

CANDIA ZONING BOARD OF ADJUSTMENT

Minutes of June 28, 2016

APPROVED

Place: Town Hall; Meeting room

Call to Order: 7:00 pm

Members Present: Boyd Chivers, Chairman; Judith Szot Vice Chair; Ingrid Byrd; R. Howe, B. Petrin, Dana Buckley Alt.

Members Absent:

Pledge of Allegiance

Approval of Minutes April 26, 2015

Members Sitting for Approval of Minutes: B. Chivers, J. Szot, I. Byrd; R. Howe, B. Petrin,

MOTION: Motion made by J. Szot, seconded by I. Byrd to approve the minutes of April 26, 2016 as amended. All were in favor. The motion carried with a vote of (5-0-0).

Continuance Case 16-611 Applicant: Berry Surveying & Engineering 335 Second Crown Point Rd, Barrington, NH 03825; Owner: Slate Rock & Gravel Co. c/o National Finance Corp 2 Linden Street Reading Ma 01867; Property Location Raymond Road; Map 407 Lots 66 & 71; for a Special Exceptions and Variances under Article V Section 5:02: Table of Use Regulations B. & C. Commercial and Industrial uses in a Residential District.

Abutters present Rick & Sherry McGregor 29 Island Road, George & Sandra Faust 22 Island Road and Kathryn Tierney 30 Island Road; Fletcher Perkins 81 Island Road.

Chairman Petrin said they received notification from the applicant concerning withdrawing their application. He read into record letter received June 17, 2016 from applicant's lawyer, Cronin Bisson & Zalinsky P.C. 722 Chestnut Street, Manchester NH 03104, "*Dear Board, We are writing to notify you of our client's decision to withdraw the pending application for a variance. Since the matter was continued we have been working to formulate a more specific plan that would respond to anticipated questions from the public and the Board. Unfortunately, our work is not complete and we believe that it is premature to move forward with the case. When the plans are more specific we expect to reapply. Thank you for your consideration. We apologize for any inconvenience.*" Chairman Petrin said they will not be hearing this case tonight. He apologized for those who came tonight to hear this case. He was asked if the applicant comes forward in the future would all the abutters be re-noticed and he said yes. The question was asked if there was a specific plan with a road for the property. J. Szot said that all of this information is in the land use office and anyone can come and ask to see as they are public documents. G. Faust asked if there was some kind of penalty for the applicant since this is the second time they have brought everyone down here. J. Szot said unfortunately there is nothing the Board can do as the applicant has a right to withdraw their application. J. Szot continued saying the applicant was coming forward for variances and special exceptions under all of the uses under b & c and so it would have allowed them to do anything that would be allowed under b & c in the ordinances including sexual related business which is in the last section of b. She said so by the Board granting the variances would have essentially rezoned these two properties which the town voted not to do. J. Szot said the applicant is essentially asking the Board to rezone the land and allow them to do anything that is allowed in the commercial zone. K. Tierney said they were given notice of the public hearing why weren't they given notice that it was cancelled? J. Szot said the

letter came in last week and unfortunately the Board is not required to re-notice and the notices you received last week the Board was not legally obligated to send as the abutters had already received their original certified abutter notice but the Board felt since it was so long since the initial public hearing that the second letter was sent out which was paid for by the Board as a courtesy. The original certified letters were paid by the applicant. Chairman Petrin apologized for the inconvenience. S. McGregor asked for the record wouldn't it be the applicant's responsibility to let the abutters know they withdrew? B. Petrin said the abutters would be notified when they reapply for a new public hearing. D. Snow said this is within a quarter mile of a protected Lamprey River which requires immediate notification of the advisory committee and secondly is it clear that the applicant is of regional impact and he believe both of these issues should have been addressed at the original meeting as you only have 60 days and they should have started the process as soon as possible. He said when the applicant delayed the hearing the Board had an opportunity to have said this is a regional impact and to solve all the things that need to be done. He said the property is adjacent with operations going on in Raymond. He said for this adjacent property in Raymond they did a regional impact and they were granted various variances and the last he heard they can crush rock but cannot take the material from our side but can bring in material on the Candia side. J. Szot said this was already done and they were notified and continued saying this committee does not have any jurisdiction and cannot tell the Board what they can do but will make sure they are notified.

