# CANDIA ZONING BOARD OF ADJUSTMENT MEETING MINUTES OF January 25, 2022 APPROVED

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

ZBA Members Absent: none

<u>Audience Present:</u> Boyd & Lynn Chivers (applicant), Bill & Kelly Keena (applicant), Mark & Dee Desharnais (Keena - Builders), Kevin Gagne (Building Inspector) and town residents.

\*Judy Szot, V-Chair called the meeting to order at approx. 7:00pm immediately followed by the Pledge of Allegiance.

## Case #22-001:

**Applicant**: William & Kelly Keena, 1029 Mammoth Road, Manchester, NH 03104; Owner(s): same; Property Location: 57 Maplewood Drive, Candia, NH 03034; Map 405 Lot 45-4; For a Special Exception under Article V Section 5.02A(2): Table of Use Regulations: Type of Land Use -Residential and a Variance under Article XV Section 15.04(E): Specific Special Exception Uses: Accessory Dwelling Units.

**Intent**: to allow the construction of an accessory dwelling unit with an increased square footage area above the maximum 750 sq ft for ADA compliance (wheelchair accessibility).

- J. Szot starts by confirming that the applicant(s) are present, and they are in person as well as their Builders, Mark & Dee Desharnais, and asks them to explain their request to the Board.
- B. Keena thanks the Building Department for their assistance up to this point in their guidance with the process thus far. He goes on to say they are very happy to be in this town. Their son already lives here on Jane Drive, and they are really excited to be making this their permanent home. His sister called him a few months into Covid, back in 2020, (her husband passed away several years ago, so she currently lives on her own) and told him how depressed and isolated she is. She has had Multiple Sclerosis (MS) for many years and her ability to move has been declining, as this is a progressive type of disease. She does still have the ability to walk with a cane, but she is getting worse and it's clear she will be completely wheelchair bound at some point in the near future. K. Keena notes that in the last 2 years she has broken her foot twice and her arm because she has fallen. B. Keena states that her health is declining, and they feel a calling to be able to help her. She will be an enrichment to their family home and want to be able to help her. They feel it's important to have a space for her in the home and make sure when she is bound to the wheelchair, she has access without the stairs and therefore they will be including the elevator in the home for her. His mother is 95 and has aids that come to assist her, and thinking about that, they wanted to make sure his sister Kathy has space for aids, if necessary, as well. They took a plan for the house and asked their builders if there was a way to accommodate a living space for his sister and they have made it possible in the proposed plan.

The applicant's builders, Mark & Dee come up to the table and speak to the Board about the additional square footage. Dee starts by explaining that the ADU design is approx. 1,152sq ft and they know it's over the max requirement of 750sq ft, but they did try to downsize it to get the same square footage of the garage underneath so it flows correctly while still meeting what the Keena's will need for their sister. They believe that if they are looking at the spirit of the ordinance, it all looks like a single family home. Mark states that the issues they would've run into would be the problem of entering the main house, the roof line, moving the elevator, etc. The space is over the garage only and the design is suited to the space to look like part of the main home and gives the area needed for his sister.

- B. Chivers asks if this discrepancy was identified on the original building permit and that was confirmed, and they knew it would be required that they come before the ZBA for approval before it was completed.
- M. Raumikaitis asks about the discrepancy between the square footage they are referring to (1,152sf) vs. what is on the application/plans they have before them tonight (1,292sf). D. Desharnais notes that there was a change to the knee walls, and she will have M. Desharnais speak to that more. M. Desharnais notes that originally it was going to be traditional framing at 12 pitch, and it ended up being trusses, so that ended up being a 9 pitch, so it set back the knee wall quite a bit. B. Chivers confirms with the builders that this unit will fit over the garage area and will be ADA compliant. M. Raumikaitis asks if there is an ADA recommended minimum size, total square foot for a unit. He notes that the Board was given individual layouts in the application packet for a kitchen, bathroom and bedroom but is there a minimum standard they know of for a whole space, and they said they do not know if

there is a specific number for that as a whole. M. Raumikaitis then asks the same question to K. Gagne (BI) and he states there is no specific standard for the total amount, there are minimum standards for each particular room based on the requirements for a diameter around the wheelchair for access in each room. He says with that standard and the dimensions we provided in the plan, for the person not to be bumping into things when they are trying to get around, it adds up to additional square footage. He notes that he wants to confirm the square footage for the record. The measurements on the plan for the application the Board has tonight were done according to the current dimensions. M. Desharnais notes that they did not include the closet space in their square footage so that was the difference between the 1,152 and 1,292 and the accurate total measurements will be the 1,292 sq ft, and the Board was satisfied with that clarification.

