

CANDIA ZONING BOARD OF ADJUSTMENT
Minutes of March 28, 2017
UNAPPROVED

Place: Town Hall; Meeting room

Call to Order: 7:00 pm

Members Present: Bob Petrin, Chairman; Ingrid Byrd; Boyd Chivers; Ron Howe; and Dana Buckley, Alt.

Absent: Judith Szot, Vice Chair

7:00 pm Pledge of Allegiance

Approval of Minutes November 22, 2016

MOTION: Motion made by B. Petrin to accept the minutes from November 22, 2016 as presented. D. Buckley **seconded**. R. Howe was also **in favor**. I. Byrd and B. Chivers **abstained**. The **motion carried** with a vote of **(3-0-2)**.

D. Buckley, Alt sat on the Board for Case 17-618.

Case 17-618: Applicant: Michael Hanlon, 504 North Road, Candia, NH 03034; Owner: same; Property Location: same; Map 402 Lot 003-2; For a Variance under Article VI Section 6.02; Intent to build a detached 24' x 24' garage on a concrete foundation within the side setbacks.

Present: Applicant Michael Hanlon and Katherine Hanlon

Abutters Present: Paulette Landry, 486 North Road, Candia, NH 03034

M. Hanlon said there are some maps in front of you and we can look them over in a bit. We're here this evening to present our case to request a variance to build a detached 24' x 24' two stall garage on a concrete foundation within the side line setback. We've been residents here in Candia for 20 plus years, paying taxes and contributing to the community. We look forward to another 20 plus years. The map in front of you depicts where the houses are located on the subdivision plan within proximity. The two purple little squares.

B. Chivers asked is this your lot here Mike, 3.2? M. Hanlon agreed and continued and this is our abutter, right over there. That map is the plot plan which shows the house, septic and future garage; the proposed garage. The map in front of you depicts where the houses are. It's a unique circumstance as the two properties are subdivided on the corner of North Road where New Boston and Currier intersect. The lots are tight together, not leaving much room for future expansion. Early on we installed a fence on the boundary line to establish a divide and keep peace. For reasons unknown to me, the builder favored that boundary line in question placing the house 30 feet off center. That said, I got a hold of Holden engineering and surveying and they said the leach bed dictates where the house would be placed and the leach field was in the prime location for percolation. It's now become apparent that a standard 24' x 24' detached or attached garage, will not fit within that setback. Back in May of 2004 we appealed a denial for a variance on a shed that encroached on that setback. It's not in the minutes, much to my disappointment, but one of the Board members stated that it looks like these two properties never should have been subdivided. We were granted the variance. Our property is well kept, maintained and pleasant to look at. Anything we would design and build would look appropriate in that area. Not diminishing the

values of surrounding properties. I'm hopeful that the ZBA will grant this variance. Questions and comments?

B. Petrin asked M. Hanlon to approach to explain. B. Chivers asked where would your house be on lot 3.2. M. Hanlon showed the existing house, leach field here, tank and what we're trying to do is get something in here. The other map shows it clearer that it doesn't fit. The fence is here along the boundary line. We've projected where our neighbor's house is as best as we can, in proximity. I. Byrd said the map they're looking at is different. M. Hanlon said it is the same but that one is strictly of my lot. R. Howe said I need to see the whole thing.

R. Howe said okay this is what I was looking for. House, leach field, proposed, there's a shed here and this shed that I was talking about in the setback line also. B. Petrin asked where is this shed here. M. Hanlon pointed and said right here. That other map you can see it a little bit. I. Byrd asked is that shed going to stay. M. Hanlon said that's shed's already been approved, it is staying. I. Byrd said I was asking if it's staying now that you're building a garage. M. Hanlon said yes, it's staying. M. Hanlon explained here's what you're looking at here; driveway, house. Here's North Road, driveway, well, house. I called Holton, they're the surveyors that did this and I asked why, we're so tight, these two properties, she's tighter than I am, she has less to work with than I do, I asked why would we have put these buildings so, why wouldn't we have gone that way. All he could say was the leach field dictates where the house goes but the leach field has to be put within, wherever they put the test pit. R. Howe asked that's not that wet out there is it? M. Hanlon said it was. Everything runs off and goes out back, we do have a creek in back; it's wet. When these places were being built, this property wasn't even developed so for all I know, you can't see these lines when you're in the woods. They drew this plan so he must know what he's doing but it just didn't leave room, there's no room here. As I said attached or detached, it still ends up in this setback line.