Case 16-612 Applicant: In Law Construction LLC 298 Chester Turnpike Candia NH 03034; Owner: same; Property Location: Old Manchester Road; Map 413 Lot 105; for a Variance under Article VI Section 6.02 Intent to build on a nonconforming lot in the Light Industrial District.

Abutters present David & Doris Vachon 474 Old Candia Road Candia NH 03034, Francis Bean, Cheryl Shepard 480 Old Candia Road, Candia NH 03034

B. Chivers asked to be recused as he sat on the Board of Selectmen when this property was sold and will speak at the appropriate time as a citizen and not a Board Member. D. Buckley, Alternate was asked to sit for B. Chivers. Roger Demanche, In-Law Construction owner, applicant was present. He said he bought this land from the town asking as many people in the town offices about this property and no one could find anything at the time of the purchase. He said he wanted to put an office on the property for his business. I. Byrd asked what the size of the building was. R. Demanche said the surveyor came up with the building at 30 feet by 75 feet. Chairman Petrin confirmed there is currently no building on the lot. J. Szot asked if they had a drawing that showed the building. R. Demanche said the plan did not show the building only setbacks. I. Byrd said they do not have a drawing of what they are planning to build. R. Demanche said they have to get to a buildable lot status before they can go forward with that. He said the property is in the Light Industrial District. D. Murray, Building Inspector showed where the buildable line was on the plan. The buildable triangle is 30 feet by 119 feet. J. Szot said the question that was asked was how large was the area that is buildable as it is triangle and the building proposed is rectangle. R. Howe said the buildable area is larger than the building proposed and continued what difference would that make. F. Bean said it would make a big difference if he is going to put a big building on it and he doesn't have enough room. R. Howe said he does have enough room. J. Szot said we do not know that. R. Howe said they gave the dimension of the building already. R. Demanche said the building will be 2,250 square feet and is going to be an office. J. Szot asked what they were going to store there. R. Demanche said pump jacks, equipment inside the building but not big equipment as he is not an excavation company. B. Petrin said he is not seeing a complete application. I. Byrd said the square footage is 2,250 that is not the dimensions. R. Demanche said the building is 30 feet by 75 feet which is 2,250 sq ft. I. Byrd said the drawing you gave us shows the building within the setbacks and Chairman Petrin said no it does not. R. Howe said it shows the buildable area. I. Byrd said I am talking to the applicant continuing saying the square you have there really means nothing to anything you are proposing. R. Demanche said that area is the buildable area where they can put a building in and the building could be the entire area but it is not. I. Byrd said when you say that is that buildable area is that the little rectangle? R. Howe said no that is dimensions. I. Byrd said let the applicant answer her so does that rectangle have anything to do with the

proposed building and. R. Demanche said correct and she said that answers her question. He asked if she was looking at the red or blue line and I. Byrd said she does not have color on her copy of the plan. Chairman Petrin said part of the confusion is they see a building envelope but do not see where you would orient a 30 foot x 75 foot building. He said part of the application would be to have a drawing illustrating this. R. Demanche said it is the buildable area and he is asking for a variance to allow building on a nonconforming lot. He said he was under the assumption that it was a buildable lot and he brought it before this Board to make sure it was a buildable lot. R. Howe said they really don't care about the building itself that is the Building Inspectors' jurisdiction and the question the Board should care about is whether they are going to allow a building on this nonconforming lot. I. Byrd said in the past they have asked applicants to also show where they are going to put the building but now they do not know if this lot is under a foot of water. D. Murray said there is wetland delineation on the map. I. Byrd said they provide graph paper to graph out what they are going to do which doesn't need to be done by a surveyor and to show where the proposed building would be because in her mind if they say this is a buildable lot they are saying let you put something anyplace.