R. Howe states that typically we hold strict to the 750 sq ft, though he's not a firm believer that has to be the case always, but they have turned down people with normal buildings with 25 sq ft more than allowed and this is 50% more than the allowed space. His question would be "what's the minimum space you need for a person with ADA requirements to live in, not how it fits on the building". Can you create some dead space to make the building look right if it's not being used or heated? What happens in the event they move and now the Town has a 1,250sf apartment, not a 750 sf building which is what they are charged to live with. He thinks this is a real leap. M. Raumikaitis says that he knows members of the Board are well aware that he's not a fan of the 750sf limit and have made no secret of that in the past and wants to point out to the Board that within the last year they have approved an ADU unit that was built over an existing structure and the size was kind of fixed in place and have stretched this rule on occasion. Looking at NH law, he finds the square footage limitation to be too restrictive. The Board turned down at the last meeting a case, and the owners' parents turned down an ADU because they wouldn't be comfortable in the 750sf. He asks people in the room to consider if they, as an adult, would push themselves into a 750sf space and say that is where they are going to live. The State wants towns to embrace and develop workforce housing and ADU's satisfy the requirements for this if 50% or more have 2 bedrooms. Though this is not a 2 bedroom unit, he still finds the restrictions to be too restrictive. He notes that in his opinion, the State changed the rules for ADU's in 2017 and there may have a been a quick rush to get some regulation in place because if there wasn't a regulation, there would've been no regulation. He recognizes that the PB tried to get something in front of the public and if he recalls it was a very quick situation. He thinks the minimum requirement in the State of NH is 750sf and there is no max. The PB put forth before the town that the minimum would become the max, and he thinks it was done quickly and without a lot of forethought as to what ADU's can be, and it's not just for "in-law apartments", it is designed to become rental property if it has to. He thinks many towns are afraid of decreased property values and in this age of a lack of workforce housing and lack of property for sale and rent in the Town of Candia, these types of conversions are going to meet a lot of needs across the board. He sees this as not anything that is against the spirit of the law, especially in NH law and he doesn't see it as anything that would decrease property values at all either. J. Szot notes that the response she would have to his comment, the place to make that change would be at the Planning Board. If this Board feels that these are too restrictive, then they would need to go to the PB and ask them to make the change. That being said, she thinks this is different and are talking about special needs that are or need to be ADA compliant and is a whole different thing. Being able to get around furniture, getting around the wheelchair around cabinets, under the bed areas, etc. When she looks at this, she believes the Board is bound by the ADA guidelines. They may need to go before the PB to have a town vote for possible changes but this case, she feels is completely different. M. Raumikaitis says he recognizes this and wanted it on the record that he thinks it's to restrictive and in this day with lack of housing it's something that should be strongly looked at, and he does accept J. Szot's point of view. R. Howe says he also agrees with J. Szot in this instance. He notes that he did just get done, with what sounds like he was talking against it but never could see how 2 people could live in 750sf. M. Raumikaitis asks again if anyone would want to downsize their life to that and a couple people note that their living environments are less than that currently and are comfortable, so it can be done, though if the means were available would probably go larger. J. Szot notes that the issue tonight is that this case is something that needs to be ADA compliant. B. Chivers states that when the Town adopted the ADU ordinance, he believes that no one took the ADA specifications under consideration and that's why he also agrees with J. Szot and thinks tonight is a special occasion/case. It's the 1st time they have had a case before them for a design to accommodate ADA requirements. J. Szot notes that is the purpose of the Board, to look at the ordinance and say there are times there are special reasons and you have to make adjustments to whatever the town has passed and say, 'that doesn't make sense, or you can't do that here.' You have the federal standards for ADA and it going to make this space larger anyway. B. Chivers notes that the place to argue the merits of the law as it's written is the PB, not here. We are stuck with the law as it's written now.

T. Steinmetz asks if the applicant's sister currently drives, and they say yes but they do not believe for much longer. He then goes on to ask if the parking area for the house will accommodate a handicap accessible van when the time comes. The applicant says yes, they did plan for that, and the builders confirm the garage door is 9ft high to accommodate for the future vehicle. The applicant notes that the idea is that the space will be her side of the garage, her vehicle (current or future) will come in, she can either step out or when she is in the chair more

permanently, exit the van in her wheelchair, go directly into the elevator and then into her living space from there (she's home).

