

CANDIA ZONING BOARD OF ADJUSTMENT  
Minutes of September 27, 2016  
UNAPPROVED

**Place:** Town Hall; Meeting room

Call to Order: 7:00 pm

**Members Present:** Bob Petrin, Chairman; Judith Szot, Vice Chair; Ingrid Byrd; Boyd Chivers; Ron Howe; and Dana Buckley, Alt.

Members Absent: None

7:00 pm Pledge of Allegiance

Approval of Minutes August 23, 2016

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

**MOTION:** Motion made by B. Petrin to accept the minutes from August 23, 2015 as amended. R. Howe seconded. All were in favor. The motion carried with a vote of (5-0-0).

**Rehearing Case 16-612 Applicant: In-Laws 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 Vachon of 474 Old Candia Road, Candia, NH 03034 was present; Francis Bean of 480 Old Candia Road, Candia, NH 03034 was present.

Residents present Dick Snow 127 Depot Road, Dean Young, Fire Chief was present. Dave Murray, Building Inspector was present. Tom and Ron Severino were present. Chantel Demanche was present.

Roger Demanche, In-Laws Construction owner, applicant was present. His Attorney, Maria T. Dolder, Esquire from Hebert & Dolder, PLLC was present.

B. Chivers recused himself. B. Petrin confirmed that B. Chivers would recuse himself from this portion. D. Buckley, Alternate was asked to sit in for B. Chivers.

B. Petrin stated that re-hearings are designed to give the ZBA an opportunity to correct any errors that it may have made and errors can and do get made in all sorts of Town Governments, hearings and so on. We've read your submission as to why you think this was unjustly served for you, the denial. Is there any discussion from the board, any commentary?

J. Szot said I would like to hear, anything that they have to say about the rehearing.

M. Dolder said I'm Maria Dolder, I'm an attorney, and I represent the applicant. My question to the Board are you looking for me to keep my discussion to just that sole one prong that you denied the application on?

B. Petrin said I think that's appropriate unless there's some disagreement because it was just that one point.

J. Szot commented that a rehearing is time to revisit the whole thing and I would like to hear the whole thing. That's what I would like to hear. I have questions; we did not have this last time. M. Dolder asked do you want to ask me your specific questions. J. Szot replied no, you go ahead and then as we're

going, I have questions about the building, I have questions about parking, I have questions about lighting. M. Dolder replied generally those are Planning Board issues, generally not Zoning Board issues but we're happy to chat about those but those will not be brought up in my application because those generally go towards a variance request. J. Szot replied well they affect abutters in this case. Those kind of things will affect abutters in this case; lighting and noise and the removal of the trees which will expose the highway, which will create noise for the neighbors that they don't have now, lights from cars that they don't have now. You have a large building, when Mr. Demanche came in he said he wanted to move his business out of his home. This is...he must have an enormous home because this is not what I was envisioning when he said he wanted to move his business out of his home. This to me looks like he has three or four office...like for contractors, you have your stuff underneath you have your office on top, not that I have anything against that, it's just the lot's not sized. M. Dolder said I'm happy to walk through the whole entire presentation. I'm prepared to do the whole variance for you tonight so I'm more than happy to do that for you if that's what the Board would like.

B. Petrin asked her to continue.

M. Dolder said so as you stated, we are looking for a variance to construct a light commercial office building within the light industrial district. The use itself is expressly permitted under your zoning ordinance because as I just said, this particular lot is zoned light industrial. In fact, residential use is not permitted on this particular lot. Why we need the variance? We need the variance because we have 1.57 acres of land and it requires 2 acres of land. Now I'm just going to walk through each one of the prongs of the variance, one by one. As you know in doing variances a lot of them overlap, you'll hear me saying the same thing in terms of each one but I would like to be very specific and walk through and just stop me at any time. (M. Dolder read from her prepared document "NARRATIVE IN SUPPORT OF VARIANCE APPLICATION OF IN-LAWS CONSTRUCTION, LLC":

1. *Granting the variance would not be contrary to the public interest because: 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. Under case law, the relevant public interest that you look at is what is expressed in your Zoning Ordinance. So to ascertain whether granting this variance would violate your basic zoning objectives you look at whether or not it would alter the essential characteristics of the neighborhood or it will threaten your public health, safety or welfare of the public. This variance does neither of those. As I said, the use that's being proposed here is expressly permitted within your zoning district. The property itself contains 1.57 acres of land and it has over 600' of road frontage. The Applicant is proposing to construct a 30' x 120' building within the light industrial office building. In doing this, as you can see on the plan, the applicant is able to maintain all of your setbacks under your zoning ordinance, so even though we don't have the acreage, the size of the building is being placed on this property, in a manner so that all of your setbacks will be maintained. Because we front on two streets, we have the front setback on two sides. You'll also notice that this property is bordered by Route 101 and the overpass and so clearly this proposal doesn't violate the basic zoning objectives or the essential characteristics of the neighborhood because this particular use is what this lot is zoned for. It's not zoned for residential use and residential is expressly prohibited. And because of the fact that we can maintain all of your setbacks, this does not contradict your zoning ordinance so much that it would be contrary to the public interest.*
2. *Second, the use is not contrary to the spirit of the ordinance: One of your expressed general purposes of the Town of Candia zoning ordinance is to prevent the overcrowding of land. Even with the relief that's being requested here, this proposal is in keeping with this general purpose. The use, as I said is expressly permitted under your zoning ordinance. The property contains 1.57 acres so it has plenty of room to put this particular building on it. It has over 600' of road frontage. And once again, we are going to maintain all of your required setbacks on the property including wetland setbacks. They did have a wetland scientist come out and flag the wetlands; we'll maintain all the wetland setbacks, all of your road setbacks and still be able to place this building on the property. In fact, there is natural pond on this property, and I'm sure you're all*

aware, *that creates a natural 100' buffer from the neighboring lot.* So you have an extra 100' from that pond that buffers you from the neighboring lot. This particular lot is bordered by the road so in terms of the roadway, we meet all our setbacks, but it's just the roadway quite frankly. And given the fact that your use expressly *complies with the uses allowed in your zoning ordinance, this variance relief will not alter the essential characteristics of the neighborhood, nor the character of the property as you have zoned it and therefore it does not sacrifice the spirit or purpose of the Ordinance.*

3. *Granting the variance would do substantial justice because: One of the ways that we evaluate substantial justice is that any loss to the individual that is not outweighed by a gain to the general public is considered an injustice. Under this standard, we clearly satisfy this requirement. As stated above, the use is expressly permitted within your zoning district. The property itself contains 1.57 acres of land and has over 600' of road frontage. We're simply asking to construct a use that is permitted in this zone on a lot that does not necessarily meet your acreage requirement but it does meet your frontage and will be able to maintain all the setbacks on the property. Substantial justice is also achieved by granting variances which do not adversely impact on nearby property owners and which allow a property to be used reasonably. Quite frankly, without the variance relief, this property can't be used at all. There is just no way to utilize this property without any variance relief at all. So the fact that we're using this property for what it is zoned for, and the exact use that you anticipated for this, shows that this is substantial justice. Once again, the pond on the property creates a natural 100' buffer from the neighboring lot. It's bordered by Route 101 and the over pass. There is no evidence to suggest that building this particular building on this lot, which is permitted, will have any adverse impact on nearby property owners. On the other hand, without this requested variance, as I said, these people can't use the property at all. In fact nobody can use the property. It's a non-conforming lot and they will need some variance relief in order to utilize it. This is the minimal variance relief necessary to utilize this particular lot in the way it's intended. Therefore that is considered substantial justice.*
4. *The proposed use would not diminish surrounding property values: Once again, we're proposing to construct a light industrial office building by obtaining the proper building permits and in compliance with applicable public health regulations. The building would be built in a manner so that it would maintain all your setbacks, some of them exceed the setbacks and the use itself is permitted under your zoning ordinance. There's already an established apartment complex that's located across the street from the property, there's Page Street Leasing, which has multiple tenants, on the same side of the street nearby. In addition, just over the hill, you have two large commercial style buildings in that area and it's, once again, important to note that the property is bordered by Route 101 and the over pass. So once again, given all of this and the fact that this particular property is zoned for light industrial use, residential is not allowed, this won't have any adverse impact on neighboring properties, nor will it diminish your surrounding property values.*
5. *In terms of unnecessary hardship: This particular property is unique in several different ways. First of all this remainder lot was created in or about 1981 when the NH DOT put the highway through it. That's what created the lot in the first place. So as a result of that creation, this lot is bounded by NH Route 101 and the overpass. It also has a pond on it which provides for further natural buffering from the neighboring lots. The property does contain 600' of frontage, which is greater than what is required under the zoning ordinance, and it has been zoned light industrial zoning district. So although I understand there may be residents nearby, this particular lot is not allowed to house residential use. So the use being proposed here is expressly permitted within the district and it's what was anticipated. Due to the lot size, as I've already said, this property cannot be used for any purpose without some variance relief. Given the fact that this particular proposal fits squarely in with what your zoning ordinance intended for use, and we are able to utilize it while maintaining all the setbacks on the property, this is the minimum relief required in order to make any use of this lot at all.*

M. Dolder asked if you have any questions, I'm more than happy to answer them. B. Petrin asked if there were any questions, Judith.

J. Szot asked security lighting on this building, yes? No?

R. Demanche replied we're trying to see if it's...getting a variance for the lot, not for lighting. J. Szot replied ok but the lighting affects the quality of life of people who live in this area. Right now they live in the country. When you ask people why they come to our town, they say they come here because they like the fact that it's rural. When you construct this 120' long building, in an area where there are houses and it's dark at night and you have a substantial border of trees that blocks the highway. You take down those trees suddenly you have noise from the cars that not only are they going to hear, that whole area, all down South Road and all the people on Douglas Drive, are going to be bombarded with the traffic that some of that is blocked now by the trees that are there. You've got the lights of the cars going by. You've got an office building, I don't know, four or six units whatever, I don't know how many you're going to put in there, but you said you're going to have dumpsters behind it, now you've got beep beep beep because people are coming to pick up the dumpsters at six in the morning. People who live across the street now are going to look at this and when you say that this is zoned light commercial, yeah, and I'm going to tell you how they did it, they sat down and they said let's start here at the highway and we'll go over to Brown Road and we'll make that commercial. It makes sense, you mentioned the apartments, you mention Page Street and all those other things, and that all makes sense if this road was flat. But this road is not flat. This road is a significant hill and all that development is on the other side of the hill and there is nothing commercial from the top of that hill all the way out to you get to the Auburn line and there are some things farther into Auburn but there is nothing else commercial. There are houses across the street. Yes there's an apartment complex and it's in the back and in the woods. So you can't see that, the neighbors don't see that and don't hear it. They live in a quiet residential neighborhood and this....it also says when you substantially change the neighborhood, that's not allowed.