R. Demanche said to answer your question on wetlands they had a wetland scientist come out who marked the wetlands which are shown on the plan. I. Byrd asked to look at it and R. Howe said you have a copy of the plan. I. Byrd said it is so tiny she cannot see it. D. Murray pointed out the buildable area and the setbacks. Chairman Petrin said if they grant a variance they cannot be sure that you will be able to put your structure within the setbacks. R. Demanche said the setbacks are marked and within that area is where the building will be placed. He said the reason he is here tonight is that they do not have 2 acres and are asking for a variance to build on the lot. I. Byrd said this lot was originally created when the State built Route 101 so did this get purposely get cut off what happened? F. Bean said Mary Martin Mitchell family owned all of that land and when she went to sell she was advised by her realtor to split her property in half. She said they bought Lot 104 and they were accidentally given Lot 105 which they gave back to the Mitchell family. They did not want to pay taxes on Lot 105, so the lot went to the Town. She said it was denied in the past to have a house built on it and now R. Demanche wants to build on the lot and the town said no that is not buildable and she wants to know why he could build on it.

D. Murray read his memo dated June 24, 2016, *"The original lot was created by the Mitchell family in 1936 and reconfigured in 58, 63 and 1981. It was a very large lot originally and was subdivided over the years for the family house lots along Brown Road. The remainder of the lot was still of substantial size until the Department of Transportation put the highway through it in 1981. Lot 105 is the remainder of the original lot on the west side of Route 101. In July of 2003 a proposal to build a single family dwelling was brought to the ZBA by owner Mary Martin and was denied because the remaining lot is approximately 1.5 acres and in 2003 was zoned residential requiring a minimum of 3 acre parcel. That proposal also had the house and septic too close to wetlands. The owner also owned lot 104 that is contiguous with lot 105. The only variance requested was 6:02. It was decided that the Board could not approve the application. In August of 2003 the applicant came forward for a variance under 6:02 and 10:10 b. There was some talk about the lot only being 50% of the required size of 3 acres, the property was contiguous with lot 104, the well was close to the man made pond, the entire house was located within the septic field location. It was suggested that there was a different use for that piece of land other than it being a house lot. It was noted that the distance of the variance requested from the wetlands was significant. The application was denied. ""In October of 2003 a rehearing was scheduled and again the variance for article 6:02 was denied. The reason for the decision is written as "Variance denied due to the applicant's failure to demonstrate the existing lot configuration qualifies as a pre-existing, non-conforming lot exempt from the standards imposed by section 6:02. However, should this prove to be a non-conforming lot the provisions of Article 2:02 E-1 invalidate the status as a pre-existing, non conforming lot." In 2006 the zoning was changed to Light Industrial 2 and the acreage requirement is now 2 acres instead of 3. Lot 105 is approximately 1.53 acres. It is no longer 50% less than what is required. The new proposal meets all the required setbacks from right of ways and wetlands. It seems that one purpose of the Article VI Table of Dimensional Requirements is to prevent the overcrowding of land as mentioned in Article I Section 1:02. I believe that the intent is to prevent any homes and businesses*

from being too close together and retain our rural character. Lot 105 has 600+ feet of frontage on Old Candia Road, the rear is bordered by 101, the south end comes to a point before the overpass and the north side abuts a residential property. Between lot 105 and the residential use is a pond that creates a minimum 100 buffer. I think the density protection is well provided. The proposal is certainly accommodating for the land use and would be a benefit for an otherwise unusable piece of property. Across the street is an apartment complex and nearby is Atlantic Bridge, on the same side of the street is Page Street Leasing with multiple tenants, and just over the hill is what used to be Tilo Industries consisting of two large commercial style buildings.” B. Petrin thanked D. Murray and asked if there were any other comments. S. Faust said so twice it was denied and then they changed the rules and now it might be okay to build on?

Chairman Petrin said when they were denied the first time they were asking for residential use which is a 3 acre minimum and what is being proposed now requires a 2 acre minimum and the lot has been rezoned for Light Industrial which only requires 2 acres. D. Murray said in the first proposal they had the house and septic area in the wetlands and they did not come in with another proposal. F. Bean said the zoning changed to 2 acres minimum and Chairman Petrin said that is correct and the applicant is claiming he can accomplish this within the building envelope.

