

**CANDIA ZONING BOARD OF ADJUSTMENT**  
**Minutes of April 28, 2015**  
**APPROVED**

**Place:** Town Hall; Meeting room

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

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

**Members Absent:** *Boyd Chivers*

**Pledge of Allegiance**

*Approval of Minutes March 24, 2015*

*Members Sitting for Approval of Minutes: Vice Chair J. Szot, Ingrid Byrd; R. Howe; B. Petrin; M. Laliberte.*

**MOTION:** Motion made by B. Petrin, seconded by I. Byrd, to approve the minutes of March 24, 2014 as amended. Vice Chair J. Szot, Ingrid Byrd; R. Howe; B. Petrin were in favor M. Laliberte abstained. The motion carried with a vote of (4-0-1).

**Case 15-607** Applicant: Amy Dufour 25 New Boston Road, Candia NH 03034; Owner: Same; Property Location: 25 New Boston Road; Map 405 Lot 106; for a Variance under Article 10 Section 10.06b “Very poorly drained soils.”; to construct an in-ground pool within the setbacks of very poorly drained soil in a Residential Zone.

*Members Sitting for this Hearing: Judith Szot Vice Chair; Ingrid Byrd; Ron Howe; Bob Petrin, M. Laliberte*

*Applicant/Agents Present: Daniel Dufour and Amy Dufour 25 New Boston Road, Candia NH 03034; Janet Hajjr of Surfside pool*

Daniel Dufour father spoke on behalf of Amy Dufour his daughter. The applicant brought more pictures to show the Board. D. Dufour said not really knowing what the definition was for very poorly drained soils he didn't know it included ponds. He said on page one of the handout it shows the area that looks relatively large and that was his interpretation of very poorly drained soils.

Vice Chair J. Szot said there is a very specific definition of very poorly drained soils. I. Boyd read the definition of poorly drained soils, “soils remain wet for a large portions of the year round as the water table remains at or near the surface year round.” D. Dufour said on the next page he assumed the area in contention was and said you can see their vehicles are parked close and there is no sinking and the soil is dry. He said they moved in 2 ½ years ago and they have never had any water situation where they were parking in mud other then when the snow was melting this spring for a few days which dried up quickly. He said they never got to a point where the tires sunk.

Vice Chair J. Szot said it is historical that the area where he parks was filled in and there has been a time when the water went almost up to the house and covered the road but not while they lived there. R. Howe said there has been water in the barn. He said he lives on the same road and there has been water that has run through the barn when the culvert got blocked which it does on a regular basis. D. Dufour asked whose job it is to maintain the culvert and Vice Chair J. Szot it is the Town's job. D. Dufour said Mr. Bean traps muskrats in his backyard and does come by fairly often to clean it out by going in with his waiters to clean it out. R. Howe said the road agent is ultimately responsible for it. He said there has been a time when the culvert has blocked and the road agent had to find a tree that was long enough to reach the length of the road and he put it in with his backhoe to push the block all the way through 2 or 3 years ago when it flooded and washed out totally. I. Byrd said is must be in a flood plain. D. Murray said floodplain A which dictates that you have to be careful when you build on it so in case it floods it does not divert the water in a different direction and in this case an inground pool would not do this. D. Dufour said the barn is on a concrete slab and is 14' from the water and asked how long the barn has been there and R. Howe said 25 years or more. R. Howe said he would question the poorly drained soil as it refers to soil in place here there is fill but that does not mean the base underneath would not be poorly drained soils. D. Murray said it seems to run through alright as long as it doesn't back up and the yard is dry now and this is the wet season.

D. Dufour said if you continue through the pictures they show views of the general area and said the pool is completely on the other side .R. Howe said they had an above ground pool there before. D. Dufour said it shows where the pool is approximately going to be and the last picture shows the property from Deerfield Road view. He said the pool will be approximately where the old pool was and they are going to replace the chain link fence with a new chain link to go with the pool. D. Dufour said the location of pool is 52 plus feet from the water using Google and using a tape measure. B. Petrin asked the D. Murray if he had gone to the site and asked if it was dry and solid enough to get equipment in and D. Murray said yes. R. Howe said before they bought the house there was some serious work done to the foundation to the back side of the house because of the fill. I. Byrd asked how old the house was and D. Dufour said it was built in 1975.

J. Szot Vice-Chair asked if the level of the ground would be raised and filled in or at the level it is at now as she was concerned with fill needed. D. Dufour said approximately the level it is now but it does slope to the back. J. Hajjr said when they put in the pool they disturb roughly 4 feet all around the actual size of the pool to put in bracing for the pool and then they fill that in then they do the concrete. J. Szot Vice-Chair said so basically you will be only 4 feet closer to the wetlands. I. Byrd going 4 feet out for concrete work how far beyond that will the equipment be going and asked how close they would come to the wetlands. A. Dufour said there is a lot of room they can actually drive a vehicle around the barn near the wetlands. R. Howe asked where the fill is going that is coming out for the pool and D. Dufour said he showed where he was going to place the fill in an area that had sunk over time that was not near the pond. He said he would like to use the good soil only and any extra will be hauled away. M. Laliberte asked about a pump house and D. Dufour said his plan was to have the pump right alongside the house with a cover. D. Murray said he felt none of the construction will encroach closer then the barn. B. Petrin asked if the edge of lawn was the back lot line and D. Dufour said they have 5 acres rectangle shaped lot with 400 ft of frontage on Deerfield Road and just shy of 600 ft on New Boston road. J. Szot Vice-Chair asked the building inspector if he had any thoughts or concerns he wanted to bring to the Board. D. Murray said he almost didn't bring it to Board as it really isn't a structure just an in ground pool but if you go to the definition of a structure it is anything permanently attached in the ground that is why they are here tonight for the variance. He said he did not have any problems with this at all; it will not block or redirect the flow of water or anything else.

