

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF May 23rd, 2023
APPROVED MINUTES**

PB Members Present: Judith Szot, Chair; Mark Raumikaitis, Ron Howe; Tony Steinmetz (via Zoom);

PB Members Absent:

Boyd Chivers, Vice-Chair

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

Old Business:

Case #23-001: Public Meeting

- **Applicant:** Applicant/Owner – Bob & Claudia Carr – 17 Vassar Street, Manchester, NH 03104. Property Location: 669 High Street, Candia, NH 03034 Map 405, Lot 48
Intent: *Public Meeting for the board to consider a Motion for Rehearing*

J. Szot: We have done some revising of the March meeting minutes. We have several people talking at one time. Also, we have discovered that our recorder was not working properly. The other thing about this meeting. This is a meeting. It is not a hearing. There is not testimony from the applicant. The purpose of this hearing is to read the documents that the applicant's attorney have submitted to us. We will deny his application for rehearing. Then his remedy is to appeal to the Superior Court. We would open up the hearing. Make any changes to his conditions on his subdivision. I think it is important to note that Mr. Carr had three legal ways. The board ruled that there was a hardship. It was based on the conditions. There are two different places in the minutes where they agreed there would be no further subdivision. There were questions about the barn. Who would use the barn. Line number 196 starting with Mr. Carr, imagine people coming there. Line 252:

We had a discussion about, should we look at those restrictions before. We wanted to make sure that what the lawyer. Boyd made a motion to continue the hearing. It starts at about 2.07 and goes to 2.11. It was said three times that there would be no commercial.

The question is, did we err when we said no commercial use, no further development.

I believe if we look at the paperwork from his decision. He can come back to the ZBA if he would like to do something different.

Judith reads from the NOD (See Attached)

He has a right at some point if he wants to do something else.

What we never discussed was...quotes the NOD (See Attached). But he wants to maintain the right to do that.

He has the right to use that property. You can use that and if in the future there is something else, it is a residential area and he needs to come back to the board.

If we think we have erred, we grant his appeal.

To continue the meeting, at which we were discussing our decision about what the conditions would be.

M. Raumikaitis: Can you clarify for me a rehearing, only if the board feels a mistake was made? So I am kind of in a conundrum here because I think we had long conversations in April to make sure that the applicant's rights were protected. The document was changed. It left a situation. It was a long conversation. And we did talk about the 90 day. If we didn't rule, the applicant was going to have to start over at square one. In my opinion, it was what the applicant had agreed to and was comfortable with. In good faith, I thought I was going forward with a situation, where we were giving the applicant what he was looking for. The appeal, my understanding is, if we don't agree to a rehearing, the applicant's only choice is Superior Court. So here is my conundrum. I don't think that what the applicant is asking for is anything that is outrageous. Nothing can be done on that property unless it meets the zoning or state law. Any commercial that was there. We added that statement in there. I would have no problem modifying what we put in there to say, any future commercial use of the property. All of the protections are there. It is zoned residential. From a rights point of view. The applicants. Did we make a mistake by putting that in? I don't know because the applicant asked for it. Is it a mistake by the board to accept what was offered by the applicant and the applicant's representatives? I am leaning towards no. The conundrum is that nothing can be done on that property. The protections for the town are technically still there.

J. Szot: (reads from the NOD) See Attached.

The purpose of the rehearing. No Have we made a technical error? The applicant was here. The people representing him made statements. The applicant sat here while his attorney and his engineer made the statements. At one point, he did say he would guarantee that there would be no further subdivision on the land.

If we made an error, it saves us from going to the courts and spending all of that time and money. If he made statements. If his representatives made statements....

If we haven't made an error, then no purpose was served. Is it fair to all of the other people who have taken the time to come here?

I don't believe that we made an error. I have two questions though. We have four out of five members of the board. As long as there is a quorum of the board here...

If you feel...the purpose is, his document has to state why the decision is unlawful and unreasonable. He is saying that they didn't know about at the meeting. We never mentioned any of those things. The two things that we talked about as a board were the fact that he made the statement that he only had 20 buildable acres. They were concerned about the wetland crossing. He got his six units that he wanted. One could argue was there a hardship. When in fact he had three legal ways. What was fair for the town, what was fair for Mr. Carr.

R. Howe: I have said before, we are a board of lay people. We are not lawyers. We make our decision honest and true. It is certainly possible. I really think that we didn't make a mistake here.

T. Steinmetz: I would like to get a clarification on commercial and non-commercial. Are we talking about agriculture? The way things stand right now, the applicant has been approved. If the applicant would like to do something there, would the applicant be able to do.

J. Szot: There is nothing that says he can't. That involves him coming back before the board.

T. Steinmetz: That's why I am a little confused. We have a vineyard. He makes wine on the property. He is licensed by the state. Why would one agricultural be allowed? There has been no discussion about what the commercial operation might be.

J. Szot: It is really not the place to discuss that. Did we make an error in the conditions that we placed on the applicant? If we have made an error, we need to grant him a rehearing. Have we made an error. It is only about the document and the conditions in the document.

T. Steinmetz: I apologize for going off track.

J. Szot: We had to rehear it this month because you have 30 days to rehear. Our next meeting would be after that 30-Day period.

M. Raumikaitis: I would like to address the letter that came from the attorney representing the applicant. I am reading from page 4. I would disagree with that. It was discussed. And it talks about how the applicant was not given a chance to speak on the changes and I guess I would disagree with that because as you know, the meeting was continued. I do believe the applicant was duly notified. It was in the minutes that this was an extended meeting. Those conditions are already addressed by the zoning ordinance, by planning, and by state law.

J. Szot: I would agree with you except, they made the statements. Three different times, it was stated. It wasn't that we put it in there. They voluntarily put that in there. They had legal ways. They sat here at the meeting, and they agreed to those conditions.

Now they are saying, wait, we don't like those conditions. In our decision, it says if they don't like it, they do have an option to circumvent this without going to the court.

M. Raumikaitis: I think we made a mistake by putting no further use.

R. Howe: Noncommercial use versus no commercial use. To me, that is two different things. To me there is a difference.

J. Szot: All we are talking about right now is the letter we received from his attorneys.

R. Howe: We said there cannot be any other commercial use. We never used the term non-commercial.

J. Szot: Reads from the NOD (See Attached)

T. Steinmetz: No comment.

Do you want to continue discussing it or do you want to make a motion.

R. Howe: I **move** that we deny the rehearing. J. Szot: **Second**. Split. **Motion Fails**.

M. Raumikaitis: I make a **motion** that we accept. T. Steinmetz **second**. Split. **Motion Fails**.

M. Raumikaitis: We are at an impasse. His rights are protected. If he is unhappy with this, his rights are protected. He can come back at a future time to the board and ask to do whatever he wants to do on that property.

The motion for rehearing has failed.

Motion that we hold a meeting on June 19th as a continuation of this hearing to rediscuss this decision. Second: T. Steinmetz. All were in favor. **Motion Passed**.

Other Business:

- Review of Minutes – Review was postponed to a future meeting.
- Review / Adjust Schedule of Fees
- Procedural Review / Adjustment.
- Any other matter to come before the Board.

R. Howe: **Motion** to Adjourn. M. Raumikaitis **Second**. All were in favor. **Motion Passed**.

Adjourn:7:36PM

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file