B. Chivers said he is speaking as citizen not as a Board of Selectmen. He said he is concerned with the reputational damage to the town of Candia if they deny the applicant this variance. He said the town auctioned this property off and represented the property as an assessed value of \$80,000 that would be a value consistent with a buildable lot. He said R. Demanche bought the property with that assumption it was a buildable lot in the Light Industrial Zone. He said for him the Town of Candia would have suffered reputational damage if they accepted this money and then denied him a building permit. He said he is not sure what the remedy would be. F. Bean said so because Candia did not present the property correctly and sold it, now the new owner thinking he could build on the land, it's not his fault, and it's really the towns fault. She continued the Town should give him back his money which is what she would do. Chairman Petrin asked if there was a reason why she was against it. F. Bean said there is run off over there and she doesn't want him building and having it contaminate her well or her pond and he was talking at one point about going around her back yard to get into his yard. R. Demanche said he never spoke to anyone about the driveway. F. Bean said it's not your fault you bought something you could not use. R. Demanche said technically if he gets the variance tonight it will be useable and it should be useable as all the wetland setbacks are all met. F. Bean said there is run off from the highway and the culverts from the highway. Chairman Petrin said he is not familiar with the culverts and D. Murray showed the culverts on the plan and how the run off runs. Chairman Petrin said so you are concerned about the runoff from the highway not about the use of the property. F. Bean said it is a huge yucky green pond and she does not want that disturbed and coming any closer then it is. R. Demanche said the building can only be so big and it will only be what he is proposing and there is no room to enlarge the building. B. Chivers suggested they grant the variance and attach conditions such as restricting storage to inside the building only. This condition would become a permanent condition that would go with the property which would hopefully satisfy some of your concerns. F. Bean said she is concerned about water and not sure how to protect her well. R. Demanche said there would be driveway in front to the back of building with garages under. He said if he put a well in of some sort it would be minimal. F. Bean said she does not want to be bothered by anything going on over there. D. Murray said the lot was not sold as buildable being less than 2 acres so they knew it was under acreage. The price may have reflected a buildable lot but it was not represented as a buildable lot. R. Demanche said he doesn't want to keep putting money into something that is not buildable. J. Szot asked what the purchase price was and R. Demanche said it was \$35,000 at the tax lean auction. B. Chivers said it was \$30,000 plus 10%. R. Howe asked if the septic system needs to be within the buildable area and what about paving around back for the garages. D. Murray said it doesn't need to be in that area but there are setbacks to the wetlands and they could pave beyond the setbacks. J. Szot said right now the vegetation helps to absorb run off from the highway but when they push the snow off the side of the highway if you cut all the vegetation in that area what happens to the runoff from the Highway. R.

Howe said he agrees but he was concerned about how far back could you pave ½ acre behind and how do they protect that from happening.

R. Demanche asked his abutter if you use the scenario you just gave us and the Highway throws all the snow off and it gets down to her house she would be flooded every single year and two years ago when they had a bad winter or asked the worst winter ever did she have flooding? F. Bean said her house is set back from the highway. R. Demanche said so her house is set back and his property is already set back and his proposed building will be set back so the area that is back there is wide enough and all slopes to the highway not away from the highway with culverts to push out on the other side of the highway. He continued so for that to fill up even with the worst flood they have had it did not come up high enough and wouldn't even if the lot were completely paved. D. Buckley asked the Building Inspector's opinion concerning the run off having as he has knowledge of the property and asked what would he consider the likely hood that her well or property would be adversely affected. D. Murray said he is 99% sure her well would not be affected at all but would be more concerned with the salt coming off the highway to affect her well which hasn't happened. He said what the applicant is proposing has no affect to anything and as far as the highway run off. The runoff is on state property that is designed to handle the runoff in the swale that feeds underneath and across into the culverts. He said he does not see where the runoff would affect her property.