The applicant notes that this is their "toe tag" home and do not intend to be moving once it's complete. B. Chivers asks where they were prior to this, and they came up from Florida but both from different states other than NH. They want to live here, and all be close together with their children and grandchildren. They want this to be their family home and possibly in the far future, move into the unit themselves, and it being ADA compliant already could help with that transition.

- J. Szot asks if there are any further questions/comments from the Board or audience and B. Petrin says that assuming the builder/designer/homeowner will address, if appropriate, any other ADA compliant ramps, door handles, light switches and so on, which they would are assuming those requirements will be taken care of in the design and that is confirmed by the builders. He believes this case is pretty straight forward and are just looking for the special exception and it's appropriate to adjust the required criteria. K. Gagne (BI) notes that as the Building Inspector, he supports the added square footage based on the need and highly recommends the Board approve the case and his department will work with the applicant and their builders to make sure all the requirements are in place. He then notes that there was mention that the applicant or future owners move in, it may provide space for someone with the same disabilities, and they will be able to take advantage of this opportunity and it will help for many years to come.
- 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 7:31pm

J. Szot 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 health and safety reasons governed by ADA requirements for the handicap. **All were in favor. (5-0)** 

- J. Szot suggests a motion be put forth to approve the variance. All were in favor.
- B. Chivers **motioned** to grant the Variance for relief under Section 15.04(E) to allow an ADU, not to exceed 1,292 square feet. R. Howe **seconded**. **All were in favor**. **(5-0) Motion passed**.
- J. Szot 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.

- J. Szot 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 15.04(E) to allow the Accessory Dwelling Unit on (map/lot: 405-45-4). B. Petrin **seconded.** All were in favor. (5-0) Motion passed.

## Case #22-002:

**Applicant**: Boyd & Allyn Chivers, 165 Depot Road, Candia, NH 03034; Owner(s): Boyd Chivers Trustee, et al. & Chivers Revocable Trust, 165 Depot Road, Candia, NH 03034; Property Location: Abbott Road, Candia, NH 03034; Map 409 Lot 151; 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.

- J. Szot starts by confirming that the applicant(s) are present, and they are in person.
- \*B. Chivers recuses himself since he is the applicant in this case.
- \*T. Steinmetz will sit in as a voting member for this case since B. Chivers is the applicant.
  - J. Szot starts by asking the applicant about the noticing for a particular property that is known in town to have been sold and bought by M. Chivers' son recently. The Land Use Office Coordinator (LUOC) notes that the abutters are noticed based on the information assessing has updated in their system and in some cases can take months because they are waiting on the Registry of Deeds to send over the new deeds for recording. The Board is agreeable to this explanation and moves on with the case.
  - B. Chivers starts by introducing himself and his wife and explaining to the Board that his intent is to have a family burial plot on their private property. He notes that they started discussing this option in more depth after a case was brought to this Board a few months ago for the unfortunate loss of a family member in another Candia resident's family. They talked this over with their family, identified a spot on their property that conforms to the State statutes, it's permitted under Candia's zoning by special exception, and he believes they meet all the criteria, and they ask this Board for favorable consideration for the special exception.
  - T. Steinmetz asks the applicant to confirm the dimension of the plot and he notes it's approx. 900sf. He notes that the RSA requires at least 100ft from water, certain setbacks from a public highway or a residence and meets all the setback standards.
  - J. Szot notes that there will be specific items the applicant will need to address with the State when the time comes and the applicant says yes, after the special exception part is done/approved. The State will regulate details going forward. J. Szot notes to make sure the family always has access to the burial area and the applicant notes that their son now owns the abutting property so they will have that access as well. The LUOC notes that there will be an easement required at some point as part of the RSA. B. Chivers states that he believes they have conformed to the standards.
  - D. Snow (abutter-Depot Rd.) states that he is speaking as an abutter, and he is also a Cemetery Trustee and spoke to the committee prior to attending this meeting tonight. He told them he was going to come here and suggest that if we're going to be doing any more private cemeteries in the Town of Candia, that we ensure that in one of the conditions of the special exception, that we geolocate the boundaries of where it's going to be and make that a condition of the approval and for any interments that are to take place, we again, geolocate properly monumentation and provide the Town with the information that goes along with an interment. He goes on to note that in the history of Candia, there are a number of private cemeteries that have turned out to be public cemeteries and when they do all of a sudden what you end up with is the public responsibility. He says he can't tell us where everybody is buried in any of the public cemeteries, and he can't tell us about where some of the people are buried that have been done and actions by the PB in private cemeteries that became public cemeteries. To help those people who are going to come after us, that are going to have to try and figure it out when it becomes a public cemetery, he thinks its appropriate that you have a geolocation, that you have monumentation of the cemetery itself and then you have monumentation and geolocation of the individual interments and you could probably do it with a GPS or Trimble Unit now. In the consideration of the special exception, the location of where that planned private cemetery is comes out of the constraints of a number of other statutes like you can only be so far away from a road or like Boyd and his property, that's within the Rivers Management Program, which has a quarter of a mile boundary on either side of it so if you're going to be doing something in there, you have to go to that program and have them look at it. If there are no interments planned now, he could do it with a GIS unit or Trimble and get the 4 corners if he does it nice and square or get a surveyor to come in and say where the monuments will go tell the Town where it is so in the future, there won't be any question as to where this private cemetery is in the Town of Candia things change,

