

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF March 28th, 2023
APPROVED MINUTES**

PB Members Present: Judith Szot, Chair; Boyd Chivers, BOS Rep; Tony Steinmetz; Mark Raumikaitis, Ron Howe

PB Members Absent:

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

New Business:

- **Case #23-001:**
Applicant/Owner(s): Bob and Claudia Carr – 17 Vassar Street, Manchester, NH 03104.
Property Location: 669 High Street, Candia, NH 03034; Map 405 Lot 48.
Intent: *to request a variance to waive terms as stated in, Article II, Section 2.05 to build multiple dwellings*

J. Szot: Mr. Steinmetz was listed as an abutter, and he is not. If you take out the road, his property does not abut the property.

Bob Carr: I realize he is not an abutter. However, his property line is within 200 feet of our property line. I approached all neighbors. I am agreeable to having him stay on the board.

Joe Coronati, Jones & Beach Engineering: The property is 669 High Street in Candia. This is a large parcel. A 90 Acre Parcel. Currently on it is a small existing home. We have been talking about the zoning and the regulations. There is some language in the ordinance and that is why we are here tonight. The proposal is to add three duplexes. The existing house would be removed. There would be a total of 6 residential units on 90 acres. Mr. Carr would also like to have a barn. We kept the driveway across from Donovan Road. It makes sense to line them up across from an existing road. We have a wetland running through the middle of the property. This keeps all of the residential development in front of that wetland. This could obviously be a much larger development. We clearly have plenty of land to support three duplexes on this parcel. We have provided an arial as well. The three proposed homes are actually further back than the existing house. We have a large buffer to the road and a large buffer to all of the abutting property lines. It allows us to have large setbacks and we would basically be

behind the neighbors' homes with these proposed dwellings. It is a beautiful piece of property. All of the back of the land would not be developed with this proposal.

John Bielagus, Applicant's Lawyer: Do you anticipate any septic problems?

J. Coronati: The septic for each of the three-bedroom units. Each unit would have a standard size septic that would meet the state requirements and the town requirements.

Mark Raumikaitis: When that backlot is eventually subdivided, the backend of that lot. Is this all that is going on this property.?

J. Coronati: The future of the property I am not really privy too. That is the proposal for now. When you look forward in the future. In order to subdivide the back of that property. We are not creating an

M. Raumikaitis: Where would the road go if you were to put one in?

J. Coronati: One of the problems is you have a maximum length cul-de-sac. Not conducive to subdivisions. If the properties had wide frontages, you would see more subdivisions. He could go in and do a standard subdivision. In the future, I think this layout actually eliminates the ability to subdivide. Because each of these homes would have to be on a 3-acre lot. By developing this property this way, you would not see a future subdivision.

R. Howe: Forgetting these homes, I don't see how there is room for a road on either side of these structures to get into the back.

B. Carr: That is not my intention. It can't be because we just used all of the frontage with this plan. We want to leave it the way that it is. We do not want it to be able to be developed in the future.

R. Howe: Is the existing house on this property. Is that going to stay?

B. Carr: All of the existing structures would be coming down.

J. Szot: When I look at this map, for a major subdivision, you need 60 feet. It looks like there is a little more than 100 feet from the edge of each building.

J. Coronati: On the West side of the property, the... That's where things get really tricky. We would have to subdivide this lot and meet the density for those six units. Bob really wants to have a barn out back. By the time you get past the units and over to the barn, you are almost 1000 feet into his barn. It doesn't really make sense to build a lot 1000 feet in. That's why he is not proposing a subdivision. It would be a different layout and would need zoning relief. It would be really expensive to get very little yield.

R. Howe: How do you access? How do you get across the wetlands.

J. Szot: But you do if you cross that first wetland. You could incorporate some of those wetlands into your lots. And you could easily, with conventional development. You have not provided any maps of that area. We do have maps of that area, but they are from 2006. You did a complete soil study, and we have that in the folder. I believe at the time, your soil scientist said you had 58 buildable acres.

J. Coronati: They would be buildable but can you access it? We are really not proposing any of those things. To get way out there, the town would have to grant us a 4000-foot cul-de-sac. There is no other way out of this property. Granted I will say no one ever says everything is forever.