M. Dolder responded I guess I'd like to address a bunch of those. With all due respect, the property is located on NH 101, that's not a quiet road. That's not a road that cars don't always travel down. That's a pretty substantial road in town. The second is the town zoned this light industrial. Residential use is not allowed. If the town wanted this to maintain a residential area, then it should have zoned this lot residential. It chose to make it light industrial. Light industrial is the only use that's permitted on this lot. So to say that this wasn't anticipated, of course it is, and it's the only use that's permitted on the lot. If they wanted to come in and get a residence, they'd need a variance and it's my understanding that in the past the Zoning Board has not approved those for residential use. So light industrial is all you, unfortunately have. In terms of the neighbors, we're able to maintain not only 50 foot buffers, which is what's required under your zoning ordinance, both of fronts, because we front two streets, we have over 100' buffer before you reach the next property. I mean there's a pond there so to say that we are directly on top of neighbors or impacting them quite frankly this building has been designed to make the most minimal impact to this particular lot as possible. So in terms of...I mean it's not a manufacturing facility, it's not like they're going to have trucks going in 24 hours a day, it's a light office use. It will be used accordingly and in terms of trees and lights, I don't think you're going to notice much more traffic off of 101 than would normally be there. This isn't a drive through; it's not a 24-7 operation.

B. Petrin asked if you could offer maybe some relief or a measure of comfort that there'll be minimal tree cutting to allay that fear of noise or loss of that natural vegetative buffer.

R. Demanche replied as they sit right now, they sit on top of the hill. They sit below the hill. They are as close to the top of the hill as they could possibly get. So there close to Page Street, you can hear Page Street down there...oh you can, I live over there, I know.

J. Szot interjected there are two houses directly across the street from this. There's a house on the end of Pine Ridge. There's a house on the end of Pine Ridge, there's a lot that's a wetland lot, and then there's another lot that sits up in front of the apartments, there's a driveway that goes into the apartments and then there's another house that sits, an old white colonial, that sits on top of the hill, and the two houses across the street. Once you cross, go down, crest that hill, it is all residential and I'm sorry to disagree with you but 101 used to be the main highway, it is no longer and you can ask all the businesses

that went out on 101. I. Byrd interjected the old 101. J. Szot continued the old 101, when there was no longer traffic to support their businesses. I live in this area; I know what the traffic is like on that road. There is very little traffic on that road. It is a rural road and it is dark at night. I think we have to consider the lighting. Because when you look at this building, he has to go into his setbacks in order to get into the back here, he's going to have to take down the trees to be able to get into the back, the only way you can site this, he's from one building, one setback line to the other. He's going to have to cut trees in the front to get to the back. He said that they were going to have garages underneath the last time. You're going to need to get into this back here, to get in here with trucks, to get into here to access this stuff.

M. Dolder replied but it's not going to be a night time operation, it's not going to be at night where you're going to be worried about the lights. J. Szot commented if you're talking about renting to contractor's and things, you don't know when a plumber has to come in there and get his stuff because he has an emergency at night. You don't know when....

M. Dolder responded I don't think that's the use. I don't think that's the intent that it's going to be at night.

R. Howe asked what is your intended use. I thought this was just for your business, am I correct? R. Demanche said correct. R. Howe said so you're not going to be renting space out to another subcontractor or something are you? R. Demanche replied if it comes to that point, yes, if I have to. R. Howe said okay, but that's not the intent, although that could change. I. Byrd asked how many stories. R. Demanche said one story. J. Szot replied you said you were going to have garages in the back. R. Demanche responded correct, that's one story. J. Szot confirmed so they're going to be underground, so it's two stories, it's a basement and...R. Demanche said it's not considered two stories. J. Szot said yes I understand so you have space underneath and a ground level floor.

D. Buckley asked are any of the abutters here tonight, of the houses you mentioned, are they here tonight?

B. Petrin said just the Vachon's. D. Buckley replied that's not the house that Judith had mentioned already. R. Demanche said theirs two abutters. B. Petrin said oh Bean, Oh I'm sorry. D. Buckley continued so what you had mentioned earlier isn't an actually an abutter, it's just in the general area, the house you had mentioned that might be affected? J. Szot said there are two, if you know, are you familiar with this area? D. Buckley responded no. J. Szot continued it's the, when you get off the highway if you make a left, you go past South Road and continue, this is the area just before Brown Road. The problem is, this lot, when this lot was created, the owners were compensated for the loss of their property by the state. This was the remainder that was left. The applicant has purchased this land, knowing, or should have known that this was not a buildable lot and now he's coming to us saying "make me whole". Because I own this land and I can't do anything on it. But he purchased the land and it was not a buildable lot when he purchased it.

M. Dolder replied that I would like to step in, it may not have been but it's been taxed as a buildable lot so when it was sold to him he was shown the tax cards and it is taxed as a buildable lot. I. Byrd commented it was owned by the Town how could the Town tax itself? M. Dolder replied there are tax cards and it shows \$80,000 tax assessment on it. I. Byrd said I'm asking you to explain how the Town would tax itself. M. Dolder responded because at some point in time it was owned by someone else and the Town took it. The Town has been assessing this lot at \$80,000. J. Szot said we assessed it at \$80,000 dollars and it was sold for \$30,000. M. Dolder said at auction. I have the tax bill; it shows land value at \$80,600 dollars. I. Byrd asked and when was the last tax paid on that? M. Dolder replied I don't know. J. Szot commented that Mr. Demanche told me that he's been doing this for a long time. I saw him in the office one day. I would assume that he's been buying and selling property and building for a long time. He knows to look at the zoning ordinance. He lives in Candia and he should have known, irrespective of what's on those cards, that this was not a taxable lot. M. Dolder responded that he's here for a variance and he's entitled to ask for a variance. J. Szot said he is entitled to ask for a variance. M. Dolder continued if we meet all five criteria of the variance then we are entitled to get that variance. That is exactly what a variance is here to do. The variance vehicle is for these exact reasons and it's my contention that he meets all five aspects and quite frankly this Board found at the last meeting, that he met four of them, that he

only didn't meet one of them. We have explained why he meets that fifth one. J. Szot replied but the Board also has a right at the rehearing to revisit every one of these areas of variance. M. Dolder responded absolutely, the Board is allowed to revisit it, but if you are suddenly going to change your opinion, you have to have some justification as to what has changed since the last meeting and this meeting to tell us that we no longer meet that particular prong. B. Petrin replied so the issue at hand, just to stay on point....M. Dolder said I don't mean to interrupt you but just getting back to abutters, we do have some abutters here. Are the abutters that you seem to think have the biggest issue with our project here tonight? I. Byrd replied that has nothing to do with anything. M. Dolder replied it does because if those particular abutters are truly concerned with what...I. Byrd stated but you cannot imply because somebody is not here they don't care what happens and my feeling is they came here, you shouldn't kind of embarrass them or make them feel bad. M. Dolder said no, I think they want to give input. I'm asking if the abutters are here and would like to give input on their feelings on this proposal, that's what I'm asking. B. Petrin said unless you object. Judith do you have any more points or questions because we can hear from the abutters. J. Szot said absolutely. B. Petrin said please go ahead Mr. Vachon.

D. Vachon said first of all, we don't have an issue with him building. Second of all, I want to know, for my own well being here, why would the town, auction off a piece of property and not be able to build on it? Who would buy a piece of property and not be able to do anything? That's what I want to know. I wouldn't dish out \$30,000 with the intention of building a building and get turned down. That's upsetting me, that's not right.

B. Petrin acknowledged okay. Thank you for your commentary. I want to stay on point here and the point is that there's an application for a variance and we should focus less on how we got here but we're here now with an applicant in front of us for a variance and then after that fact...J. Szot said well it's like it starts all over. B. Petrin said no, I want to just make one other point, so you're talking about lights and other concerns, noise. Is that not an apportion for the planning board? J. Szot replied but the point is that he does not have to go before the Planning Board; all he needs is a building permit once....B. Petrin asked that's not a site review? J. Szot said no, he can go and do it. The fact that he...

R. Severino said that's wrong. He needs a site plan review. J. Szot continued he still needs a site plan review? But the point is, once he has the variance, then there is nothing that can be done about the other things, but the fact that what he's doing may affect the people in that neighborhood, is subject to the variance. And it says that it doesn't change the essential character of the neighborhood. There are places where it says granting the variance is going to start down that slope where everything in that neighborhood is going to change. Because now you've got this and people across the street are going to say I don't want to live with this and suddenly you have people moving because they don't want to live with this building that's there.

M. Dolder replied I would like to address two of those issues. First of all, it's not correct that once we get the variance the Planning Board has no power to do anything. Lighting, noise, those are all under the purview of the Planning Board, that is there express purpose and so therefore, if we went to the Planning Board, even though we have a variance for the use, that doesn't mean they have to like our lighting or like the siting or like the landscaping. That's all in the purview of the Planning Board that's expressly what they have to look at and what they have to approve. This is just the first step because we can't get to the Planning Board without being allowed to have the use. In terms of the abutters, I don't disagree but that is the standard, but we've heard from at least one abutter who does not have a problem with this and I know at the last meeting, this Board determined that the impact to abutters was minimal. J. Szot said but it also says, if you look in the variance criteria, not contrary to the public interest. But it says to determine this does the variance alter the essential character of the neighborhood. R. Howe replied it doesn't at all. J. Szot asked Ron are you familiar with it? R. Howe replied that neighborhood; I'm very familiar with it. J. Szot commented but once you cross that hill, it's all residential. B. Petrin commented but the people in that area, those residences, live there as zoned light commercial. J. Szot said it's only been zoned light commercial for, I think it was re-zoned in 2011, 2013 something like that. D. Murray said 2008. R. Howe commented I hear what you're saying Judy about cutting trees and everything else but, and I was just doing some rough figures, there is 3600 sq. ft. in this building. If we're generous and

say the hot top area around it that's affected is another 6300 sq. ft., that's 10,000 sq. ft. that's affected in this whole lot out of 65, 66,000 sq. ft. It's less than 8% of that lot. J. Szot said but Ron look at what the building envelope is, look at the size of the building envelope, he is filling almost that entire, yes he has that lot, but he can't build on the majority of that lot. One of the reasons that we have the 2 acre minimum is so that you have enough space to put all this stuff. R. Howe said he does. J. Szot replied he doesn't, yes he can go into the setbacks. But he's going to be going into the setbacks to put his driveways, to get around the back. R. Howe said of course, everybody does that. J. Szot replied into their setbacks? R. Howe said why wouldn't they. You have your driveway in front of your house. I. Byrd stated that's residential. J. Szot said I'm not talking about just the driveway, look at the parking in the back Ron. He needs to get into, he's going to be into that area, that's the setbacks, the trees are going to be cut, and those people are going to be affected. R. Howe said what people are going to be affected? The only people affected are the apartment building, which admittedly is back away. J. Szot said no there are four houses there, two on his side of the street and two on the opposite side. R. Howe said and there's going to be trees in front of this building from what I can see.

