

**CANDIA PLANNING BOARD  
MEETING MINUTES OF  
December 18, 2019  
APPROVED**

PB Members Present: Rudy Cartier, Chair; Robert Jones, Alt; Brien Brock, BOS Rep.; Mark Chalbeck, V-Chair; Josh Pouliot; Mike Santa, Alt.; Scott Komisarek; Judi Lindsey

PB Members Absent: Joyce Bedard

Audience Present: Dave Murray (BI), Jim Logan (applicant-Currier Homes), Joe Lasadoorian (applicant-CH-Engineer), many town residents

\*Rudy Cartier, Chair called the PB meeting to order at 7:00pm immediately followed by the Pledge of Allegiance.

**Informational:**

**Applicant:** Currier Homes, 47 Haverhill Road, Windham, NH 03087; Owner: North Branch, LLC, 273 Currier Road, Candia, NH 03034; Property Location: New Boston Road, Candia, NH 03034; Map 406 Lot 97.

**Intent:** To build 22 duplexes on 100 acres (55+ private development).

J. Logan starts by introducing himself as the applicant/owner and his Engineer, J. Lasadoorian. J. Lasadoorian states that there are 100 acres of land which this proposed project sits on and they feel like a 55+ development would have the least amount of impact on the town. They are looking to build 22 duplexes with a total of 44 units total. They will be using approx. 1/3 of the total 100 acres, more towards the front of the property. They would like to work with the Town as far as conservation goes. He notes that Candia doesn't have an open space provision, but they would still like to work with the Town to allow local people to use some of the back space.

J. Logan notes that the idea behind the project is to build the housing up close to the road and save as much land in the back as they can. They would like to give an easement to the Bear Paws Conservation Group. To have the back land and keep that the way it is. They have been cutting trails and other work the last couple years. They are in the process of putting in a rope bridge over the river so people can get to the back. He has talked with the Candia Congregational Church and may give them a permanent easement to hold a wilderness camp in the back woods also. They have a lot of interest in that to use the back flat lands for that. To slip a dirt road in off to the side so people could get to the back and if the Church wasn't using it for the camp, it would be opened to the public for various purposes.

R. Cartier notes there are couple things he wants to address and the 1<sup>st</sup> is that section of New Boston Road isn't zoned for having over 55 housing. He reads off Section 5.06, #6-(Frontage), in the zoning regulations which gives specific guidelines that this housing must have a minimum of 200 ft of frontage on an arterial street. He then reads the definition of arterial streets in Section 3 Definitions, which states Rte. 27 from the Hooksett town line to the Raymond town line; Rte. 43 (Deerfield Rd) from the intersection of Business Rte. 101 to the Deerfield town line; Business Rte. 101 from the intersection of Brown Rd. to the intersection of Rte. 27. He goes on to note that is the biggest problem, being that it is not on an arterial road as defined in the zoning ordinances.

J. Lasadoorian asks if this runs close to it then? Because if you go straight down Currier Rd., that's the Deerfield line right there, so this is off to the right side within a quarter mile of that. R. Cartier confirms that but adds that the arterial road should be Rte. 27 and Rte. 43. J. Lasadoorian asks if this would be something the Board would consider a waiver for in this particular situation? R. Cartier states that in the way the regulations are written, yes, an applicant can request a variance from the Board for anything in this ordinance. J. Lasadoorian asks if it would be through the PB or the ZBA and R. Cartier states it would be through the PB. R. Cartier states that procedurally, the applicant would have to prepare and submit the required application with plans for the project and then you can request a waiver at that particular time. There is never any guaranteed that the Board will or won't grant a waiver. Everything has to be taken on its own merits, so it would be something you'd be doing a lot of work beforehand to make sure the application checklist was complete. As a part of that, you could request a waiver and the Board would evaluate the pros and cons of the request and act accordingly.

J. Lasadoorian says before we go to much further, is that something the Board is open to or if we can show it does work in the space? R. Cartier states that is not something they can answer either way. The Board doesn't have an official request for a waiver or an application for it, so they can't really say yay or nay.

