

CANDIA ZONING BOARD OF ADJUSTMENT

Minutes of November 25, 2014

APPROVED

Place: Town Hall; Meeting room

Call to Order: 7:00 pm

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

Members Absent: *None.*

Pledge of Allegiance

Approval of Minutes September 23, 2014

J. Szot excused herself to allow M. Laliberte to sit on the Board to make a quorum to be able to vote on the minutes as she was not present for the September 23, 2014 meeting minutes.

Members Sitting for Approval of Minutes: *Boyd Chivers, Chairman; Ingrid Byrd; R. Howe; B. Petrin; M. Laliberte.*

MOTION: Motion made by M. Laliberte, seconded by I. Byrd, to approve the minutes of September 23, 2014 as amended. The motion carried with a vote of 3-0-2. R. Howe and B. Petrin abstained.

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

Applicant/Agents Present: Ron Severino of the Historical Society for the Town and Trustee of the Museum represented the town regarding the Fitts Museum 185 High Street, Candia NH 03034.

Abutters/Public Present: *None.*

Case 14-604 Applicant: Town of Candia 74 High Street, Candia NH 03034; Owner: Same; Property Location: Fitts Museum 185 High Street; Map 406 Lot 006; for a Variance under Section 6.02 Table of Dimensional Requirements to construct a hearse house shed within the side and rear setbacks and reconstruct ell on rear of museum within the rear setbacks in a Residential Zone

Ron Severino, representative of the Historical Society and Trustees of the Fitts Museum representing the town regarding the Fitts Museum 185 High Street, Candia NH 03034 was present. No abutters were present. J. Szot asked if Ron Severino had written authority to represent the town. R. Severino replied no and said he is a Trustee of the Fitts Museum. J. Szot said here is the problem the property is owned by the town so a paper has to be signed to have the authority to represent the town and she understands but if he were to come in about any other property and said you had the right to represent these people and there was nothing in writing and you could present all of this and the selectmen could turn around and say we don't approve any of these. She said she knows it is a procedural thing. R. Severino said other then the minutes of August 22, 2011 he does not have anything in writing. Chairman Chivers said he has the minutes indicating that the selectmen agreed with the building of the structure for the hearse house shed. R. Severino read from the minutes, "*If they wanted to move the building closer to the Sterling's, he has already talked with them and they don't have a problem with it. They would have to get a variance to move it within the 25 foot setback.*" R. Severino said the trustees of the museum and historical society came in to get permission to build the hearse house shed. He said the selectmen approved the building of the hearse house but left it up to the trustees and historical society where it would go on the property and the design of it and if a

variance was needed to apply for one. Chairman Chivers read from the August 22, 2011 selectmen minutes, “*Selectmen Soars motioned to allow the Historical Society to move ahead with planning their hearse shed. Seconded by Chairman Kelley. All were in favor. Motion carried.*”

R. Severino asked if that was enough to proceed. J. Szot said she would accept that for the first variance requested but not for the second variance requested. R. Severino said he would start with explaining the first variance. R. Howe said if they were to approve the second variance they could approve it with a stipulation that it is accepted by the selectmen as he would hate to see them go through this twice. I. Byrd said she had a question she wanted to ask before R. Severino started his presentation and said in her mind the hearse house is one issue but the reconstruction of the ELL is another issue and she is not comfortable putting them under one variance and suggested dealing with them as two variances.

MOTION: I. Byrd said she would like to make a motion to accept the selectmen minutes of August 22, 2011 as proof the selectmen approved the construction of the hearse house shed. Chairman Chivers said they will do that after when they rap everything up. J. Szot said what they are approving is that he can represent the town. I. Byrd said since they have the minutes that could take the place of the authorization form. B. Petrin seconded the motion. R. Howe asked procedurally does a motion belong at this point of the presentation and is it appropriate to have a motion on the floor in the middle of R. Severino’s presentation. I. Byrd said it has to do with whether R. Severino as a trustee can represent the town to present the case to the ZBA. Chairman Chivers said it cleans up the procedure. B. Petrin said to support what I. Byrd is saying it is in place of the power of attorney. Chairman Chivers said the motion was made and seconded and asked if there was any more discussion. He continued all in favor to recognize Ron Severino as pursuant to the selectman minutes of August 22, 2011 to represent the Fitts Museum before this Board with respect to the design and construction of hearse house shed. All were in favor. The motion carried with a unanimous vote of 5-0-0.