B. Petrin said is there not or are we assuming it's going to be clear cut. R. Demanche said we're not clear cutting. The size of the...I cut the trees behind it, that's Route 101, everything to the left is a 100' buffer. Even if we cut the trees we're not going to shine the lights in people's houses. It's going straight down. Shine the light 100' across, how much are you going to get. B. Petrin asked on the Route 43 side, what was your intention of cutting that out. R. Demanche replied if we cut it out, the light's going to project onto the road, nowhere else. R. Petrin stated you are planning on clearing that, from the structure to Route 43. R. Demanche said where it needs to be cut. B. Petrin asked so you're not saying you are clear cutting it. R. Demanche said I ain't saying either way, I'm not sure. But the people that are in front of that, it comes down, it hits the road. There's nobody directly in front where the building's going anyways. They're further up or they're further down on the other side of Douglas. B. Petrin said okay. R. Demanche said so how does that project into anybody's yard? J. Szot replied but the noise carries. R. Demanche said the noise of what? J. Szot replied the cars on the highway. R. Demanche replied the cars on the highway? As soon as the leaves fall, the cars on the highway, you can hear it right away. Absolutely. I. Bryd said but if the trees are gone. R. Demanche said the trees are pines so if the trees are gone. I. Byrd said the noise is going to travel. R. Demanche said ok the trees fall down, it carries through. I mean it does. D. Murray said I'd like to clarify one thing. He will be coming in for a Major Site Plan Review because it's over 2,000 sq. ft. of disturbed soil. This isn't the last hurrah right here. B. Petrin said ok is there a chance if we were to grant a variance we could put in some stipulations there or, does that give you a measure of comfort? J. Szot responded that you can put stipulations in the variance. I. Byrd stated our history has been that stipulations are not followed or enforced. R. Howe replied I don't see how you can put something like that in anyway. It's not our position to do that. We could put stipulations on but not those specific things, there specifically the Planning Board's issues. If they can't meet the requirements of the Planning Board, that's another issue. They gotta make this first step to get to the second step. B. Petrin said agreed. Is there any other commentary from the residents or the audience or specifically the abutters?

R. Severino can I ask a question. If nothing's allowed to be done on this site, someone can cut all the trees anyway. That's just a point, trees can be cut because then doing that it doesn't have to be Planning Board. The other comment is the Planning Board does have to regulate this and I would encourage the Board if they have concerns to show up at the Planning Board hearing at that time but that's their job and they do look into this stuff. I know as far as the taxes, this was a taxable lot for many years. It wasn't owned by the Town, it was taken by the Town because the people stopped paying the taxes because they couldn't use it so the Town took it back. It was assessed so high, and unusable, that they stopped paying the taxes on it. The Town took it away and auctioned it off. It still had a value of \$80,000. You can build, it's commercial land, I know that area very well, been here a very long time. You have a few houses but there are a lot of businesses there too. J. Szot commented there all on the other side of the hill. R. Severino replied it doesn't matter, it's commercial. Then you have to change the zoning. J. Szot said it does matter because the neighborhood changes when you cross that hill. I. Byrd replied it's

not 2 acres Ron. R. Severino replied that's why he's here. J. Szot said and the original owners were compensated, yes they lost the land, but they were compensated when the State took over that land. R. Severino said then it should have gone down to zero for value. It should have stopped taxing. J. Szot said well that's the Town and that's a problem with the assessors in the Town.

B. Petrin said let's stay on point once again please on the matter of hand which is for reconsidering the original denial. Unless there are any other questions or comments I'm going to close it to the public. We'll go through the criteria and see what result we come up with. Judith do you have anything else you'd like to comment on? J. Szot said yes. I think it's contrary to the public interest because I think that there all modest houses in this area, the apartments and all those things are farther back, all the commercial development is on the other side, this is going to substantially change this small neighborhood, there's going to be light pollution, noise pollution and I think the fact that it changes the neighborhood...there are changes that can be made, you can change the general health, the safety, the general welfare I mean just having to listen to the noise and looking at the lights is a significant change and I don't think it would meet that criteria. B. Petrin replied and we can address this as we go through the criteria and take a polling. Because now it's a matter of point now and that can be in a vote. I. Byrd do you have anything else. I. Byrd said no. B. Petrin asked Dana? D. Buckley said I'm not familiar with the area so it's hard for me to accurately judge whether or not, what we're discussing tonight, wasn't discussed before about noise and lights. So there's two abutters here, they don't seem to have a problem with it. The houses that we're discussing would be affected by the noise and light pollution are not actually considered abutters so they weren't notified of this. J. Szot said they're across the street. They probably weren't notified because they are across the street and not physical abutters but I think they should have been, were they notified. D. Murray said oh yeah. D. Buckley said so they were notified and they didn't show up. D. Murray said they didn't have concerns I guess. D. Buckley this leads me to believe, but I can't be sure, I would say it's not contrary to public interest. B. Petrin said ok. Should we proceed?

J. Szot said we can do all five and then you can vote on them if you want. B. Petrin responded that's the logical progression, that's the procedure. J. Szot stated the spirit of the ordinance says that it's to lessen congestion, prevent overcrowding of land, preserve and protect land values and amenities; I don't think this lessens congestion, I don't think this prevents overcrowding of land. I don't think it preserves land values, I think that huge commercial building across the street is going to affect the people that are living across the street. I think it's going to affect their land values. When you look at the size of the building and the size...he's filling everything he can build on. I'm sure he's maximizing what he has and if he had 2 acres we wouldn't be here discussing this. But the ZBA cannot grant a variance just because they like what's someone's doing and they think what they're doing is good for the Town, you can't grant a variance based on that. You have to base a variance based on facts. B. Petrin commented right and we can't deny one because we think someone's going to be offended by it, light or noise pollution, or we think there's going to be light or noise pollution. We're only assuming that and while it's a thoughtful presumption to have, it doesn't mean it's accurate. It's a very unique property and we know that. What they are asking for is a reasonable use of land and I don't know that we can sit here and say that the rights of the public or the private citizens are being affected because maybe the folks that are living nearby aren't going to be affected by the light and the noise, we're assuming that they are. Is it a reasonable use of property? We'll have to address that and go through the criteria. R. Howe asked Judy if this building were half this size, would you have a problem with it. J. Szot answered possibly not. I think the size...when he came in...one of the reasons that I reconsidered last time was that he came in and said to us, I want to move my business out of my home and so I'm thinking alright he wants to put a 20 x 40 foot building or something like that and I can see that, that's I can see that, I would not find that objectionable but when I looked...at the end of that meeting last time when we granted the rehearing, that's the first I saw this thing with this building, this 120 foot long building. R. Howe said we had that before. J. Szot said I never saw this. I. Byrd said I didn't either. J. Szot replied not with the building plan on it. B. Petrin said I don't think we had that Ron. J. Szot said we just had the setbacks, not with the building drawn on it. Then when I saw that building, I thought well that's not what we talked about that



time. One of the reasons I wanted to reconsider was I felt that he was gonna move his stuff out of his home, that's fine, I had no objection to that but when I saw the size of this, and if he had 2 acres, I would think he would be able to get around here better, leave more buffer but because he has this huge building, he's going to be into his buffers in the back to put his driveways, to put drainage, everything he's got to do around this building and suddenly...all the trees around...if you look at that, he's using, it looks like half of the building envelope, the building area he has, is his building. So that narrow end that goes to where the road crosses, to get around the back side of that building, he can't go, well maybe he could go the other way, either way, he's going to be in the setbacks with his driveways and things and all of that cuts out the trees. All of that increases the noise pollution and the light pollution. B. Petrin asked does that come into discussion for site plan. J. Szot said but it also comes into discussion...it's...these are grounds for us to grant or deny a variance. R. Howe suggested I guess you're saying he made a mistake putting the building on here. Which he didn't need to do to come to this. J. Szot said yes he did. He can't just show us what he's going to do, how can you make a decision if you don't know what he's going to do on the property. B. Petrin said he's just asking for a variance to build. R. Howe reiterated that he's asking for a variance to build and he's meeting all the setbacks. J. Szot replied and Ron when have we not asked people for a map that shows what's going, we have people who come in for a variance and they want to put an addition on their house and their going in their setbacks, don't we have a map that shows what they're doing, that shows the building that they're putting on their property with the setbacks. Why is this any different? Why can't you say we want to see what you're building and where you're putting the setbacks? We do that for everyone. B. Petrin said but they're meeting the setbacks. J. Szot replied they do meet the setbacks; the problem is the setbacks of the building. The problem is you've got driveways, you've got to come in here, to get around to this part of the building, you're going to be into the setbacks here. So that means that you're...and he's not going to just put his driveway, he's gotta have drainage and all kinds of stuff, those trees are going to go down and yes we have a right if you read the handbook from the Board it says, there's a part here...*is the proposed development consistent with the areas present use.* The present use of everything around there is housing. Residential. And I know they zoned it commercial but Ron you know how that's done. They sit with the map and they say ok let's start here at the exit and we'll go to Brown Road and we'll go here. D. Buckley said but they didn't. J. Szot continued they did, okay but what you can argue is this lot is non-conforming, he bought it and knew or should have know that this lot was not a buildable lot and now he's saying "make me whole." R. Howe said but the Town's been taxing it as a buildable or... J. Szot replied he just bought the lot. R Howe said I know but the Town's been taxing the lot as a buildable lot all this time. I. Byrd replied no it hasn't. The Town owned it. R. Howe replied no prior to the Town taking it over. You just heard what Ronnie just said. J. Szot replied and that's an issue the previous owners should have taken up with the tax people when they came. B. Petrin said so let's stay on point. That's not what we're talking about. J. Szot said the point is, if you read this, we have a right to question every one of these things. To question the word changes the essential character of the locality. If it changes for the health safety and welfare of the people when you think about...B. Petrin replied and we've gone through all that haven't we. J. Szot said yes, so anyway. B. Petrin replied if we've gone through them I think it's appropriate to go through the five conditions then. J. Szot well no if you think of substantial justice it says the ZBA can't alleviate an injustice by granting an illegal variance. Any loss to an individual, Mr. Demanche, which is not outweighed by a gain to the general public, is an injustice. The only person gaining here is Mr. Demanche. The public is not gaining here. Everybody says we need commercial because it's going to lower our taxes. How much do you think it's going to lower taxes, \$6.00? I mean really, it's insignificant the amount of money that this is...if you're thinking this is something that's good for the Town because it's going to lower our tax rate; it's not going to affect you more than \$6.00. B. Petrin interjected then let's talk about all the other variances we grant the Town doesn't benefit. J. Szot said well sometimes they do, alright. B. Petrin replied in this case they do too. Because even if it's an insignificant amount of money it's a positive number not a negative number. J. Szot said the only one gaining here is Mr. Demanche. The neighbors get noise, they get light pollution, they get increased traffic. B. Petrin said that we're assuming they can't tolerate. J. Szot continued the removal of the buffer of trees that dampen sounds and block site from the highway, security

lights that are going to shine in their houses, trucks coming and going who knows when, it's not consistent with the areas current use. All the commercial developments' on the other side of the road, on the other side of the hill, there's nothing past Old Candia Road.

B. Petrin said it is zoned light commercial and it is within the confines. J. Szot said I think diminish the property values. Everything around this development is residential. A large commercial building across the street or next door can't help but lower the property values. Cutting down the trees increases the highway noise and lights. Security lighting again takes away that rural feel for this area and granting this variance would affect the character of this neighborhood, forever and I think it's going to start a domino effect that adjacent properties are going to ask for similar requests. Why can't the property across the street ask for..come in and say we have this 120 foot building across the street from us, why can't I build a commercial building over here. Well it's zoned residential, yeah but you let him build there and he didn't have enough land so why can't I get a variance. So it's a domino effect.

B. Petrin said alright any other discussion? We need to keep the meeting moving. He asked Judith to help out on the criteria.

J. Szot stated:

*"1. The Variance will not be contrary to the public interest;"* J. Szot said I think it is. I. Byrd said I do too. B. Petrin replied I don't believe that it is. R. Howe said I don't either. D. Buckley said I don't. B. Petrin, R. Howe and D. Buckley **were in agreement**. J. Szot and I. Byrd **disagreed**. (3-2-0).