R. Howe: Are you looking at running utilities out to this barn?

B. Carr: Yes, at least electricity

T. Steinmetz: Who would have use of the barn?

B. Carr: Just me and my family. We met with the planning board a couple of times, just to get a feel of the pulse. We just went in to have a conference.

B. Chivers: And they directed you here?

J. Coronati: There was some confusion in the ordinances that we wanted to clarify with the planning board.

B. Chivers: What were those contradictions?

J. Coronati: Jack might know them better or maybe Bob.

“B. Two-Family and Multi-Family Dwellings: Purpose: It is declared to be in the public interest and for the general welfare of the Town of Candia to permit the development of housing facilities specifically suited to address the needs of the elderly, handicapped, youth, and low-income families who wish to reside in the Town of Candia. In order to achieve this goal, two family and multi-family dwelling uses identified in Section 5.02: A.32 of this Ordinance and specifically referring to this section may be permitted as Special Exceptions in the R District subject to the following safeguards:

1. Such uses shall be located on an arterial street as designated in Article III. (Business Routes 101, S.R. #43, S.R. #27)

2. Specifications:

- a. Lot size shall contain no less than three (3) acres and have 200 feet of frontage. Lots greater than six (6) acres may utilize existing legal right of ways providing private road access is built to town standards.

- b. The dimensional requirements shall comply with Section 6.02 of this Ordinance. Specifically: front yards shall be 50feet, side and rear yards shall be 25 feet, and maximum building height shall be 35 feet/2.5 stories.

c. Density shall be one dwelling unit for the first three acres and an additional dwelling unit for each additional contiguous buildable acre. In accordance with Section 2:05 only one multi-family or two-family building will be allowed per lot unless approved under innovative land use.

d. One-bedroom units shall contain a minimum of 600 square feet per unit. Two-bedroom units shall contain a minimum of 800 square feet.

e. Two parking spaces shall be provided for each dwelling unit.

f. All applications for 3 or more units shall be subject to site plan review.

g. A maximum of four dwelling units shall be allowed in any multi-family structure.”

J. Bielagus: That was proposed but then they had this innovative land use, but it didn't pass the last vote.

J. Szot: It was to codify workforce housing because the legislature changed the regulations in 2022 and said that any town that had elderly housing under conditional use permit also had to have workforce housing.

B. Chivers: The way I read, the second sentence, only one-family, unless approved by innovative land use.

J. Coronati: We didn't want to be restricted to the workforce housing.

J. Coronati: The other section confused us as well. There shall be only one per lot...The maximum would be four units in a multi-family. That is why we are here for the three duplexes which would be six units.

M. Raumikaitis: As it stands today, without a variance, you could put a single dwelling in with four units. The way the regulations are written...

J. Coronati: Let's say Bob was allowed to build a road. To create lots that have frontage, you have to create a road that the town would then have to maintain. This is a private driveway; it will never be a road.

B. Chivers: To get 6 units in there would be 600 feet of road, all of which would conform to the zoning ordinance. Could you build a road there?

J. Coronati: From route 27 to that first wetland is about 550 feet. It would probably be a situation where it would probably be a stubby cul-de-sac. It creates a town road.

B. Carr: From a selfish point of view, we wanted to keep the property the way it is.

J. Bielagus: If you could do something else. What is the harm to the public? Why put in a road for six units? Where is the blind lady with the scales of justice? What is the substantial justice? The variance gives us that.

R. Howe: Do you intend to rent these duplexes?

B. Carr: They are going to be owned and rented.

R. Howe: Is there some common land back here if people want to put a garden in, etc.?

B. Carr: Yes.

R. Arsenault: How close are you? How can you get away with that? Doing duplexes when most people need 3-acres for one. What's next, condos?

J. Coronati: There is a large parcel here that abuts Merrill Road. This is still up by 27.

Tony – Merrill Road: The zoning board allows multi-family housing in Candia? How many units can you have per house? You can get away with putting that on a 3-acre lot? How many acres do you need for that?

