

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF September 26th, 2023
APPROVED MINUTES**

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

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 #23-003:

Applicant: Jon Kobel, 95 Old Candia Road, Candia, NH 03034; Owner(s): Jon & Terry Kobel, 95 Old Candia Road, Candia, NH 03034; Property Location: 95 Old Candia Road, Candia, NH 03034; Map 409 Lot 080; For a variance under Article VI Section 6.02: Dimensional Requirements – Residential.

Intent: *to request a variance from the required setbacks to allow the construction of a 12' x 20' shed.*

Jon Kobel: I need additional storage and I want to make it very aesthetic. I want something that looks really nice, and I just don't have the dimensions. I just don't have the space to put it anywhere else. I can't go the 25-foot setback. I can go probably within 10 feet. There will be no electricity and it will be on Sono Tubes. The portable shed is going to be moved to the other side of my shop.

R. Howe: Why can't this go on the other side of the shop?

J. Kobel: It would crowd that whole setup and it would upset.

R. Howe: The corner of it is literally on the property line. Is there a reason that this couldn't be attached to the shop? It seems as though if you turned it and attached it to the shop.

J. Kobel: I am not sure because eventually I will probably be tearing the shop down. There are trees that are not on that drawing.

R. Howe: What's on the other side of the property line.

J. Kobel: That is mostly seasonal runoff. It's really not usable because it is always wet.

R. Howe: This is a stick-built building?

J. Kobel: It's a kit.

R. Howe: So it's not just a canvas frame.

W. Keena: Did I hear you correctly that you could get 8-10 feet off of the line?

J. Kobel: I love my trees and I really don't want to cut them down. It was kind of the same issue when I built my garage.

R. Howe: I am surprised you got a permit for that. How long has that been there?

M. Raumikaitis: Just for the record it was July 2020. You have the garage set at the 20 feet facing the shed, I see 20 x 12. If you flip, it.

J. Kobel: I can adjust it. The trouble with that is going to be access in and out. I can turn it and adjust as I need to, but I am going to be dealing with the ledge and the trees and everything else.

R. Howe: What is behind this?

J. Kobel: Seasonal runoff. Constantly running water

R. Howe: So we are not into wetlands? I guess the question is, you don't have running water there but what does the law say about where the wetlands start.

J. Kobel: You can walk right across it when it's dry. We have had so much rain this year.

W. Keena: You asked about putting it next to the shop.

T. Steinmetz: That distance between the West side of the property line. From what I am looking at, it looks like 1 foot. We want to know in advance what it is going to be.

B. Chivers: What do you plan to submit to the building inspector, if he wants to come out and take a look?

J. Kobel: Within 10 feet. At this point, not knowing how I am going to deal with the ledge. It will be at a maximum.

B. Donovan: It's all on the zoning board right now.

R. Howe: I wonder if we should do that beforehand.

J. Kobel: We already talked about putting it on the other side of the house. The idea was to move it to the other side of the shop and clean everything up. It will be very pleasing to the eye.

M. Raumikaitis: I want to know what the dimensions are.

J. Kobel: The snow is going to start flying pretty soon. I can guarantee you that it is not going to be any closer than 8 feet to the line. A third of my property I can't use because it is all wet.

B. Chivers: Does the applicant want us to consider it tonight? We asked you if you want to get dimensions that are more firm. So, if you want, we can consider it tonight or you can come back and you can firm up those numbers for us. The requirement is 25 feet.

R. Howe: This whole shed. I don't know how the garage was approved.

B. Chivers: Do you want to ask for a continuance?

J. Kobel: What would you prefer?

B. Chivers: We are not going to negotiate with ourselves.

J. Kobel: I can't do 25. The best I am going to do is 10 feet.

R. Howe: I am not happy with that.

M. Raumikaitis: Can you see this from the road?

J. Kobel: If you were looking back there.

B. Chivers: There are a lot of options to put this on your property and conform to the zoning ordinance.

R. Howe: If you set it tight to it, it looks to me like the corner of that building. It looks like it would be 20 feet from the lot line. Even if you tear down the shop. If you tear down the shop, where are you going to put that?