*"2. The spirit of the ordinance is observed;"* J. Szot said I think the spirit of the ordinance is to lessen congestion, prevent overcrowding, preserve and protect land values and amenities, and I think that this building is going to increase congestion in the area. I think...multiple businesses there, trucks, it's taking up most of the building envelope, they're going to have to cut down the trees, it would affect the values of the properties around them because of increased light pollution, noise pollution and traffic. I think that the spirit of the ordinance is observed, I do not. I think it is against the spirit of the ordinance. R. Howe said I believe it's in favor of the ordinance. D. Buckley said I believe it is. B. Petrin said I believe it is. I. Byrd said I don't. J. Szot said I don't. B. Petrin, R. Howe and D. Buckley **were in agreement**. J. Szot and I. Byrd **disagreed**. (3-2-0).

*"3. Substantial justice is done;"* J. Szot said I think we can't alleviate one injustice by granting an illegal variance. I think this variance is an illegal variance. I think that the public is losing on this. The only one gaining anything is Mr. Demanche. Everyone loses but Mr. Demanche and it's not consistent with the areas current use, which is residential. B. Petrin replied even though it is zoned light commercial that's the consistency. J. Szot interjected that the rest of the area is all residential. So I do not feel that substantial justice is done. R. Howe said I believe it is. D. Buckley said I believe it is. B. Petrin said I believe that it is. I. Byrd said I don't. J. Szot said I don't. B. Petrin, R. Howe and D. Buckley **were in agreement**. J. Szot and I. Byrd **disagreed**. (3-2-0).

*"4. The values of surrounding properties are not diminished;"* J. Szot said I think this commercial building next door can't help but lower the property values, cutting down the trees, because cutting down the trees is going to allow the highway noise, cars and lights, security lighting is going to destroy the rural feel of the area. B. Petrin said I don't believe it's going to affect surrounding properties, when you put value on properties you compare them to other like properties in the area and not against a competing element such as commercial or industrial so I don't believe..J. Szot interjected but if you have something that's different that what you have and people consider it undesirable, they're not going to get the value for their property they might have gotten at another time. B. Petrin replied sure and that's why....J. Szot said and that's what that means, is that building this building will affect the values of the properties surrounding and I think it will. B. Petrin asked Ron and Dana what do you think. Do you think it's going to affect the values? R. Howe replied no I don't. D. Buckley said I don't. B. Petrin replied I don't believe it will. I. Byrd said I do. J. Szot said I do. B. Petrin, R. Howe and D. Buckley **were in agreement**. J. Szot and I. Byrd **disagreed**. (3-2-0).

*"5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship"*. J. Szot said the last one is hardship. The Board does not have the discretion to grant a variance because they believe the project is a good project. Granting of this variance would alter the character of

this neighborhood forever beginning a domino effect as adjacent affected properties seek similar requests due to the now changed character of the area. I think you're starting on a slippery slope. I don't think that the literal enforcement will result in unnecessary hardship. I think this is a self imposed hardship. I think Mr. Demanche bought this land and it was not a buildable piece of property when he bought the land and he wants us to "make him whole" and I don't think we have the right to do that and I think what we're doing is wrong. B. Petrin said I think we should do it because it's the only intended use for this thing, and without having something go in there it will remain a useless something or other and then we don't know what goes on next. It's already been mentioned in the meeting tonight, someone could just clear cut that just for the sake of clear cutting it. Maybe we can find some common ground in between and say let's put something there that's useful to the community. It's not just Mr. Demanche that gains on this; hopefully other people can find some use for it as well to further their livelihoods. I don't believe that there's going to be a hardship. I believe there would be a hardship if we didn't grant it. R. Howe said I agree. J. Szot asked what do you think is the hardship Ron. R. Howe replied the fact that he's bought the property and can't use it. J. Szot replied but he knew he couldn't build on it so why is that, how is that a hardship. I. Byrd said its 1.5 something acres, he knew, our light industrial. J. Szot said or should have known. I. Byrd continues is 2 acres. Just like a house lot is a certain acreage and if you buy one with less than that acreage, you can't then come in and say oops. R. Howe said well what else would you do with a piece of light industrial property if you weren't going to build on it. J. Szot responded we've denied people the right to subdivide their property because they had 5 feet less than what they needed to subdivide. R. Howe said and I don't agree with that either. I. Byrd said how would you feel Ron if this building was across the street from you. You're in a nice quiet, settled neighborhood. B. Petrin commented but he didn't move into across the street from a light industrial lot. J. Szot replied these people didn't either. The zoning changed after they moved in. I. Byrd said they've been there forever. It's one of the little communities in Town that has lower value housing so that people that don't have a lot of money can live in Candia. And they don't have to own a \$300,000 or \$400,000 house to be here. Those are all small houses and I hate to do something that would make life for people that don't have a lot of money more difficult. I tend to look at the whole issue not just the one and I think all of you've been around the various meetings where we talk about keeping everyone in town in town, just because you live in small house you shouldn't, your life shouldn't be made more unpleasant.

B. Petrin replied okay, thank you Ingrid. Let's continue going through the fifth criteria please. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.* It would result in unnecessary hardship. R. Howe said I believe it would. D. Buckley said I believe it would too. J. Szot said I don't. I. Byrd said I don't. B. Petrin, R. Howe and D. Buckley **were in agreement.** J. Szot and I. Byrd **disagreed. (3-2-0).**

B. Petrin commented it did pass and I want to remind you all that it's okay to disagree and that's what makes the world go round. Not everybody is going to get their way or have things come out that they think is going to best for them and the folks around them and it's your duty to consider those things so thank you for those hard thoughts and tough words because they need to happen. At the end of the day, this does get granted and you'll receive a notice of decision. Oh we have to vote for it, I'm sorry. Is there a motion please to grant a variance?

### **MOTION:**

I. Byrd **motioned** to approve the variance. R. Howe **seconded.** B. Petrin asked did you make that motion Ingrid. I. Byrd said yes with my teeth clenched. B. Petrin said and Ron also gives a motion. All in favor (*three*). Those opposed, **two oppose**, no abstain. **(3-2-0), Motion passes.** And now I get to tell you that you'll receive notice of decision and onto the next step which I believe will be a site plan review.

B. Petrin asked B. Chivers to return to his seat and thanked D. Buckley, Alt.

**Case 16-615** Applicant: CoPart, 14185 Dallas Parkway, Dallas, TX 75254; Owner: Candia South Branch Brook Holdings, PO 410 Candia, NH; Property Location: Raymond Road; Map 409 Lot 104; for a Variance under Article V Section 5.01B; Intent, expansion of Junkyard permit.

Abutters Present: Jerome and Donna Becker 240 Raymond Road, Candia, NH 03034 were present.

Ron Severino, Owner of Candia South Branch Brook Holdings of Candia was present. Tom Smith, Property Manager of CoPart and John Kostro, General Manager, from CoPart, 14185 Dallas Parkway, Dallas Texas 75254 were present. Resident Dick Snow was present.

R. Severino said I'm Ron Severino, I'll start the presentation, it's my property, it's where the variance is going. If you have questions about use and stuff like that they will be able to speak. We're here for relief, I guess its Section V 501B, which talks about the junkyard, I use this term with my teeth clenched because we're not really making a junkyard. If you are familiar with the car recycling place, it's been here for many many years, it's been operating, has a junkyard permit since 1975. The property was recently leased by Copart now, they changed the operation. It's no longer a dismantling facility and recycled parts and all that. It's strictly an auction site and storage site for short term, where vehicles come and go, mainly insurance companies, repos and they'll get more into that. So it's basically a big parking lot. I really wanted to come to the Planning Board site plan review under used car lot but if you read into the Junkyard regulations in the RSA says if you buy and sell a wrecked car, it's a junkyard. It also goes on to say that it has to be there 165 days and these aren't but this is the cleanest way, come in here and get it done like this. CoPart would like to expand and I own 170 acres to the east of them. I own pretty much everything to the right on this page. B. Petrin asked you don't actually own the property in question. R. Severino said no, I don't own the property, I own the property where we're looking for the variance. B. Petrin said oh I see, to expand. R. Severino continued the yellow is my property. Only the 10 acres we're looking to expand. The other residents, we're not going to put it there. B. Petrin said I understand. R. Severino continued so just to say how we got here, its tough reading cuz it says no junkyard shall be allowed in any district. But then it says a license to operate one can be obtained from the Board of Selectmen in a matter of RSA 236:111 so if you go to RSA 236 it says in towns that have a Zoning Board of Adjustment, we need to come here to get a certificate to take to the Selectmen so basically this is the process to obtain a junkyard permit. Again, we're really not going start a junkyard but that's what we need to do. I have a map there and we're trying to give them 10 acres to the east and to add onto the existing operation that they're doing. There are no buildings, this is strictly going to be...the reason we use that Google map, is basically what you'll see there, an existing lot is a parking lot with cars. Once we get through this step, there'll be a Major Site Plan Review. And basically it will be a gravel parking lot with all the, whatever else we need to do for storm water management. I don't have a big lengthy speech on all the criteria but I'll just run down through, as far as it being "*contrary to the public interest*", that existing junkyard has been there even long before the permit was issued in 1975. It's been there forever. It would make sense to keep it there than have another one started somewhere else. "*The spirit of the ordinance is observed*" I'm following the ordinance to get here, so I don't know how else to cover that but it is zoned commercial in that area and just further down is light industrial to me this if far more suited, you can request it in a residential area as well, I think this is a far better area. "*Substantial justice is done*" this company has come to town and done a wonderful job cleaning up that property I figured they're a big asset to Candia, we'd like to keep them here and if they need to expand to stay here I think everybody wins on that. It's good for them; I don't see where it's going to harm anyone else. "*The values of surrounding properties are not diminished*" well my brother and I pretty much own all around them, and it is out of the way of a lot of things, it is in a commercial zone. You can't really see many residences from there. The closest residence is the house next door and is actually owned by the owner of the people that still owned the Car World property also own the other property. There are two houses in there, one is Benji's, I'm sure Benji doesn't mind seeing a few cars out back. And as far as a *hardship*, there's really no other place to go. It's a hardship that it's we're not allowed to just put a junkyard wherever we want

and this is the most logical place to expand this. If we don't allow this I don't know, there are really no other possibilities to expand so that's my five items. At this point I'll answer some questions and then you'll probably want to ask some questions of the CoPart people as well.

B. Petrin asked what's the topography of this chunk of land you're looking to use, is it mostly flat or do you have to do some major excavation. R. Severino responded the reason there's two sections there, that first 7 acre section is fairly flat, the land next door pretty much runs down to a constant 5-6%, but it's basically flat so it won't take a lot of grading. The 3 acre parcel would probably take a little more grading but that area would probably be used for retention, water retention stuff like that. So we're separating those areas for our own use.

D. Buckley stated there was a document here about the Lamprey River because you're within a quarter mile, is that correct. R. Severino that's why we drew that 1200 foot, when they wrote that letter back, they said it looks like you're getting close to that 1200 foot line, and so we drew, we pulled it back a little bit. J. Szot said a quarter mile is 1320 feet. R. Severino commented if we have to move another 100 feet we will, there's no need for us to deal with Lamprey River. I wasn't aware of that until I saw that letter. It doesn't mean we can't do it, it's just another layer and I'm not sure if that's a provision here or if that's probably Planning Board. J. Szot said Dick can fill you in on that because he's the one that made us aware of that. This group will look at your things, they really don't have the authority to do anything but they can look and make suggestions about what you're doing but by law they have to be notified. And so we notified them and we didn't have this to give to them. R. Severino said they didn't know where it was but it appears to be close. I'm not that familiar with that issue, I think at site plan, if bureaucracy is going to take over, we'll give up 100 feet. If it's going to create a lot of delays and a lot of money, we don't need to be within the quarter mile. I thought she mentioned 1200 feet in her letter. J. Szot said I think its a quarter mile which is 1320. R. Severino replied it's in our interest to stay out, if we need to get in there, they would be notified but I'm assuming that would probably come at the Planning Board level and I right Dick?

