

CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
August 22nd, 2023
APPROVED

ZBA Members Present: Chair Judith Szot, Mark Raumikaitis, Ron Howe and Tony Steinmetz (via zoom).

ZBA Members Absent: Vice Chair Boyd Chivers

7:00 pm Judith Szot called the ZBA meeting to order, immediately followed by the Pledge of Allegiance.

NEW BUSINESS:

- **Case #23-002:**

Applicant: Paul and Sarah Brassard, 266 Donovan Rd., Candia, NH 03034; Owners(s) Paul and Sarah Brassard, 266 Donovan Rd., Candia, NH 03034; Property Location: 266 Donovan Rd., Candia, NH 03034; Map 411 Lot 40.

Intent: *To request a variance to waive terms as stated in Article VI, Section 2. to construct a 30x36 ft. barn/garage within 25 feet of the road, when 50 feet is required.*

- J. Szot: There are five criteria's that are required for the applicants to receive a variance. 1.) The variance must not be contrary to the public interests. 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 house safety or general welfare of the public. 2.) The spirit of the ordinance is observed to be contrary to the public interest the variance must unduly and a marked degree conflict with the ordinance so that it violates the ordinance's zoning basic objectives. 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. 4.) The values of surrounding property 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 of the question of value or any other point, since the function of the board is to decide how much weight or credibility to give witnesses testimony or opinions of witnesses including expert witnesses. 5.) Little enforcement of the provisions in the ordinance would result in unnecessary hardship. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exists, only when some characteristic at the particular land in question makes it different from all others can a necessary hardship be claimed. The property owner needs to establish that because of special conditions of the property and the application of the ordinance provisions to his property would not advance the purpose of the ordinance provision in any fair and substantial way.

- J. Szot said it is the applicant's responsibility today to explain to the ZBA on why they need all five of the criteria's in order to be granted a variance. A hardship that is shared by others, because the zoning ordinance sets up specific rules. Something that is shared by everyone is not a hardship. If you do not meet all the five requirements they cannot grant them a variance. She asked the applicants to explain what they want to do and why they feel they cannot follow the zoning ordinance in this particular case.

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- Applicant P. Brassard asked if the members had received the informational packet he submitted. He is looking to put a barn/garage on his property located right before his driveway. He owns about 1700 ft. of the road up to Mr. Cummings land. He explained by showing them on a map, and stated he preferred to be closer to the main road because the power lines are on the opposite side of the road. His whole concept of putting up a barn/garage is to store his tractor, excavator and random attachments is so that he can see it. It will not block the view for any of his neighbors and the closest house is approximately 500 ft and he is asking for a variance. He had gone to get an excavator to clear it, for cord wood storage area and to build a garage there. He ran into a vast amount of ledge and he could not break it with a 40,000 lb. machine. Setting it back would require him to drop it down a hill and in getting a vast amount of fill. He cannot put it any closer due to the swamp and he does not want it to be located directly in front of his neighbors house. He is asking for 25 ft. because he cannot move it over, due to the massive amounts of rock next to his well and does not want to blast there. He gave additional details on where he was going to place the barn/garage with a map.
- R. Howe or M. Raumikaitis?? Explained the intention for setbacks on roads is to properly maintain the roads and to have access to do work there. He said if this land is subdivided in the future and the road needs to be built out, they will be looking at a tight situation in areas by the road. If something does change to the road, it could produce a situation in the future where that barn/garage could become a problem. He asked if any of the land was in conservation or protected and P. Brassard replied, no.
- P. Brassard described his land is on an elevated platform/ledge, then it drops down and the ground is very wet. He stated that he has opened up a path for vehicles to pass through on Donovan Road.
- Mr. Cummings stated the right of way on Donovan Road is 66 ft. and measures 33 ft from the center lines of the road. They all looked at a map showing property lines, roads and the details on where he is planning on placing the building.
- B. Donovan confirmed buildings need to be 50 ft. from the edge of the road or 75 ft. from the center of the road. P. Brassard stated he is displaying his barn/garage is 25 ft. from the edge of the road. He was asked if he could have a greater distance and he said. he could not and they would see the reason why when they go to look at the property.
- R. Howe or M. Raumikaitis?? said it is close to the road therefore he would like to see the property. J. Szot stated it would be considered a site visit with the members and it needs to

be very specific on a certain date, time and including minutes. It is part of their process and is open to anyone who wishes to attend, because it is a public meeting. She will also be talking with the Road Agent to find out the width of the road.