B. Chivers: This is NH. If you are going to do anything you have to cut down a tree.

J. Kobel: I am running out of time; I am facing winter.

B. Chivers: I would urge you to withdraw your application.

R. Howe: What is the reason for this 12 x 20? If you went 10x25, you might gain two more feet that way. There are a lot of options.

J. Kobel: I did consider that. I would have an easier time dealing with you than dealing with my wife.

R. Howe: The bottom line is if we deny this, you are going to have to come up with something that makes the building inspector happy.

B. Chivers: Let me suggest that you continue this. If you can't come up with something, we will see you again in October.

J. Kobel: I will do my best to get 25 feet.

B. Chivers: If you can get 25 feet, you don't even have to come back.

R. Howe: Is this shop on a slab?

J. Kobel: It's on Sono Tubes.

R. Howe: Why can't you move the shop? We don't have pictures; we are trying to do our best to help but you gotta give us something to work with.

Motion to continue to October: R. Howe. Second: W. Keena. All in favor. Motion passed.

Old Business:

Case #23-002:

Applicant: Paul and Sarah Brassard, 266 Donovan Road, Candia, NH 03034; Owner(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 barn/garage within 25 feet of the road when 50 feet is required.*

B. Chivers: Have the abutters been notified?

Amy Spencer: Yes

B. Chivers: Any abutters here.

No abutters present.

P. Brassard: (attending via Zoom) I apologize, I have military obligations.

S. Brassard: So, it looks like you guys are looking at, I believe, a subdivision plan.

W. Keena: Is this the old survey that we were looking at?

S. Brassard: This is the one that we originally looked at when you guys were all walking around.

R. Howe: Did you have this property surveyed?

S. Brassard: This is the official certified survey.

B. Chivers: But, did you delineate the line between the towns ROW and your property?

S. Brassard: Yup.

B. Chivers: Is it established on the ground now?

S. Brassard: Yup.

B. Chivers: By whom?

S. Brassard: When they showed up to do their, what was it, the follow-up.

B. Chivers: The site walk?

S. Brassard: The informational? That's when this was presented, and everything was addressed at that time. And that's when we were looking at everything, going we need to find, and there is, there are flags still from this. You can see all the markings.

B. Chivers: Okay, who installed those? Who did the survey?

S. Brassard: Fieldstone Land Consultants.

B. Chivers: They did?

W. Keena: Is this a new survey then? Or the same one that we were looking at?

S. Brassard: No, this is the survey.

W. Keena: The same one we looked at that day?

S. Brassard: Yup.

W. Keena: So, there has not been a new survey?

S. Brassard: There hasn't been a new survey. And he said it's all still certified. We spoke with him before.

B. Chivers: How is the building inspector to determine where that property line is when he goes out there?

S. Brassard: It's marked.

B. Chivers: It's marked?

S. Brassard: Yup. And we have all the poles, and it even delineates which pole on this survey, so you can see all those. It delineates the tree.

B. Chivers: Weren't you instructed to have that thing surveyed when they sent you a letter on that site walk?

S. Brassard: Yup, but this survey is still good, and it still has markings.

W. Keena: You reached out to the original surveyor?

S. Brassard: Correct and they said this is still a certified survey.

B. Chivers: So that issue has been addressed?

S. Brassard: Yup.

R. Howe: How far then is this building?

S. Brassard: So, what was originally proposed, when we went out and did the site walk, we realized it was within plus or minus.

R. Howe: It sounds like this building, literally, is in the right of way.

S. Brassard: Correct. It was pretty close to it. It was plus or minus maybe three feet. Something like that. It was pretty close.

B. Chivers: Where do you propose to put this building now?

S. Brassard: So, what we needed to clarify, cuz it seemed to be kind of like an open-ended book, was where are we measuring from on this ROW for the setback?

B. Chivers: Well, it's easy. The ROW is a 66-foot ROW through there.

S. Brassard: Yup. Correct.

B. Chivers: So you measure from the edge of...

R. Howe: From the edge of that 66 feet, not the road.

B. Chivers: Not the road. It's the ROW.

S. Brassard: Okay, so when building permits have been done, do you guys measure from the edge of the ROW or do you measure from the edge of the road?