R. Cartier reads out the definition for the waiver request and what the steps involved are for this process. The 1<sup>st</sup> step would be the applicant comes in with an application for the plan, the Board will review for completeness, at a meeting it will be deemed complete or incomplete. If complete, the Board will go onto a hearing for it but if it's deemed incomplete, the Board will send it back and the applicant will have to start again. The Board can't discuss and waiver request without first having a completed application and written waiver in hand to review the zoning ordinance sections to be waived.

J. Lasadoorian asks the Board if by "complete" application, if they mean a full set of road drawings, mapping, everything that comes along with that? R. Cartier states that they can contact the Land Use Office Secretary to get a copy of the full application they will need, which includes a checklist of items required for completeness. R. Cartier says, to answer your question, probably yes. What happened is if we deem the application complete, then it goes to the Town Engineer to be evaluated and get their recommendations. Those recommendations would also be sent to you and then you'd go back and forth with the engineering firm to determine how best to comply with that and move forward from there.

S. Komisarek notes to the applicant that they want to look at the distance from the 4 Corners when you read the ordinance because there's a certain density within a 1-mile radius and goes out to 2 miles. That location may be between the 1 and 2 miles, so you'll want to familiarize yourselves with that. The engineer confirms they did check that. J. Logan asks if its 2 miles from where the crow flies or by driving? R. Cartier states down the road. J. Logan says that he thinks they're within the 2 miles and asks if the whole thing has to be within the 2 miles or just part of it or how does that work? R. Cartier states that it would be the entrance/access.

J. Lasadoorian notes that they meet all the provisions other than not being on Rt. 43 or Rt.27. R. Cartier states that though he wasn't around when the ordinance was written but he believes the intent was to allow it but to make sure it's a controlled allowance. As he said before, an applicant can ask for a waiver.

S. Komisarek states that another thing that would be useful is traffic data from New Boston Road and it feeds onto an arterial road. What's that road look like? The geometry, what's the traffic count existing and what would the impact average counts per day? SNHPC has done a lot of that traffic study data to get an idea if the road could handle the increase in traffic.

J. Lasadoorian states that they originally thought about open space because a lot of towns have open space provisions, but we couldn't find something to meet that, and Jim is very land conscious. So, we were hoping to hold this up front and that's why we really grabbed on to that 55+ provision. R. Cartier reads the Common Land/Open Space provision from the zoning ordinance (Article V Section 26) and says there are a couple of things to look at in that section. J. Lasadoorian says he does think they met all the other provisions to what they were doing. J. Logan says so they'll go back to the drawing board and come back and talk with the Board at a later date. The Board thanks them for coming in.

#### **Minutes -October 29, 2019:**

J. Lindsey made a **motion** to accept the minutes as presented. M. Chalbeck **seconded**. B. Brock & J. Pouliot **abstain**. **Motion passed.**

#### **Minutes -December 4, 2019:**

J. Pouliot made a **motion** to accept the minutes as presented. B. Brock **seconded**. J. Lindsey & S. Komisarek **abstain**. **Motion passed.**

R. Cartier opens the public hearing at 7:18pm.

#### **Review Zoning Ordinances for potential Warrant Articles:**

R. Cartier notes that #18 is regarding the 4 Corners District and will not be discussed at this public hearing tonight as it was previously presented at the 11/20/19 public hearing. He notes that although the amendments are in a certain numbered sequence currently, they may change once they are on the ballot. He directs the audience to state what amendment they are talking about before they proceed with any questions/comments. He then proceeds to read over each of the remaining 17 proposed Zoning Ordinance Amendments that will go to the ballot. He asks the Board if they have any questions/comments and since there are none, he opens it up to the public.

