

**CANDIA ZONING BOARD OF ADJUSTMENT**

**MEETING MINUTES OF**

**August 30th, 2022**

**APPROVED**

ZBA Members Present: Judith Szot, Standing Chair; Boyd Chivers; Mark Raumikaitis; Anthony Steinmetz, Alt.

Chair Szot called the meeting to order at 7:00PM, followed immediately by the Pledge of Allegiance

New Business: • Case #22-009: Applicant: Pattie Davis, 93 Critchett Road, Candia, NH 03034; Owner(s): 23 Main Street, LLC; Property Location: 23 Main Street, Candia, NH 03034; Map 409 Lot 091; For an appeal from an administrative decision under Article XIV Section 14.02: Powers: A. Administrative appeal. Intent: Appeal from an administrative decision of the Planning Board. Notice read from agenda – Read by J. Szot

J. Szot reads a letter/statement to open meeting:

*“Good evening. This board has done extensive research into this appeal. I have prepared a statement which I am going to read to you tonight.*

*While many of those in attendance here tonight, and maybe even those at home on Zoom, have strong feelings about the subject of this meeting, we are not convened here to discuss the merits or wisdom of the Planning Board's decision giving rise to this appeal. Rather, the role of the Zoning Board of Adjustment is prescribed by statute and by those statutes we are bound.*

*The applicant before this board made a good faith effort to determine the law and her rights under it. Because of a recent vacancy at the Land Use Office, however, there was no-one available to carefully vet the application or to determine this board's authority to hear appeals from decisions made by the Planning Board for projects qualifying under Innovative Land Use Controls.*

*Subsequent research in preparation for this meeting, however, has determined that RSA 676:5 III applies in this case where the authority to hear an appeal from a Planning Board decision is clearly delegated to the Superior Court. Here is a relevant citation from that statute:*

*"provided, however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional or special use permits, to the planning board, then the planning board's decision made pursuant to that delegation cannot be appealed to the board of adjustment, but may be appealed to the superior court as provided by RSA 677:15."*

*This board, therefore, having no jurisdiction over this matter or authority to hear an appeal, must summarily deny the appeal and advise the applicant accordingly.*

*Thank you for your interest in this matter and please accept the sincere apologies from this board for any inconvenience this may have caused you.*

*That being said, this board does have the ability to allow those who are here tonight to speak and present their concerns.”*

We have advice from our attorney who states that because Mrs. Davis has appealed, she should be allowed to state her case at the hearing and there were several options that Mrs. Davis could state her case, that 23 Main Street could state their case, and speak solely to the jurisdiction. However, he did state, if the ZBA wants to allow persons to speak about the entire appeal, that is within the ZBA's discretion. So, it is up to this board, the members of this board, to decide whether or not the people at this hearing have the opportunity to speak. And I know many of you feel you didn't get a chance to speak at a time when it was important to do so but I will poll the board and see what the members, if someone wants to make a motion to allow the people to speak.

T Steinmetz made a **Motion** that the applicant and the people be allowed to speak. M. Raumikaitis **seconded**. Discussion followed.

B. Chivers stated he would be opposed to that motion. I recognize the passion in this room, but I do not think this meeting should evolve into a criticism of the planning board. I think your comments are welcome and appropriate. You have the right room to make those comments it is just the wrong body to present it to. If you want to go to a planning board meeting and express your views on this, that is the appropriate place. This board has no jurisdiction and no authority to grant relief. We have no jurisdiction over the zoning ordinance as it's written. It is up to the planning board to administer that zoning ordinance. If you are dissatisfied with the way they administered that ordinance, that is the place you should go. Not here. I don't want to see the Town of Candia having one board start to criticize another. It's not productive and it is not constructive, and it is not how we should be doing things. I recognize your passion. I appreciate you coming here tonight. I am afraid that hearing you would be a waste of your energy and our time. I'm sorry about that.

M. Raumikaitis: I'm always a fan, I will always advocate for people to say what is on their mind. And I advocate that. I am going to make a statement that says that if the public is unhappy with the course of planning board actions and whatnot, there is a place for that and that is at the ballot box. Investigate who made decisions. Investigate who was operating this situation. Support or not support those people. That's your right. You also have the right to have an effect on zoning ordinances. Zoning ordinances that are being sited here and a relative state law, related state law are zoning ordinances

that were voted on and approved by the townspeople. The townspeople can change those ordinances by petition. There are procedures and I would advocate if you are unhappy with the existing situation, investigate, and look into that matter. You have the right as the public to make those decisions. The townspeople will either support you or not support you but if it's important to you, stand up, as you can and affect those zoning ordinances by petition.

J. Ratigan – I am the applicant's attorney. I appreciate that you acknowledge that the board does not have jurisdiction, it's quite clear. He then proceeded to suggest that there was a large population of elderly people in attendance and that the meeting was a risk to them and left.

**Motion** revisited: T Steinmetz made a **Motion** that the applicant and the people be allowed to speak. M. Raumikaitis **seconded**.

M. Raumikaitis, yes; J. Szot, yes; T. Steinmetz, yes; B. Chivers, no. **Motion passed: 3-1**

Pattie Davis – Critchett Road – I had two things prepared because I wasn't sure if I would get to speak short or long, so I am going to go somewhere in the middle. Thanks for listening to me. Thanks for everybody coming out and listening. It's awkward because we are all friends here in this town. We are a small town. I have been at parties with a lot of you. I've worked on boards with some of you. I've taught your kids. I've coached your kids in baseball, etc. This is nothing against a person, let's remember that. It's all about the town and that is all I am worried about. As I think, I am not against a person or the town. I am against these waivers, mostly. Without the waivers, there isn't a project and I strongly feel, looking around here, that I am not the only one who feels this way. I have done case studies. I've done interviews. I have petitions here. Superior court has been applied to. The thing is, we have a town, it's interesting you said, go to the polls and vote on how you feel. I feel like we have gone to the polls, and we did vote on ordinances that we felt were important to us. We voted on people to uphold them. We were surprised to say the least. I don't feel like we as townspeople have to go to every planning board meeting to make sure that what we voted on is being upheld. I feel that we did go to these meetings, and we did do what we wanted and then somebody came to town and came up with these and waivers for; acreage, density, the number of buildings, height of buildings, space between buildings, setbacks from the neighborhood, pedestrian access, and open space requirement was done in two hours. That's a lot. In the center of our town. That is just huge.

