

CANDIA ZONING BOARD OF ADJUSTMENT
Minutes of November 22, 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.

7:00 pm Pledge of Allegiance

Approval of Minutes September 27, 2016

MOTION: **Motion** made by I. Byrd to accept the minutes from September 27, 2016 as presented. B. Chivers **seconded**. Bob Petrin, Chairman; Judith Szot, Vice Chair; and Ron Howe were **all in favor**. The **motion carried** with a vote of **(5-0-0)**.

Residents Present: Dennis Lewis, Road Agent; Dave Murray, Building Inspector; Christine Dupere, Town Clerk; Dick Snow; Judith and Mark Siemonsma; Richard Zang; and Kenneth Purington were present.

Continuation of Case 16-616 Applicant: Joshua Horns, Paul McCoy and/or Michelle Copper; 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 Variance under Article VI Section 6.02; Intent to build a Single Family Home on a 29.5 acre non-conforming lot on a discontinued road in the residential district.

Abutters present: None

Applicant Paul McCoy, Realtor, representing Mr. Matthews, was present. Richard K. Matthews 121 S. Flagg Street, Worcester, MA 01602 was present.

P. McCoy passed out some paperwork to the board and said this is for the record; we had people check into the Title of the road and RSA's in reference to a discontinued road. B. Petrin asked for a moment to digest this. The board members took a moment to read the information handed to them.

B. Petrin stated to my recollection, where we left off two months ago our stance was that we weren't in a position to grant a variance based on the fact that there was no road there for frontage. And we agreed that we would look further into it, as you did, we did as well. Judith Szot had pointed to an RSA that said your recourse was to go to the Board of Selectmen. Do you have benefit of Bart's reply, is that appropriate to share with him? B. Chivers said sure. B. Chivers asked Mr. McCoy, in your second paragraph, second sentence, you acknowledge that Aunt Mary Brook Road was discontinued by the Town in 1872. Your next sentence says it's my understanding it's now considered a Class VI road. Can it be both?

P. McCoy responded well what happens is it was 1903 that the RSA's changed to gates and bars so in other words, it wasn't until after WWII until the towns took fee simple of the lots. People went in and laid out a road and put the road in and the Town took it over. And in 1892 they discontinued the road and the only difference between, after 1903, they put gates and bars on so they could keep the animals in. The only people that could use the road, even before, were people that owned lots up there. If you go into your RSA's they talk about discontinued roads but then after 1903, they talk about Class VI so basically a Class VI road is a discontinued road. The only difference between them is a Class VI road, they say gates and bars but before 1903, they just discontinued the road.

B. Chivers responded this case turns on whether it's a Class VI road or a discontinued. P. McCoy replied it doesn't make any difference because a Class VI road could be a private road. B. Chivers asked how does the Town of Candia classify this road. P. McCoy replied it's a discontinued road but a discontinued road, well either way, it's still a private road, you can't take that away.

R. Matthews introduced himself and said I own the land. When I bought it in 1986 it was classified as a Class VI road and I was issued a building permit for the 30 acres, otherwise I never would have bought the thing in the first place. And then I don't know what year, I should have kept the letter, but I was notified by the Town that they were re-classifying it as a discontinued road. That was, 20 years ago, I don't remember, it must be in the record somewhere, I remember getting notified of that. I was issued a building permit when I bought the land, otherwise I never would have bought it and I don't see why....B. Chivers commented you realize that building permit lapsed if you didn't use it within a certain period of time, that's immaterial at this time, whether you were issued a building permit at one time.

P. McCoy replied I think we're getting carried away. What we're in here for basically is because there's no frontage. We actually have a private right of way. I think the concern last time was about petition the Selectmen about doing a road. We're not going to do that, we don't want to do that. We want a private road, we want to put one house on 30 acres, we have the right to go in there and do it. We had a building permit before, there's no real difference between a discontinued road and a Class VI road especially up before WWII, they never deeded the land to the Town, that's why it goes to the center of the road. Class VI roads go to the center of the road. If it was deeded to the Town, the Town never deeded the land back. When we started zoning, that's when the Town said gee, we ought to take control of that right of way so now when people put a subdivision in; they deed it to the Town, fee simple. If you discontinue a road, you have to deed it back to those individuals to make it legal to close the road off. But before WWII, when they started classifying what roads, they did it in 1903; in 1903 they went to discontinued roads with gates and bars. The only good thing with gates and bars was they put it in there so people could open the gate. Anyone who was an abutter on that property had the right to go through it so they could never lock it. Before that, the only difference with Aunt Mary Brook Road is when they discontinued it; they didn't put gates and bars in. You don't have to put the gates in.