D. Snow responded I'm speaking for the Lamprey River Advisory Committee the LRAC is notified of any process that's being approved by a Town Board that is within a quarter mile of the Lamprey River, North branch protected corridor. It does not necessarily imply that he can't go into that, all it says is that they would review it and the project review committee looked at the initial and said well we think its pretty close but don't really know, we need to see the plans. I believe their suggestion was well you'd probably need a dredge and fill permit or whatever. R. Severino said an AOT permit. We're going to run into that with Alteration Terrain Permit as well. D. Snow continued the quarter mile is not a restrictive measure; it's merely a measure of notification so that we can advise the Town and DES as to whether we believe there are any concerns with the resource within that quarter mile corridor. R. Severino said is it this Board's concern or more of a Planning Board concern. D. Snow said from the perspective of the statute Ronnie, it says that any Board considering something that might impact the resources of the river within that quarter mile it requires to notify us. R. Severino said ok so it's a notification and we can take it from there.

J. Szot asked did you get a copy of the letter that came back (R. Severino said yes), that said it *seems likely that a NHDES Alteration of Terrain Permit will have to be applied for, should your ZBA give the green light for further consideration. If such is the case, please advise the applicant that a full submission of plans and reports must be made to us at the same time as they are submitted to the State.* You've read it; you have a copy of it. R. Severino said yes. But we're required to let them know. R. Severino said we are aware of it. My engineers aware of it, I've sent him a copy of that letter. B. Petrin asked do you have to have a DES permit amended or something because you're increasing the size of the lot. R. Severino responded any land disturbed over 100,000 sq. ft. requires and Alteration of Terrain permit form DES.

I. Byrd we got two maps. R. Severino said I embellished the second one. Dave requested that we should get some dimensions. I. Byrd said but the shapes are different. R. Severino said it says we shouldn't come within 300 feet of a Class V road with a junkyard permit so we backed that part out. I. Byrd said there should be a different name for this, automobile storage. B. Petrin commented it's an ugly

word but it isn't that. I. Byrd said it sounds so bad. R. Severino said to answer your question, this one has dimensions so we took some area away from here. I. Byrd said when this was approved way back when, you weren't the owner, there were monitoring wells, all throughout as to run off and things like gasoline, oil, stuff being spilled, whether that would leach down into the river. Are those monitoring wells still there? R. Severino said I don't know what's over there. D. Murray said DES has signed off on all of those monitoring wells, there were never any signs of anything leaking into the ground or anything like that, they monitored them for a good many years, 15-20 years, and recently, probably within the last three years, they've signed off on that with no issues at all. R. Severino said we were very lucky with Jeff Cantor, who's no longer with us, he was known in his industry for taking that to another level and that was about the cleanest, I will say that was a junkyard and he did a very very clean operation and when the CoPart people came to town they cleaned it up even more, erosion is not an issue, but again through the site plan process that's going to be looked at all over again. I. Byrd asked are you going to clear cut this whole section, if you have gravel. R. Severino replied everything will pretty much be cut. Not everything within those yellow lines, as we might not use the entire 10 acres. 10 acres is the area we need to try to fit it in. In this far NW corner we probably won't cut there because it's getting too steep. We aren't going to cut anything that we don't need to use.

D. Murray said when CoPart's came to me to take over the Car World property, I had never heard of CoParts so I did my due diligence, called the EPA, I called DES, the two entities could not say enough wonderful things about CoParts, never an issue, never a spill, nothing. A very clean facility. B. Petrin asked what areas are they located.

T. Smith replied I'm Tom Smith, property manager for CoPart, I've been with the company from October, and actually this month will be 21 years. When I started with the company there we had 41 facilities, they were actually building yard 41, and this is yard number 155 in our nomenclature. I have budgets for yard 179, 189, yard 80 and we're working all over the country. The numbers are not completely sequential because there have been some facilities that have been mothballed in lieu of a larger facility but we're getting really close to that 200 facility mark. We have 14 facilities in the United Kingdom, 5 in Brazil, none of these places I go because I put 300,000 miles on a pick-up truck about every 5 years and I don't fly. But we just opened up in Germany, Spain, Dubai, United Arab Emirates, we've really gone from a company that started here in good old USA and have a global footprint right now. B. Petrin asked headquartered here. T. Smith replied yes, Dallas Texas. I am from Pittsburgh, PA. This location here in New England, if you want to call this region sister yards, we have a facility in Hartford, one in S. Boston, N. Boston, near Springfield. As you go out we have 7 or 8 facilities in New York. The Northeast and the Mid-Atlantic because of the population, we're really jammed in there tight. We love it here. Sometimes when you open these places up, we don't know really what our business is going to be. As soon as we turn on the switch so to speak and say ok guys we're in Candia, we're in this place, we're in that place. You kind of anticipate what your business is and the next thing you know your customers start coming to you, overwhelming even. Before Tom Severino did our site work, before we even finished, I joked with him that we'd have to find out who owns this property around us because this place is filling up as he's laying gravel down and setting cars on it. And he said well I know the owners, I can get you in touch with them and sure enough by the time we're finishing up it's evident, I make a phone call and say guys we're full. I don't know what you want to do. Find out who owns the property. So that's what brings us here and with your blessing we'll proceed and move to the next step. Anything I can answer and John Kastro here, he's our General Manager for the facility. He's local. I'm spending a lot of time here but we'll answer any questions about what we do.

J. Szot asked what do you do. T. Smith replied primarily we're an auto re-marketer, a wholesale Internet auto auction. J. Szot asked so your business is not on site. Everything is done on the Internet. T. Smith said yes it is. The facilities end up being basically a car storage facility. Our customers can be anywhere from insurance companies to lease companies, owner operators, if you want to sell your car and don't want to have to put up with the hassle of people coming to your home, you can bring it to our facility, bring your Title to us and we can sell it on the Internet instead of 3 or 4 people showing up to look at your car, you might get 300 people looking at your car. But the lion's share of the business is

insurance based. So a lot of the cars are damaged. And that can be anything the insurance company has paid out on. Fire, theft, collision, you name it, whatever they've paid out. And then you have your end of life, we have AT&T, Bell, certain freight companies that might go out of business, not go out of business but roll through their inventory when it hits a certain mileage mark. If they're our customer, we sell that. We might get 10 AT&T trucks here, 30 in Hartford and 200 of them in Houston. So all of those customers come into play but the business started out basically as insurance auction, insurance damaged vehicles. But because the computer doesn't really know what it sells, other customers want to use that vehicle as well so we branch out. We have marketing guys that are out there beating the street trying to get business for us so if the Town of Candia wanted to sell their fleet of Police vehicles, they can sell them right down here. When Tom, all of his company trucks, when he gives his employees all new trucks, they can bring them down and we can sell them. But the lion's share of it is insurance damaged vehicles and we end up using that dirty language that nobody seems to want to say, junkyard.

J. Szot asked what happens to the cars you can't sell. T. Smith replied everything sells. There's no such thing, they all sell. There's a buyer for everything. J. Szot said the concern that I have would be that there is something that doesn't sell, it gets stuck on the back of the lot and gets left there and they start to pile up. T. Smith said we don't get paid until we sell so we have no incentive to let a piece of inventory sit. Now occasionally if you have a lawsuit, some of these comes in they have a lawsuit...this inventory rolls in 30, 60, 90 day increments. As fast as we get the Titles, we enter them, because that's when we get paid. If you have something that's tied up in litigation, it might be there for a little while but it's not that situation where stuff just keeps backing up backing up, it's a small percentage of the inventory. Most of our business is not a consignment, it's what we call a PIP so we do a Percentage Incentive Program, we do all of these things for customers for free. Pick up the car, detail the car, shrink wrap it if it's a nice late model vehicle to protect the inside, then we don't take a paycheck on that until somebody actually buys it. If something sits, we probably have \$400 or \$500 dollars in a vehicle sitting and we don't get that money back until it sells. They all sell.

R. Howe asked you don't have any individuals coming to your lot coming to your lot saying I'm looking for a used car. T. Smith said no. Some people will show up here because they remember Car World or LKQ but we just have to point them to some of our buyers that still may be dismantlers but we're not selling any parts or anything like that. B. Petrin asked so you're not dismantling or doing reclamations or fluid handling or anything. T. Smith said no. J. Szot asked and you're not selling cars at the site. So if I came and you had something I wanted you wouldn't sell it to me on the site. T. Smith said I'd have to direct you to our member site and you would become a member of CoPart or someone at the counter could help you become a buyer and then you could pull out your laptop, we have phone apps now don't we? We have phone apps, Android, and you can just buy it from your phone. For the longest time, we probably process over 1 million vehicles a year; we had more pictures on the Internet than anybody. We take 10 pictures per car get uploaded, certain views that everybody wants to see and that what everybody buys off of are those pictures.

I. Byrd asked what's the most expensive car you've ever dealt with. J. Kastro replied the Ferrari MJ \$875,000. I. Byrd asked where was that from. J. Kastro said there was one in Texas and I thought New York. J. Szot said the only concern I would have is the fact that the cars would be staying on this site over an extended period of time and being left and you're assuring us that that would not happen. Is there some provision for a car that you take in that you can't sell? T. Smith said eventually the ones that are in litigation that finishes up. Anything we can't get Title to, there are processes through the State to be that you'll be able to apply for a duplicate Title. There are junk programs, parts only. There's a lot of different vehicles for disposition so it's not going to just sit there, unregistered, untitled, no plates. It's not going to sit there. J. Szot reiterated so if it's something that isn't going to sell because someone's going to drive it you're going to sell it to someone like Jeff Cantor and he's going to...T. Smith said a lot of the ones that just don't seem to get the bids we have an agreement set up with folks that will take them for scrap metal. They negotiate those deals on a continual basis where x amount of dollars a car and sometimes they get a winner and occasionally they'll get a loser but they'll take 10-15 cars at a time, the types of cars you're talking about. R. Severino stated and correct me if I'm wrong but I believe the real estate there is too

valuable to have cars sitting there. T. Smith agreed and said we make money when we sell and how many times can we run something through that same spot. If there's a car sitting there that I can't sell, I can't sit another one there. J. Szot said does this show your cars on the site. T. Smith said no this is after we took over and currently all these other areas are full now. R. Severino agreed. J. Szot said ok. I. Byrd said my question is for Ron. Ron does this operation also own the used car lot off 101 on the other side of Auburn? It used to be Jeff Cantor. R. Severino replied no. Originally it was Jeff Cantor days, Murray's Auto Parts; Jeff Cantor used to work for Jeff or for Jack Murray, bought out Murray's. Jeff Cantor sold that off a long time ago. When he moved to Candia in 78' he gave up that property and moved Murray's Auto Parts here. J. Szot said and that's a whole different operation because they hold the auctions on site and people take the cars. You're saying everything is done on the Internet, you just get the cars out of there, somebody buys it, you package it and get it out of there.