I would like to state that the appeal was Pattie Davis on behalf of Candia Residents. And it is for the decision of conditional use, the decision made for conditional use permit granted by the planning board, as well as the major site plan. In granting the conditional use permit, they can propose conditions, but none were given. None were even suggested. The RSA states that any provision on this ordinance may be waived when: 1. Requiring compliance with the particular provision of the conditional use permit would create an unreasonable hardship. 2. The application would be consistent with spirit and intent of the ordinance. Well, the unreasonable hardship. The letter from D,T, & C who is their lawyer, does not establish that any variance they have requested is necessary to establish a reasonable use of the land. They've only argued that there is unbearable hardship, specifically that 23 Main Street asserts it is an unreasonable hardship if it is not granted, citing cost, repeatedly, repeatedly, repeatedly. That's not the standard by which a waiver, any waiver can be judged. Chairmen Carter noted that the waivers could only be waived if some characteristic of the particular property makes it different from others and that town council had advised them as such. In a memorandum, provided by the town council on June 2<sup>nd</sup>, prior to the meeting, it was clearly stated and given to every board member in writing. Unnecessary

hardship means that owing to a special use of the property that basically cannot be used in a different way. However, this parcel does require a variance to be used in a different way. It can be used in many ways. In fact, even in the applicant's letter, he states it can be built within the specifications required by the zoning ordinances. Therefore, his own letter acknowledges, that they are not requesting variances on a distinguishable property, which requires a variance to enable reasonable use of it. There is reasonable use. Furthermore, it states the conditional use permit for elderly housing may only be issued if proposed development shall be consistent with general purpose, goals and objectives of the Town of Candia's Master Plan, that many of you sat in on and helped develop. This proposed plan is not consistent and it's not even just a little bit inconsistent. It requires 8 sizeable waivers which would fundamentally render the zoning ordinances mute for purposes of this development. The Town of Candia's Master Plan adequately and effectively has served the needs of the residents of Candia. The rules were created to include waivers when there was a unique hardship. The conditional use permits were created to be granted when all the criteria are met. To grant eight waivers where the only credible argument is economic, the developer is not making the money, to ignore years of town planning and voices of overwhelming majority of the residents of Candia.

In an amendment, put on the ballot in 2019 to add a new four corners village district. Article 4 Section 4.03, which includes requirements for setbacks, width, lot frontage, lot shape, etc. The purpose of the article, this was stated in the vote, the purpose, as stated on the ballot is to allow mixed moderate density residential, small scale commercial use, as compatible with a village setting. Permit new development, redevelopment and infill construction that increases economic viability on the four corners district and allow for a range of housing types and sizes that can accommodate current and future needs of the residents at all stages and income levels. This failed 650-276. Obviously, the town wasn't interested in the four corners being developed that way. That is not a small margin. Now, spirit and intent. This is addressed only by the applicant by being close to facilities. Like the fire station. The library, which they can walk on two arterial roads, with no sidewalks and a two-foot shoulder, and a 35 mile per hour speed limit. The park, ditto. And the CYA Building. As the proposed 29, multi-story, elderly housing would lack the required land and open space and it would not include sidewalks for the elderly residents, it would, purport, create lovely space while creating not a threat to public health, safety, or welfare. This is true of the maximum building height. This is the same thing for each and every one of the waivers. The maximum dwelling units application is without supporting evidence as this is a needed development to serve in Candia's existing residential population. Therefore, granting a waiver would benefit Candia in the future. Southern NH Planning Board did a survey and Candia has increased since 2010 110% in our elderly population. I don't think we need more housing for them. We already got them here. What we need is more housing for the youth. They can't buy homes in this town. They need to find a home that is affordable. That is the type of housing we need to put here. The same problem exists for each and every one of the variances sought by the applicant. Reiterates the waivers. We know that the residents have ample common land; that they have ample open space. None of that is even possible and open space? We know that because the applicant has applied for variances to each and every one of these ordinances, leaving no room for open space, no room for walking around. The proposed garden that they say they are going to have is on top of the well, which the building inspector has told me is illegal. You can't put them on top of a well. The problem is, I think, monetarily and that is not a reasonable way. The same rationale put forth by the applicant, said he could have purchased and have built new construction, without any attention paid to the town master plan. Well, why didn't he do it? Once the Candia Planning Board has granted this many significant

variances on this single plot, done without any legitimate rationale, I feel, offered by the applicant, what is to stop another applicant from making the same request. Nothing. I don't think anything. I appreciate that each one of the applications come individually but this one has been given with 15Xs the amount of housing there. If I have a three-acre lot why can't I go now and put 14 other houses on it. I could get a variance. Why not? And I know there are reasons, but it doesn't feel like there are reasons because this has been given this way.

J. Szot: Your application was very clear and concise.

P. Davis: I have probably close to 200 petitioners here that I am reluctant to give because you aren't hearing it, so I do have them, and I would be happy to show them to you but to what avail. The other thing is I have a ton of letters here that people have written. Probably 70 letters that people have written on how they feel. And lastly, after the last meeting, some people that were on Zoom said they didn't know how to speak and if you could just tell them how to speak.

J. Szot: I think what we will do is hear the people in the room and then we will hear the people on Zoom if that's okay. We always hear abutters first.