B. Petrin commented but it's still discontinued. It's not a recognized road. P. McCoy replied it's discontinued right but it's a private right of way. Just like a Class VI road is a private right of way. They stop maintaining it. B. Petrin replied is that accurate, I don't know that to be accurate. P. McCoy replied it doesn't make any difference, we'd still have a private right of way and according to the records, you allow three driveways on a private road. Aunt Mary Road has a permit that can be used as a driveway for the State, to go on the State highway. B. Petrin asked when that was effective. P. McCoy replied it was effective 2014, I think it was. B. Petrin asked did the State approve curb cuts; is that what you're saying? P. McCoy responded they issued a building permit we allowed three off the driveway.

R. Matthews commented that there are two houses on that road now. P. McCoy replied there's an agreement that you have in your file that the Webber's and the McRae's, McRae has to maintain the road, its right in your records. Then you issued a building permit on another property for the Sherman's, they have an easement on the road. The only thing we're asking for is we're asking for a frontage release. We don't have any required frontage, that's the only thing we're asking for. It has nothing to do with the board as far as this road goes. Other than we have a private road to go in there and we have a road, if you have any common sense at all, you have the right to go up there, no matter what happens. You can't just take it away, whether it's discontinued or not.

B. Petrin commented that's correct. P. McCoy continued it looks like the Town, I haven't found it yet because I can't find the record, it looks like the Town gave an easement for Aunt Mary Brook Road, a power easement up there as if they owned it. There is a power easement all the way through Aunt Mary Road. They have agreed, we've talked to them and they said they will give us right of encroachment to get to our land if there are any issues. Because you can't stop someone from going to their lot. B. Petrin commented that's correct we can't. However, I think Dave Murray, the building inspector made commentary two months ago about you can't stop from going there but it's not full use of the land. P. McCoy interrupted that's why we're here.

R. Howe replied my understanding was that you had the ability to get to your land for basically two functions; recreation and forestry. Those were the two exceptions. Yes you can get to the land but you can't use it for anything else. That's my understanding. P. McCoy said no, you can't stop people from using their land. In fact there was a house on the property at one time out there. There was a log cabin out there that was destroyed. We brought that point to you. B. Petrin commented maybe when that was a road. P. McCoy said anytime there's a building out there; you have the right to rebuild it, whether it was 200 years ago.

B. Chivers stated Mr. Chairman, the issue before the board...P. McCoy interrupted the issue before you right now, we're getting carried away, if we can prove that the road, we can get the easement, we're asking for the use of one house lot on 30 acres of land, we have a private right of way to it. You can't take it away. B. Chivers commented the issue before this board is whether you have frontage on a Class V or better road in the Town of Candia. P. McCoy replied that's correct, that's why we're here.

B. Chivers asked what's the answer to that question? P. McCoy said we don't have it. B. Chivers responded this board is barred by RSA 674:41 from issuing a building permit on anything other than a Class V or better road. P. McCoy stated wait a minute, you're totally wrong, I'm sorry. B. Chivers said excuse me. P. McCoy interjected we're here before the board. J. Szot replied just a minute. Just a minute.

B. Petrin stated excuse me, Mr. Chivers has the floor please.

B. Chivers said following your last presentation we sought legal counsel and we presented this case to our lawyer, Bart Mayer, in Concord. And his response was we are barred as a board from issuing a building permit on that road because it lacks frontage on a Class V or better road. We can't even hear your application for a variance. So rather than argue, we're not going to argue with our own lawyer. That legal opinion has been distributed to our board. We haven't questioned it; we have no reason to question it.

J. Szot added our attorney tried this same case and he won this case in State Supreme Court and the case is Russell Forest Products vs. the Town of Henniker. And Russell Forest Products wanted to do the same thing and they tried it and it went through to the State Supreme Court. So I think if our attorney says to us that we cannot grant a building permit, we have no jurisdiction. We have jurisdiction, this board has jurisdiction over the zoning ordinances. We have no jurisdiction over roads. The Selectmen are the proper board that has jurisdiction over roads. There is no road. The legal case that you refer to says the *prescriptive easement shall be to the McRae's and their successors only. The road shall not be enlarged or expanded beyond its current width, height and no changes shall be made to said road.* This is in the legal document that you gave to us. We have no authority over this road according to our attorney. You gave us a letter from someone who is from a Title company. This attorney is a municipal attorney. He has tried cases all over the State. He tried this exact case. He said we have no authority over this case. We cannot hear you sir. You can present all this information that you want but we have no authority over this case. We told you that two months ago. That we have no authority over this case. I did, I told you that two months ago. We cannot hear this case. It is about roads, it is not about a variance. The law states specifically if it's not on a Class V or better road, we cannot grant a variance. End of story. You can sit here and tell us all you want.