B. Petrin asked if there were any other questions. R. Howe said I have some questions for Ron. How far back does the Commercial Zoning go? R. Severino said I think it goes to the river now doesn't it. Its 800 feet by about six or eight years ago. B. Chivers stated its 800 feet on the South side of 27 and goes to the river on the North side. R. Howe said ok and looking at this I can't see, there's no wetland in any of this. R. Severino said again, we had it flagged. That block to the right is separate. There are a couple of things of wet in there but that's all going to be dealt with. J. Szot said you have to get that AOT permit, I would assume that they are going to be aware of that. R. Severino replied yes, all that's being done that, the soil scientists have been out there, the wetlands have been mapped, surveyed, we're in the process of applying for the AOT permit which you have to have all of that done, which is also part of the requirement for site plan review.

B. Petrin said any other questions or comments. If not, we're going to close it to public discussion. Boyd will you help us with the variance criteria?

B. Chivers read the Board of Adjustment shall hear and decide the request for variances in the terms of this ordinance. No variance may be granted unless all the following criteria are met:

*"1. No diminution in the value of surrounding property is not diminished;* B. Chivers said I don't believe it would be. It's right next to a grandfathered non-conforming use. J. Szot said it's consistent with what's happening in the area. It's zoned for this. There's really no reason not to allow them to expand and I think it's a better use, as much as I loved Jeff Cantor and know that he did a wonderful job, there's always that question about the fluids and the gasoline and by getting the cars in and out of there, I think it's a much better situation. **All were in agreement. (5-0-0).**

*"2. Granting the Variance would be a benefit to the public interest;"* B. Petrin, R. Howe, B. Chivers, I. Byrd agree. J. Szot said I agree because I think it will bring value to the town and it will reward them. It will provide space that his family needs. R. Howe said I do have a question, we approve this, CoPart moves on to something else. Now have we effectively approved a junkyard? Now 20 acres, the potential for. It occurred to me. R. Severino said for what it's worth, if CoPart left, I would not allow a junkyard on my property. I know that's a possibility. R. Howe said but it's not your property, you're not going to control it anymore. R. Severino said well it hasn't been conveyed yet. I. Byrd asked are you leasing it to CoPart. R. Severino said yes, at this point. I still own it and I still have the option to put covenants in as to how the property is...R. Howe said that would be my only concern, now we have the potential for a huge junkyard. R. Severino said that's why I'm trying to do it under my name and have a little more control over that. R. Howe said so in the event that they leave...R. Severino said I still own the abutting property. I. Byrd asked is any of this land in current use. R. Severino said yes. I. Byrd asked so you're going to take it out of current use and file. R. Severino said yes, the Planning Board will make sure that happens. **All were in agreement (5-0-0).**

*"3. Denial of the variance would result in an unnecessary hardship to the owner, arising special conditions affecting the land or buildings that distinguish the property from other similarly restricted property in the area.* B. Chivers said I agree. He's already adjacent to a junkyard if you deny him this variance you condemn that property. J. Szot said you're not changing it, better use. I was concerned that if it's out by the road and we have one of the major recreation areas in our Town is the water park, and that if you are expanding another 400-500 feet on the road, people going to the water park are going to be



looking at the cars, where this is all in the back, this is not going to change that and that's certainly a consideration for variances if you effect a major recreation area in the area.

**All were in agreement. (5-0-0).**

*"4. Granting the Variance would result in Substantial justice;" All were in agreement. (5-0-0).*

*"5. The use will not be contrary to the spirit of the ordinance;" All were in agreement. (5-0-0).*

**MOTION:** B. Chivers **moved** to grant the variance authorizing a junkyard under section 5.01B. J. Szot **seconded. All were in Favor. (5-0-0). Motion Carries.** B. Petrin stated you'll receive a notice of decision.

**Case 16-616** Applicant: Joshua Horns, Paul McCoy and/or Michelle Cooper; PO Box 924, Raymond, NH 03077-0924; Owner: Richard K Matthews Trustee; 121 S. Flagg Street, Worcester, MA 01602; Property Location: Aunt Mary Brook Road, Candia NH 03034; Map 408 Lot 068; For a Special Exception; Intent to build a Single Family Home on a 29.5 acre lot on a discontinued road in the residential district.

Abutters present None

Residents present Joni Plante of 27 Aunt Mary Brook Road was present; Richard Snow 127 Depot Road, Candia, NH 03034 was present.

Paul McCoy, Realtor, representing Mr. Matthews, was present. Realtor, Michelle Cooper was present. Applicant, Joshua Horns was present.

B. Petrin suggested that perhaps if we look at what he gave us while he gives his presentation we might read along and learn to see what he's up to. And I'm going to be counting on some of the folks on the Board who've been in Town for a long time and recall the history of that area.

P. McCoy said what we're asking for is for the Zoning Board to consider issuing a request for a building permit on Aunt Mary Brook Road, a discontinued road. Basically, the road was discontinued in 1872 and there was a Town vote of such and therefore the property goes to the center of the road and over the years and people have used the road, actually it's funny because when the road was discontinued, it was named something else. It was changed to Aunt Mary Brook Road many years after it was actually closed. But the issue we have here is this being a discontinued road, the right of...the public has no access to the road but the owners, anyone, owner of the road has the right to pass the road continuously, it doesn't go away. As we're talking here, the Town has issues at least 10 of these in the last few years; I have a copy of all of them. We're just asking for relief to build one house on 30 acres of land that is on Aunt Mary Brook Road. And if you grant a variance they have to sign a waiver of liability and an agreement with the Town that they will not be responsible for Fire, Police, School Bus or any liability related to a road. The problem we have we have 30 acres of land on an old discontinued road therefore we don't have access of 200 foot frontage on a Class V road so that's what we're asking for, relief from the frontage requirement.

P. McCoy continued there's *no diminish in value of surrounding..sufficient areas*, to build on this property would not diminish any values of surrounding properties, if anything it would increase value as the access of all property owners along the way will benefit from better access to their properties.

*Granting of this request would be of benefit to the public interest.* As this unique lot is approximately 30 acres in size and we are requesting just one house to be built. The public will not see any change and will not be responsible for any maintenance or town services. Also the town will be receiving much-needed tax money for new dwelling on this property.

*Denial of this variance would result in unnecessary hardship to the owner arising out of special conditions affecting the land and buildings distinguished property from other similarity restricted properties in the area.* This unique property has been used as a residence on the property many years ago. Matter of fact there's remains of an old house on the property that we found. It was pointed out to us by a previous owner that

there was a property there. The present owner also received a building permit, which you'll find in the packet, at the time he purchased the property. This particular property also has a power line easement alongside Aunt Mary Brook Road and you'll see that in the picture that I gave you. There is an easement up through there for the power company to take care of that power line. Not only will the property owner maintain this property access as the power company maintains access for their power lines also. Also there are two other driveways that have been issued off of this same discontinued road. One by court order as to the owners may maintain the road for their access to the class V road. If you look in your packet, there's a court order saying people own the road, all the abutter sown that road, yes that's the court order. If you read their, the agreement was that they could maintain the road to their property. We do have a court order saying that the property can be maintained by the property owners. There's also a map showing where that road is.

*The Granting this request would result in substantial justice.* The owner of the property would be able to use his land in a reasonable request for a 30 acre lot. The owner when purchasing this property would never bought it if you did not get required building permit as he was assured from the town before he purchased the property. The owner also will record any agreement and release of liability. Substantial justice would be done by granting this request.

*Use will not be contrary to the spirit of the ordinance.* By allowing one building on 30 acres with the owner recording an agreement and release of any liability with the town is not contrary to any of the town ordinances.

B. Petrin asked is it a road or is not a road? We keep calling it Aunt Mary Brook Road.

P. McCoy replied they call it Aunt Mary Brook Road, I think it's kind of long, as of, since 1945 they classified all roads, Class VI but this was done in 1872.

I. Byrd said it was discontinued as a road in 1872. P. McCoy agreed. I. Byrd continued so it stopped existing as a road. P. McCoy said but you can't take the...that's correct, it's not a road it's a private...it's basically; the right of way is still there for the people that own the land. B. Petrin asked is it a street? P. McCoy said it's still there; you can drive a truck down there. B. Petrin said if this is representative I would say so, yeah? P. McCoy said you can see the power lines on there. J. Szot said those are the power lines to McRae's house. P. McCoy said they go all the way through, all the way to Langford. J. Plante said McRae's is to the right; I'm the owner of that property.

J. Szot stated that the problem is when a road is discontinued, from the center line of the road the property reverts to each of the owners so property no longer sits there. This Board cannot, that's legally what happens, this Board cannot, there are remedies for you, but it's not through this Board. We have no right to take land from people to say that they can build a road so that they can get to your property. There is a remedy for you but it is not...P. McCoy interrupted I'm sorry Ma'am your mistaken. The remedy is here. J. Szot said it is not. P. McCoy said yes it, Ma'am, if you look, also if you look back, okay. J. Szot responded RSA 231:21 discontinued roads. You go to the Selectmen. Read it. Google it and read it, that's the remedy. P. McCoy said we went to the Town and this is different than that. This is a discontinued road. J. Szot highways previously discontinued highway, what proof do you have that this road is a Class VI road? P. McCoy said this it's a discontinued highway. J. Szot replied then RSA 231:22 previously discontinued highways. This is how you access; you have to follow the procedure in RSA 231:22. That's how you access. P. McCoy said we brought that up with the Town and they said because of the distance and because it had no frontage, we had to go to the zoning board.

J. Horns stated I'm the potential buyer of this property; I sold my house in Danville and living in an apartment right now in Bedford. With all due respect, the question is not with access, I'm not an attorney but my understanding of NH law is that when a road is discontinued, it cannot be land locked. It is true that the land returns to the abutters as far as the center line of the road, however anybody who has sole access to their property through, down that road, has the right to both maintain and use it. So this is not a question of access, this is a question of whether or not we are granted a variance for the 200 foot frontage section in the ordinances.

J. Szot said can I read, would you listen to what this says here. *Notwithstanding any other*

*provisions of this chapter to the contrary, any owner who has no access to his land by public highway, may petition the Selectmen to layout, subject to gates and bars, a highway located where any previously discontinued highway was located. Upon receipt of such a petition, the Selectmen shall immediately post notice there are two places in Town, where the land is situated, and shall mail the right notices to the owners of the land over which such highway may pass, postage repaid at their last known mailing address. Unless written objection to such layout is filed with the Selectmen within 60 days after the posting and mailing of such notice, the highway shall be laid out, subject to gates and bars, in the location in which it previously existed if the Selectmen find the petitioner in fact has no other access to this land by public highway. The Selectmen shall assess the damages sustained by each owner of the land or other property taken for such highway, which damages shall be paid by the petitioner. The petitioner, and all those succeeding him in Title, shall be required to maintain the gates and bars and to maintain the highway, so laid out, at their own expense. In the event, written objection to such layout is filed with the Selectmen prior to the expiration of the 60 day period the petition shall be deemed to be a petition filed for the layout of a new Class IV, V or VI highway in accordance with RSA 231:8.* That is your remedy right here. This is exactly what you have. You have no access to land, on a public highway, on a previously discontinued road; it tells you exactly what you have to do. You have to petition the Selectmen.