B. Chivers: It's in the ordinance, if the ROW is less than 50 feet, you measure 75 feet from the center line of the road. If the ROW is greater than 50 feet, you measure from the edge of the ROW.

M. Raumikaitis: How far from the edge of the ROW? What's the dimension from the edge of the ROW is how many feet?

B. Chivers: In this case, it is 50 feet.

M. Raumikaitis: I just want to make sure that was clear.

S. Brassard: Okay, so then I just want to make sure that that's being consistently applied to everybody.

B. Chivers: That is not the issue before this board. It's in the ordinance. 6.02A of the ordinance specifies how we measure that. This is a 66-foot ROW, which is greater than 50 feet. So, it starts at the edge of that ROW. So, your building is required to be 50 feet from that line.

S. Brassard: Correct, that's how it's stated. I just want to make sure that that's how everybody in town, its rules have been applied. Is that correct?

B. Chivers: Yes, it is.

S. Brassard: So, all variances have been applied that you measure from the ROW and not the road's edge?

B. Chivers: It depends on how wide the road is.

S. Brassard: Understandable. So, if it's great than 50 feet are you measuring from 50 feet from the edge of ROWs rather than the edge of the road.

B. Chivers: That's correct.

R. Howe: Yes, and there are very few roads that are greater than 50 feet. It is very rare that there is a four-rod road.

S. Brassard: Okay, so you guys stand by that's how you have applied all of your variances and that's how you proceed?

R. Howe: I don't ever remember a variance coming in on a four-rod road.

B. Chivers: That's right. Most of them are 50 Feet ROW.

S. Brassard: So, you typically then, if it's 50 feet or less would measure from the center line of the road?

B. Chivers: That is correct. 75 Feet from the center of the road.

R. Howe: At this point can we maybe have Jeff kind of come in and if there are any comments from the road agent?

B. Chivers: We will but let's hear what the applicant has to say.

S. Brassard: Right, so based on the informational. At that time, where we were, is where we were enlightened that it's actually a four-rod road, we're almost on the ROW. At that point, we were like three feet from it. So, what we did is as we walked down the road, we have some underground power lines that we suggested maybe is there a better location that we can get with less of a variance. So, on this one I highlighted. This area, it's between like...

M. Raumikaitis: Are you proposing an alternate location? Is that what I am hearing?

S. Brassard: Yes. So I think this would satisfy a much easier place for us to do what we need to do cuz we have large trailers that we have to be able to turn around and back in and this way, it allows us to use our current driveway, so we don't have to cut in, we don't have to do any new impact the road or anything like that. So approximately, there's like, if you look at the house, I think on both of your maps, even the one I am holding there would be like test pits that you can see, that are just in front of our house that shows. So, If you were to do kinda like a 45 towards to where it shows the setback, it would be in that area. And it would be a 30x30. So, we would be able to reduce the structure to a 30 x 30 instead of the 30x36. So, we would roughly be in there. We would need to go in about 15 feet into a setback.

B. Chivers: Are you prepared to return to this board with plans to show us what your intentions are?

S. Brassard: This shows you roughly too, with measurements from the road and it indicates like 101 feet on this one which gives you an idea cuz that's going from the outside edge of the road, so that's 66 feet

plus where we would land, so we are roughly, what is it 15 feet off? Cuz 116 feet would actually be your setback from the outside edge of that road.

B. Chivers: 116. Is there a reason you can't add another 15 feet to it?

S. Brassard: Yes, cuz we have trailers that we need to be able to turnaround and back in and moved trailers around in here and it starts encroaching on the garage and everywhere. So that was the biggest thing for us. The turnaround that we initially had planned on was gonna allow for us to be able to use equipment trailers. Right, we need to be able to almost do like a U-turn. So here, it's wide enough that we can come in and almost do like a little cul-de-sac kinda turnaround thing that allows us to get in and out of that garage without any impact to the roadside.

B. Chivers: What are these trailers for?

S. Brassard: Um, we have an excavator and like equipment. So their big, they're long.

M. Raumikaitis: Looking at the survey map. I see something that says I field.

W. Keena:

S. Brassard:

B. Chivers: I want to ask the building inspector if this is sufficient detail.

B. Donovan: If they allow the variance after this, you would have to have an engineer come in and do an as-built. You would have to get a foundation cert, so that you know exactly where it is being put.

