

CANDIA ZONING BOARD OF ADJUSTMENT
Minutes of March 24, 2015
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 November 25, 2014

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

MOTION: Motion made by I. Byrd, seconded by R. Howe, to approve the minutes of November 25, 2014 as presented. The motion carried with a vote of 5-0-0.

Case 15-605 Applicant: Carl & Kathy Carlson 12 Stevens Lane, Candia NH 03034; Owner: Same; Property Location: 12 Stevens Lane; Map 405 Lot 011; for a Variance under Section 6.02 Table of Dimensional Requirements to construct an addition within the front setbacks and a Variance under Section 2.02b to enlarge a non-conforming use within a Residential Zone.

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

Applicant/Agents Present: Carl & Kathy Carlson, 12 Stevens Lane, Candia NH 03034

Abutters/Public Present: None.

K. Carlson started her presentation by handing out packets. She summarized by saying the picture on the front is their home that used to have a garage where the bottom windows are. She said they had to make structural changes to the house to accommodate family so the garage became a family room and the family room a bedroom and bathroom. She said now they wish to have a garage back and with 4 children they need an additional bedroom. She said they want to put an addition on the front of the house that would provide a two car garage and two bedrooms above and there would be changes internally to make the house easier to live in. She said the addition would improve the value of their home for themselves and Candia. She continued by saying they want to put the addition on the front because the other locations do not work for various reasons. She said in the front it works the best for interior access without ruining the layout of the house and works best for traveling from the garage to the house to the kitchen. She showed a drawing of what the front of their house would look with the edition saying it is big improvement.

K. Carlson said she knows she has to defend the request for the variance and the first criteria is why it is not contrary to the public interest and her reasons where the addition does not obstruct visibility when driving, does not; create a hazard or diminish property values or increase traffic or increase town's responsibilities or prevent the town from performing it's duties and it doesn't impact historically valuable structures, specifically their stone wall which will not be touched and would not impact the environment negatively. The second criteria the spirit of the ordinance is observed as the addition leaves the road open for widening in fact even with the addition they are still the furthest back from the setbacks then all the neighbors. She said there are only 5 houses on the street with no further development and she felt there will never be a reason to widen the street.

Chairman Chivers said you look close to the lot line on the right side and K. Carlson said they are close on the right side which would also require a variance but is the only access to the septic and if they put the addition on the other end the house it would make the house 75' wide which would look horrible and also ruin the interior layout of their house and would ruin the family room. I. Byrd asked how close to the road they would be and it was determined to be 27' to the edge of the pavement. I. Byrd asked about the number of bedrooms and K. Carlson said

the tank is 1000 gallons and upgrading the septic will be part of the project and showed where it was located on the drawing.

J. Szot read the Building Inspector's letter into record, "*To the members of the ZBA To the Members of the ZBA: I have gone over the proposal for the addition at 12 Stevens Lane and it is my opinion that the project could be done as presented and still provide the appropriate safety that I believe is the intent of our ordinances as they are written. The property listed as map 405 lot 11 has 1.929 acres. The minimum lot size requirement is three acres and that triggered section 2.02d (b) the enlargement of a non-conforming use and or structure. The residential use is correct and the enlargement of the residential home to add bedrooms for a growing family certainly should be allowed in cases such as this one. The homeowners realize that the existing septic system will need to be redesigned to sufficiently handle the additional bedrooms. Section 6.02 requires a setback of 50 feet from the road "right of way". The addition would be 15 feet from the right of way and an additional 12 feet to the pavement. The surrounding properties have structures close to the pavement that were built many years ago and are allowed to remain. Stevens Lane has a very low traffic count that should be considered from the safety standpoint that I believe is the intent of section 6.02. I think that it may be an injustice to the homeowners to not allow them to encroach upon the right of way considering the surrounding properties all do. The parking of additional vehicles could become a problem because of the close proximity of the right of way as it is with the surrounding properties. I would like to recommend that an additional parking area be designated to the left or right of the addition to remedy the problem before it occurs. With the septic being upgraded and additional parking made available it is my opinion that this proposal could be granted and the intent of our local ordinances will be retained. Sincerely, Dave Murray Building Inspector/Code Compliance Officer Health Inspector.*"

Chairman Chivers asked if they would have enough room to park cars to be off the street and asked the Road Agent for his comments on parking. D. Lewis said he has no problem with the encroachment of the addition into the setback and doesn't foresee any need to widen Stevens Lane. His only concern was losing two spots to park. He suggested coming into the driveway and parking off to the left which would be simple to do and would not be a major expense. J. Szot said she only counts 4 bedrooms and asked if there will still be one downstairs? C. Carlson said yes it was just not shown drawn in.