more people come in and we all pass away and descendants have to figure it all out. He notes that personally, he has no objection to this case. He doesn't know exactly where it is because we are doing it on the tax maps and those are not geolocated so he can't look at the maps or google based on the locations so it's up to the Board. He also notes that for considerations for private cemeteries and interments that are going to take place on private land, which appears to be something that's going to happen more frequently, he feels the Board should be talking to the NH Cemetery Association. J. Szot notes that she is not sure if he is aware of this or not, but this is all governed by state law and governs how all of the details take place. The Board either approves or disapproves and then the applicant, if approved, will work with the State moving forward on their requirements. D. Snow says he still thinks the Board should talk to the NH Cemetery Association because he has been going to the seminars for years and has a pretty good grasp of it. He is not sure if the State will do anything or not and he's never tried to put in a private cemetery, but it's conceivable that his descendants decide they want to make that private cemetery something that was a business and do green burials or whatever they are trying to do now. It's in the future so he thinks we need to think about it now. B. Chivers states that his application is for a private family burial plot and if granted, will specify that and preclude a public cemetery. The LUOC notes that the easement that is required by the State will have the location of the family burial plot and it will be recorded with the Registry of Deeds so it will be available in their records for the future. J. Szot notes this requirement to Mr. Snow, and he says he can't speak for the Cemetery Trustees. J. Szot states that the Cemetery Trustees have nothing to say about this, it's for the ZBA to approve it or not and then for the applicant to follow the State requirements.

- J. Szot asks if there are any further questions/comments from the Board or audience and R. Howe states that he thinks D. Snow has a good point that marking physically, somehow the boundaries of this with granite markers or something like that would probably be a good idea and actually physically locating is certainly important and should be required. M. Raumikaitis states that he looks down the road the same way, 100 years, 75 years, 150 years and we read occasionally now, stories across the country where cemeteries are discovered through some excavation or some other thing, so he doesn't really think it's a problem having it located. The question is what does the State require? Do they require markers, easements with some kind of location and what that entails, do those records stay available 150 years from now when someone tries to determine where was it? Location doesn't seem like a bad idea, but again he's not sure what the State requires or what they have people do and certainly don't want to run costs up by requiring granite markers, etc. by this Board, but it is important to know where it is and that there is a record of where it is. J. Szot notes that the LUOC did state that the required easement, with the coordinates/location of the plot, will be recorded at the Registry for future use and asks if this satisfies M. Raumikaitis concern. He notes that as long as in the future, though the area may be changed, at this spot, this is what we had, then yes it does. T. Steinmetz asks if the applicant will have to amend his deed and the LUOC states that the new required easement will be a part of the deed going forward as an attachment. B. Chivers states that the issue before the Board tonight is whether or not he satisfies the criteria for the special exception or not and the Boar agrees with this. B. Petrin says that he has no further questions or comments, and it seems straight forward and recommends they move forward with the criteria and the Board agrees.
- 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 7:58pm

J. Szot reads through the criteria to meet the terms of Special Exception Uses, 15.02 & 15.03 and the Board will vote on each as they are read out. **All agree**.

#### **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.

- J. Szot suggests a motion be put forth to approve the Special Exception. All were in favor.
- M. Raumikaitis **motioned** to grant the Special Exception for the relief under Section 5.02(E-2) to allow the establishment of a private cemetery on their property at (map/lot: 409-151). B. Petrin **seconded**. **All were in favor**. **(5-0) Motion passed**.
- B. Chivers returns back to the table to continue the meeting.

### Minutes -December 28, 2021:

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

#### **MOTION:**

M. Raumikaitis **motioned** to adjourn the ZBA meeting at approximately 8:03pm. B. Chivers **seconded. All were in favor. Motion passed.** 

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