B. Petrin asked if there were any more public comments as he is going to close the public hearing to deliberate. D. Vachon said his biggest concern is for F. Bean with the driveway in back which he cannot see. J. Szot said the plan does show the building envelope which is 100 feet from the pond so he cannot disturb anything closer then 100 feet. It was confirmed the whole lot is wooded. R. Howe asked between the buildable envelope and the pond if he intended to cut. R. Demanche said the only trees they would remove would be big pine trees that may fall on the building. D. Snow commented the applicant cannot get in from Brown Road. He said if the water is running this way then he doesn't see the opportunity for it to impact the pond and all the applicant is looking for is if this is a buildable lot and it seems this lot is big enough to do something on it. He said the ZBA has said a couple of times the property is not good enough for residential then why not put something on it that fits in the middle and doesn't impact anyone which kind of makes sense let's get this done and out of the way. J. Szot confirmed that there will be garages in the back underneath and he is going to store trucks and equipment inside. R. Demanche said all his equipment will be inside the dumpster will be outside and most places have one. He said if you look at the road the way it is, along the entire road are dumpsters on the commercial sites and residential have dumpsters as well and do not see that as much of an impact. R. Howe assuming by the nature of his business probably have fuel storage and the applicant said no and that fuel is brought to the jobsite. I. Byrd said to clarify anything said at this meeting is binding. F. Bean said that is a good point you made and again want to ask if in 5 years from now and things get lapse what does she do then? J. Szot said you get a copy of the minutes and a copy of the NOD from the town or copy off the website if you find you are grieved talk to the applicant first and if not satisfied then go to the BOS and the Building Inspector. She suggested printing and keeping a copy of the minutes and the NOD after they are posted on the website which would be in 5 working days.

B. Petrin closed the public hearing to deliberate. J. Szot told the audience they are welcome to stay and listen. R. Howe said he understands what the applicant is trying to do which is a reasonable use for the property. He said it is a win-win for most everyone and he is satisfied. B. Petrin said it is a general consensus that the impact to the neighbor's property is minimal to null and he would be inclined to grant the variance. I. Byrd said her biggest concern is that the applicant was misled by a member of BOS or the whole Board not really know which and the applicant was led to believe that this was a buildable lot and the applicant acted on this belief and that binds the Board's hands. She said it really bothers her that the applicant was given bad information which led him to do something he thought was perfectly acceptable and legal. J. Szot said she disagrees with I. Byrd and feels it doesn't bind the Board's hands and if she feels that this should be done she will vote no on this and the BOS can deal with this and perhaps give back the applicants money if that is how the Board goes. She doesn't feel in any way that they have to act to save face as that is not the purpose of this Board. She said the purpose of the Board is to look at the

regulations and when someone comes for a variance what makes this land uniquely different from all the other surrounding properties and the Board looks at that and say yes it does or no it doesn't and based solely on that. She said she has concerns on the site distance for the driveway as there is a steep hill and continued the driveway cut comes from the state. I. Byrd said it is still 20% below minimum acreage so it's not just a couple of percent. She said that is something that has bothered her for years and was something that was brought up at one of the law lectures saying to be very careful because once you start waiving requirements it establishes a precedent and need to think about this. D. Buckley said ultimately it is at the discretion of the Board for each application and each situation as each case is unique. So even if a future applicant were to say you gave this guy this with the same numbers, there might be something different but he does understand setting precedents. J. Szot said if the Board consistently holds to what the ordinance says makes it defensible if they go to court. She said the first time you say they are only 2% short say for frontage requirements saying 198' is okay then you have someone come in with 195' and you deny the 195' go to court and they say you gave a variance for 198' why not 5 more feet. How do you justify the difference? She said once you make that decision you are left to justify a decision so if you stick solely to what the ordinance says you do not have to justify the decision. D. Buckley said being new; he asked has there been a precedence set in Candia regarding percentages. J. Szot said they have denied a lot from being buildable that had 198' not 200'. D. Murray asked to speak and J. Szot said he was the public and could not speak.

Vice Chairman Szot read, *"C. Variances: The Board of Adjustment shall hear and decide requests for variances from the terms of this Ordinance. No variance may be granted unless ALL of the following criteria are met:*

"1. The Variance will not be contrary to the public interest;" R. Howe said it is not contrary. D. Buckley said he agrees it is not contrary. I. Byrd feels it is contrary to the public interest because the public interest is also the abutters. J. Szot said he agrees with I. Byrd. B. Petrin said he agrees with J. Szot and I. Byrd. **(3-2-0)**

"2. The spirit of the ordinance is observed;" R. Howe said he agrees. D. Buckley asked to what he would be agreeing to and Szot said he would be agreeing that the spirit of the ordinance would be observed and he said he believes it is being observed. J. Szot said she agrees and Chairman Petrin agreed as well. All were in agreement.