Mark Raumikaitis (resident) asks the Board what they are trying to accomplish with amendment #12 (Home Service Contractor)? R. Cartier states that the Board has been working on this for over a year and the initial problem that came up was the fact that Candia has a lot of 1 to 2-person independent contractor operations. He's heard numbers from anywhere between 45 to 65 but don't have any exact numbers on that. Under the current zoning ordinances, they cannot be operating as a business in their residence at all. As an example, if you're an electrician and you have your own truck, you can't have your business at your house. That was the primary situation and the other one was a fairness issue. For example, if I was an electrician on my own and had my own truck sitting at my house, that is not allowed under the ordinance; if I worked for Demand Electric and brought my truck home at night, that's allowed. The Board looked at those 2 standpoints in addition to the fact that if we don't have this, the BI will have to start enforcement actions against many town residents. What we are trying to make sure of is if your livelihood depended on you having your single truck and/or a helper, we wanted to make it so you can continue to make a living. To work within some guidelines and be able to do it from your residences as long as it's not negatively impacting the residential area. M. Raumikaitis follows up his 1<sup>st</sup> question and asks what if people don't meet the standards? R. Cartier states that they would have to come in and apply for the Residential Use Permit. The Board discussed the possibility of grandfathering people that were in existence, but we can't do that because right now under the ordinance, it's illegal. We've discussed it with the BI as well and basically if there hasn't been a complaint about a person that's running a business right now, there probably going to meet all these requirements and not have an issue.

Tracey Blevens (resident) amendment #12, asks if you're currently running a business and you bring your truck home, you can't do that anymore? R. Cartier states that you can't do it right now. If this proposed ordinance gets passed by the Town, it will be allowed. It is currently not allowed in town.

Tom DiMaggio (resident) amendment #12, notes that the amendment says processing of material is prohibited; if you're a machinist, you're processing materials as does a sheet metal worker or a carpenter. You're tying their hands by this particular statement and you don't say whether it's stored outside or inside. R. Cartier states that the Board looked at it from the standpoint as processing material has historically been gravel and loam operations, screeners and things like that. We didn't look at it from a standpoint of processing materials inside. We could be open to clarifying that more, but the Board didn't see it as not allowing something to be done inside. T. DiMaggio notes that it's a blanket statement and it needs to be clarified more. R. Cartier notes that the Board could modify that criteria to read "outdoor processing of materials but don't want to get into is start listing what materials you can and can not process. It was understood from the Boards standpoint that this was for outdoor materials.

B. Brock says that if in fact that was the Boards intent, which he believes it was, they were talking about construction people processing. Maybe that can be added in there to clarify as apposed to trying to list everything that is acceptable. R. Cartier states that once the public hearing is done and they have the feedback from the audience, the Board will discuss the potential changes and how to make things clearer or make modifications.

Max Nicosia (resident) amendment #12 states that he has a letter from his attorney and with the Board's approval, he reads it into the record (\*see attachment). He states that at other meetings, the Board has discussed the possible acceptance of small processing and is wondering where the Board came up with the resolution of no processing at all? R. Cartier states that it's based on historically what has happened in town and the Board had to come up with something for a starting point. A number of problems in the past have been more based on loam and gravel and things along those lines. The Board felt, with the input of the BI, that processing that kind of materials will not be conducive in a residential area.

T. Blevens (resident) amendment #12 asks for clarification that in order for an owner to bring his truck home at night, he has to have a permit? R. Cartier asks if he owns the vehicle? T. Blevens states that her husband is a plumber but doesn't do work out of the house. R. Cartier states that right now, he would be in violation of the Candia ordinances. He brings his truck home and he's the owner/operator. If this amendment goes through, he would need to apply for a Residential Use Permit. If these 8 criteria, the permit is granted by the BI after confirming everything is proper. That way the owner/operator would be allowed to keep the truck at his house. If he worked for Denron and brought their truck home, that is currently allowed. The way it is right now, it's penalizing the small business owners.

B. Brock notes that this is not something the Board just decided to come up with out of the blue. It's because of a legal case that the Court told the Town they are liable because they are not enforcing the current

ordinance. The Board began looking at it in order to correct it because they are aware of many tradespeople in town.

T. Blevens (resident) asks if there is a fee associated with the permit and R. Cartier says no.

Felix (resident) amendment #12 asks if once this passes, any business that is established until now, has to apply for a permit? That is confirmed by the Board and noted if they are in a residential zone.