J. Horn replied we do not want a public highway Ma'am. J. Szot responded it says, you will have a highway which is subject to gates and bars, you can block that. That's the only remedy you have, we cannot take land from people for you to put your road in there. J. Horn continued I've just been given this from Michelle Cooper, who's my Realtor, RSA 231:43 Section 3 provides that no owner of land, without the owner's written consent may be deprived of access over such discontinued highway as such owner's own risk, on its face the land which seems to apply to all land owners, not merely those with no other access. So if you look up RSA. I. Byrd and J. Szot both said you have a remedy. J. Horn replied it says we may not be deprived of access without written consent. I. Byrd stated we're not depriving you of access. J. Szot said you didn't own it in 1872. J. Horn said the current owner has access. M. Cooper said the Town has to prove that the road was actually discontinued, which we did ask if we could see the verbiage on the ordinance. P. McCoy said if take a look in your packet. J. Szot said I saw the thing about the McRae's I know about that case. P. McCoy replied if you read that, that's a court order they have the right to maintain the road. D. Murray responded up to their property. P. McCoy said up to their property. And if I own property up the street, I have the same rights they do. I. Byrd stated but you have to follow those. P. McCoy said I don't have to. You have the right; you have a court order here. I. Byrd said you cannot take other people's land. P. McCoy said we're not taking that. I. Byrd replied on the road you would be.

Joni Plante asked can I ask a question. I'm Joni Plante and I'm 27 Aunt Mary Brook Road and the successor of Michael McRae. So that belongs to me, I'm the successor. I don't think their asking to take land. I drive up and down that driveway all the time and I actually don't own it but I have an easement. They have an easement to access their property. Which is what that basic court hearing is about. They're not taking land from somebody. That's the whole idea of an easement, is that you don't own the land. I. Byrd said but an easement has to be on the Deed. Don't shake your head at me. No her. I own a parcel of land that's 30 acres, that runs along the former railroad. There was an easement next to my house that was on the Deed and we ended up having to buy the easement from the owner of the back land.

J. Plante asked how did the Sherman's get their house approved. I. Byrd said I don't know who the Sherman's are. J. Plante said they're the ones that own on the left side, where they built on 18 acres. They were able to build a house on this. I. Byrd said and they have frontage. J. Horns so you mentioned a railroad, but we're talking about a public highway, a Class V road being discontinued I guess in 1872, to being a public, I mean a private road. I. Byrd said January 28, 1872. J. Horns said right, then it would go from a public highway to a private road and while it is true that the land goes to the center of the highway for the abutters, it reverts back to the abutters, the...without written consent, you cannot deprive the current owner, whoever that was in 1872, of a right of way to their property. So by your argument, if I own the land, I would be trespassing if I drove onto my land. I. Byrd stated which is why we bought the back acreage in order to not have to provide access to someone. J. Horns stated I respectfully disagree. I.

Byrd said we did it.

P. McCoy said anyway, what we're asking for is relief from the 200' frontage. We have the right to go through the property. If you look at all the surveys, it could be, if you go back and look because I just checked with the Town before I came in, when they did the discontinuance, they didn't...once of the things you have to do when you discontinue a road, is you have to put down that the deed, the people have to deed, the Town has to deed it back fee simple. It doesn't do it automatically. We could probably go back and find that that road was never closed properly. But if you look at all the surveys, right up that road, matter of fact there was one just done, showing Aunt Mary Brook and to the brook to the road is a separate road, it's probably still owned by the Town of Candia. It doesn't automatically do that, you have to put it, you have to write it in there that the Town will deed the land back. We have a court order saying that a person up the road must maintain the road, it says, they will maintain the road to their property, we'll willing to do that. We're going to maintain it to our property. This is nothing unreasonable. And number one, the Town of Candia already gave a permit for this property, when this gentlemen came in and asked to get a permit, he wouldn't have bought the land when he did do it, a period of time, they actually, he came back in and got a physical permit. He didn't build a house, he was going to but things changed in his life. You've got at least 10 of these going on in Town, which were all done right, Baker Road, Donovan Road, all of these roads were discontinued. You allowed it; I've got 10 of them I can show and one's a court order. I'm just saying that this is a reasonable request to build one house on 30 acres of land that's almost all solid good, the septic design's there, the power's there, there's no reason in the world not be able to build one house on 30 acres.

D. Murray commented needless to say I've been digging and scratching on this for a couple of days now and my interpretation from what I found, the road was discontinued completely, not gates and bars, discontinued in 1872. They still have their rights to use it, to go up and down, enjoy their property, but not full use of the property, which would include building a home. That's the way I interpret it.

B. Petrin said and I still say the question if it's no longer.. a discontinued road then yes theoretically, the ownership should have reverted to those abutters, but it doesn't appear that that happened otherwise we would have a right of way, an easement in there and I don't know if that exists on all those deeds or that it was ever that it didn't get reverted back to the owners. J. Szot said I think they have a remedy. They have a remedy described in the State statutes to make it a road again that's subject to gates and bars, to petition the Selectmen to lay out the road and then they can do whatever they need to do to make that road. I don't feel that we have authority on this. I think the State provides a remedy for them and I think that's their remedy. Go to the Selectmen, petition the Selectmen to lay out that road subject to gates and bars, pay for the, whatever penalty the Selectmen deem...

B. Chivers commented Mrs. Szot they're still going to be, if that were to occur, they would still be in the same position they are tonight. They don't have frontage on a Class V or better road. J. Szot said but then they can build on it. B. Chivers stated they would still have to have a variance under 6.02 to build on that property, they wouldn't have frontage on a Class V road so they would be back before us. J. Szot said so maybe this is premature and maybe they need to get that first and then if they got that first and then we could address the conditions of whether or not they have access. B. Chivers said my recommendation is to consider their application for a variance based on the five criteria.

J. Szot replied I think it's premature. I think it's backwards. I think they need to go to the Selectmen first and get through this and then once they have access to it. There are two points here, one they have no access, or at least I don't think they have access and Dave is saying they don't have access and two....

D. Murray interjected they have full access but not full use. J. Szot replied but not full use, so in order to get...B. Chivers asked Dave what limits their use of the property. D. Murray said it just says no full use. B. Chivers asked in the deed. D. Murray said no in that book right there, "*Hard Road to Travel*" it talks about discontinued roads, gates and bars, class VI roads and how it all went down, how it changed over the years, the discontinuance of roads. B. Chivers stated so by virtue of the vote to discontinue that road, they are deprived of their right to the full use of their property. B. Chivers said and a full use in your estimation would be the construction of a home. D. Murray replied yes. B. Chivers said ok by virtue, they

have, then that becomes a condition on the deed then. D. Murray said I don't know.

P. McCoy replied now we're getting into Constitutionality, let's not, you can't deprive, I'm not sure that's what they meant by that. Again, you can go all kinds of issues with that. You have a road here that was discontinued you can never stop the person from accessing that road. All we're asking for is that under today's guidelines, we have 30 acres of land that at one time did have a property on it; it did have a building permit. We're trying to eliminate any other issues that could come up with this thing. You've got a court order saying that they can use that road it was reverted to all the abutters if you read the court order. My interpretation of that, and people we've talked to, you have the right to go up that road. Now the Selectmen, do have a thing for Class VI roads, we wouldn't even need to be here. They allow private roads. If you want to call it a Private road, you can give us a building permit because you can have 3 driveways off a private road. Right now that road is an easement through there, you have a right to go in there. The people that own the land. You have a court order there we're in here for zoning for 200 foot frontage. A road that's very easy to maintain, and plus we already have an easement with the power company, which I think might be one of the reasons they still have it up there.

R. Howe asked Ingrid and Judy is this the same piece of property that we denied a permit for probably five years ago. I. Byrd said more than that. R. Howe said I remember denying a permit to build a house on Aunt Mary Brook Road. J. Szot said we've done it several times. R. Howe continued much of this same discussion at that time and if we've denied it once, right or wrong, for us to approve it now, you talk about letting yourself in for potential problems. J. Szot commented that there are two issues here, one is the issue of the access the other issue is they don't have the frontage. I think that if they went to the Selectmen and they laid out that road, if they petition the Selectmen to lay out that road, and then you can say alright you have a driveway, you can put one house on a driveway, and we could allow them the variance to build on that road. But I think that allowing the variance to build is putting the horse before the cart. There is a remedy and this part is not through us. Once a road's been discontinued, the State says you go to the Selectmen. They would have to go to the Selectmen, and then when they have that from the Selectmen, then if you need...R. Howe replied I don't have a problem with building a house, I have a problem with the fact that you don't have a road to build it on.

P. McCoy replied it seems like we have some confusion, can we postpone this meeting until next month until we can figure out what's going on. I see what you're saying and we discussed it with David a few times and that's how we came up to the idea of coming here, so if we could continue this. I. Byrd replied we told you what your remedy is. P. McCoy said we've already gone through that. We went through this. I've gone through it with David; I've gone through it with lawyers and everything else. And they said we don't have to do it, a couple of things, when you have a court order you can use the road, that's one thing. The other thing is everyone has a right to their property. The public doesn't have the right to go up there. The people that own the land there have the right to get to their property. What David was saying, you don't get full rights to it, well that was when they closed the road, that doesn't mean you can't build a house up there. But the Town has an ordinance, if you sign the waiver of liability, matter of fact the RSA's that came it to protect someone for this same exact reason. J. Szot stated that's a Class VI road. P. McCoy continued Ma'am you're talking about laying out a road, you want to do this, this guy wants to build one house. He doesn't want to spend \$100,000 to try to put a house up there.

R. Howe commented maybe he's absolutely right and we should take his whole package that he has to present, give it to Bart and have him research this thing and then try to come back at a meeting next month. D. Murray said that's my suggestion. R. Howe continued we still have to make the final decision but at least we're making it with...B. Petrin said I don't know the protocol for a continuance. J. Szot said you just announce it and then everybody here knows about it and you don't have to re-notice it.

B. Petrin said for the record, my concern is that once the road got discontinued it should have gone back to the abutters and if that's the case, it should be shown on tax maps that there is no more road. And if that's the case the tax maps, would, could and should have an easement on them, each one of the properties that you had be traveled you. P. McCoy said it's in your packet it does show the road all the way through. M. Cooper said so doesn't the conservation map. P. McCoy said that's the easement for the power line going through. B. Petrin asked this is an easement. Is the easement specific to the holder, if it's

public service? P. McCoy said yes. B. Petrin continued it's not a public easement right. It's an easement based on notification. J. Szot asked so this road is the public service road. P. McCoy said no. That's the road on this property. I. Byrd said it's the driveway. P. McCoy said well that's Aunt Mary Brook Road right now. J. Szot stated someone's been over that recently with heavy equipment. P. McCoy said yes. B. Petrin said and we don't know who owns the property.

I. Byrd said I'm going to admit being the old elephant in the group; I've lived on the property I'm on for years. I remember very clearly that it was not Aunt Mary Brook Road initially. That was something Mike MacRae came up with because originally that stretch of land had been the continuation of the stage coach road that came from Chester, down Crowley Road, Depot Road, and through the woods because it got discontinued and Thresher Rd in Deerfield. It was never known as Mary Brook Road until Mike MacRae came up with that and there were a lot of arguments because the post office did not initially want to deliver mail to Aunt Mary Brook Road because it didn't exist. So there you go.