J. Szot Vice-Chair read the letter from the building inspector into record *“To the Members of the ZBA: I have reviewed the proposal to construct an in- ground pool at the Dufour residence located at 25 New Boston Road and have come to the following conclusion. The proposed location of the pool is within the 100 foot setback from very poorly drained soil and a swimming pool is defined as a structure resulting in the request for the variance. The property is also located in flood zone A. **Special consideration** for the construction of any structures should be taken so that the structures will not block and redirect the flow of water during any flooding. An in-ground pool would certainly not block the flow of water. This property has not flooded in a number of years. Other structures on the property include a large shed that is on the edge of the wetland area. This structure has been there for a number of years. No problems have occurred due to the location of this shed. The proposed location of the pool is between the main dwelling and the shed. The pool will not encroach the wetland area more than the shed, in fact significantly less. This is the only feasible location on the property for such a project. I spoke to road agent Lewis about the proposal and he did have a concern to pass along to the homeowner and the installer. The whole area was created with “fill” many years ago and special attention should be used for proper compaction of soils during construction. It is my opinion that the proposal could be approved as shown and the variance granted while maintaining the intent of the ordinance.”*R. Howe asked the applicant if they had considered an above ground. D. Dufour said if they cannot do the in ground pool they will do without a pool. He said they are getting along in age and it would be nice to walk out to the pool and not climb up to a deck. He said from his experience an in ground pool would be much better and would be a better fit. D. Murray said if water back up and gets flowing an above ground pool is going downstream. A. Dufour said they have a paralyzed child in the family and an above ground pool is not going to be feasible for him.

J. Szot Vice-Chair asked if there was any other comments and asked the applicant if he was aware of the five criteria he has to meet and he said yes and she continued once everyone is finished speaking she will close the hearing and then the Board will deliberate and make an decision and that they can stay and listen to the deliberation but cannot contribute.

J. Szot Vice-Chair asked if anyone had any other questions and hearing none closed the hearing to deliberate. D. Snow asked if he could address the Board saying he is from East Candia and is addressing the Board tonight as the chairman of the Lamprey River Advisory Committee. He said as you are aware he hopes, the project

is in the vicinity of the north branch of Lamprey River and is therefore protected under River Management Protection Program. He said LRAC is the establishment of a local river management committee and one of the duties of this committee is to advise the local municipalities on projects that take place within the areas that are protected. He said an RSA states municipalities and other agencies shall inform the LRAC of any projects they are considering in managing and regulating activities within designated river corridors. He is concerned that the LRAC has not been notified unless the project is not within the Lamprey River and its contributory corridor. He said he will leave the information with the Board as it may be advisable to consider this carefully. He said the disadvantage to the applicants is if this was challenged and the proper procedures were not followed when they consider this variance.

J. Szot Vice-Chair asked if this property was within the corridor and D. Snow said he has not seen the plans and therefore cannot answer. J. Szot Vice-Chair said you know where the house is on the corner of Deerfield Road and New Boston Road so how far is that from the Lamprey River 500 feet, 800 feet a thousand feet? D. Snow said he did not know as he has not seen a map of it. He said he was just saying there are things that need to be considered. J. Szot Vice-Chair asked D. Snow if he was asking the Board to adjourn this meeting and notify this committee and then come back next month after they investigate this and let them know if this is within this area. D. Snow said he wouldn't go that far. He was saying if the project is within a quarter mile of the corridor defined by the statute, he told the Board he would consider a verbal notification tonight from the Board. He said then he would ask for a set of plans which he would present to the local project review committee that is meeting Thursday and they will decide whether they will review it or pass it the LRAC which is meeting the end of next month. He said that is all he is suggesting.

R. Howe asked D. Snow if it covers all the tributaries that flow in the north branch and how far down the tributaries does this go. D. Snow said it has never been defined by the court and all he can say is Lamprey River and its water shed tributaries are under the River Management Protection Program and it says municipalities are required to inform the local advisory committees of any actions within the quarter mile corridor and a corridor is defined as being either 1300 feet of the high water mark or the 100 year flood plan which either one is greater and he cannot make a decision he is just letting the Board know.

J. Szot Vice-Chair asked what the next step would be if in fact they chose to notify this program or chose not to. D. Snow said he is not saying this but if someone would challenge the application because of improper procedure and if it was in fact improper procedure you would be doing a disservice to the applicant.

I. Byrd asked D. Snow how long he has been chairman of this group and he replied he was elected in January 2015 and then I. Byrd asked why was this information not brought to the BOS, Planning Board and ZBA so all the boards would be prepared and they would not sit here tonight not understanding what is going on and telling the applicant that they may not get their pool until November. D. Snow said he did and I. