

**CANDIA ZONING BOARD OF ADJUSTMENT**  
**Minutes of March 25, 2014**  
**APPROVED**

**Place:** Town Hall; Meeting room

**Call to Order:** 7:00 pm

**Members Present:** Boyd Chivers, Chairman; Judith Szot Vice Chairman; Ingrid Byrd; Ron Howe; Bob Petrin

**Members Absent:** John Easter; A. Soares, Alt

**Pledge of Allegiance**

Chairman Chivers asked Bob Petrin to sit for John Easter

Approval of Minutes February 25, 2014

Members Sitting for Approval of Minutes: *Boyd Chivers, Chairman; Judith Szot, Vice-Chairman; Ingrid Byrd; Ron Howe; Bob Petrin*

MOTION: Motion made by I. Byrd, seconded by R. Howe, to approve the minutes of February 25, 2014 as amended. The motion carried with a vote of 4-0-1. B. Chivers; J. Szot, I. Byrd, R. Howe were in favor. Bob Petrin abstained.

Continuance Case 14-600 Applicant: Kevin Dumont 446 Raymond Road, Candia NH 03034; Owner: 446 Raymond Road LLC 446 Raymond Road, Candia NH 03034; Property Location: 446 Raymond Road; Map 408 Lot 031; for a Variance under Section 8.06: Signs Size Restrictions: to permit the construction of an additional 16 foot by 8 foot sign next to existing sign and a Variance under Section 6.02 Table of Dimensional Requirements to erect 2 - 65 feet high movie screens in the Light Industrial 1 Zone.

Members Sitting for this Hearing: *Boyd Chivers, Chairman; Judith Szot, Vice-Chairman; Ingrid Byrd; Ron Howe; Bob Petrin*

Applicant/Agents Present: *Kevin Dumont, 446 Raymond Road, Candia NH 03034, Adam Gerhard & Regina Franz, Capture the Dream LLC 204 S. Main Street, Newmarket NH 03857*

Abutters/Public Present: *No Abutters were present. D. Murray Building Inspector; Carlton Robie, BOS; Dick Snow, BOS; Fletcher Perkins, 94 Island Road were present*

Chairman Chivers said the applicant came before the Board last month and the public hearing was continued until tonight. He said the Board asked the applicant to come to the ZBA with plans that had greater detail and at the same time the applicant was going to go to the Planning Board for a Minor Site Plan review. Chairman Chivers said the applicant has since done both things; they have provided a more detailed plan and they have a Notice of Decision (NOD) from the Planning Board granting the Minor Site Plan. He said the Minor Site Plan is subject to the following conditions, “(1) Variances for proposed movie screens and entrance sign are required from the Candia Zoning Board of Adjustment and (2) the Owner(s) of the facility shall routinely consult with the Candia Police Department and secure a Police Detail for traffic control when requested by the Police Chief.”

K. Dumont presented the full size plans to look at as well as 11 x 17 sheets. Chairman Chivers said by J. Szot’s calculations there is a 129 foot elevation drop from the right of way on Route 27 and

where the 65 foot high movie screen is proposed. He said the top of the movie screen will be approximately 65 feet below a horizontal line drawn straight from Route 27 and there is no imaginable way someone could see the screens from the road. K. Dumont said the plans presented show the elevation changes, the second screen in the correct location, sign location and the size of the screens. Chairman Chivers said he has complied with the Board's request. I. Byrd said the Board also asked where the exact location of the proposed sign would be. K. Dumont said it is on the plan. J. Szot asked where the right of way for Route 27 is on the plan and what OHW meant that was on the plan. K. Dumont said the State normally asks for 100' from the center of the highway and they compromised at 65 feet. He said they actually placed the existing sign at 67 feet. J. Szot questioned the original sign location compared to the location of the proposed sign on the plans presented. A. Gerhard said the original sign is not in the correct location but the proposed sign is and he apologized as he used an older plan. I. Byrd asked who drew the plans and A. Gerhard said he did and she asked him if he was a licensed surveyor as she felt it was a requirement somewhere. Chairman Chivers said the requirement to have a licensed surveyor is in the Subdivision Regulations and per the Zoning Regulations plans drawn by a licensed surveyor are not required. A. Gerhard confirmed that the existing sign is in the same line as the proposed sign on the plans. J. Szot asked if they had paperwork from the state saying where the signs have to be and K. Dumont said he has a signed agreement with the State but did not bring a copy with him. He said he did not bring it as he felt the location was between them and the State and they were coming to the ZBA for the sizing of the sign. Chairman Chivers said he assumes if they grant the variance the applicant will put the sign in a location that conforms to the State's requirements.

R. Howe, B. Petrin did not have any questions. I. Byrd said her questions were answered. J. Szot said to I. Byrd that the screens will not be seen because of the elevation difference and I. Byrd asked where the location of the screens on the plans where and K. Dumont showed where the screens were located on the plan. J. Szot asked where the Cobb's house, an abutter, was located and A. Gerhard pointed out the larger house icon was the Cobb's and the smaller house icon was their rental property.