P. McCoy said well then why didn't you just tell me that you can't take the case then. B. Petrin said that's what we're telling you. J. Szot also said we're telling you. P. McCoy replied very good and that's fine, we'll go to the Selectmen which I asked to do originally. Now that you've said your words on it, I'm going to make it quite clear, I want it on the record that you're trying to say that you don't have the jurisdiction to give me a variance because we don't have proper frontage on a Class V road.

B. Petrin said yes sir and I'd like point out in the document you have in your hand, a discontinued highway is not a highway. P. McCoy continued this case was Forest products, this was a commercial operation. I'm very familiar with the case. We're talking one single family home and again, I agree, I'd be very happy to go to the Selectmen. We'll just drop the case and we'll go that way. The reason we're here, I was told to come here. We waited an extra month to get in here, I wanted to come in October and because certain people weren't going to be around we made it to here, we agreed to it. So here we are. Here it is November and we're held up on this property for another two months.

J. Szot stated if you had listened to me two months ago, when I told you in September, that we had no jurisdiction over this case, you insisted that you...P. McCoy interrupted Ma'am that's not what I said. J. Szot said ok the point is we told you...P. McCoy continued the point is there. The relief from a building inspection is the Zoning Board. This case here and I'm not sure where it says the zoning board. I. Byrd commented Mr. Chairman, come to order. Mr. McCoy you're being very rude and interrupting members of the board while they have the floor. You really need to stop that. Excuse me. Mrs. Szot was speaking; you interrupted her and overrode everything that she was saying. That's not helpful to the issue. P. McCoy ok. B. Chivers asked Mr. Chairman. P. McCoy interrupted. B. Petrin said yes Mr. Chivers. P. McCoy tried to speak. B. Petrin repeated yes Mr. Chivers I. Byrd said he has the floor.

B. Chivers continued Mr. McCoy asked for some answer from this board do you want to... P. McCoy said no no no no no.

B. Chivers continued I'm proposing I'd like to make a **motion** Mr. Chairman and precede that **motion** with a statement. *Before this board can consider whether the applicant meets the 5 criteria prescribed by RSA 674:33 which are required to be met for a variance to be approved, it must consider the application of Section 16:07 of our ordinance and an RSA that specifically governs the issuance of building permits on discontinued roads, RSA 674:41. Section 16:07 of the Candia Zoning Ordinance provides that "Whenever the requirements of this ordinance conflict with the requirements of any other lawfully adopted rules, regulations, or ordinance, the most restrictive or higher standards apply". RSA 674:41, clearly a lawfully adopted rule or ordinance, applies specifically to this case. That statute prohibits the issuance of a building permit for properties situated on discontinued roads. Section III of that RSA, moreover, is preemptive in nature, meaning this town cannot adopt a lesser standard. Our board is bound by Section 16:07 of the ordinance to recognize and honor the restrictions and prohibitions enumerated in RSA 674:41. Because of the statutory prohibition of the issuance of a building permit on a discontinued road, the issue of whether the criteria of RSA 674:33 is met, is irrelevant.*

MOTION:

B. Chivers continued; I, therefore, **move to dismiss this case** as the board has no legal authority to facilitate the issuance of a building permit on a discontinued road. I. Byrd **seconded**. P. McCoy asked if there was more to it. B. Chivers said no that's my motion. B. Petrin said no that's the **motion. All in were in favor. (5-0-0) Motion carries.**

P. McCoy said so basically we go to the Selectmen. B. Petrin replied yes sir. P. McCoy replied no problem. B. Petrin said thank you for your attendance.

Case 16-617: Applicant: Monica and Robert Heon; 55 Range Road, Deerfield, NH 03037 Owner: Mark and Judith Siemonsma; 94 High Street, Candia, NH 03034; Property Location: 94 High Street, Candia, NH 03034; Map 409 Lot 095; For a Variance under Article V Section 5:02 B11; Intent to operate an auto repair and inspection shop on a 5.69 acre lot in a residential and mixed use area.

Abutters Present: Homeowners, Judith and Mark Siemonsma of 94 High Street were present. Richard Zang of 93 High Street was present. Kenneth Purington of 146 High Street was present.

Applicants Robert and Monica Heon of 55 Range Road, Deerfield, NH 03037 were present.

R. Heon stated I'm Robert Heon, Monica, hopefully this goes smoother than what just happened. I presently run a garage in Deerfield, 1 Brown Road. I'm at the point where I can't grow much where I am and this property here is a little bit bigger and its house and garage are on the same piece of property, which would make life easier for us. It actually makes her commute (*referring to Monica*) shorter. We're in mixed use; there are similar businesses all around us. The garage is already there. I just want to do automotive work there.

