5). The ordinance refers to the minimum guidelines for rentals per Section 15.02, but there are no detailed guidelines further than that (ie: # of units on property, owner occupied requirements, # of people per unit, etc). It was determined by the Board to follow the regular process in applying for a special exception through the ZBA and if there are further questions/concerns regarding the guidelines going forward, the PB would have to work on any modifications/updates for a warrant article to go before Town vote.

MOTION:

T. Steinmetz **motioned** to adjourn the ZBA meeting at approximately 8:35pm. B. Chivers **seconded**. **All were in favor. Motion passed.**

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