R. Jones notes the clarification that all the businesses that are in town right now, are not in compliance. The reason the Board is rewriting this, is to make it more flexible to the businesses that are in town. Right now, no one out of that whole list (40+ people), is in compliance.

Felix (resident) asks so once this passes, the businesses will be able to continue doing what they are doing for a living? Go see Dave (BI) and file the permit and let him know we're running our business and then he can come check it out to make sure everything is good? The Board confirms this is correct and this is the whole intent of the ordinance.

Rick Champagne (resident) amendment #12 asks what if the person lives on a state road? R. Cartier states that it would still have to be the same way because there isn't anything else in the ordinances about home service contractors on an arterial road, which is what we're talking about when it's a state road. There isn't anything in the zoning ordinance that allows for it now. R. Champagne asks for confirmation that even if a person is on a state road, they still must get a permit and R. Cartier says yes.

Jim Gregg (resident) amendment #12 suggests a possible change to #4 criteria from "neighbors" to "abutters". R. Cartier gives an example and notes that suggestion would not work in this case because sometimes it will not only affect the abutter but others beyond them. The Board has a responsibility to make sure the neighborhood is not affected. We're trying to get the fairness idea taken care of but it's not going to solve everything.

B. Brock states that the Board didn't want to be too specific and restrictive so that why we had the BI involved in this whole process. He was asked are you comfortable with this as in, does it give you something to work with but the flexibility to look at the specifics and decide? He was comfortable but it also puts a lot on his shoulders. We know this is not going to be perfect but it's a start and if it needs to be changed, we can do that next year.

Peter O' Neil (resident) amendment #12 asks if this is only for residential properties, not commercial, and R. Cartier confirms residential and mixed use.

The Board answers other questions like not being allowed to have employees at the residences, increasing the 1 outside employee to at least 2-3 especially in a family owned/run business, grandfathering and what if a new neighbor moves in with issues, large vehicle classes in residential zone and what to do if not satisfied with BI decision? The Board informs the audience that this is based on having smaller businesses now and in the future. This is an Accessory use to the residence, not primary use. No one can be grandfathered in because right now everyone is in violation. This is a place to start and then move into a commercial zone with growth. If you are in compliance with the BI, that is a pre-existing use and you are fine. If they have further issues, they can go before the ZBA to appeal. Everyone has the right to appeal the BI decision by going before the ZBA.

Felix (resident) amendment #12 notes that this basically gives the businesses support and the Board confirms this.

D. Murray (BI) states that the good thing about this is it gets these things on file. If there is something that comes up, it assists to protect most but can also determine quickly if someone is not in compliance and remedy the situation more efficiently.

Judith Szot (resident) amendment #12 points out various items including not allowing larger vehicles (c1-5-8) residential zones not knowing how the Board came up with the fact that someone that runs a business out of their home can not park their vehicle there as well and that this situation arose from someone that couldn't get his way and ended up in court with the Town. R. Cartier states that the Board wants to protect everyone, but this is only a beginning. We don't have documentation or proof to determine when everyone started their businesses or what they were originally intended for. This is a way to begin that process and work with the community to keep the town moving forward. We do not want to have the BI have to violate 40+ businesses when we can work with them to alleviate them. J. Szot asks if the Board asked the BI for the list of people that they found based on the Nicosia list and R. Cartier stated that the Board has no documentation at this time.

D. Murray (BI) states that he was looking into those recently under that gap and did not find that information and he believes that under article 5 c-2, contractor's, shops, carpentry, electrical, machinist and heavy equipment has always been prohibited in residential zoning.

R. Cartier notes that the BI is very conscientious about making sure these things are done properly, he was one of the people who brought it to the Board's attention about the levels of compliance.

R. Cartier reads article 4 section 4.03E regarding mixed use in order to clarify the confusion in the audience. Felix (resident) amendment #12 notes that this amendment is simple and not etched in stone. It can be altered down the road. R. Cartier confirms this and adds that this amendment is not the perfect answer, but we have to start somewhere.