M. Raumikaitis: Looking at the top, I see that you have. 100 feet. I see the building 10 feet back.

P. Brassard: I did it on purpose, so that you could see.

M. Raumikaitis:

R. Howe: Obviously you are going to clear around where this building is. This space in here is going to be cleared then.

T. Steinmetz: The information you are looking at? Is this something you just received now? Or was it in a packet?

It was just presented. You don't have a way of seeing it.

P. Brassard: The night of the presentation was one of the first times that I saw the plan. This is how we came up with the new site. It reduces the actual variance. Judith, you were 110% correct.

J. Szot: Is that map that you are looking at, it looks like the satellite map that we had in the previous packet. There was one in the first packet.

P. Brassard: It's a different snapshot.

J. Szot: Is there some way that the setback is marked? So, when Bob goes in there, he will know where the front of the property was?

S. Brassard: We found the flags.

J. Szot: We need to know definitively where that front line is. Has this line been verified by a licensed land surveyor.

B. Donovan: That is the purpose of getting the foundation certification. If the measurements are wrong, it is up to them to move the slab, remove the slab.

J. Szot: This is what I said in my letter, is we need to have the front line surveyed. Maybe they can call that company.

B. Chivers: I agree with Judith.

J. Szot: It is their responsibility.

S. Brassard:

J. Szot: Do we have information from him? Not from you. He sets his certification based on the information that is given. In my letter, I said to you that we needed a survey. It's not what you say, it's what you prove. It's having that information. Rudy, am I correct?

B. Chivers: The letter that you sent to them on September 6th, said that clear. You certified it.

S. Brassard: Do you need an email from him?

J. Szot: We need a letter from him. You have to provide that information to us.

B. Chivers:

M. Raumikaitis: When was that done?

P. Brassard:

J. Szot: You don't have to do your whole property. We just need you to do the area where you are going to build.

P. Brassard: Making that mistake of clearing my land again.

J. Szot: You do know that is against the law, what you did?

P. Brassard: Unfortunately, I did it before I applied for the variance.

J. Szot: The right of way boundary is clearly marked. What I asked you to do was get a survey by a licensed land surveyor. We brought that because we were hoping it would help us.

P. Brassard: You asked for a certified copy from a land surveyor, you have that.

J. Szot: It is your responsibility. It was not discerning.

M. Raumikaitis: The applicant has given us a solution here. If you think about it in these terms, it is irrelevant. If the survey is done prior to pouring the concrete, the answer is right in front of us. We know if it was 110 feet from the far side. It is all a moot point. We just need to know that the slab is.

B. Chivers: Actually, you are missing 15 feet.

R. Howe: Do we know where the right of way is?

M. Raumikaitis: I would recommend that they identify. They are going to locate that far side of the road. We need 116 feet. Our discussion should be related to 15 feet.

W. Keena: Do you agree that it is up to you to meet the variance, should we grant one?

J. Szot: The point is we don't provide a variance without the information. Our responsibility, as a board, is to have that information, not based on guesses or promises. Specific data. That is not facts.

P. Brassard: Mam'am, I reached out to two survey companies, and they cannot. I am not gonna pour until a licensed.

B. Chivers: Bob, when they come out to do that certification, will they determine if that is exactly where that should be?

B. Donovan: Yes.

R. Howe: How do we know where the town ROW is? I thought you were saying after the cement is poured.

B. Donovan: You can do it two ways.

M. Raumikaitis: You are fully aware that this responsibility falls on you?

S. Brassard: Are you questioning the surveyor?

M. Raumikaitis: The requirement is met. A survey is gonna say, that slab is a certain distance. It is the applicants' decision. No matter what, the slab will be no closer than 101.

B. Chivers: By 15 feet. It is up to them to site this building.

W. Keena: Is it fair to say that our building inspector would be able to certify that?

B. Donovan: Normally, they ping it with the survey. When it is close like theirs, they want to ping it again.

B. Chivers: If there is a mistake made, the responsibility falls on the applicant.

R. Howe: If we take this one step further, if you move this building. If you come in 115 feet from the far edge of the right of way.