- P. Brassard said the irony of it is that people say Donovan Road is not our problem, but when you try to do something, they were told you cannot, because it is against the rules. He said he is the one of the people who help to maintain and pay for the road's upkeep. J. Szot said the problem is when you agreed to build on a Class VI Road, you agreed to take on that responsibility and money is a non-issue for the Committee. P. Brassard said he does not care about that and he is not worried with that, he is just worried that everyone has a say in something. J. Szot said she did not understand him. P. Brassard said the Town does nothing to maintain the road and therefore it is not a burden on them. J. Szot said, not at this point, but the point is we are not a Board that is planning for the here and now. We are a Board that has to look at what the effect is of what you are going to do in the future. Also, do you meet the very specific requirements, and if the land around you is all ledge and if it is shared by everyone then there is no hardship. P. Brassard said that ledge extends into his yard also. If you walk down his driveway you will see a rock that he could not move. It is massive and looks like it extends to his backyard and then it drops into swamp.
- R. Howe or M. Raumikaitis?? said what if they split the difference 37.5 ft., how much would you have to do to meet that. P. Brassard asked if wanted to be 25 ft. from the road edge what he would be losing. R. Howe or M. Raumikaitis?? asked if he could go back another 12 or 15 ft. P. Brassard said that would 18 wide and it would be less than ideal. When asked what is it that is stopping him to meet that, he said, they will see it when they visit, and explained the ledge is on the back side of the property and it has a drop.
- J. Szot suggested pouring a back-footing wall and to bring it out. P. Brassard said you are talking about a 12 ft. wall and he would have to get the appropriate footings with fill and pack it in, and it would almost be in a swamp.
- R. Howe or M. Raumikaitis?? asked neighbor Mr. Cummings if he was in support of the Brassards request. Mr. Cummings said he is not sure is because he did not know what was going to happen in this meeting. He said Donovan Rd. or the property lines do not run in a straight line. Therefore, you cannot look at Donovan Rd. at one point and see how much footage there is. When you get to the swamps the borderline sort of disappears. His suggestion is to bring a map to have a fair assessment and they will see why he wants to build where he is planning on. R. Howe or M. Raumikaitis?? said there is no guarantee with without stone walls, that the road is in the middle of the right of way. When they reached the boulder, they moved the road instead.
- J. Szot scheduled the members to meet for a Site Walk the Brassard's property at 266 Donovan Rd. on Thursday, August 31st at 6:30. They will continue their hearing on the next ZBA meeting date scheduled for Tuesday, September 26th, 2023. They will ask the Road Agent to attend the Site Walk.

OTHER BUSINESS:

- **Review of the Minutes:** Tabled
- **Procedural Review/Adjustment:** R. Howe or M. Raumikaitis?? read: *Permits are valid for 2 years, after that date the local ordinance could extend it if they change the rules or the Zoning Board has to approve it for another permit.*
- There was a discussion about how long they could keep extending permits. Building Inspector B. Donovan stated he will have a discussion with the Selectmen regarding accepting one extension per permit, otherwise, the applicant will need to go through the process again because the codes change.
- R. Howe or M. Raumikaitis?? **Motion** to accept the application for an extension as presented. **Second** J. Szot. All were in favor. **Motion Passed.**
- J. Szot said this is discussion the members have had for a second time therefore it becomes part of their bylaws. They had no prior procedure to recover their fees and now this will allow them to charge fees.
- R. Howe or M. Raumikaitis?? questioned if the Carr Case was appealed. S. Szot said she had not heard anything yet.
- T. Steinmetz questioned the previous minutes that have not been approved and asked when that would happen. J. Szot said there are 5 sets of minutes that need approving and asked the members to begin reading them and they will go over them in their next meeting.
- R. Howe: **Motion** to adjourn. M. Raumikaitis: **Seconded.** All were in favor. **Motion passed.**

7:00 pm Meeting Adjourned.