B. Petrin asked R. Heon are you going to be storing repaired vehicles on that property. R. Heon said I'm not quite sure. B. Petrin said yes, you will be. How many will you have on that property? R.

Heon responded typically, nothing I work on is unregistered, there may be one unregistered vehicle from time to time but typically that's not the case. I typically don't have much more than 5 or 6 cars at a time. It's basically a daily...there'll be 5 or 6 cars but they'll be moving in and out. B. Petrin replied it's in and out, no sales. R. Heon responded no car sales, none of that. B. Petrin replied just repair and inspection is what you're looking for. R. Heon confirmed exactly. B. Petrin continued do you have a thought for any signage if you are opening up a business. R. Heon replied if I did it would be a simple sign out by the street so people would know where they are. There are two entrances, one is for the residence. B. Petrin confirmed from here, the first one is the garage; the second one is the residence. R. Heon answered exactly. I'd put small signage, I'm not looking to make some big lighted neon thing. Just something simple enough to mark the end of the driveway to make an entrance for people to come in and out of.

B. Petrin asked are there any questions or discussion from the board. J. Szot asked R. Heon what kind of repairs do you do. Repairs like collision or like...R. Heon replied mechanics. I don't do body work; there'd be no spray painting or anything like that. J. Szot asked what happens to the parts that are replaced and things. R. Heon replied right now I have a person that collects all my junk on a regular basis. J. Szot asked what's regular. R. Heon replied it depends, sometimes you go weeks without creating anything and sometimes you will have a pile. Usually it's never much more than a pickup truck load. I don't store a bunch of junk and most of this stuff would stay in the garage until it was ready to go anyways. It's not like I'm going to put a bunch of junk on the side of the road or something.

I. Byrd asked what about oils, fuels etc., transmission fluid? R. Heon replied right now I save every bit of oil because I have a waste oil furnace, that's how I heat the garage.

B. Petrin asked that's what you have now but what is in place here? R. Heon replied it depends on...I believe its gas over there now, propane. Which is not anything, I don't want to spend that kind of money to heat the garage. I. Byrd asked so what are you going to do with the oil? R. Heon commented dependent on how I sell the property over there; I'll either buy a new waste oil furnace or move the current one I have to this site.

B. Petrin asked how big is this building; I think we might have a map. J. Szot replied it is...M. Heon said I went through extra exhibits that I didn't quite get in (*hands out additional maps*) it's 36 x 54. You don't have the benefit of this. I have pictures of what we have now as well. I. Byrd asked this is what's there? R. Heon confirmed this is what's existing, yes. The only plans I have for that building, from what it is now, is to make it a little bit taller. Because right now, it's a little too short to put lifts in. That would be about the only change to that building. I. Byrd asked do you have a site plan that shows where the house is. B. Petrin said I was just going to ask you to show me where the driveway is. R. Heon said that's the best picture right there. This is the garage. B. Petrin asked if it was paved. R. Heon replied nothing is paved. It's hard to see through the trees but this comes right around, you can go right beside this garage to this one. B. Petrin said so this isn't really representative, this is more. R. Heon said no, I don't even know what this is, drawn there to represent the pool? B. Petrin said 36 x 54. R. Heon said that's not where the garage is, it's over here. While we have this here, so you know what my plans are, I'm not going to remove any of this. The tree line. I'm going to keep that to keep me as hidden as possible. I. Byrd commented you have to have a buffer. R. Heon replied exactly. I need 5 or 6 cars, so it would fill right here, on the back side. The cars that would be sitting there, you wouldn't see from the road, they would be behind the garage.

R. Howe asked do you have help working with you or are you working...R. Heon replied I have one full time position which is currently done by two part time guys. That's all I have. And one of them is my nephew, so it's when they feel like showing up. B. Petrin reiterated so you're not using spraying, no auto body work, but you're going to be using compressors for power equipment. R. Heon replied absolutely.

B. Chivers commented you said you were going to make the building higher, how do you do that? R. Heon responded no not adding to it; pick it up from the bottom. I'll put a row of concrete blocks and jack it up. I've talked to some building movers already to get an idea of what it's going to cost me. No sense getting carried away with getting permits for that until you say I can do it.

B. Petrin commented there is a bit of a wrinkle, from my recollection, the Candia planning department is putting together a master plan and in this plan they talk about creating a center of Town. The center of Town, which of course is leading up into the historic district, the older buildings up there to South Road, and that is all part of the plan. And in this plan they make exceptions, when I say exceptions, businesses would be not allowed under that plan. Do you have something on that building plan portion of it?