M. Nicosia (resident) suggest leaving it up to the BI to decide if more than 1 employee is ok for the specific business he may be looking into. R. Cartier states that the Board can not allow the BI indiscriminately to decide ordinances.

June Petrin (resident) amendment #12 wants clarification that according to this, you can't have the employees on site/at residence? R. Cartier states that you can only have the owner and 1 employee working with them.

Paul Frasier (resident) amendment #12 asks what do you do when it's a family run business? R. Cartier states the Board will review the feedback and look into broadening the view.

R. Cartier closes the public hearing at 8:33pm.

The Board discusses the amendment comments from the meeting and possible changes. They have determined that amendment #12 is what needs revisions. Based on audience feedback, the Board decides to change 1 employee to 2 employees in criteria #3, delete criteria #5 and reword criteria #4 so it now reads: The use does not cause undue nuisance to neighbors by reason of noise, dust, glare, traffic, vibration, or other disruptive influences including, but not limited to, the outdoor processing of materials.

\*J. Lindsey made a **motion** to accept the changes as determined by the Board to the Draft 2020 Proposed Zoning Ordinance Amendments dated December 18, 2019. J. Pouliot **seconded**. **Motion passed**.

\*The changes accepted by the Board tonight will go before Town Counsel for review, and if deemed necessary, the Board will hold an additional Public Hearing on Friday, 1/3/20 at 6pm at the Town Hall to present to the public.

#### Other Business

- R. Cartier requests authorization from the Board to allow him to go before the BOS to encumber the funds for the 4 Corners work and the CIP. The Board agrees with this request.
- B. Brock recuses himself from the Board's table as the applicant in case #19-009:  
B. Brock (applicant) requests a 30-day extension to his NOD dated 11/20/19. The deadline date is 12/20/19, but due to recent inclement weather conditions, the Surveyor, Jim Franklin, has not been able to set the bounds as required.

S. Komisarek made a **motion** to approve the 30-day extension of the NOD deadline in order for the Surveyor to set the required bounds. M. Chalbeck **seconded**. **Motion passed**.

- The Board discusses the possibility of an additional public hearing for the zoning amendments. They will check with Town Counsel regarding the changes made tonight and if necessary, will hold an additional hearing. They tentatively schedule the Public Hearing for Friday, 1/3/20 at 6pm at the Town Hall.
- S. Komisarek discusses with that Board that he received a call from George Regan at NH Housing Finance Authority regarding possible grant money that may be available to the PB for future planning. He will forward an email to R. Cartier regarding the information and the Board agrees to allow R. Cartier to work with him and apply for the grant.

M. Chalbeck made a **motion** to authorize R. Cartier to apply for the grant. J. Pouliot **seconded**. **Motion passed**.

J. Pouliot notes that whatever the Board can do to try and make the 4 Corners Village District pass, do it. He has not heard much positive feedback and the community doesn't have a good understanding of the concept. Any social media, flyers, posters or word of mouth might help.

**MOTION:**

J. Lindsey **motioned** to adjourn the PB meeting at approximately 9:19pm. J. Pouliot **seconded**. **All were in favor. Motion passed.**

\*Rudy Cartier, Chair called the ZRRC meeting to order at 9:20pm immediately followed by the Pledge of Allegiance.

There was no business for the Board to discuss tonight as they held the Zoning Article discussion during the PB Public Hearing.

**MOTION:**

J. Lindsey **motioned** to adjourn the ZRRC meeting at approximately 9:22pm. J. Pouliot **seconded**. **All were in favor. Motion passed.**

Respectfully submitted,  
Lisa Galica  
Land Use Secretary  
cc: file

(\*attachment)



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December 18, 2019

Town of Candia Planning Board 74 High Street  
Candia, NH 03034

**RE: Proposed 2020 Zoning Amendment #12**

Dear Chairman and Members of the Board:

This office represents William ("Max") Nicosia, owner of the property situated at 676 Old Candia Road. As this Board is aware, Mr. Nicosia owns and operates Mad Max Trucking. In that regard, Mr. Nicosia operates certain commercial motor vehicles in connection with his hired hauler business - namely, a tractor trailer and tri-axel dump truck. During the summer of 2018, the ZBA denied Mr. Nicosia's request for a variance to park these vehicles on his property. The legality of that decision is currently subject to pending litigation. However, Proposed 2020 Zoning Amendment #12, if enacted, would essentially render the ZBA's decision moot by permitting Mr. Nicosia's use by right on his property. For those reasons, and because Mr. Nicosia will be particularly affected by the proposed amendment, he offers the following comments.