R. Cartier: Planning Board Chair Lot 411. They don't exist. Their property is the entire thing.

B. Chivers: So the correct lot is?

S. Brassard: What was presented to you was for a subdivision.

T. Steinmetz: The certified survey was completed when?

July 15, 2018.

B. Chivers: Are we prepared to discuss?

*The previous meeting was 30 x 36. The applicant originally had cleared a spot, after
On a class 6 road. It is my opinion that the applicant is trying to work with us here.*

T. Steinmetz: When was this plan completed by the applicant?

M. Raumikaitis: This has been produced since our walkthrough.

T. Steinmetz: Why wasn't it shared with the ZBA before now?

B. Donovan: Do you need me to stay?

Collectively: Yes / Affirmed

*R. Howe: I go back to the question I asked, and you didn't really answer it. It seems like there is a lot of
space.*

S. Brassard:

R. Howe: It solves this whole issue, and we wouldn't have to deal with it.

M. Raumikaitis: Can you explain.

S. Brassard: We walked it and taped it and walked it again. We have thought of it.

R. Cartier: RSA 674.41 I C. To build on a Class VI Road is to go to the Board of Selectmen.

B. Chivers: Any structure?

R. Cartier: It would go to the board of selectmen first. Then it would go to the building inspector.

B. Chivers: It's really out of sequence. Bob, did you know that they had to go to the selectmen first?

B. Donovan: I did not.

*R. Cartier: The problem would be, if you didn't do it in sequence, it is an illegal procedure. The issue
before you is probably that the ZBA would say that they cannot make a decision. The nice part of that, is
that you.*

B. Chivers: I would ask the applicant to request a continuance.

R. Cartier: I would suggest that you withdraw.

P. Brassard: Would we pay that fee?

*B. Chivers: We would waive that. Thank you, Rudy. I did not know that. I thought it was just a
residence. Mr. Brassard, are you and your wife willing to withdraw the application?*

P. Brassard: I guess that is our only option.

R. Howe: Before we close this.

J. Wuebbolt: I don't have anything to add. I think you talked it to death.

J. Szot: 676.6 says: *“The effect of an appeal to the board shall be to maintain the status quo. An appeal of the issuance of any permit or certificate shall be deemed to suspend such permit or certificate, and no construction, alteration, or change of use which is contingent upon it shall be commenced. An appeal of any order or other enforcement action shall stay all proceedings under the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal shall have been filed with such officer, that, by reason of facts stated in the certificate, a stay would, in the officer's opinion, cause imminent peril to life, health, safety, property, or the environment. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by the superior court on notice to the officer from whom the appeal is taken and cause shown.”*

RSA 676:6

Once you appeal, once your building permit is denied, you cannot do anything on the property until.

S. Brassard: Judith, what is going on?

B. Chivers: Mr. Brassard, are you going to withdraw the application?

P. Brassard: Yes, please God withdraw it.

B. Chivers:

Other Business:

- Letter of Interest – ZBA Alternate

Gale submitted a letter of interest. Please introduce yourself and tell us why you want to be a member of this board.

Gale Pellegrino: I have lived here since 2006. My terms have been relinquished on other boards. I saw that there were openings on both zoning and planning.

B. Chivers: We are happy to have you. Mr. Keena just joined us a couple of weeks ago. We can always use alternates to be groomed as replacements for those of us that have been sitting here too long.

J. Szot: The board has to vote. Gale, in my entire time, there have been only three women that have sat on the board. It would be nice to have another woman.

Motion: Make a recommendation that we send a letter to the board of selectmen. R. Howe: Second. All were in favor. Motion passed.

R. Cartier: NHMA Conference, Saturday, October 21st. Saturday. 9-3. \$90.00

J. Szot: We put extra money in our budget to make sure that everyone can go. You can sign up for sessions, at the end of the meeting, you get the audio/video. At your leisure, you can listen. I would strongly recommend that anyone who has not taken the training do so.

Motion to adjourn: R. Howe. **Second:** M. Raumikaitis. All were in favor. Motion passed.

8:25PM.

- Review of Minutes
- Any other matter to come before the Board.

Public Comments:

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file