Chairman Chivers closed the public hearing for the Board to consider the case. He said on the fifth page of the handout the applicant has gone over the 5 criteria for a variance. I. Byrd asked which variance they are going to talk about 2.02b or 6.02 and felt they were listed separately so they need to address them separately. Chairman Chivers said they are just talking about one project. J. Szot said 2.02b is the governing ordinance and 6.02 is the actual ordinance that pertains to it which is the enabling ordinance and 2.02b the ordinance that directly explains the enabling legislation where you have to allow it first and then set up the rules for it. Chairman Chivers said they will grant the variance under 6.02 because they are required to under 2.02b, and they started with the variance under 6.02 which is the dimensional variance.

I. Byrd read the 5 variance criteria into record: "*1. The Variance will not be contrary to the public interest;*" Chairman Chivers said as the applicant pointed out does not obstruct visibility doesn't create a hazard doesn't diminish the property values or increase traffic or impact environment and asked the Board if they agreed on this. The Board was in agreement. "*2. The spirit of the ordinance is observed;*" Chairman Chivers said Mrs. Carlson said the spirit of the ordinance is to leave the road open for widening but Stevens Lane only has 5 houses with no land left to build on so widening the road will not be necessary. He said all the other houses violate the ordinance already being grandfathered in. The Board agreed. "*3. Substantial justice is done;*" Chairman Chivers said Mrs. Carlson points out that the house will be much more livable for current and future family and they will be able to stay and not have to move. The Board was in agreement. "*4. The values of surrounding properties are not diminished; and*" "*5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship*". The Board was in agreement the applicant has met these two standards. J. Scot asked about conditions and Chairman Chivers said there would be 2 conditions; upgrade the septic to accommodate a 5 bedroom house and provide additional parking on the east side of the driveway. B. Petrin asked what the time frame was for building if granted the variance. D. Murray said they have one year to begin the work and he will be asking for the new septic design before he issues the building permit. The applicants said they want to finish the work before school starts in the fall of this year.

MOTION: Motion made by B. Petrin, seconded by J. Szot to grant the variances under 2.02b and 6.02 with two conditions; parking for 4 vehicles outside the garage and approved septic system to accommodate 5 bedrooms. All were in favor. The motion carried with a vote of 5-0-0

Case 15-606 Applicant: 36 High Street LLC, 38 Fieldstone Lane Candia NH 03034; Owner: Same; Property Location: 36 High Street; Map 409 Lot 200 & 200-1; for a Variance under Section 2.02 d Redevelopment of the subject parcels; and Variance under 6.02 to allow stairs and door platform deck within the front setbacks within a Mixed Use Zone.

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

Applicant/Agents Present: Scott & Amy Komisarek 38 Fieldstone Lane, Candia NH 03034

Abutters/Public Present: Sis Richter for the Historical Society

J. Szot said before they start the hearing, she said she is neighbors with the applicants and if anyone feels there would be a conflict of interest, she would step down. She said she doesn't have any problems sitting for the case. No one on the Board had an issue and Chairman Chivers thanked her for her disclosure. Chairman Chivers asked the building inspector to clarify how he noticed under 2.02d abandonment and asked what that had to do with this property. D. Murray said the property has been unoccupied and not maintained for over a year and the regulations say since it is a nonconforming lot being close to the road and once abandoned for more than a year it has to come back before the Board. Chairman Chivers said the proposed use is a conforming use in Mixed District on a nonconforming lot and it doesn't seem to pertain. He said 2.02b would pertain more. D. Murray said that is his interpretation of the ordinances. S. Komisarek said he checked with his attorney about the ordinance 2.02d and the attorney felt that he should come forward for the variance.

S. Komisarek said he has submitted his response to the criteria and from a common sense standpoint it would seem there is overwhelming support for the preservation of the structure. He said they do plan on restoring and renovating the building and improving the front entrance. Chairman Chivers said you will find this town is in support to keep historical buildings intact which is what his proposal is. He asked to have the Building inspector's letter read into record. J. Szot read the Building Inspector's letter into record, *"To the Members of the ZBA: I have gone over the proposal for 36 High Street and have met with the property owners of the project and am both excited and impressed with this proposal not only as the building official but as a lifelong resident of this community. We have all seen the rural commitment of the owners with the completion of the farm stand and after viewing the plans can see another complimenting addition to our community. The existing property listed as Map 409 Lots 200 & 200-1 have been abandoned and unmaintained for a number of years triggering Section 2.02d. Our tax map lists lot 200 having .388 of an acre and lot 200-1 having .378 of an acre for a total of .766 of an acre. The two lots will be merged together and the deed will be registered. The plan shows that the building, ample parking, septic and well can co-exist on this parcel with the exception of some drainage that is to be put onto lot 409-203. A drainage waiver will need to be done as it shows on the plan detail. The existing building is less than 50 feet from the road and the proposed walkways will also be less than the required 50 feet. The walkways will not encroach within the set back more than the existing building. In our major site plan review regulations section 8.03 under Architectural Design Considerations (pg 15) #6 refers to "STYLING"(a)Efforts should be made to re-use existing structures particularly if they have historical significance within the community, and (b) Traditional New England styling is preferred. Colonial construction details such as gabled roofs, hip roofs, dormers and window treatments are encouraged. It is my opinion that this project could be allowed while retaining the intent of our ordinances as to why they were written and improve the overall rural presence of the community while maintaining a safe and secure environment for the residents and visitors of Candia. Sincerely, Dave Murray Building Inspector/Code Compliance Officer Health Inspector."*