As a threshold matter, Mr. Nicosia is fully supportive of proposed Amendment #12. This Board has recognized that Candia is a community of tradesmen and contractors who have been operating small businesses out of their homes for many years in order to make a living and support their families. The Board has proposed this amendment because it values these residents and their contributions to the community. Mr. Nicosia shares these values with the Board. Amending the Zoning Ordinance to permit by right Mr. Nicosia's use and that of similar tradesmen and contractors is particularly appropriate at this time to legitimize their efforts and to provide an avenue for conformance with local regulations. At the same time, certain criteria that must be satisfied to obtain a residential use permit will ensure harmonious uses within the Residential District.

Mr. Nicosia submits, however, that two of these proposed criteria are too restrictive. First, criteria three limits resident-business owners to one employee. The purpose of the proposed

amendment is to legitimize approximately 65 businesses in Town. However, anecdotally, at least 75% of these businesses employ more than one employee. Most businesses employ two or three individuals in addition to the resident-owner. Limiting resident-business owners to one employee would not accomplish the purpose of the amendment because, even after it goes into effect, most contractors will still be unable to obtain a residential use permit due to this restriction.

This Board has said that the proposed amendment aims to strike a compromise between (1) allowing small home-based businesses that operate harmoniously in residential areas while; (2) prohibiting those that are too large and would be better suited in a commercial or industrial area. This compromise will not be lost if the proposed amendment is redrafted to allow for two or three employees in addition to the resident-owner. Such a business is still small enough to operate harmoniously in the Residential District and the revision would accomplish the purpose of the amendment by legitimizing the majority of tradesmen and contractors in Town. Accordingly, Mr. Nicosia requests that the Board revise the proposed amendment to limit resident-business owners to two or three employees in addition to the owner.

Second, criteria eight restricts traffic generated from the subject use to between the hours of 6:00AM and 9:00PM. However, many, if not most, tradesmen and contractors leave their homes before 6:00AM each morning in order to start their day as early as possible. For those that work outside during the summer months, it allows them to get more work done in the cool morning rather than the hot afternoon sun. For those in transportation businesses, it allows them to get a jump start on their travel ahead of the congested morning commute. Early work hours are inevitably part of nearly every trade.

Presumably, the purpose of the 6:00AM traffic restriction is to minimize disruption to neighboring property owners. However, proposed criteria four already accomplishes this purpose. If a proposed use in and of itself is an undue nuisance to neighbors, it does not matter what time traffic is leaving the subject property because all the criteria must be satisfied for issuance of a permit and the permit application will be denied on criteria four. Similarly, if a proposed use is not an undue nuisance to neighbors, then there is no harm in allowing traffic to leave the subject property earlier than 6:00AM, since the proposed use is already harmonious with the neighborhood. Moreover, plowing contractors get calls at all hours of the night during winter storms. They must respond to these calls in order to clear roads and driveways and ensure the safety of their clients, however, they will be unable to leave their homes prior to 6:00AM under the amendment as proposed. For these reasons, Mr. Nicosia requests that the Board revise the proposed amendment to limit traffic generation to no earlier than 4:00AM rather than 6:00AM, with an exception for plowing and similar type businesses during winter storms.

Mr. Nicosia reiterates that he is fully supportive of Proposed 2020 Zoning Amendment #12. He thanks for the Board for its time in this regard and looks forward to voting on the proposed amendment in the new year.

Sincerely,



Brett W. Alward, Esq.