Chairman Chivers said let's start with the variance under 6.02 Table of Dimensional Requirements to erect 2 - 65 feet high movie screens in the Light Industrial 1 Zone. He asked the Board if they had any reservations about granting a variance. The members did not have any reservations.

He asked J. Szot to read Section 14.02C Variance. J. Szot read, "*No Variance may be granted unless ALL of the following criteria are met: 1. The Variance will not be contrary to the public interest;*" The Board agreed it would not be contrary to the public interest. Chairman Chivers said criteria #1 would be easy enough to agree; the ordinance allows outdoor movie theatres and a 35 foot high screen is not large enough for the movie screens and is a mistake in the ordinances.

"*2. The spirit of the ordinance will not be contrary to the public interest;*" All Board members were in agreement. "*3. Substantial justice is done;*" All Board members were in agreement. "*4. The values of surrounding properties are not diminished; and*" All Board members were in agreement and Chairman Chivers said the movie screens will not be seen. "*5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship*" All Board members were in agreement.

I. Byrd asked if before they vote if any abutters were present. No abutters were present.

**MOTION:** Motion made by I. Byrd, seconded by R. Howe, to grant the variance under 6.02 Table of Dimensional Requirements to erect 2 - 65 feet high movie screens in the Light Industrial 1 Zone. The motion carried with a unanimous vote of 5-0-0.

Chairman Chivers said next the applicant is asking for a special exception for a sign larger than what the ordinance allows and in addition to the existing 10 foot x 10 foot sign that was granted on ZBA case 11-587. He said it is a 16 foot x 8 foot (128 sq ft) sign which is 28% larger than the existing sign.

Chairman Chivers said the applicant is asking for a special exception under Section 8.06: Sign Size Restriction and asked I. Byrd to read the criteria. She read, “*Standards provided by this Ordinance for the particular use permitted by Special Exception; 1. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*” The Board was in agreement. “*2. No detriment to property value in the vicinity or change in the neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*” The Board was in a agreement. “*3. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*” The Board was in agreement. Chairman Chivers said that has been addressed on the site plan. R. Howe said he agrees, in fact it would be more of a safety hazard if it was too small. . “*4. No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;*” The Board was in agreement. “*5. No significant increase of storm water runoff onto adjacent property or streets.*” The Board was in agreement there was no runoff.

MOTION: Motion made by R. Howe, seconded by B. Petrin, to grant a special exception under Section 8.06: Sign Size Restrictions to allow a Sign measuring 16’ x 8’ (128sq ft) in addition to an existing 10’ x 10’ sign in the Light Industrial 1 Zone. The motion carried with a unanimous vote of 5-0-0.

K. Dumont thanked the Board for their time. Chairman Chivers said D. Snow, BOS, has brought to the Board’s attention a change in the RSA’s that requires all boards to notify the Lamprey River Advisory Committee when there is project within ¼ mile on each side of the Lamprey River and its watershed. He said fortunately for the applicant D. Snow has already notified the Lamprey River Advisory Committee of the project. Chairman Chivers said he got a legal opinion indicating that perhaps the ZBA should have done that earlier in the process but the ZBA did not know about it. K. Dumont was instructed to send the plans to the Lamprey River Advisory Committee. K. Dumont thanked the Board for their time.

Case 14-601 Applicant: Shane & Kim Brady 40 Old Manchester Road, Candia NH 03034; Owner: same; Property Location: 40 Old Manchester Road; Map 410 Lot 153; for a Variance under Section 6.02 Table of Dimensional Requirements to construct a 6’ x 34’ covered farmers porch within the front setbacks in the in the Light Industrial 2 Zone. For additional information, please call the Land Use Office at 483-8588

Members Sitting for this Hearing: *Boyd Chivers, Chairman; Judith Szot, Vice-Chairman; Ingrid Byrd; Ron Howe; Bob Petrin*

Applicant/Agents Present: *Kim Brady, 40 Old Manchester Road, Candia NH 03034*

Abutters/Public Present: *No abutters were present. D. Murray Building Inspector; Carlton Robie, Board of Selectmen; Fletcher Perkins, 94 Island Road were present*

K. Brady said they want to build a 6 foot by 34 foot covered farmer’s porch within the front setbacks to dress the house up. She said the building department said the hand drawings done by the builder were acceptable. Chairman Chivers said the issue is where the right of way really is. Road Agent Dennis Lewis said as far as he knows it is a 3 rod road which is 49.5 feet. He said there is a corner pin

on the property with is fairly accurate with the stone wall across the street. He said he measured the stonewall near the mailbox with Building Inspector, Dave Murray, and found the right of way is 6-7 feet behind the mailbox on the lawn. D. Murray said the encroachment of the proposed farmer's porch will be approximately 38 feet. Chairman Chivers asked if the 3 rods were measured from the center of the road and D. Lewis said more than often the road is not in the center of the right of way and that is why they go by the right of way and not the pavement.