J. Szot replied I know that when they had the community meeting that people want to have a village district and they want this area to be the village district. You've got pictures of Goff which is there, and they've made exceptions for things that aren't there. But this idea of the mixed use is a recent addition to our ordinance within the last couple of years. When you look at mixed use and they were very specific in the kinds of things that were permitted in the mixed use district and very specific about the things that were not permitted, that were expressly denied in the mixed use area. They're talking about businesses such as retail stores, barbershops, beauty shops, retail, drugstores, groceries, baked goods and the like, general services, supermarkets, florist, appliances and things. The funeral home because it's there already. Professional offices and banks. But they specifically left out, the type of businesses that have a lot of noise or a lot of stuff around them, like yours has. R. Heon pointed out you realize we're right next to the Town Highway Department right, you don't think there's a lot of noise there in the middle of the day? I. Byrd said they are way in the woods. J. Szot continued but if you look at them, they want that area in the four corners area to be a village district. Once you pass Goff and you look at what's around us here, you have our community buildings, our Town park, Town offices and our police station, the library, our school and then all the way up the road, you have historic houses. This is really one of the nicest areas in Candia. They could have included that when they were choosing things in the commercial area to be in there and they specifically left out those kinds of things; *gas stations, car washes, service of automobiles, trucks, mobile homes, travel trailers, major recreational equipment, boat yard, animal hospital, commercial kennel, sexually oriented business*; they specifically left those things out for a reason because they had this vision of Candia and the vision of Candia precludes having businesses that have outdoor things, the storage of cars, the parts that are left there. I Google earthed your place and there are cars and things around and I just think...R. Heon said you Google earthed the place that I have now? There's almost always five or six cars out there. J. Szot said that's what I mean. Five or Six cars. R. Heon commented any parking lot in Town has five or six cars in it. J. Szot asked what are you talking about hours of operation. R. Heon said if I had a grocery store, I'd have five or six cars out there. M. Heon said his day ends at six. That's when he comes in for supper.

B. Petrin said when Judith made reference to the exclusion of service of automobiles; you are familiar with what she's talking about? M. Heon said yes, that's why we're asking for the variance. R. Heon said so we could try to get over that little hump. B. Petrin said my understanding is that this is contingent upon the purchase and sale of that property. If this gets disallowed, you would move on from that commitment. R. Heon replied that's a fact. I. Byrd said I'd say less than a quarter of a mile down the road; there are two buildings that are being used as auto businesses. One on the right hand side which was Fred Kelly's old place, on the left hand side another place that's all fixed up for auto business. Both of them are why are those not acceptable to you? R. Heon replied I'm not sure what you're asking? B. Chivers commented maybe they're not for sale. R. Heon replied those are already rented, those are sold. I'm not looking to rent. I want to own my own place. The whole idea is to walk out of my basement and I'm at work and this commute for my wife is much closer than where we live now, everything kind of fell into place until we got this little snag. B. Petrin asked if there were any abutters.

R. Zang introduced himself. Richard Zang, I live right across the street at 93 High Street. When I moved here in 97', 19 plus years ago, I bought the house across the street. The first doctor in Candia built it. It's in the Town history, Dr. Timothy Kelly, and it was built in 1770. I would be part of that historic district since I'm literally across the street, including right across from the garage. I have 466 feet of road frontage. I was very impressed with the Town, impressed with this building. The Town, clearly when they designed the Town Hall tried to make it look, where it would fit in with newer homes but also where we have a long history right on this street. The funeral home was there. Goff's place but the commercial

district is clearly up there. Ingrid, those placed you mentioned, is that commercial zoning. R. Howe said yes. R. Zang said that's clearly commercial, this is not. I. Byrd said the intersection was the dividing spot. R. Zang clarified the four corners. I. Byrd said yes. R. Zang said with all due respect to this gentlemen that said businesses like this are all around, no they're not. There isn't anything from here up. That's what you said. You said there are businesses like that all around. R. Heon said what she said is that could be a grocery store or a hair salon or something like that. R. Zang continued but when you gave your opening statement, you said there are businesses like this all around, no they're not. They are down there in the commercial district. R. Heon commented there is a towing company just up the street. R. Zang replied not in the historic part we're talking about and that's more than half a mile up. The church is half a mile up and it's beyond that. But clearly they're not all around. So I bought more for the beauty and history of the place, including this building right here. It would bring down property values for sure if there was an auto repair business. Plus, I'm a bit stymied because Judy read, it said service of automobiles, which is specifically what he's doing and he mentioned expanding the area and filling in the back but that's wetlands back there. Also, he said usually no more than one unregistered car well what about other times when it's not usual. Two or Three? I understand more than one is illegal. I would be strongly opposed.