J. Szot: If you are creating a new subdivision, you need 3-acres.

Tony – Merrill Road: If you have a two-family, would that be four acres for one unit?

J. Szot: They can go to innovative land use but they do not want to because it is restricted to elderly or workforce.

Tony – Merrill Road: At the beginning it said a road built to town standards. What is that? It would have to be a regular road.

J. Szot: You also have to consider that the taxes on these units would be substantial.

Tony – Merrill Road: Are you planning on living in any of these units?

B. Carr: Potentially down the road. Not now.

B. Chivers: You would have a right to build one structure with four dwelling units there and not need a variance. You are coming in and asking for three structures with two dwelling units in each one. So, the only issue here is two dwelling units. Am I right?

B. Carr: I needed to keep you guys busy.

B. Chivers: The stakes are not very high when you think about this when you think about this. I mean, they are to the abutters.

J. Bielagus: We are not asking for a huge variance. Like a business that might pollute. Like across the street, they have the dog training. We looked over there earlier before we came here and there were about 25 cars. Which is fine because there was actually no problem with the highway, no congestion. And what you are offering here is obviously very low impact. You are preserving all of the wetlands. You are allowing for all of that back acreage to stay as it is for the owls, for the beavers, and for the deer. It's close to Bear Park there, so obviously you've got animals who are coming, and it keeps the habitat the way that it is.

B. Carr: If I could add too, we have done this because it is nice. I am doing this because I love the property. In the back of the existing house is clear, it's all grassy, there is a field with a giant apple tree. We get deer and moose, and the occasional bear comes through. And can you imagine for a person coming in to rent one side to be able to have

this in Candia as a renter, to be able to just enjoy the pristine beauty of that kind of backyard would just be incredible. In my opinion.

J. Szot: I understand that; the problem I have is that we have no guarantee, that that's going to be the end result.

B. Carr: I would guarantee it. If there is a way to do that.

J. Szot: You would guarantee that there would be no more subdivision on that land?

L. Sousa: Presentation via Zoom (See Attachment) I want to be very clear, that we want to make sure that, we are at a disadvantage because people that are trying to participate and cannot see. They mentioned the wetlands which is something I mentioned as well. My objectives are to demonstrate the lack of ethics by the applicant. We are looking at verbal assurances. However, we had a call from Claudia Carr, specifically asking if we would sell our property. Potentially considering our property as well. We don't have any specific assurances as to what is going to occur here. Especially since before this meeting, we got the call asking us to sell our property. They have mentioned and eluded to a few things. Actually, it affects our property. I am concerned about the well-water use. We have 56 acres. We are talking to additional departments. The animals do not understand boundary lines. We want to make sure we protect current resources. The culture of this neighborhood is we are private people that are community minded.

B. Carr: There is no smoking gun. I am 62 years old. I used to be a builder and a developer.

C. Stamatelos: Based on your construction, has this property been recently surveyed?

B. Carr: Not recently, but yes.

C. Stamatelos: When you speak about the existing lot that you are going to use, you are short maybe 4 acres. When you create this are you going to deed it, including that lot? My concern is that if it is not absorbed...

J. Coronati: I am not sure exactly what you are looking at. Is that lot 49? That is not part of that application. We got 90 acres because Bob painstakingly paid to have the whole lot surveyed.

J. Coronati: Lisa's presentation was very thorough, but her property is a quarter mile away.

Tony – Merrill Road: Has that property been perc tested at all to see what the soil is?

J. Coronati: Obviously, if we get approval here, we will have to go before the planning board to address all of those items.

David Gould – 81 Halls Mill Road – I am trying to distill this request down. Some of the concerns that Lisa brought up. I would pose that there is a way to guarantee that the land does not get developed and that would be a conservation easement.

B. Chivers: I think we would require something like that as a condition of the granting of that variance.

M. Sousa: Just a brief comment, I just wanted to mention that I have occupied my house for a year and a half. I have a doorbell camera and I have never seen anyone come to my door that I do not recognize.

Dana Mazzarelli: Donovan Road – My concern is about property values and ground water. In the past two or three years, we have experienced serious drought levels.