Chairman Chivers said he wanted the members to keep in mind they are not here for a site plan review, they are here to consider if the applicant meets the criteria for the area variance to allow the ramp within the setbacks. I. Byrd said it makes sense as it does not extend out beyond the existing building. R. Howe asked what his plans were for the building and S. Komisarek said it is going to be a combination of commercial space with one residential unit. He said they do not have any signed leases for the tenants so he cannot speculate the type of commercial. Chairman Chivers said as long as the proposed use does not violate the ordinances and they meet the requirements for a variance the only time he would need a special exception would be if there were more than one residential unit. I. Byrd asked where the septic would go and she was shown where it was on the plans. J. Szot said they have two variances to consider 2.02d and 6.02. R. Howe said he was still not sure what constituted abandonment because you could move out of your house and have it for sale for 3 years with no one living in it that is not abandonment and why they are stuck on this.

J. Szot said she feels it would apply when a house is abandoned like Stubby's and unsafe to live in but this house has people that were in and out of it. D. Murray said the issue of abandonment came up since the property is nonconforming and he said he understands their questions if the property had been conforming. R. Howe said it is clear cut in the instance of the grocery store on 27 located in the residential district where they closed down for more than an year at a time several times and they had to come back to reopen and questioned on where and how they draw the line on abandonment. I. Byrd said felt the Board is holding him to a standard that he had no control over until he owned the property and she felt the abandonment issue is not appropriate here. S. Komisarek said it was a grey area and because of the investment that is going to go into the property he wanted to make sure it is covered.

J. Szot said the only reason they may want to address it is as it is already noticed and will clear up the issue because she has known people where the bank checks the ordinances and if they think there may be an issue the bank sends them back to the town. She felt they should address the issue tonight and vote on it even though there isn't a clear definition and it is not clear that it was abandoned. J. Szot said officially she feels it was not abandoned.

Hearing no more comments Chairman Chivers closed the public hearing to deliberate the case. He said they will start with 2.02d. J. Szot read the five criteria into record, "1. *The Variance will not be contrary to the public interest*; 2. *The spirit of the ordinance is observed*; 3. *Substantial justice is done*; 4. *The values of surrounding properties are not diminished*; and 5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship*". Board was in agreement with all 5 criteria.

MOTION: Motion made by J. Szot, seconded by B. Petrin, to grant the 2.02d Variance to allow the redevelopment of the building within the Mixed District. All were in favor. The motion carried with a vote of 5-0-0

Chairman Chivers said they will do the second variance request 6.02. J. Szot read the 5 criteria into record; "1. *The Variance will not be contrary to the public interest*; The Board agreed as it does not encroach any further that what already exists. "2. *The spirit of the ordinance is observed*;" J. Szot said it is observed as it helping to restore a historical house. "3. *Substantial justice is done*;" J. Szot said again it does not encroach further then what already exists. "4. *The values of surrounding properties are not diminished*; The Board agreed the improvements will enhance surrounding values. "and 5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship*." The Board was in agreement.

MOTION: Motion made by J. Szot, seconded by B. Petrin, to grant the 6.02 Variance to allow the stairs and platform within the front setbacks as presented within the Mixed District. All were in favor. The motion carried with a vote of 5-0-0

Other Business

Elections of Officers

Elections

MOTION: Motion made by R. Howe, seconded by I. Byrd, to nominate Boyd Chivers as Chairman. J. Szot, I. Byrd, B. Petrin and R. Howe were in favor. Boyd Chivers abstained. The motion carried with a vote of 4-0-1

MOTION: Motion made by I. Byrd, seconded by B. Chivers to nominate Judith Szot for Vice Chair. B. Chivers, I. Byrd, B. Petrin and R. Howe were in favor. Judith Szot abstained. The motion carried with a vote of 4-0-1.

Member Terms Expiring and Noticing for Alternates

There was a discussion on sending letter to the BOS for terms that are expiring this year. B. Petrin, R. Howe and I. Byrd all expressed interested in being reappointed. Chairman Chivers said he will have a memo sent to the BOS asking to reappoint all 3 members. Noticing for alternates will be posted around town and on the website.

Adjournment

MOTION: Motion made by R. Howe, seconded by B. Petrin to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 8:10 pm.

Respectfully submitted,
Sharon Robichaud Recording Secretary