R. Howe said he did not have any questions saying there is not a lot you can do and actually the house encroaches as well. Chairman Chivers said it is an old house that predates zoning. I. Byrd said it makes the encroachment worse, she hoping it would have lined up with the garage. Chairman Chivers said the house is where it is and the applicant has the right to make improvements and he cannot see where the Board can deny it. D. Murray said the road in question is low traffic and he does not foresee the road ever being widened. D. Lewis said there is no issue with snow being pushed onto it.

I. Byrd said in the review letter the Building Inspector had written he said that the farmer's porch should not become living heated space. D. Murray said you can put a stipulation in that it will not become heated living space. R. Howe said you don't want to use the word enclosed so they can be able to put up storm windows or screens.

He asked J. Szot to read Section 14.02C Variance. J. Szot read, "*No Variance may be granted unless ALL of the following criteria are met: 1. The Variance will not be contrary to the public interest;*" The Board was in agreement. "*2. The spirit of the ordinance will not be contrary to the public interest;*" All Board members were in agreement. "*3. Substantial justice is done;*" All Board members were in agreement. "*4. The values of surrounding properties are not diminished; and*" All Board members were in agreement. Chairman Chivers said the value would increase "*5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship*" All Board members were in agreement.

MOTION: Motion made by R. Howe, seconded by I. Byrd, to grant the variance under 6.02 Table of Dimensional Requirements to construct a 6' x 34' covered farmer's porch within the front setbacks with the condition it can never be made into heated living space in the Light Industrial 2 Zone. The motion carried with a unanimous vote of 5-0-0.

### **Other Business**

Frank Albert to formally address the Board regarding developing a policy of formal recognition of departing and new members in order to promote more volunteerism

F. Albert congratulated Chairman Chivers on being elected to the BOS. Chairman Chivers said Frank retired in 2012 after 22 1/2 years of service. He read a statement that was to go into the 2012 town report regarding F. Albert's service to the town, "*after 20 years of faithful service to ZBA and the Town of Candia, Frank Albert announced his resignation this year. The Board has benefited from his contribution and perspective and members are grateful for his service. Frank will be replaced by John Easter and Rob Petrin joins the Board to succeed John Easter as an alternate.*" He said somehow this part of the report got cut off, not sure how, and it did not get in the 2012 town report. He said he asked the secretary to see what happened and she said she would take care of it next year. Unfortunately it was not placed in the town report the following year and I did not follow up on it as I thought it was taken care of. F. Albert said he had talked to the secretary yesterday she explained it and took responsibility for 2013 town report and the recognition will go in the 2014 town report. He said I am sure the Board knows it is important to have this in the town report as it gets people thinking maybe they want to join a board and in the past when someone leaves a board there is mention in the town report and he thought that was done when someone joins the board too. He said he knows when someone joins their name is added to the roster in the town report but feels a separate paragraph would

be good for the person who joined as well. Chairman Chivers said it is a good point and will remember to do this. B. Petrin said leave it to Frank to give that kind of insight.

J. Szot said it is common courtesy and she was surprised he was not mentioned and said we should take the time to recognize people when they leave and join. R. Howe said to take it one step further suggested having the BOS send a letter to the individual officially thanking them which would become part of official record and not just this board but for every board.

Chairman Chivers said they have Mark Laliberte in the audience tonight who is interested in joining the Board as an alternate and has submitted a letter of interest. M. Laliberte said he lives on 90 Jane Drive, grew up in Candia, left came back and just got elected to Budget Committee. He said his feeling has always been is there are two ways to really know the town; how the money is spent and how you do regulations. He said he thought an alternate to the Zoning Board would be a great place to start to learn about this board. He knows the commitment is a combination of not a lot of meetings but having to know a lot of in depth learning when these meetings happen. He said he sees how smooth the meetings run and the Board must do their homework. He said he wants to start giving back after 48 years.

MOTION: Motion made by I. Byrd, seconded by J. Szot, to have a memo sent to the Board of Selectmen with a recommendation to appoint Mark Laliberte as an alternate to the Zoning Board of Adjustment. The motion carried with a unanimous vote of 5-0-0.

J. Szot said she thought he had background in planning. M. Laliberte said he worked for the City of Manchester Mayor's office from 2007 to 2010 where he worked with a lot of budgets. He said he also sat in on the Zoning and Planning Boards. He said the Zoning was more interesting then the Planning Board he said that ran sometimes really late. He said he has a Master's in Public Administration from UNH and if accepted the first thing he is going to do is make a reservation in May to attend the annual meeting the OEP puts on which will be at the Mountain View. He said he wants to start doing his homework so when he is called up to serve. Chairman Chivers said he saw in the letter that he understood the Simplex decision M. Laliberte said he understood the basis of the 5 criteria for the Simplex versus Newington 2001.

### **Adjournment**

MOTION: Motion made by J. Szot, seconded by I. Byrd to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 7:45pm

Respectfully submitted,  
Sharon Robichaud  
Recording Secretary