John Adkins – North Road – I was having a difficult time seeing the map. Where was the barn going?

J. Coronati: These plans are all here at the town hall. If anyone wants to come in and look at them. The barn is situated about 900 feet back from High Street. If you have ever been on the property, Mr. Carr maintains trails that are wide enough to drive down. There are existing trails that are certainly wide for a side-by-side.

B. Carr: It is just a personal barn to use for storage. I would like a barn if I ever decided to get a horse, I might put it in a barn.

John Adkins: How big is the barn?

B. Carr: 100 x 40

B. Chivers: Can you satisfy all of the other requirements?

J. Coronati: Yes.

R. Howe: Do we consider the barn part of this development?

J. Coronati: We are not asking for relief for the barn.

J. Szot: You do not need it. Where is the primary dwelling unit for the barn? A barn is an accessory to a primary use. If you don't have a primary use, how can you have an accessory barn?

J. Bielagus: I want to be transparent. I told Bob to leave the barn off.

This plan preserves the wetlands.

Small density. It lessens. Minimum would probably be an additional 12 vehicles. Safety. Health and general welfare. The purpose of the town is for the residents. This is what the town is looking for. It is what the state is looking for. It is not concentrating your population. No pollution. Low density. It is certainly with the public interest. If you go through. Substantial justice. It is the relative comparison of harm to the public and benefit to the applicant. There is not harm to the public. There is nothing here that

Lisa or any of the abutters have mentioned. The values to the surrounding properties are not being affected. The literal enforcement of the provisions is harmful. They have never posted the property. For all of those, we respectfully request this variance.

J. Szot: I do have a question. You said that.

J. Bielagus: I think what he was referring to it the gardens, people that are going to be there will continue to use the gardens. We are not putting in anything that is going to impact the current property.

J. Szot: Under the hardship. You said that. His wetland calculations said there was.

J. Szot: If we don't have proof of the representations. At that time, we had the proof from the soil scientist. It would render 70 of the acres unusable.

J. Coronati: I think what they are saying is they are only using 70 of 90.

J. Szot: If several other properties share these,

J. Bielagus: It is a hardship because we cannot create the lots to put in the four duplexes. We are restricted to what we can put in the front. It becomes a hardship for us doing that. That is the hardship, forcing us to put in a road, spend that money. What is the rational?

J. Szot: You are talking substantial justice, but the hardship issue is what makes your property different from any other property that is so zoned? What is unique about your property that is not unique about these other properties? Same conditions, there is no hardship.

J. Bielagus: We have 90 acres and a lot of wetlands. The difference is with the 90 acres and the ponds. You can distinguish it that way.

J. Szot: Mr. Carr is there anything else?

Tony – Merrill Road – How far back is that barn going to be back again. Obviously, you are going to need some kind of road to get back there. How big is this trail? But will it be wide enough, and will it hold equipment? That is going to have to be upgraded as well? How about a concrete truck? And is it going to go through the wetlands?

J. Szot: The public hearing was closed at 8:47.

We do not have to make a decision tonight. If we need time to come up with the findings of fact. If it becomes necessary, we have the option.

B. Chivers: 14:02

We have expressed a desire to broaden our supply of housing. Multi-family homes on an arterial street.

R. Howe: I would agree with that provided that we have the written statement that the property that cannot be developed.

M. Raumikitas: It is 900 feet from the road and 100 feet from the property line. I don't see the barn as contrary to the public interest.

T. Steinmetz: I would like to have the terms and the conditions about the rest of the property before this is approved.

The five variance criteria. (review)

Variance Criteria

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?

All were in favor. Unanimous.

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.

All were in favor. Unanimous.

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.

All were in favor. Unanimous.

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.

All were in favor. Unanimous.

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 any "fair and substantial" way.

B. Chivers: This is always the toughest one. Literal enforcement of this ordinance would in fact create a hardship.

J. Szot: It is when you look at this property and ask how it is unique, it is not unique.

B. Chivers: All of the testimony we heard tonight was about future development. If we cannot grant a variance for 2:05 tonight. I am not sure how many units they could get out of that. But this might be the least, worst way to resolve it.