(5-0-0).

"3. Substantial justice is done;" R. Howe was in agreement. D. Buckley asked again for clarification. J. Lindsey said by granting the ordinance that would show that substantial justice is done and D. Buckley asked what is meant by substantially justice is done and J. Szot said it would be fair to the ordinance and community. Chairman Petrin said he knows one of the things to take into account is the abutters' concerns. He said without having the knowledge about runoff and other issues that were brought up but having the Building Inspector saying on record that he believes the impact not just the run off would be minimal to the abutters is why he is in agreement. I. Byrd said she agrees with D. Buckley but only because of how this was handled from a selectmen's point of view and believes there were a lot of problems created. **(5-0-0)**

"4. The values of surrounding properties are not diminished;" R. Howe said he does not believe they would be diminished. D. Buckley was in agreement. I. Byrd said she does not know that and what would happen to surrounding properties one is one of those questions that has always bothered her because you cannot tell what is going to happen a year down the road and a classic bad example here in town is the iron works up the street that was supposed to be a wonderful small iron works and it shafted all the surrounding properties on that one she is going to abstain. J. Szot she is in agrees the surrounding property values would not be diminished. B. Petrin agreed with I. Byrd and will also abstain. **(3-0-2).**

"And 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship". J. Szot continued RSA 674:33 I (A), *"For the purposes of this subparagraph "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) no fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one .(B) if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist, if and only if, owing to*

special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance” I. Byrd asked her to repeat what she just said and J. Szot repeated it again. She said the public purpose of the ordinance provision is to have 2 acres and that specific application to that provision to the property. She said it needs to have 2 acres and this property has 1.53 acres and the ordinances say you must have 2 acres and this specific application to this property there is no relationship between the two and it doesn't make any sense to have 2 acres to this particular case and that the proposed use is reasonable so it has to be two things and the criteria under 674:33a are not established. She said it doesn't matter if it is a dimensional variance or a use variance. She said this is the dimensional variance and is there a hardship, that there is no fair and substantial relationship between the general public and purpose of the ordinance and the specific application. I. Byrd said we need to be lawyers. J. Lindsey said she feels there is a hardship because the definition of unnecessary hardship shall apply whether the provision of the ordinance from which the variance is sought is a restriction on use or dimension. She said the problem with this property is, it was not created by the owner. She said other applicants have created a substandard lot but the original owner of this lot was compensated by the state for the taking of the land. J. Szot said the land could be sold to an abutter and I. Byrd said it can still stay in the Town's hands and it didn't have to be sold the Town chose to sell it. J. Szot said they have to decide on hardship, literal enforcement of the provisions of the ordinance would result in unnecessary hardship and she continued to state again RSA 674:33 I(A)(i). Chairman Petrin said they have established it is different. J. Szot said it backs up to the highway. Chairman Petrin said the use is reasonable and do we agree on that. J. Szot said it has to be both things. She said the Board has to vote on hardship. I(A). Chairman Petrin said this is unnecessary hardship. J. Szot said that means there is no substantial relationship between the general public purposes of the ordinances for the specific application saying there is no relationship between having the town ask for 2 acres and having only 1.5 acres. R. Howe said he believes there is a hardship. J. Szot said under RSA 674:33 Section I or Section (A) or Section (B)? R. Howe said he doesn't know other than it is a hardship. J. Szot said why don't they do Section (A) first then Section (B) and if it does not meet Section (A) then you have to do Section (B). J. Szot read 674:33 I (A)(i) into the records again, *“(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one”* She said so you are saying there is no relationship between asking for 2 acres and having only 1.5 acres. She said does the town have the right to say they want 2 acres in the Light Industrial 2 area. J. Szot said she doesn't agree if it is under I(A). Chairman Petrin and I. Byrd agree. I. Byrd said she keeps getting hung up on the fact that the Town is responsible for a lot of this and it bothers her. D. Buckley said he is still not clear on hardship. J. Szot said again, *“(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one”* J. Szot said the ordinance specifically states you need 2 acres and they have 1.5 acres and there is no relationship and to let it go doesn't make any sense for the Town to say 2 acres and this is only 1.5 acres. J. Szot said does the Town have the right to say 2 acres. D. Buckley said that is the whole reason of a variance as the Town also has the right to say in this particular case it is ok that there isn't 2 acres, so not sure what she is asking. J. Szot said so are you saying there is a hardship or yes it is substantial. D. Buckley said he believes the Town has the right to say if it doesn't meet the ordinance that this Board has the right to say they would still approve it not sure where that would fall. J. Szot said that would probably come under the next section. J. Szot said there is no relationship between the purposes of the ordinance and applying it to this case. She said the ordinance says there must be 2 acres and there is no relationship of applying it in this case. D. Buckley said then he doesn't believe or understand there is a relationship then. R. Howe said he would have to say no to this part too. **(0-5-0)**.