B. Petrin said thank you for your comments.

M. Heon commented I would like to say mixed use, which I've now studied extensively, does include Goff's or Candia trailers, so that is clearly in mixed use. As well as 15 and 13 High Street..Is it High Street or Raymond Road..., which is right next to it, is a body repair shop, in mixed use? And next to it, it's being renovated to do automotive detailing. So those are in mixed use. They're the exact same zone that we're talking about.

I. Byrd responded however they pre-date, just about, our zoning. They've been there forever. You can't zone somebody out and then say go away, we re-zoned it, you can't have your business there anymore so you work with what you've got. But you don't make the situation worse. I think all of us are very concerned with keeping the historic part of this area. B. Petrin commented and that's where the Planning Board steps in and develops this master plan that says going forward, here's what we envision and that's what gets laid out, that says none of this, or we can do that or we can't do this. That's that going forward portion. There's the grandfathered portion and the going forward portion of that. There's a mission in mind for that.

R. Heon replied so with that said, why does the mixed use keep going if it's not mixed use? M. Heon said that parcel is clearly in mixed use.

J. Szot said it's when they added the mixed use district, part of what they, it says *to provide a greater variety and mixture of land uses* but then it says *all pre-existing uses in existence prior to the adoption of this ordinance, shall be allowed to continue as a permitted right in this district even if they are not denoted as permitted by right*. So Goff pre-exists this, the other place you're talking about pre-exists this. They are allowed to be there. You can't change the zoning and then say now you have to move because you're not allowed here. They are allowed to continue. If they cease to exist, someone else cannot come in there...if Goff moved, he can no longer do those...he might not be able to do that or the other place, they might not be able to do...if they did something different, they couldn't do it there or tried to do the same thing. So when they added this area, they had this vision of what they want to do. They want to develop a village district in the center of Town, where Goff is. I don't know if you are aware, but that used to be our Town Hall, which burned down in 1939 after the Town meeting. We had a lovely Town Hall there. They kept the land for awhile and then the land was eventually sold and we used to meet in the Selectmen's office, I mean in the school, which was the Selectmen's office. Everything was done there in this one little room for years. Eventually after many tries we were able to build this building. The vision was to create this area here. The businesses that are here are going to stay here. If they leave, something else will come in there but not that. It's a pre-existing non-conforming use they can continue but they can't expand it or change it in any way. The meetings that we had earlier in April, the people specifically talked about this area being an area where they wanted to have a Town center with walking. They envision a village, a Town. It's hard to imagine the repairing of cars fits in with that idea. R. Heon asks which comes from. B. Petrin said the Planning Board, the master plan. J. Szot said I don't remember

when mixed use came in, only a couple of years since we've had mixed use. I. Byrd said ten years? J. Szot said oh no, not that long Ingrid. It's not more than 4 or 5 years if that. I don't recall when it was put in.

R. Zang commented Judy, to help you out with that, if you recall we had the same thing with Cooperative Extension from UNH when, that was 15 years ago, we had these charettes. We did the same thing, I mention it only because I believe that was the impetus behind the mixed zoning which subsequently followed. The idea was to make this part of the Town more walkable. Part of that was a woman might have a beauty parlor in the garage or in the building next to the house. J. Szot added a bake shop. R. Zang said right, the idea was to make things more walkable, that's how it was envisioned. That's what came out of the charette. That was one of the things that came out of the charette. Then a warrant article got put forth for the mixed zoning, that's what it was about. It was much different, commercial zoning; it was that idea of making this whole area be more walkable. And then that was also, as you correctly pointed out, UNH Cooperative Extension. J. Szot said it was the same thing. R. Zang said that's what the people want.

K. Purington introduced himself and said I'm Ken Purington, I live on top of the hill at 146. Just to have a little history, my grandfather built that garage there, back in the 30's. This piece of property on top of the hill, this piece of property we're talking about was once part of that and my family's been there, Pages, Fosters, been there since 1763. I have to agree with Judy and Mr. Zang that this proposal doesn't come close to what the neighborhood already is and what the people of Candia want it to stay as. I'll just be repeating what's already been said but I have to agree with Judy and Mr. Zang, they hit the nail on the head, it's just out of place.

I. Byrd commented I'd like to point out to anybody that doesn't know that when we talk of the master plan and zoning, those are all voted in by the residents. It's not something that's wished on the Town by a group of five or six people that moved up here from Massachusetts. It's the whole community that votes on these things. So you have to consider that it's not just a small group of people speaking to you through these ordinances, it's the Town.

R. Howe said a couple of things...I think we're not objecting to the home business, we're objecting to the type of business and nothing against your business except that it's the kind of business that we really don't want to see in there. If we approve this and you say you're going to have five cars there. What's to say five years from now, there's not 15 cars. What's to say you decide to sell this property and now we've created this existing use.

R. Heon said but by what she just said, if they sell down there you can't have a body shop down there anymore, it becomes somebody else's. You have to turn it back..Isn't that what you said? J. Szot said I'm not sure if that's mixed use or commercial. I. Byrd said it's grandfathered. R. Howe commented I'm not sure the same thing applies here and I just wonder what kind of a problem we're letting ourselves into, nothing against you or your business but the potential for things to change again. B. Chivers agreed.

J. Szot asked is there anything else you want to say Mr. Heon? R. Heon replied well I think you beat it to death. It sounds like you don't want us to move into Town. I. Byrd said move here and leave the cars in Deerfield. R. Heon said that's kind of defeating the whole purpose. M. Heon said that's how he earns money, unfortunately.

B. Chivers said before we get into the criteria, I'd like to thank Mr. and Mrs. Heon for a very thorough application. You did a really good job on that, I appreciate that.

M. Heon commented we understand the way it is, is against us. The only thing we're asking for is that these types of businesses do exist, I understand they were grandfathered. We were just asking for like consideration. The property's a beautiful property. My husband's a tidy man. He's a one man show and he's more on the retirement path than he is on the growing some sort of big business path. I. Byrd commented get that in writing from him. M. Heon continued he's not going to expand. He's going to be retiring and this is going to become his property. This is his business and livelihood now but it's just a fact of life where we are in life. It's a beautiful property, we love the property. It has beautiful gardens, it's lovely. I wouldn't tolerate the kinds of things you're talking about, because I'm his wife, I wouldn't tolerate those kinds of things. On our defense we're just asking for like consideration. These things do

exist, we would love to become your neighbors for a whole host of reasons but it rests with you folks. B. Petrin said if there is no other commentary we're going to close it to the public and go through the five criteria then, thank you. Judith would you help out with the criteria.

J. Szot said the first one is that:

1. *The variance would not be contrary to the public interest.* I. Byrd said I think it is. The public interest is expressed in the master plan and in the zoning. B. Petrin said I agree. It's because the master plan has come up and it's another document that we're relegated to adhere to. J. Szot commented it says in our guidebook that *for a variance to be to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. And to determine this, does the variance alter the essential character of the neighborhood.* I'm looking at the guidelines from the State. And unfortunately, I think it does change, it alters the basic neighborhood, once you get past the four corners, you have the funeral home and the pizza parlor but after that besides this building and the library and the school and then up the hill, everything going up there is all residential and it's all our oldest houses, it's all historic houses. The museum, the church. I say that it does change, it's contrary to public interest, it's going to change the character of the neighborhood and it's basically against what they were trying to do with the ordinance. B. Chivers said I agree with Mrs. Szot. It would be contrary to the public interest as expressed in the master plan and the zoning ordinance. R. Howe said I agree. **All were in agreement. (5-0-0)**
2. *The spirit of the ordinance is observed: If an ordinance prohibits industrial and commercial uses in a residential neighborhood, granting permission for such activities would be of doubtful legality. The board cannot change the ordinance.* J. Szot said and the ordinance specifically prohibits it in that area. Again, that's tied into the master plan, it's tied into the old master plan trying to create a village district, it's tied into the new master plan, it's tied into the ordinance in that they're trying to create that mixed use and they specifically left out certain things because they didn't want them in that area. B. Chivers agreed with Mrs. Szot. R. Howe agreed. I. Byrd agreed. B. Petrin agreed. **All were in agreement. (5-0-0)**
3. *Substantial justice is done. The public cannot alleviate an injustice by granting an illegal variance. Any loss to the individual which is not outweighed by a gain to the general public is an injustice. Whether the proposed development is consistent with the area's present use.* J. Szot continued what does the public gain from this? We don't gain anything. It's in direct opposition to our village district, it's in opposition to the mixed use ordinance, it's specifically prohibited. B. Petrin interjected and it's contrary to the master plan. J. Szot repeated it's contrary to the master plan. It's not consistent with the rest of the things in this area, which is a residential area. I. Byrd said so it does not do substantial justice to the Town. How are we going to vote, yes or no? J. Szot said no justice. No, Substantial justice is not done. B. Chivers said I think we are in agreement on that. R. Howe agreed. **All were in agreement. (5-0-0)**
4. *The valued of the surrounding properties are not diminished.* J. Szot commented this is something that it's really difficult to ascertain whether or not the surrounding properties...but I think in a case like this when I think about if I was going to buy Rick's house would I buy it if there was a garage across the street. Maybe I know you're a nurse practitioner, I don't know if you work the swing shifts but if you're asleep during the day and that impact hammer starts and you're sleeping during the day. If you're there, you're going to know what it's like to listen to that impact hammer. I think people might think twice, Rick might have a more difficult time selling his house if there was a garage across the street from him. It would be diminution in value. Everything else around there, the library, the Town Hall, the school, all the historic houses up there. I. Byrd agreed. B. Petrin agreed. R. Howe agreed. B. Chivers I agree. We have to take the abutters assessment into consideration too. **All were in agreement. (5-0-0)**
5. *Hardship.* J. Szot stated there are two parts to it. First of all this is a use variance. And then the

first part is there has to be a substantial relationship between the purposes of the ordinance of the specific restriction. At the master plan meeting the citizens specified this area to be a village district. The Planning Board specifically when they wrote up that section on mixed use and the citizens of the Town when they voted on it agreed that this is the kind of thing that they wanted in this area. They were very careful, they didn't just go through all of the commercial and say they wanted commercial in there, they picked and chose the type of businesses they wanted in this area and they left out auto repair shops. You're going to alter this whole area by putting this in. The other part of that is there have to be some kind of special conditions on this land that distinguish it from other properties in this area. What about this area makes it so different that we would grant a variance. There is nothing in the setting, nothing in the environment that make this different so those are the two prongs of the hardship variance. There has to be no substantial relationship between the purposes and the specific restrictions in that owing to the special conditions of the property that distinguish it from other properties. There are no special conditions. There is a substantial relationship between the ordinance, what the people said in the ordinance, what the people have said at the master plan meeting, what our current master plan says, I've been to the meetings where their working on the future master plan. All of the discussions center around this area in being a village area. B. Petrin said and so the vote on unnecessary hardship? J. Szot continued is there a hardship, *literal enforcement of the provisions of the ordinance would result in an unnecessary hardship* and I say no it does not. R. Howe agreed. B. Chivers agreed. There are plenty of permitted uses for that property, this just doesn't happen to be one of them. **All were in agreement. (5-0-0)**

MOTION:

B. Petrin stated having gone through the criteria; it appears that it is not going to be acceptable to move forward on that. Can we have a vote on that? All in favor. (*Motion required*) B. Chivers said I'll make a **motion** to deny the request for the variance. I. Byrd **seconded**. J. Szot commented the denial is based on the conditions that we discussed. **All in favor for motion to deny**. All opposed none. **(5-0-0)**

Motion carries.

B. Petrin continued you will receive a notice of decision but know, as Boyd already echoed, you made a fine and logical presentation. You seem like pragmatic people with apologies it's not going to move forward. You're doing your due diligence and finding out what you can do before you made a substantial purchase of the property so give yourself credit there. Regrettably, it's not going to work in this instance. You'll cut your losses and move on and once again thank you for a reasonable presentation, thanks for working with us on that.

J. Szot commented and it's sad because people like you were the kind of people we'd like to see in Candia.

Other Business

I. Byrd commented somehow we need to let Bart know for future reference its Aunt Mary Brook road, he wrote Merry. He needs to know so that he doesn't say it in a legal document. B. Petrin asked (*addressing A. Bickum*) can you to relay that to him, just for the record. Thank you.

R. Howe commented these minutes are huge. Can you simplify them somewhat? We went through this once before and we got every word that everybody said. I wonder if we really need as much detail as what we have here.

B. Petrin replied I think we do. I. Byrd commented the only thing I can tell you is that in the past Bart has said, it's the thing you leave out because you don't think is important that is going to make or break the case. He says he would rather have too much that he can look back on than not. B. Petrin said this was a long meeting you recall, that was a big one.

B. Chivers replied I'm sure Andrea would like more abbreviated minutes too. We struggle with that at the Board of Selectmen too but it's hard for them to condense, where do you draw the line.

R. Howe asked you keep the recording right? So from a legal standpoint, you always have that. A. Bickum replied that once the minutes are approved, the recording is deleted unless it is deemed to be a very important case, at which point the recording can be downloaded to the computer.

MOTION:

B. Petrin asked if there was a **motion** to adjourn. **Motion** by B. Chivers. R. Howe **seconded**. The **motion carried** with a unanimous vote of **(5-0-0)**. The meeting adjourned at approximately 8:05 pm.

The ZBA meeting in December has been cancelled due to lack of a quorum.

Respectfully submitted from recording,
Andrea Bickum
Recording Secretary