Denise Lazott - 101 Island Road: The property abuts Holbrook Cemetery and I have plots in Holbrook – making me a standing abutter. I am opposed to the waivers.

Matthew Cobb – 472 Raymond: Madam Chairman, if I may, this property abuts town property, so I think in that sense, every resident of the town of Candia is functionally an abutter. I think in that sense pretty much every resident in Candia here feels that they are, in that sense, and abutter.

Tom Dimaggio – 42 North Road: I was here at the planning board meeting the night that the waivers got passed. There were two gentlemen. Two of us that were here. I was also at another planning board meeting in which the chairman allowed the public to speak for every waiver that was proposed. The night these waivers were proposed, I was there until after nine. Unfortunately, I get up at 3 to go to work and couldn't stay much longer but nobody was asked to speak on the waivers. Nobody had a chance, while I was there, to speak for or against the waivers. So I don't think that was legal to do that without any public opinion whatsoever. There was one gentleman in front of me and we were the only ones that I saw that were still in the room. When I left, there was one other gentleman in the public and I told him he could use my name. I don't know if he did or not but I know I never had a chance to speak on behalf of this event regardless of how you voted for the waivers. I don't think it was a legal vote the way it was handled. Thank you.

Steve Higgins – 291 North Road: I appreciate Tom speaking up because I was the other gentleman at the meeting. I think I was the only one that stayed until 10. I actually went down simply because I saw another 55+ community proposed and I was against it simply for the fact that we just put a 55+ community in. As was previously stated very well, Candia is old. Rockingham County is old. The state of NH is old. As far as I know, since I have been in town, since 98, roughly about 100 new houses? The average cost right now is somewhere around 4 or \$500,000. We have no affordable housing. We have tons of senior housing. I was the one who actually wrote in a letter and then reiterated that a piece of land surrounded by the library, the school, the park, the CYA, is a perfect place for young housing, young families which I think is what the master plan called for. One gentleman on the planning board read that out loud and said basically, what do we think of that? And one person said, well you know, old

people could rent out CYA for something and then they moved on. So I guess my point is in keeping with what a couple of people have said, I know that it was probably brought up at the beginning of the meeting, that there is a process. So basically, you vote for people on the zoning board, you vote for ordinance. There are two people that have already said, I sat in the meeting in complete shock, complete shock that they could ignore the ordinances the way they did. Even Rudy Cartier who is the Planning Board Chair said, you are required to have 20, you have 7, how do we stretch this? That's not even close. And I literally looked at the planning board members and said you should be ashamed of yourself because you are not coming anywhere near to the spirit of this ordinance. Nowhere near. As I said, I stayed until 10 and I came home and rode my bike for an hour before I could go to bed because I was so angry that a town board would ignore the will of the people so badly. I am sorry if I am getting emotional, but I am very emotional about this because I have a son and I can't imagine him buying a \$500,000 house out of college, so my feelings are what other people have said. To say that you guys have no jurisdiction I just don't get. The planning board completely ignored the ordinance. The town ordinance and basically just said, you know, we can do what we want is basically what we've got here. So that's my personal feeling.

J. Szot: Thank you Mr. Higgins

Mike Guay – 468 North Road: – I've got a letter here, but I am not going to read all of the words because I don't want to put you to sleep. But I do want to make a couple of points. First of all, I want to apologize, I did not know this was not the right venue to make this case. Apparently, we are going to have to go to Superior Court because the planning board decided not to do what they were elected to do. I am sorry if I am blunt but sorry. I have several concerns regarding the proposed development on 23 Main Street. I am a resident and taxpayer and prefer that the ordinances we voted for and are in place be enforced as they were intended. Please do not approve of the proposed development of this lot which so clearly violates the letter and the spirit of the law. A loss in standards exists to define permissible development and maintain the fundamental rural character of Candia. While the proposed development is in the best interest of the landowners, it is certainly not in the best interest of Candia. The planning board granted waivers for the following items. Our Conditional Use Permit standards for housing are clear and all of the standards need to be met. Many of the waivers directly linked to the proposed development on a tract that is only 34% of what the standards require. The minimum tract there is 20 acres, 6.7 acres. 34%. Maximum density for multi-family: this lot based on the ordinances would allow for 6, there are 29 proposed. These are not minor waivers. These are basically ignoring the laws on the books. A waiver would be, I've got a 6-acre lot that says I have to have 7, that's a minor waiver. Maximum number of units per building, are supposed to allow for no more than 6 units per structure. There is a proposal for 8 for one and 10 in two more. None of the minimum setbacks are met due to the amount of properties that are being put on this lot. The maximum building height should be single story, it's double story. Again, that is not a minor waiver. Building separation, same thing 100 feet versus 75 feet. There is no pedestrian access allowed; no amenities such as benches, streets, and paths. Open space, the ordinance calls for 40% open space. On this lot that would have been 2.7 acres, almost half that lot. There is not proposed. Zero. I basically said, I know this a controversial topic in town. I have heard arguments about hardship. I don't believe it. The only hardship I see is profit for the landowners. Arguments regarding the possibility of forced work force housing. I have done a lot of research. No such thing exists. The state ordinance says you have to have an ordinance that will allow for elderly and allow for workforce, we do. It's just not that lot. That's the point, it is not that lot. There

is no reason to permit the waivers on this particular lot. Please deny this request for development. Apparently, I will be talking to the Superior Court.