J. Szot read the second part RSA 674:33 Section I (B). *“(B) if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist, if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance”* All were in agreement that it is an unnecessary hardship. **(5-0-0)** J. Szot said it passed on 4 of the 5 criteria, with #1 being the criteria it did not pass on.

MOTION: Motion made by I. Byrd, regrettably B. Petrin seconded to deny the variance based on the first criteria not passing “*The Variance will not be contrary to the public interest.*” The motion carried with a unanimous vote of (5-0-0). R. Howe regrettably votes in favor as they have no choice. D. Buckley said so if one of the criteria does not pass the variance does not pass so they have to vote in favor of denying the variance so he voted in favor. I. Byrd voted to deny. B. Petrin regrettably voted in favor. J. Szot voted to deny.

Chairman Petrin said what they are saying is the public interest has been put into question. He said what are the applicant’s options, perhaps go back and get your money back from the Board of Selectmen or what will happen after that. R. Demanche said perhaps come back with his lawyer as there was a lot of confusion on the interpretation here with a lot of back and forth. R. Howe said you can appeal this decision but he would have to present something different to be considered. I. Byrd said a variance cannot be granted unless all of the criteria are met.

Chairman Petrin said the applicant will get his Notice of Decision shortly and has the right to appeal which he apologizes for this and for the time it took and thanked the applicant for his patience. J. Szot read from the Article IX: Prehearings, “*1. Within 30 days of the receipt of the decision of the Board, anyone affected thereby may request a rehearing. 2. Requests for a rehearing shall be in the form of a written request to the Board setting forth the grounds on which it is claimed the decision is unlawful or unreasonable. 3. At the first regular meeting after receipt of a rehearing request, the Board shall, within 30 days, by majority vote, grant or deny the rehearing request or suspend the decision pending further considerations. 4. To be granted a rehearing, the Board must first determine that good reason or new evidence which might affect the decision, has been stated in the request. 5. If a rehearing is granted, the petitioner shall be notified in writing and the rehearing scheduled and noticed in the same manner as the original hearing after the costs of noticing have been paid by the petitioner. 6. If a rehearing is denied, the petitioner shall be so informed in writing stating the reasons for denial and informing him/her of his/her right to appeal to the Superior Court.*” F. Bean asked if she would be notified if there was a rehearing and J. Szot said if they appeal it will come back to the ZBA and the Board will read the appeal and consider if there is enough new evidence for them to re consider the application and the only decision made would be whether the Board would allow him to come back to represent another application and if granted at this time you would be notified. If he is denied a rehearing he can then go to Superior Court. I. Byrd said just get your money back from the town.