B. Chivers asked by how much Mike? M. Hanlon said as it is now; it encroaches in the back by 9' 6" and in the front by 6' 4". B. Chivers asked it's a 25' setback? M. Hanlon agreed. B. Chivers said that's the only encroachment right there, it meets the front setback? So you meet the 50' foot setback? M. Hanlon said yes. R. Howe asked how can you get to the back of your property. M. Hanlon said you can't go in that area over there as you can't drive over the leach field, so you come right around out this way. R. Howe said now but once you put that building in there. M. Hanlon said I see what you're saying, for equipment? R. Howe replied I'm thinking in general. M. Hanlon replied there's 18' there and 15' there. You can walk around here, it's all open lawn but you can't drive equipment over this.

I. Byrd asked if you need to bring equipment back there how would you do it. R. Howe said you can do it with 15'; anything will fit through 15'. B. Petrin asked if it was clear, no foliage, trees here. M. Hanlon replied I do have a few trees that will probably be coming down just to make that so... well there are two Hemlocks, for ease of building. Again, as you look on this line everything's great but as soon as it shoots back, the back end of the building and even if I attached it, there's a power vent there so we're trying to avoid this and there's windows here. I have some pictures that depict it and I can show you how busy that side of the house is.

K. Hanlon commented there's a power vent and electricity. M. Hanlon said I'm going to ask a question. When this is being drawn up, this is approved by the Zoning Board correct? B. Chivers, B. Petrin and I. Byrd all said Planning Board. M. Hanlon said the Planning Board. I know the builder can build anything he wants within these setbacks. B. Chivers said that's correct. B. Petrin said there's a building envelope. M. Hanlon continued wouldn't a Planning Board say, because they drew this garage, if you pull this up, they draw this into the setback, they're aware that this is tight. And as I said, for both of us, why would, it's 30' off center and the leach field dictates, but a little more dirt and you could have pushed 10 feet that way. I know that's hindsight. I. Byrd asked if there were signatures on the plan. From the Planning Board? Was it approved or was it an as built? M. Hanlon said I don't know what stamp that is, these are the plans that were given to us. D. Murray responded it's the surveyor's stamp. I. Byrd said sometimes in the past the Planning Board would approve the plan, and then that's not what got built. Because after it's approved it's gone. B. Petrin confirmed they approved a buildable lot. I. Byrd continued they approved what was proposed but what was proposed was not necessarily what got done. M. Hanlon

said these prints are pretty accurate. These are within inches. I. Byrd replied but I'm saying that the Planning Board may never have seen those. M. Hanlon said but they must have approved something for this to go forward shouldn't they? B. Chivers said yes. I. Byrd said they approved the proposed plans and the Building Inspector would have the proposed plans, but what was built was not necessarily what everybody said yes, amen to.

M. Hanlon said 1995 these plans were submitted; this house was built in 1996 and whatever this was, is very accurate. I. Byrd asked you don't even know who the building inspector was back then because I can think of several developments that got approved and then when things got on the ground; it's like oops the septic systems on the other guys' lot. D. Murray agreed, it happens, anything's possible. I. Byrd continued they would have given you an as built plot. They might not have done the original.

D. Murray said the Planning Board can really only make suggestions on where the location of the house is, it's a proposed thing. It's really up to the builder as long as it fits within the envelope. I. Byrd commented so what the Planning Board sees is not necessarily what you got. D. Murray replied as far as building location? No.

B. Petrin said so let's work with what we have. A question for Dave Murray are there any requirements about the 5' space between the home, which illustrates a power vent and the proposed new structure. D. Murray said you would have to move the power vent; you could attach it at that point. If he brought it in, he has different elevations there, so he's got stairs, so now the stairs are in the garage and the garage would have to be longer, it would defeat the purpose. On the 5' distance, he can do that and not finish the inside. If he brought that in any closer, he'd have to make that a fire...B. Petrin said so as it's proposed, that's 5' exactly. B. Chivers asked if there were any other issues. D. Murray reiterated just the side setback, that's it. It's a modest garage.