Linda Carroll – 117 Diamond Hill Road: We moved to Candia, and it will be two years next month. We looked at many communities. I read ordinances. I did my due diligence. We looked in many, many communities. I loved what I saw in Candia's ordinances. I come from a town that I grew up in that was all farmland. It became so crowded with malls and shopping centers and elderly housing and condos and apartments that we had to move. I was really happy to see Candia not be like that community. That's what we moved to. I was very disappointed. I had the ordinances, I started taking out parts of it, to find out when I was looking on Zoom because I was sick, didn't come. That the application would be inconsistent with the spirit and intent of the ordinance. Request for waivers must be written and the planning board must vote on each waiver request at a properly noticed, public meeting. There wasn't. It was brought up before. That did not happen. I am very disappointed. Board of adjustment, the variance will not be contrary to the public interest. The spirit of the ordinance is observed. Substantial justice is done. The values of surrounding properties are not diminished. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. I don't see any hardship except for...they should have done their due diligence, just like we did. There were many communities that we did not move to because we did our due diligence. We looked at the ordinances of those towns and it wasn't what we wanted. I don't think this developer looked at the due diligence of this community. I vote on no.

J. Szot – Thank you Mrs. Carroll. Is there anyone else here in the audience who wishes to speak? Is there anyone else online who wishes to speak?

206 Brown Road – I just want to understand why you don't have jurisdiction because I did read the planning and zoning chapter and it said, hearing design appeals if it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16. So why is it you don't have jurisdiction? Could you please enlighten me?

J. Szot: This is NH Planning and Land Use Regulation which our board gets every year. This is the current edition of this. Zoning Board of Adjustment, it talks about appeals to the Zoning Board of Adjustment. The third section of it says that if in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance or upon any construction interpretation or application of the zoning ordinance, which would be appealable to the board of adjustment, if it has been made by an administrative officer, then such decision may be appealed to the zoning board of adjustment under this section. However, if the zoning ordinance contains an innovative land use control, adopted pursuant to RSA 674.21 which delegates administration including the granting of conditional use or special use permits to the planning board. Then the planning board's decision made pursuant to that delegation cannot be appealed to the board of adjustment but may be appealed to the Superior Court. So because this whole proposal came in under conditional land use which is section 503, 504, 505 of the Candia Zoning Ordinance. Because it came under conditional land use, there is one section in there that grants, that was changed and put in there, that grants the right to grant waivers to the planning board. Now you can call it a waiver if you want but it is basically a variance. It gave them the right to grant a variance and as long as this section remains in that conditional use permit, the planning board has the right to grant variances. You can call

them waivers, but they are variances to the zoning ordinances. If that had been appealed. If that was not there and had been appealed to the zoning board, there were five conditions that the zoning board has to meet, the applicant has to meet in order to be granted a variance. And there were only two that you have to meet if you grant one of these waivers. So as long as that stays in that particular ordinance and another applicant comes in and the board sees fit, they can waive all of the conditions if they so choose. So again, as Mr. Raumikaitis said is, if you don't like what is happening, you have the right to change it by petition.

The question was raised, asking if that wasn't already what was voted on.

J. Szot: I am going to stop you, only because I think you have to understand that our board did not make that decision. This was a decision that was made by the planning board. Even though... I was at the meeting, I stayed for part of the meeting, and then I left. But it was made by the planning board, so the question is, as Mr. Chivers said, is better directed to the planning board. To going and asking the members, how could you do this? I don't know if they'll hear you. I honestly don't know if they will hear you. And, in all of that, it's still mute, because the only remedy that the people of this town have is Superior Court. They have to go to the Superior Court as provided in 675. The applicant can go to the housing board. And in fact, at the meeting, made a statement that if this wasn't approved, he could go to the housing appeals board and go for workforce housing. And my first thought was, when did workforce housing become a pejorative? I am looking around this room and I think many of the people in this room are coming under that thing. My husband was a carpenter, that's workforce housing. When you think of the electricians, and the carpenters, and the teachers, the people that don't make tons of money, that aren't in some kind of tech field, where you are making tons and tons of money that work with their hands. Why do we say that we don't want these people in our town? We have a school, that when my children were in that school, it had close to 500 students. We could put 100 new students in that school and not raise that budget one cent. I was talking to someone who said when here daughter graduated, there were 11 kids in the class. Her daughter and another girl were the only girls in that class in the 8<sup>th</sup> grade this year and the whole rest of the class was boys. So we can use workforce housing. I don't know why it's become such a pejorative.

P. Davis: Okay, I have a statement and a question. Why does somebody go for conditional use permit as opposed to just saying I want to build. Do you know the answer to that?

J. Szot: Well, it's a lot easier to get. A conditional use permit, as you said...how many houses could you put on that six-acre lot? Two. Split it in half, you've got two three-acre lots but if you have a conditional use permit, you could get 6 or if you get waivers.

P. Davis: So that is the only reason you would go is to get more. Okay. Because he could have gotten waivers under not conditional use also, right?

J. Szot: Not they would be variances.

P. Davis: Okay, then they would have come to you?

J. Szot: Yes

P. Davis: Okay, and the other thing is, just to let everyone know here that we have appealed the Superior Court and sorry but you will be served probably tomorrow. I just have to get my copies made.



Margaret Fortini – Depot Road: I have a question. A while back, you said variances and waivers were the same thing and now you just said that they were different. So what's different about them that wasn't...

J. Szot: Well a waiver is essentially a variance. They call it a waiver but essentially, they are waived, they are granting you a variance. But under this conditional use permit, it is described as a waiver but it is basically a variance to the ordinance.

Margaret Fortini – Depot Road: So, it's the same thing?

J. Szot: It's the same thing. It changes the conditions of the ordinance -

P. Davis: I have to follow up. Can I follow up? So, it sounds to me, and I might be wrong. If you go for a conditional use permit, it sounds like really the only reason is so that you have to go to the superior court to not get shot down.

J. Szot: I would not venture to say why someone would choose a conditional use permit but the conditional use permit has different standards about density, about...

P. Davis: Yes, but all were waived. That's what I am saying, they went for the conditional use, they were waived, they got their waivers and now the only recourse the town has is to go to Superior Court. Whereas if they didn't get a conditional use permit...sounds like conditional use permit is a trick.

J. Szot: Well as long as that is in our ordinance, other people can come and can do that. Or take out the section that says: Section 10, 504.10.

"10. Waivers -Compliance with the individual provisions of this ordinance shall constitute the conditions required for the issuance of a Conditional Use Permit. Any provision of this ordinance may be waived, when, upon the application by the applicant to the Planning Board, the Board shall determine in its sole discretion 1) that requiring compliance with the particular provision for the granting of a Conditional Use Permit would create an unreasonable hardship and 2) that the application would be consistent with the spirit and intent of this ordinance. Requests for waivers must be written and the Planning Board must vote on each waiver request at a properly noticed public hearing." And at a public hearing people should be allowed to speak so there should have been some recognition that there were people in the audience and said, just as we say, is there anyone who wishes to speak.

P. Davis: But there weren't tons of people there that night. I guess like I said, that's bad on us for not showing up but on the other side of that, I elect people to pay attention to the laws. I don't come to every one and you guys don't come to mine. And I do some stuff in town too and we can't all watch everybody's back.

J. Szot: The only thing I would say to that Patty is that I would assume that some of you have read the decision by the board and find out who voted which way and if you are unhappy with the way that those people voted, when they come up the next time on the planning board. However, that being said, someone has to run against them and I look at this room and I ask how many of you have taken the time to serve? And that's the problem is that we have the same people, who perhaps may have an agenda get on boards and other people don't serve. I have been in planning and zoning in this town since 1982. I was chairman of the planning board, so I know this process and I know how it's supposed to work and it is all contingent on what is in these sections on conditional use permit and it's up to the people if they are unhappy to do something about this, to go to the ballot box, to vote, run for offices. We are one

member short tonight and we have no alternate. Tony is new on the board. He was our alternate for several years. We have several boards who have no alternate so if you really are concerned, you have to not only vote, you have to also take the time to serve. And I know it's hard but.

P. Davis: Aren't those ordinances. Aren't those boards, like your board and your board right now are coming up looking at ordinances that they may or may not want to change for votes.

J. Szot: That's right, it's done in November/December. It's citizens petitions, I believe have to be in between 90 and 120 days before the election.

Lorraine Briand –3 Old Deerfield Road: My main concern is all of these variances. Is this setting a precedence for the next developer, the next person. Or how about if somebody has only 15 foot of frontage and they want to build a house, can we get a variance on that? That's my concern.

J. Szot: That's different. If it comes under conditional use permit, I think back to Bart Mayor who was our town attorney for many, many years. He always said to us, if you stick to what is written in your ordinances, he says, it is always defensible. Once you make a waiver, then it's hard to turn around and say to someone else, no you can't do that because you have a waiver and you have 195 feet of property and so you waive it, you say it, okay, you can build, we'll give you the five feet but then the next guy comes in and he has 192 and then they've got 187 and then you have no justification. So once you waive it, you have no justification for denying someone. And the planning board can be sued for denying waivers. Once you grant it, it's pretty difficult not to grant again.

Tracy Blevens – 39 Donovan Road: I just have a question. So when this does go to the superior court, the townspeople are going to be paying for this, they will be paying to defend themselves. In our reality, these people made a choice who were elected by us and in the end, end up costing us money for us to fight for a decision we voted them in for. So, it is very frustrating to me. So, we are going to have to defend it and I'm all for it. I am going to support that. I will help fund it.

Michael Melanson – 215 Raymond Road: If these all go through, this town will spend so much money trying to stop other builders from building anything they want because these variances are allowing them to build on such small acreage, we won't be able to stop any other developer without spending so much money in lawsuits cuz they'll just be able to sue our planning board and say you've got to give it us, you gave it to somebody else.

M. Raumikaitis: I am stepping away from the board and I am speaking as a resident of the town. I am Mark Raumikaitis - Douglas Drive. I stated earlier about voting and that has been touched on here. The innovative land use controls: the conditional land use permit give the authority to the planning board to basically waive whatever they felt like waiving. It was added to the ordinances. It can be removed from the ordinances if it's investigated and done properly. And I advise and recommend that you do that. It was mentioned here that there is a record of who voted. Find out who voted, put them on your refrigerator, and vote no. You have to do that. And again, as a private resident of this town, I commend Patty's effort and I wish you well as you move forward.

Tom DiMaggio – North Road: I got one question. Well two really. One, is this going to be held up until after the elections or is it gonna get through before we can do anything about it. Two, I wonder if this hadn't been someone on the planning board proposing this, would it have been accepted at all on the planning board. So I think in this case, one person on the planning board, got all of his friends on the

planning board to pass it and I wrote in the Candia Uncensored, a couple of things that if you haven't read it, you should. And I am not gonna go into it tonight but this really stinks.

J. Szot: I would advise everyone, if you have not and it will take a little while but if you look at the minutes of the meeting, there are like two pages, a page and a half. If you listen to the audio tape, it's over 3 hours. So if you have, you can go online and take it in small doses but listen to the audiotape and I think it is important for you to listen to the discussion and how the discussion was led. Who led the discussion. How the discussion transpired throughout the meeting because it will give you, the written minutes of the meeting, do not give you a fair; do not give you an idea of exactly what happened at the meeting.

Lorraine Briand –3 Old Deerfield Road: What date was that meeting?

J. Szot: It was the sixth of July.

Darrel Nafranowicz - 206 Brown Rd.: Tom just touched on this. The conflict of interest. That the applicant is a member of the board and I understand he recused himself from the vote. Did he recuse himself from the premises or did he remain on the premises when the vote went through? (J. Szot stated he was sitting right there.) Okay, the next question would be, is it required or appropriate that the person who is conflicted remove themselves from the premises, so their presence doesn't influence the vote. (J. Szot stated that she could not answer that question.) I think that is something that should be address on any board in this town. If there is a conflict, that person that has the conflict should remove themselves from the premises so as to not influence anybody else present.

T. Steinmetz: The NH Municipal Association recommends that they remove themselves from the room.

J. Szot : If it is a recommendation, it is not required. Is there anything new, that anyone would like to say?

Amy Walker - 628 North Road: Basically, everything we are doing and saying here tonight is mute because we have to go to the Superior Court, correct?

J. Szot: That is correct. It is mute in the sense that this board, as was said in the beginning, has no jurisdiction over this. It's very plain, it's in the state laws, it's in the RSA. We do not have jurisdiction. We had the choice of opening this meeting, me reading my letter, asking for a motion to deny the applicant, saying this is over. And I went through this many times and I know that in all the years that I have been active, I have been at meetings where I wanted to speak and was denied that opportunity. And you walk out of the meeting, you feel disaffected from your governing body. You feel that you have no voice and it's not a good feeling. And I felt that it was important to know that you are coming here, I knew that we could not do anything but to send you out of here without having the opportunity to speak, I felt was an injustice because you are here because you feel as though you did not get heard. And I felt that at least everything you have said is part of a public meeting. There are public records of this. All of this will be on the town website. The audiotape of this will be on the town website. There will be extensive minutes that will also be on the town website that you can read. It will probably be part of the court hearing.

P. Davis: That's what I wanted to say that the Supreme Court does come back and listen to all that happened tonight because not everybody is going to go up to Brentwood and listen. So everything that

gets said, gets brought up, we were advised to bring up anything that you think you want said. It might not seem like important, but it is something that will get into the books.

Raymond Road: We all feel disaffected. We all feel not listened to. We feel like the people who represent us, ignored us.

Deborah Blanchard – North Road: I am just curious about when were our voices supposed to have been heard. Apparently, the planning board didn't listen to anybody who was there, the meeting went on for hours. But it also sounds like it was already water over the dam. And no matter what you said it wasn't going to count. You've got the statutes; I realize the limitations tonight but when was our opportunity to speak? And plus, frankly, I didn't think we had to speak. I mean the waivers were so beyond, it's like common sense. My word.

J. Szot: I believe the first meeting was June 1<sup>st</sup> and at that time, if you look, if you go online and you go to the Town of Candia Website. Candianh.org and you can get into the minutes of the meeting. You can also see the agendas and on the agenda for June 1<sup>st</sup>, it stated that this, the Conditional Use Permit, the waivers were going to be discussed and it listed a public hearing. There was a notice for a public hearing. At that meeting, it was continued. The law does not require anyone, that the board re-notice the public hearing and so on June 15<sup>th</sup>, when those two proposals were put on the minutes all it stated was Conditional Use Permit and Major Site Plan. Nothing about a public hearing because it was stated at the previous meeting that it would be continued until it was heard. So, at that meeting on June 15<sup>th</sup>, when it came up, it was mentioned that it would be continued until July 6<sup>th</sup>. So, if you went in on the minutes like I did and looked, I saw the public hearing notice for the first and did not see another public hearing notice. It was not mentioned. You had to sit and listen to the minutes and see that it was continued and then it was continued again. And it was technically, properly noticed. Did I know? I was sitting right there, and did I know it was a public hearing? No. I did not know. And I've done a lot of public hearings in my life, and I did not know it was a public hearing. When we do it, we say we are opening a public hearing. When we are done, we say we are closing the public hearing. We are very specific about how we do it. I did not know. I did not understand it was a public hearing. And that's just from someone who was there. But unless there is anything new, if there is anyone online who wishes to speak, we'll close the public hearing and then we will make a decision.

Keith Lemay – Adams Road: I just want to say one thing, as you are talking about the continuances and everything else, this developer has continued this, I believe since the 15<sup>th</sup> of September. He's coming back for more variances. September 7<sup>th</sup>.

Lorraine Briand –3 Old Deerfield Road: The notices. Are those the ones that we find at the post office as well? All of these?

Jennifer Kiss – North Road: So, this process or what started but kinda stalled in the room here tonight. Going to a Superior Court, does that stop the process or the progress for the project that was proposed?

J. Szot: I don't think he can move forward if it's in court. Can he?

M. Raumikaitis: I've read, and I don't have a citation, that a developer or builder or someone who moves forward during an appeal process, does so at their own risk.

Jennifer Kiss – North Road: Could I follow up then, with that question. So, maybe yes, maybe no. Do we know, will the planning board continue to hear requests brought forward?

J. Szot: I believe that they are required to continue but if the developer puts a significant amount of money into that project and starts something and the court reverses their decision, the court can remand it back to the planning board and say you've made an error here, you need to review this, their bound by whatever happens.

B. Chivers: Before we leave, I would like to call everyone's attention to a project of similar fact pattern. It's in the works now on New Boston Road. It is a large parcel of land, it's gonna require waivers. This doesn't even meet the qualifying criteria by being on an arterial street. It's going to be an elderly housing project. They are proposing to pack that thing full of houses. But the first waiver they are going to need is that one that exempts them from putting the project on an arterial street. That is going to be a test of whether this town is going to be bound by prior decisions. Because you can be sure that developer, if he is not granted all those waivers is gonna come back and say why not. This is how we suffer in the long run when we start moving around.

Darryl Nafranowicz - 206 Brown – At the planning board meeting, he's already argued that all of waivers were granted on the Main Street project. And what he is asking for is so far less than what was already granted to this other developer. He's already arguing it.

Deborah Blanchard – North Road: Can the planning board, at their next meeting say they made a mistake, we are rescinding our decision?