R. Howe: Someone mentioned conservation easement.

B. Chivers: It is up to us to draft the terms of this variance and it is up to them to comply.

Motion: B. Chivers. M. Raumikaitis: **Second.** B. Chivers, M. Raumikaitis, R. Howe = Yay

Judith Szot, Tony Steinmetz = Nay

3-2 – Motion passes.

M. Raumikaitis: The secondary statements that are going to go as part of this, is that something that we should have drafted more professionally?

J. Szot: Mark, I would agree with you. This is what I was talking about before, we had this discussion. We can come up with a proposal and have it looked at by our attorney and then come back next month and finish.

B. Chivers: That's exactly what mine does but it finishes it tonight. Move to approve variance from section 2.05 of the ordinance, to allow construction of a three duplex dwelling unit, on a property identified as Map 405 Lot 48 subject to the following conditions. There shall be no further subdivision of the property for any additional development. Said restrictions shall be recorded at the Rockingham Registry of deeds in a format acceptable to the town of Candia. So, they provide us with the restrictions, they can draft up what the restrictions are, the ones that they think are going to satisfy this board. They provide them to us; we give them to counsel. Counsel signs off on it, they get the variance.

J. Szot: So, this is what I am saying. We have done all the work, we continue this. He comes back with this information. He brings it to us, we have our attorney look at it and next month, we finish it up, first thing.

M. Raumikaitis: I am going to say that I like expediency, obviously. I think Boyd's motion where we are asking the applicant to bring the restrictions, the town attorney says that meets the spirit of the ordinance, the decision of this board. Once the attorney signs off on it, we're done. So, they bring it, the attorney likes the spirit. The property is not going to be further developed, whatever legal term is necessary to make that happen, and our attorney signed off on that, I don't know where the risk is.

B. Chivers: I don't see the risk.

J. Szot: None of the board has seen it. I understand that we are allowing the attorney to sign off, but this is a decision made by the board based on information that is presented to the board and if we, as a board, don't see...we're saying, we'll sign off on it. What if it's okay for the attorney but it's not okay for the board?

M. Raumikaitis: The statement there, that Boyd made, the motion would indicate no further development, that would be supplied to the town attorney. The town attorney would say this document that's provided by the applicant meets what we approve tonight and signs off and we're done. Basically, the attorney is going to confirm that their document meets our motion.

J. Szot: But we haven't seen it.

J. Coronati: Just to add one comment, when you say no further development, can you specify what you mean? Because I believe that means housing units. You may believe it means something else and he would like the ability to have agricultural and recreational use. So I don't want the attorney to hear what you write as no further development...

Many people speaking at once.

B. Chivers: The restrictions we have agreed upon tonight that will satisfy some of the abutters.

J. Bielagus: If you don't want any further development, residential, you don't want any further development, you don't want any further use. But personal use.

J. Szot: An accessory building but no commercial. So, no commercial.

J. Coronati: No commercial and no residential.

J. Bielagus: Right. I will draft something and send it to your attorney. I'll have that, the first of the week, to your attorney.

B. Chivers: Okay, so why don't we give them tentative approval subject to...

J. Szot: I think I need to see what they come up with.

B. Chivers: Okay.

Continuing this discussion:

B. Chivers: I **move** we continue this case until our next meeting. R. Howe: **Second**:

All were in favor. Unanimous. **Motion passed.**

Review of Minutes: B. Chivers: **Motion** that the minutes be approved as presented by Amy Spencer. T. Steinmetz: **Second**. M. Raumikaitis – Abstain - All were in favor. **Motion passed.**

Fees: Current cost of postage plus \$2.00. Will discuss at the next meeting.

Some discussion of moving the meeting time. Mutual agreement to leave it as is.

M. Raumikaitis: I make a **motion** that the board recommends to the Board of Selectmen Motion that Boyd Chivers be reappointed to the board. R. Howe: **Second** All were in favor. **Motion passed.**

Motion to Adjourn: M. Raumikaitis **Second**: T. Steinmetz. All were in favor. **Motion Passed.**

Adjourn: 9:20PM

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file