P. McCoy stated that's what I said when I first came in. It's interesting that the road changed its name and its' known like that and written down like that on all surveys and its supposedly it's a discontinued road. J. Szot said Donovan Rd. and there are many discontinued roads that are shown on the maps. B. Chivers asked Mr. McCoy did you say you wanted to continue this. P. McCoy said yes. B. Chivers continued what would be the purpose of that. P. McCoy said well it would give us time to go in and then come back to say we have the right to variance. We've already got everything in here.

B. Chivers said what would happen in the next month. P. McCoy said we could check with the Selectmen. B. Chivers continued is that to give us a month to get legal opinion on your position. P. McCoy said yes. B. Chivers stated at the end of the day, even after we conclude you have every right to access the property you still have to come back for the variance. And your application for the variance will still be judged on the five criteria that are present. P. McCoy replied right but he cost of putting the variance together or here we can continue it another month if we have to, if you agree to it.

B. Chivers asked Mr. Chairman would you allow the Board to consider the five criteria and see if he's successful in getting access to the property whether he would in fact ...

B. Petrin stated I'm not convinced he has access to the property. I. Byrd said he doesn't have access. B. Petrin continued and so that would be the terminology that Dave used, full use, I'm just not convinced you have access to the property because it's not a road, yet nobody has shown that it's been deeded back to the abutters and nobody has demonstrated that there's an easement there to traverse that property. P. McCoy said I just gave you, there's a plot plan in there, court order that says we have all, not just abutters, all people on the road have access and have the right to maintain the road. It has this in a written court order. B. Petrin replied absolutely but it does not illustrate what those boundaries of that road, we'll call it a road because even though it's not a road, the court order calls it a road, is that correct. P. McCoy said it stays the way it is, to maintain it the way it is. B. Petrin said but who owns it. P. McCoy said it says here the abutters. B. Petrin said so the abutters own it. P. McCoy said if you read this thing it's all the abutters. B. Petrin said that's right, because it's no longer a road so the abutters. I. Byrd said if you're making a road out of it you're taking the land away from the abutters. Which is what the RSA says. P. McCoy said but according to that court order, because that's going across other people's land to get to that property that their talking about. If you read it, it specifically says, they will maintain it, and it also says to the benefit of all abutters. B. Petrin said I can't argue with that. I. Byrd asked what's the date on that. J. Szot said that's the thing, Christine was going to be here because that's the case that involves her father.

B. Petrin responded I'm in favor of continuing to give you a chance to do some homework, as well as us, without hearing the five criteria because I don't have a comfort level that you're.. I understand this. I don't think the court order is illustrating whose land we're traversing. Comment from the audience please.

J. Horns asked my question is would a change in understanding or clarification of understanding of access have a material difference on how you're going to vote. B. Petrin said I believe it could because its full use of the property we can't allow or give consent to build without you being able to get there. P. McCoy said these are ones that you've already issued. B. Petrin said when you say we you're talking

about the Town of Candia. P. McCoy said Town of Candia. Most of them are on discontinued roads. Done before, Baker road was done in 1901; most of them were done before that. B. Chivers said you just offered deeds, is that what just did. P. McCoy said yes. B. Chivers continued to properties dated to 1901. P. McCoy said Baker road was discontinued in 1901. Well ours was done in 1872. B. Chivers said you've just offered deeds to properties on those roads. P. McCoy said no this is the, this is when the Town gave them permission to build on it. B. Petrin said it came from the Selectmen. P. McCoy said it came from the Selectmen, the Selectmen had to sign...the buyer has to sign an agreement, which we already agreed to, we have to do that anyway, if you give us the permission to build on it, we have to sign a limited liability agreement with the Town. Every one of those is on a discontinued road. J. Szot read *if a highway is completely discontinued all Town responsibility ends if the public right of way ceases to exist*. P. McCoy said correct. J. Szot continued *the right to use and possession returns to whoever owns Title which is presumed to be the highways abutters but subject to whatever private easements may exist*.

B. Chivers stated all these documents represent, references a Class VI road not a discontinued road, there's a huge difference. P. McCoy replied but when you go back in, the classification today, is Class VI. It says discontinued there's very little discontinued road and all those are on discontinued roads. B. Chivers said can you site one of these with it on a discontinued road. P. McCoy said there almost all on discontinued roads. Baker Road was discontinued. J. Szot commented parts of Baker Road were discontinued. Parts of it, but those things are on the parts of Baker Road that are a Class VI road. Baker Road from South Road up to the pond, Beaver Pond is a Class VI road. From that Beaver Pond to behind Charlie Bowman's house and all the way over to Donovan Road, that is a discontinued road. There's a difference. Not all of Baker Road was discontinued, only part of Baker Road was discontinued. D. Murray said this become a private way, Baker Road. J. Szot said yes. P. McCoy said there are all different ones. J. Szot said my personal opinion is we don't have jurisdiction over this, he needs to go to the Selectmen, and get the right from the Selectmen to build his private road there, subject to gates and bars, whatever it is, and he's claiming the road is fairly good now, so who knows what they have to spend except to buy the property, whatever they need to get their private driveway in there, then I have no problem with coming back and I don't think they even need to come to us, because then a driveway right? I. Byrd said driveway is not frontage.

B. Chivers said how do we dispose of this tonight, either dismiss it or hear the application for the variance. J. Szot said I don't think we have the right to hear it Boyd. I don't think this is the proper place. He has no...we can hear it and we can deny him. I wouldn't grant it because he doesn't have frontage on the road, and I can't see any reason to vote to grant him a variance. If he came back and he had petitioned the Selectmen and he had that, then Dave, he doesn't need to come to us right? D. Murray replied that's right. B. Chivers said he still would because he still doesn't have 200 feet of frontage. D. Murray commented it that road was allowable, then yeah, he's got 1600 feet on that, whatever it is. B. Chivers said but that's not a Class V road, so he still needs a variance. J. Szot said the thing is I'm not going to give him a variance until he's gone through this process. I think this is the first process. Because you don't want to end up with a situation where he says look, I have the right to build here, you can't stop me from putting in the road. B. Petrin asked and what happens with the waiver. Is the waiver transferrable, should the owner sell in one month, are those waivers of protection transfer automatically or is that specific to the current. They're talking about having a waiver for protection, fire, emergency that sort of thing. P. McCoy that goes with the land. It goes with the land. B. Petrin said it's deeded. P. McCoy said yes. Those are all recorded. B. Chivers said it becomes a covenant. I. Byrd asked can there be a covenant that the land not be further subdivided. P. McCoy said that's automatic. I. Byrd continued can we put that...30 acres, somebody in the future might want to sell off 2, 3, 4 acres. B. Petrin said especially with this new ruling we have coming up, it's going to make it a lot easier for that sort of thing. I. Byrd said but then what do we do about a road. It's a driveway.

J. Horns said can I speak to two points. The second point I already considered putting an easement, carving out some acreage and putting in an easement against building on the rest of it. I'm amenable to that. The second point, or the first point I wanted to make, it's actually a question, would you accept judgment from a court as far as to whether or not I have access. In other words, we petition the court, ask

for summary judgment, it would come back yes you do or no you don't. Because that way we have access but we don't have to petition the Selectmen to make it a public road and buy the land from the abutters. J. Szot replied it doesn't have to be a public; it would be a private road, if you read this carefully, you petition the Selectmen and it becomes a private road, subject to gates and bars. It's not a public road; it's a road that you would own. And you're saying that you have access now, there's a road up to your house, it would only have to be passable to you...this is where you go, you go to the Selectmen, you get that, you come back, we'll talk to David.

D. Murray stated we definitely need some legal clarification. R. Howe said we do. B. Petrin said I agree. I. Byrd said Ron's right, it should go to Bart to make sure we do this correct. B. Petrin said I agree. R. Howe said I agree. J. Szot said I will not be at the next meeting. D. Murray said I'm quite sure the applicant has access to the property but I think the question is the level of use.

M. Cooper asked did you see in the RSA where it defined the level of use because I have not found that in RSA. It says they have the right to use it but you can't land lock somebody by taking a road...you can't take a road away and land lock it.

P. McCoy said I think everyone's been reasonable, if we could continue the meeting, we can find out more about it. I understand where this lady came from and we've already checked into that and done a number of things on this. If you need to double check it, we'd appreciate a continuance and then we can make a decision.

J. Plante said if we're going to be asking an opinion from Bart, one of the questions that might be helpful is that even though it was closed, if the land was not deeded back to the land owners by the Town, can he give an opinion regarding that because maybe it wasn't closed properly. I would like his opinion on that.

I. Byrd said when the train, the railroad that runs through Candia, when that was discontinued there were deeds that said the land goes to the abutters on either side and there's only one small section in Candia where that owner previously said uh uh, I want it back. Otherwise, everything went back to the abutters.

I. Byrd asked can I make a **motion to continue this but not until November**, because I think this is an issue where we need to have a full Board. Because that would give Bart a chance to research. It would give these folks a chance to go through everything they want, everything they need to look at. Look at costs to building a road, maintaining a road, driveway, whatever you want to call it. B. Petrin said and easements. If that's the case it's either a road or an easement.

R. Howe asked a question of the applicant. How quickly were you hoping to get started building. P. McCoy said the septic design been's done. We'd like to do it next month, do you have alternates. R. Howe said yes. P. McCoy said if we have to, we can postpone it. B. Petrin said let's go ahead and put it on the agenda for next month. P. McCoy said we can suspend it, ask for another continuance. B. Petrin is there a second to Ingrid's motion with a change to 30 days not 60, do you agree with that. I. Byrd said I don't want to make a motion. Because I think that's rushing it. B. Petrin stated even with the option to continue again in 30. I. Byrd said it's going to bring everybody here, including these folks, who I think have probably something better to do than on a Tuesday night, and with Thanksgiving and the holidays in November our meeting is probably going to be in the middle of November rather than the end. So it's a difference of maybe two weeks. B. Petrin asked would anyone make a motion for a continuance. B. Chivers commented we can get a legal opinion from Bart in 30 days. B. Petrin said we're talking for a long time, I think it's a prolonged continuance. J. Szot said I think Ingrid is saying you've got 5 people that heard the case. I will not be here then; I will be back by the 3<sup>rd</sup> of November or something. I think she wants to have the same people hear the continuance of the case rather than. I. Byrd said the normal full board. D. Murray said it will be two days before Thanksgiving. It's the fourth Tuesday of the month. I. Byrd said so go the third Tuesday. D. Murray said I don't know if you can do that. I. Byrd said you can change it. J. Szot said you just notice it.



**MOTION:**

B. Chivers said I'll motion just to get this thing going here. B. Petrin said for 60 days. B. Chivers said yes, it will be the 22<sup>nd</sup>. November 22<sup>nd</sup>. I. Byrd said I'm willing to go before then. 22<sup>nd</sup> of November. **My motion stands.**

B. Chivers **seconded. All in favor. (5-0-0) Motion carries.** Continued to November 22<sup>nd</sup>, 7 pm. Fourth Tuesday of November.

I. Byrd said can we tell Christine to have her here. J. Szot said and have it be the first case.

**MOTION:**

B. Petrin asked if there was a **motion** to adjourn. **Motion** by I. Byrd to adjourn. B. Chivers **seconded.** The **motion carried** with a unanimous vote of **(5-0-0)**. The meeting adjourned at approximately 9:34 pm.

Respectfully submitted from recording,  
Andrea Bickum  
Recording Secretary