J. Szot: Anything is possible.

Rudy Cartier – 553 North Road - Current Chair – Candia Planning Board: A couple of things, I have to be very careful of what I say because of the legal aspect. I am not speaking on behalf of the planning board, because I can't. But I just wanted to mention a couple of things. I have heard a lot tonight which is very interesting. A couple of things I want to clarify. Meetings, we require public input at every meeting that we have. I am very strict about that. And we are in strict compliance with the laws that required us to do that. Someone asked about what a Conditional Use Permit basically does for someone. It basically allows higher density. Like, for example, for the 55 and older housing up on High Street, you'll notice that the houses are very close together. In the RSA's for conditional use permits you do not have to have 200 feet of frontage, you don't have to have any feet of frontage basically. So that's the major thing. Someone talked about what it's like to be on the planning board and you want to come in on the planning board to require these things to be done properly. Great. I encourage you to do that. We are down three alternates now. We have one alternate. I know ZBA is the same thing. Planning is not as easy as you might think it is. There are a tremendous amount of regulations and not only our ordinances and our site plan regulations and all that. There are RSA's and Chair Szot had just went through, Chapter 674 and 676 are all legalize that we, as planning board members, have to do. So if you do want to get on the planning board, please come in as an alternate and learn what you need to do because emotions have to go out the window. It's very strict on what we have to do. Changing it's ordinances. At the end of the second meeting of every month, at the end of the meeting, we have what is called a ZRRM Meeting. Which is a zoning review and revision committee meeting. We usually start about this time to look at what things we need to change looking over the course of the year. Come to those meetings. You don't have to be a member of the board to come to the ZRRM Meetings. It does

follow the planning board meeting so it could be late sometimes. Make your feelings known on what should be changed. We have a bunch of them we are looking to change. Elections. Yes, you can vote us out of office very easily but remember every planning board member is on for three years and there is only two people that are elected every year. So it's not that you can change the entire planning board next year. And the only other thing I would say is, I sent a Facebook posting out awhile ago and people were saying that they wanted to know how they could get involved in these meetings and knowing more about it. As you all know, I post a lot of stuff about meetings and stuff, to try to get the information out there. I don't know what else to do, to tell you the truth. And the final thing I would say is that Chair Szot, hit the nail right on the head, that meeting went three hours long on just this project. Listen to the tapes and see what the tapes actually say. The written meeting minutes are just a very summary thing, just like most written meeting minutes are. And come to the meetings. I can't answer too many questions or anything like that because, as I said before this is going to be a legal issue but be involved.

Bill Gurney - 426 new Boston Road: Procedural question. Can a Planning Board Member make a motion for reconsideration?

R. Cartier: From what town council has told us, no. Like anything else, if a rehearing is requested...I can't really answer the question at this point in time but as far as I know, no.

Margaret Fortini – 166 Depot road: I did have a question about, can we, as residents of Candia, when we come to that next meeting for the planning board, request that that gentleman be removed from the premises during the hearings? Can we request that?

R. Cartier – You can request anything. Whether we can legally do anything is an entirely different story.

Melissa Madden – Chester Road: You know, you look at this crown here tonight and you wonder, shouldn't we be holding this in a larger location?

J. Szot: I will tell you, I have probably been on this board about 35 years and I have never seen this many people at a meeting.

Amy Walker – North Road: I have seen people at these, bigger, they had them over at the school when they were trying to push...

Cheryl Gendron – North Road: Where can we look on the town site to find out where in rotation, the members are and how many years?

B. Chivers: The Town Report tells you when their term is up. The first couple of pages identifies all of the town officers and it tells when their term is up.

J. Szot: Also, everything we talked about is available. It's [candianh.org](http://candianh.org). And it comes right up to the page on the lefthand side, it will say agendas and minutes. And when you click on that, it comes up, I think the first thing is the Select Board and you click on that and find the planning board and hit the go button and it will take you to the planning board and you can see the agendas we talked about when it first started on June 1<sup>st</sup> and then June 15<sup>th</sup> and then July 6<sup>th</sup>. You can read the minutes there but also there is a microphone so you can listen to the audiotape. As Rudy said, it will be very informative to you if you listen to the audiotape of the July 6<sup>th</sup> meeting. It's very long but you will know how the meeting went, you will know who supported what and how everything was passed. It's very informative.

Mike Guay – North Road: I am going to make just a couple of quick statements. The first one is, it is obvious to me listening to everything that has gone on, somebody on the planning board knew exactly what they were doing to plan this they way they planned it. We need to make sure that basically from now on we are paying attention to planning board members voting on planning board items. The second thing is, that is up to us as citizens to do that, it is our responsibility to do that. The second thing is, I have been talking to a lot of people about this over the last couple of weeks, I have heard a lot of misinformation. And one of the things I've heard is, if we don't allow them to build it, what they are planning on building on that lot, that they are basically going to open it up to developers coming in, putting in low-income housing wherever they want. I have done research and that is false. Flat false. We have ordinances in place for low-income housing. I don't think anyone here would dispute that we would like to have some low-income housing. Workforce housing. But it is basically housing that allows affordable housing for young families with kids to come into town. We already have those ordinances on the book. If they obey the ordinances, this would be a nonissue. It's that this particular lot is such a bad fit that people have raised here, the variance or waivers, whatever you want to call them based on the legal proceeding sets a precedent and we are really in trouble if we don't stop. And whatever I can do Patty to help you, I am willing to help you. I have heard a lot of misinformation about this over the last couple of weeks and I think it is up to us to start spreading the word.

J. Szot: Sir, also if you are aware with things that come under workforce housing, usually what they do is the state law says that 30% of the units fall under workforce housing and the rest can be regular housing. So 30% of those units is what, 9 units would be, 8 or 9 units would be workforce housing and the rest would be regular.

Mike Guay: But what I've heard is that if we don't allow this development, that the state will force us to do that.

J. Szot: I think what you are referring to sir is that Mr. Komisarek did make a comment at the meeting where he said, well if this doesn't go through, I can appeal to the housing board for workforce housing and the housing board usually votes with the developer.

Mike Guay: That's not true, for one thing. And secondly as long as you have ordinances that allow for workforce housing, which we do, there is no reason to grant the variance on a 6.7-acre lot for 29 units.

Anne Lacey – 39 Critchett: The granting of the conditional use permit is what started this. Correct? Okay, from here forward, if someone comes in next week and applies for a conditional use permit. Is there anything that can be done now? Or when can we change the opportunity for somebody to apply for a conditional use permit?

J. Szot: Between 90-120 days before the election, so that is somewhere in November/December, and you would have to present a citizens petition to the planning board. The planning board will vote on whether or not they support the petition, but the planning board cannot refuse to put a citizens petition on the ballot. That would be on March ballot. When you go to vote in March, that would be under the zoning changes. Once it's noticed, once the change is noticed, you are bound by the new change. If the change, if a citizens petition is presented to the planning board to change something in the zoning, we are bound by the proposed change until it is voted either passed or failed in March. That's my understanding from years of...back when I was on the planning board, that is the way it was. Once it

was noticed, it was presumed that it was going to pass and so you were bound by whatever was on it. And then if it doesn't pass you go back to the previous.

Jennifer Kiss – North Road: We listened to the three plus hours on the July audio and just a quick tip, if you go up into the playback settings, you can increase the playback speed, so that at least you can kinda get through the stuff that isn't so important and get to what you want to hear. It helps a little.

Tom St. Martin – Currier Road: I have watched the meeting go on and it is a complex issue and there are a lot of emotions flying around and I have never seen you chair a meeting before Judith and I felt it was appropriate for somebody to say – nice job.

J. Szot: Thank you Tom. If there is nothing else, I will close the public hearing and the next part, as a board we will vote on Patty's petition to our board and I would like to open it up if there is anyone would like to make a motion on Patty's petition.

M. Raumikaitis: **Motion** that the board deny the petition as presented by the petition. Second – B. Chivers. All were in favor – 8:27 PM –

J. Szot: I am sorry Mrs. Davis., your petition to question what was done at the planning board is denied because this board does not have jurisdiction to hear that under RSA 675:3.

M. Raumikaitis: I would like to mention, my motion did not include the last part of your statement. It was a very simple motion to deny. Not the rest of it.

J. Szot: Yes, I understand that, but we need to give reasons for denying. We are required by law to have findings of fact which are the reasons and so is the planning board, by the way, required by law to have findings of fact that states very specifically why waivers were granted or why, in this case, why we denied and the reason we denied your application Mrs. Davis is because we do not have jurisdiction in this case.

M. Raumikaitis: Judith, thank you for your clarification.

J. Szot: So, we will continue with our meeting now. We have a couple of things. Election of officers and minutes.

Approval of Minutes – Boyd Chivers made a **Motion** to accept the minutes of May 24<sup>th</sup> as presented – **Seconded** by Tony Steinmetz. M. Raumikaitis abstains. The rest were in favor. **Motion Passed.**

J. Szot: The next order of business is the election of officers.

B. Chivers: Tradition dictates that Vice-Chairman succeed the Chairman in the event of his absence and I therefore nominate Mrs. Szot be chairman for the upcoming year. R. Raumikaitis Seconded. Any other nominations? Seeing none. All were in favor. **Motion Passed.**

R. Raumikaitis: I nominate Boyd Chivers. T. Steinmetz **Seconded. All were in favor. Motion passed.**

J. Szot: Any other business to come before this board?

B. Chivers: Good job tonight, Judith. Despite my reluctance to hear what they had to say, because that testimony goes to Superior Court, that's important that it was heard tonight. I didn't realize that the



Superior Court would accept any of this conversation here tonight as part of the supporting documentation but maybe it will. But it was good these people were heard.

J. Szot: Thank you. I believe it's important. You know Boyd, you've sat at meetings where they wouldn't listen to what you had to say and went and did something that you felt was wrong.

B. Chivers: The right place to go, now what's happened is you've satisfied their desire to be heard and they won't go to the planning board. Half of them won't.

J. Szot: I would disagree with you, but we'll see.

B. Chivers: The right place is the planning board and hold their feet to the fire. At least it didn't devolve into some kind of criticism of the planning board. It was very constructive.

T. Steinmetz: Personally, the reason I wanted it to be heard was just because it's being recorded and it's documented. The people have spoken.

J. Szot: I think it's a sad testament that the applicant and his attorney walked out and would not hear what people have to say.

B. Chivers: Well first he threw a bomb in there and tried to scare everybody away on Covid. He said you have too many people in the room, this is a Covid threat.

T. Steinmetz: His justification was just as weak as the justification for the waivers.

B. Chivers: One thing I learned here tonight is people expect the zoning ordinance to be applied as they approve it. They read the ordinance; they know what's in it. This woman testified that she went to all the other towns to look at the zoning ordinances before she made a decision where to move. That's important. And you know, they expect that the zoning ordinance is going to be applied as it's written because we are the ones who approve it. When we go to vote, you approve every word in that ordinance and you expect it to be applied. Not expect it to be waived at some future date. And this is what disappointed these people.

T. Steinmetz: Especially not radically waived. A slight waiver within limits

B. Chivers: You know, I brought up before. You need seven acres and you've got 6.9. That's a waiver. You need 20 acres and you've got 6.9, that's not a waiver, that's eviscerating the zoning ordinance. But I was very proud of the way they presented themselves tonight and I was really proud of the way they regard their zoning ordinance. It's a challenge for this board and the planning board to deliver and to live up to their expectations.

J. Szot: Many of these people said that they did not go to that meeting because they thought there was no way they were going to waive those things. It was too, it was just too controversial. There was too much and no reason to grant those waivers. And you can call them waivers, they are variances. That's what they are. Maybe the ordinance calls them a waiver, but it is a variance to the zoning ordinance. And I really do not feel that the planning board should be granting waivers to the zoning ordinance. Rudy explained hardship, Rudy read them the meaning of hardship and told them that their attorney had told them that finances are not a hardship.

B. Chivers: **Move** to adjourn at 8:39PM – M. Raumikaitis **Seconded** – **All were in favor. Motion passed.**

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file