Other Business

Informational 23 Laliberte Lane Map 414 Lot 021 Garage within property setbacks

Christopher & Kimberly Walker 23 Laliberte Lane was present and passed out more detailed drawings from her surveyor. She said they worked with their engineer Roscoe Blaisdell. She continued saying there are 8 homes on the cul-de-sac. She said just for the record all her neighbors are in favor of what she is trying to do. She said she has been in town since 1999 where she plans to stay. She said however when they built her neighborhood they really pinched her on the lot as you can see from the setbacks. She said they are looking to put on a 32 x 24 garage one double 16’ door with a breezeway. She said right now she has to lock her door to open her oven and the breezeway would give her the much needed room. She said they bought what they could afford but now 20 years later they can afford a garage. She said she is here tonight for an informational to see what kind of setbacks or encroachments the Board might approve. She said the 8 foot breezeway gives her space to come into the house. She said she is looking to encroach 5’ into her setback behind her pointing to the plan. The measurements are taken from the iron pin that was found and the setback from the town on the road would be 20.83’. She said they built the house at the 50’ mark. She said there is no other place to put the garage as the septic and water is on the front and sides and they do not have another place to put a garage. She said she was hoping to see what the Board’s thoughts were on this on putting in a garage and a breezeway. Chairman Petrin asked Boyd Chivers to come sit back on the board and thanked Dana Buckley for sitting in for public hearing. D. Murray said what you see on the plan is what they are proposing to do saying he is not sure why the builder shoved the house in the corner of the lot like that. D. Murray said the house sits 50 feet off the road from the front corner. K. Walker said their plan is to come back in August to officially

apply for a variance and are trying to get an idea of what the Board thinks. B. Chivers said they cannot pass judgment on something. Chairman Petrin said the facts are you do not have the setbacks so you would be looking for variances in the front and on the side. I. Byrd asked why they could not put the garage on the other side of the house. C. Walker the house is not straight and is at an angle to the road kitty cornered on the lot. He said they cannot put the garage on the other side because their leach field is on the other and taking up the front of the lawn so you cannot access that part of the yard. R. Howe asked if the iron pin found was the corner lot pin and C. Walker said yes. R. Howe said you have the width of Laliberte Lane at 20.83 feet. C. Walker clarified that dimension is from Laliberte Lane to the corner of the proposed garage. R. Howe asked how they came up with the width of the road to be able to measure from. C. Walker said their surveyor found the iron pipe 8" under dirt and was able to do his measurement from that. B. Chivers said they need 25' from the side lot line and 50' from the front lot line and they will have 20.83' in front. C. Walker said they are on a dead-end neighborhood with 4 homes past them not a busy road and asked to have that taken into consideration. He said they all have 3 acres but the homes are placed close to each other. B. Chivers asked if the house met the setbacks and C. Walker said it just makes it. Chairman Petrin said one dimension is only off by 5' and the other one a considerable amount off. K. Walker asked what would be a reasonable amount to come back to ask for. Chairman Petrin said you need 50'. J. Szot said they cannot make a determination in an informational and commented the maps were really good. C. Walker said it is their only option as they cannot get around back or front and if they had another option they would have pursued it. J. Szot said the only thing they can say is that you would have to apply. K. Walker said what is the point of an informational then? The she said if they apply is it one and done or could they try for something a bit smaller which is their fear they might be denied and not be able to try for a different size but they really want the garage and breezeway. She asked what have other people done in similar hardships. Chairman Petrin said they talked about that setting a precedent, maybe you should think about selling your starter home. C. Walker said they have looked around there is nothing and they love the neighborhood and plan on staying. R. Howe said this may be totally ridiculous but maybe moving the house back. C. Walker said they cannot move the house back as there are wetlands. R. Howe said don't you think it is reasonable that most people would want a garage? He said at the very least if they decide to come back to the ZBA that they would need a topographical map and show where the wetlands are or at least the wetland delineation as it would show more of a hardship. C. Walker said they would have a plan that showed the wetlands. I. Byrd said they shouldn't say anything that would lead the application to believe if they did certain things they would approve it. She said as proposed you are creating a substandard lot. K. Walker asked historically what the ZBA as a community has given for variances on garages. Chairman Petrin said people come forward when setbacks are not met. D. Buckley said perhaps if they came in for one variance because aren't they asking for two variances one from the abutter setback and one from the town. D. Murray said both are covered under one section of the ordinances. R. Howe said how about a one car garage as a compromise. C. Walker said do they need to apply for two difference variances? J. Szot said it would be dimensional requirement. D. Murray said both setback variances would be heard as one case and certainly the low traffic impact would be a thought. Chairman Petrin said they have given input without giving an answer and now you have to decide if you want to go through the variance process. C. & K. Walker thanked the Board for their time.

Other Business

Chairman Petrin seeing no other business asked for a motion to adjourn.

MOTION: Motion made by J. Szot, B. Chivers seconded to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 8:54 pm.

Respectfully submitted
from recording, Sharon Robichaud Recording Secretary