R. Severino said the Historical Society has been trying to get a hearse house constructed on the museum property for awhile and is their project. He said the Trustees of the Fitts Museum will become the caretakers but the Historical Society are the ones that headed up this project and who came to the selectmen for approval and were granted permission as long as they followed the procedure to obtain a variance if within the setbacks. He said it has been 3 years of trying to move forward and placing the hearse house shed on the property. He said there is only 14,000 square feet which is 1/3 of an acre and there isn’t much room. He said originally the only place to put it was in the middle of the front lawn but they didn’t want it there. He said they have a very big problem with space and have run out of room and are very limited on where they can go. He said the hearse house shed is 14 x 20 within 10 feet of the side and rear setback.

R. Severino said the request for the variance for the reconstruction of the ELL has not been brought before the selectman yet. He said he felt if they were coming in for the variance for the hearse house shed to do this variance at the same time rather than have everyone come twice. He said if they come back in a year the abutters may ask why you didn’t tell us a year ago. He said what he was hoping was to get a 10’ setback blanket variance so if the trustees decide in a year or two to reconstruct the ELL they can start.

Chairman Chivers said in a perfect world you would have decided where all of this would go and the reason for that is the abutter would know where it would go and they may not want it there and that is the reason to have a variance so it clearly delineates where the project is going to go which would be acceptable to the abutters and the Board. He said to grant a variance that blankets a setback so you can construct the ELL where you want at time of the construction does a disservice to the abutters and a disservice to any interested in this and this cannot be done. Chairman Chivers said all the variances that come out of the Board reference a bench mark and you have to tell the Board how many feet and where within the setbacks which would be referenced in the plans.

R. Severino the Trustees had talked about if they found another picture of the structure behind the building they would try to do something back there to get some more room which would be within the setbacks. He said now they have to go to the selectmen and they will ask if they have a variance to build this and they won't have one and will have to come back to the ZBA for a variance and that is the reason he asked for the variance at the same time as the variance for the hearse house shed.

Chair Chivers said it is not as complicated as you are making it seem all you have to do if you want to build the addition is come up with plans agree on the concept and go back to the selectmen and come back to the ZBA and you are not being charged any fees. Chairman Chivers said the Board is going to ask you to withdraw your request for a variance for the reconstruction of the ELL on the building. R. Severino withdrew the variance under Section 6.02 to reconstruct the ell on the rear of the museum within the rear setbacks.

J. Szot asked if the public notice posted is what the abutters saw and it was and she continued both the hearse house shed and the ELL addition were noticed so how can you say we have not noticed the abutters about the addition and where would there be a problem to give a 10 foot variance across the back to construct the addition. She continued how would that be a problem to the abutters as it clearly stated they are proposing the ELL addition within the rear setbacks. She said this way they do not have to come back. Chairman Chivers said R. Severino does not have the authorization from the selectmen to come forward with the ELL addition and the Board should not even consider a variance unless you have authorization to make that representation to the Board.

R. Severino said technically the Town doesn't even need a variance they are just doing it for the sake of the abutters. I. Byrd said they have always treated the town like any other resident or developer. R. Severino said you are mimicking what he is saying and disagreeing with him. He said you are getting him on technicality of a written authorization for the variance for the ELL but legally the town does not need a variance. He said he has always agreed to get a variance and to do it the correct way for the sake of the abutters who didn't even come.