B. Petrin said it's going to be a one story garage. M. Hanlon said yes, one story. B. Chivers added that's probably the minimum width for that garage too. D. Murray said for a two car, yes. I. Byrd added and no apartment for teenage bands. M. Hanlon said no, no teenagers. Just electricity, no water.

B. Petrin asked for comments from abutters.

P. Landry said I just feel that it's going to bring down the value of my house. Two sheds and a garage abutting that side of the property. He's got over 3 acres of land and there's already two sheds there. And this makes for a third building abutting my property. M. Hanlon replied this shows one shed, it does not show another shed that is further back. B. Chivers asked if all the sheds are within the setbacks. M. Hanlon replied the one that is not is depicted on that picture. D. Murray said that was a ZBA case. B. Chivers asked if it was granted. D. Murray said yes it was approved. B. Petrin asked to see the sheds. M. Hanlon said looking down the driveway, there's a shed in this line. And another shed right back here, not on the map within setbacks. Legal, yes. A nice 8 foot fence here, trying to keep things so we're not staring at each other. We've made an effort to divide these two properties. Again, they are tight. B. Chivers asked if the fence was being maintained. M. Hanlon replied yes.

B. Chivers asked if it was the entire length. M. Hanlon said no, it's not the entire length. It starts at this marker here and there's a bound marker here, it goes back I don't know, about 800 feet? I said 8 foot but I didn't mean to get myself in trouble because I said something to him and he said that's not code but we had the people from American Fence and they called and said there was no code, 6 ft wasn't going to do it. It's a stockade fence. R. Howe asked what would happen if you took this building, pushed it back 6 ft, 8 ft and turned it so basically the building is at the setback line, aesthetically it's probably not as nice but it would make everything legal. M. Hanlon said but you have to put it behind the building. There's only 20' from here to that line. It doesn't fit. I question the angle. I understand what you're saying and I've tried a zillion ways and you just can't do it. I. Byrd asked what kind of screening besides the fence is between the two properties. M. Hanlon said she has some nice trees growing. The fence is 8 ft. so we're not at eye level. I. Byrd said but it doesn't go all the way back. P. Landry said its all wooded back there. M. Hanlon said we are separated. You're welcome to come walk the property. It's tight. All they had to do was move this 10 feet and we'd be out of this hot water. I can't control that.

B. Chivers asked P. Landry if she had any other objections other than that he has a couple of sheds on his property now? P. Landry said I just feel that it takes down the value of my home. I'm looking to

sell actually so if people see all this stuff along the border, they may not want to buy or pay me as much as my house is worth. I. Byrd asked is there a limit to the number of outbuildings a property owner can have. D. Murray replied no. B. Chivers said Dave you have quite a few yourself. D. Murray agreed and there all along the property line but I didn't put them there. K. Hanlon commented to me it wouldn't take down the value, it would add value. B. Chivers said you've identified one of the sets of issues of zoning, Mr. Hanlon has rights to his property and you have rights to the protection of the zoning ordinance. The purpose of this Board is to balance those competing priorities. He has a constitutional right to the use of his property. It's always a job trying to decide these cases, so that's we have to do is go through the five criteria in Mr. and Mrs. Hanlon's favor to grant this variance.

B. Petrin asked M. Hanlon to supply the dimensions of the two sheds. The one closer to North Rd. it says 16'. M. Hanlon replied 16' x 10'. B. Petrin asked about the other one in the back. M. Hanlon said I think its 18' x 10'. B. Petrin reiterated and they're both in good repair and you intend on keeping them both. M. Hanlon said back there in the summer, it's a garden. D. Murray said it's kept up nice.

B. Petrin said I'll close it to the public and have a discussion amongst the Board. Mrs. Landry do you have anything else to say at this time? P. Landry replied no. R. Howe asked another question as a compromise would you be amiable to getting rid of the shed in the front if you got your garage. M. Hanlon said but that was granted. R. Howe replied I understand but I'm trying to compromise. M. Hanlon said it's where the tools are and what I live out of without a garage per se so it's a working shed, where would I put it? R. Howe said how much of the stuff that's in there could go in the garage? K. Hanlon said no, I'm a garden, all my garden stuff is in there, and it wouldn't go in the garage at all. M. Hanlon said now you're fighting her. I understand what you're saying. R. Howe said okay.

B. Petrin asked if Dana had any questions or comments. I'd like to hear from other Board members, I haven't been at this as long as you. I'm particularly concerned about whether or not the abutters have said that their concerned that it might possibly lower their property value. I want to be fair to the abutters and the applicants and I haven't been at this long enough to look back in my memory and say we had this case and yes it did lower the property value or no, it didn't. I'm relying on input from other members. B. Petrin responded it's my understanding, that if you go to erect a dwelling, that when you were to later to sell it, if Mr. Hanlon was selling his own property, he'd be selling a home with a 24 x 24 foot garage, which is considered an asset, which would ultimately raise the price to some dimension. Not necessarily get his money back but it would certainly appreciate that from a taxation standpoint as well. So I don't see it would diminish the value of the property or the abutting property. D. Buckley said ok I was concerned with the value of the abutting property if it is right on the setback a little bit and potential buyers might say that's a little close for our liking, I could see that. B. Chivers said Dana the important thing to remember is the reduction in the value of the abutting property is speculative. But the harm to Mr. and Mrs. Hanlon is real if they don't get the variance. You've got two things going on here. Mrs. Landry can theorize that her property value goes down and that may or may not be the case but clearly if the Hanlon's don't get their variance and they don't get the right to put up a 24' x 24' garage, they have been in fact harmed. B. Petrin commented and another factor to consider as we discuss this that while the Landry's may put their home on the market and consider it, for a lack of a better word, the abutting property an eyesore, it doesn't mean there's not a buyer out there. I use the example of driving down 93 into Somerville and you see tenement houses right on 93 and they're looking out the window at lanes of traffic. Somebody somewhere, I don't want to live there looking out at the Interstate, but somebody does. There could be a purchaser for that property that says I don't mind an 8 foot fence and I don't mind looking at that roof because I used to look at the Interstate from my Somerville apartment. There could be a buyer and that is speculative.

I. Byrd said I have a problem, not with the construction of the garage, but with the fact that we're ignoring the setback repeatedly. There was one variance to trespass on the setback, now there's another one. What's to say there won't be a third one? There's got to be a limit to how much right you have to infringe on setbacks which were voted by the community. People felt very strongly that you have a right to be visually protected from what your neighbor does. Whether that's running a nudist colony or having a garden shed. That concerns me. B. Chivers said Ingrid you could build that into this variance that there

would be no further...that could be a condition of the variance. That would be a good way to address that problem. I. Byrd reiterated that concerns me. If this were your first variance request, I'd say why are we here? Sign it off. But this is the second one and it's by you, not by a previous owner. It's not something that was wished on you. M. Hanlon said I agree with you. When I did this shed, I didn't know that you couldn't...I thought sheds because there's no foundation, it was a gray area. We put the shed up and then the Building Inspector came by saying we have to collect permits on people putting sheds up. He came by and we paid for a permit and then he said you're not within that setback. I didn't know, I know ignorance is not a good excuse. I didn't know that sheds had to abide by the same rules as a foundation build out so I know what you're saying. K. Hanlon said the first time this was passed he had to move the shed. The next thing we had to come back again and it got grandfathered in and he didn't have to move it. It was strange that first he was told to move the shed and then we had to come back again, and they said no he didn't have to move the shed. I don't understand why.

B. Petrin said once again we're going to close it down to the public and I recognize that Ingrid had posed a direct question. So Boyd did you have any other comments or can we go through the criteria.

B. Chivers stated we're required to find in the applicant's favor of five criteria. B. Chivers continued:

1) *The variance will not be contrary to public interest.* B. Petrin said it's not. B Chivers agreed. R. Howe agreed it's not. I. Byrd agreed. D. Buckley agreed. **(5-0-0)**

2) *The spirit of the ordinance is observed.* B. Chivers said Mr. and Mrs. Hanlon you've made every effort to fit this in there. You're encroaching by 9 feet on one end and 6 feet on the other. They still have a significant margin in there between the side lot lines. I agree that they have observed the spirit of the ordinance. **All agreed. (5-0-0)**

3) *Substantial justice is done.* **All agreed. (5-0-0)**

4) *The value of surrounding properties are not diminished.* As I pointed out earlier, that's speculation. B. Petrin said and based on my example, it points in the direction that it's not diminished. All agreed. B. Chivers said if people want to buy a property in Candia, the next door neighbor having an extra couple of sheds on the property isn't going to stop them. I. Byrd and said let's not forget the 8 foot fence. All agreed that they are not diminished. **(5-0-0)** I. Byrd commented they may be but we can't prove it.

5) *Literal enforcement of provisions in this ordinance would result in unnecessary hardship.* All agreed. **(5-0-0)** B. Chivers said I think it would. They want to put up a garage, they can't put it on the leach field, and this is the only place for it.

B. Petrin replied based on getting approval for all five of those criteria, it appears we're in a position to grant that variance.

MOTION

I. Byrd replied I would like the motion to include that no further buildings requiring a variance be permitted. R. Howe asked to reword it. I. Byrd added variances involving setbacks.

I. Byrd **motioned** no further variances relative to setbacks. R. Howe **seconded. All were in favor. (5-0-0). Motion passes.** B. Chivers said so we'll grant the variance subject to the condition of the last one requiring an encroachment for a setback.

B. Petrin said you'll receive notification of that in the mail.

Other Business:

Resignation of Dana Buckley: B. Petrin said Dana Buckley has informed me that he is stepping down from this Board to devote more time to the School Committee. It's a loss to us, we hate to lose you. We don't need anything from you in writing because it's on the record. B. Chivers said you should submit a written resignation. B. Petrin said a letter addressed to the Board, just for the record that you're resigning based on your other commitment. I. Byrd **motioned to** accept Dana's resignation with regret. B. Petrin **seconded.** B. Chivers and R. Howe **were in favor.** D. Buckley **abstained. Motion passed (4-0-1).**

Boyd Chivers 3 Year Term is Expiring: Term expires May 3rd, if the Board would have me, I'd like to serve another term and I think you should get a letter to the BOS, if it's the Board's pleasure to recommend me for another appointment. I. Byrd **motioned** to recommend that Boyd be reappointed for a 3 year term on the ZBA. R. Howe **seconded**. B. Petrin and D. Buckley **were in favor**. B. Chivers **abstained**. **Motion passed (4-0-1)**. Letter to Selectmen.

Vote on Chairman and Vice Chairman:

I. Byrd *motioned* to nominate Bob Petrin as Chairman. B. Chivers **seconded**. R. Howe and D. Buckley **were in favor**. B. Petrin **abstained**. **Motion passed (4-0-1)**.

Re: Vice Chair:

B. Petrin Boyd certainly brings a wealth of knowledge to the Board, as does Judith. I've enjoyed working with Judith this past year. And that's not casting any stones at Boyd Chivers. Either one of them would be terrific. Do you have a preference Boyd? I would move to keep Judith Szot Vice Chair because I'm happy to have you on the Board for the knowledge and experience you bring.

B. Chivers **motioned** to nominate Judith to be the Vice Chair. I. Byrd **seconded**. **All were in favor**. **Motion passed. (5-0-0)**

Alternates:

R. Howe asked for help from the Selectmen to see about getting alternates. B. Petrin commented that I can attend the next meeting and bring that up to them. There is a blurb on the front page of the website. We need to solicit our friends and neighbors. B. Chivers said we should be doing that as a Board.

D. Buckley suggested Cameron Lilley might be a great alternate.

MOTION:

B. Petrin asked if there was a **motion** to adjourn. **Motion** by B. Chivers. I. Byrd **seconded**. The **motion carried** with a unanimous vote of **(5-0-0)**. The meeting adjourned at approximately 7:46 pm.

Respectfully submitted from recording,
Andrea Bickum
Recording Secretary