R. Howe said not too long ago they approved a building within setbacks for the Fire Department and he does not remember having a letter from the selectmen saying they that they were authorized to proceed. J. Szot wasn't sure if the town owned the building and R. Severino said the town has owned the building for the past 10 to 12 years. R. Howe said hasn't the Board already set a precedence. He said he doesn't remember asking about permission. Chairman Chivers said let's get back to the variance on the hearse house shed. R. Severino said the setback on the hearse house shed would be 10 feet from the rear and 8 feet from the side. Chairman Chivers asked if the lot lines were clearly marked and R. Severino said yes clearly marked by stone walls. Chairman asked if the audience had any questions and the Board members. B. Petrin asked if they have to take the well or septic into consideration and R. Severino said there is no water or septic onsite. I. Byrd asked how the hearse house shed is to be constructed. R. Severino said post and beam and will be built by the Jesse Remington High School. He said their goal is to make a historic hearse house which is a pretty simple structure and he showed a drawing he had. I. Byrd said she went online and looked at other hearse house sheds. R. Severino said the floor will be concrete slab with a wood floor base for moisture protection.

R. Severino said the Town bought the hearse in 1871 and was used by the town and then was lost in a barn for 50 years. He said it ended up in Pearson's barn and then it went up for auction and he bought it back personally. He said the Historical Society raised some money and the hearse has been at his house for 7 years. He said once the hearse house is complete they will move it there. He said it is a very neat cool old piece of Candia's history.

Chairman Chivers asked J. Szot to read the variance standards. J. Szot said a variance criteria change for number 2 was brought to her attention at a law lecture this year. The criteria will be updated in the regulations. J. Szot read, "*Section 14.02C Variances: The Board of Adjustment shall hear and decide requests for variances from the terms of this Ordinance. 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 is observed;*" The Board was in agreement.

“3. Substantial justice is done;” The Board was in agreement. *“4. The values of surrounding properties are not diminished;”* The Board was in agreement. *“and 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.”* The Board was in agreement. Chairman Chivers said the applicant has met the criteria standards and asked for a motion.

MOTION: Motion made by R. Howe, seconded by B. Petrin, to grant a variance under Section 6.02 Table of Dimensional Requirements to allow the construction of the Hearse House Shed within the side and rear setbacks at 185 High Street in a Residential Zone. B. Petrin clarified they were not including the variance for the construction of the ELL on the rear of the museum. All were in favor. The motion carried with a unanimous vote of 5-0-0.

Chairman Chivers asked R. Severino to formally withdraw the variance under Section 6.02 to reconstruct the ell on the rear of the museum within the rear setbacks and he did and he will put that in writing for the records.

I. Byrd asked to have applicants supply better quality drawings and that they will supply graph paper if needed. Chairman Chivers said he was sorry to put him through so many procedural hurdles. R. Severino said the reason it has taken so long is they are still trying to negotiate with the Church to purchase the property behind the museum and are private funds available. He said the town actually had it under purchase and sale agreement at one point but it took so long the church bought the property and if they do not purchase the property a variance would be needed to build the Ell because they need the room. He said the actual deed for the museum put the property line one foot off the back of the museum building and said when the museum was given to the town the lot line went up the stone wall and across the back of the building by one foot. Later that year the sellers decided to deed a piece to square up the lot which is what they own now and then sometime later sold they sold off the back piece and a house was built. He said the town had a Purchase & Sales agreement with the Tewksbury's and it was recorded the town had first option to purchase the back piece but when that time came the town wasn't ready and the church purchased the back piece. He said ultimately they would love to be able to purchase the property out back and be able to make more of a history place back there. J. Szot said she believes the church has a five year stipulation on the use and then they have to come back. She said they came back to use it for counseling. R. Severino thanked the Board for their time.

Other Business

R. Howe wanted to say that the building inspector's memo really summarizes the cases and found it very helpful as he has gone out on site and then gives the Board his opinion because the Board cannot do this. He said his other comment was they need to think about getting another alternate as Amanda Soares is leaving. Chairman Chivers agreed and will post the position when she leaves and then asked the Board if they may know anyone that may want to volunteer.

Adjournment

MOTION: Motion made by I. Byrd, seconded by B. Petrin to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 7:36 pm

Respectfully submitted,
Sharon Robichaud Recording Secretary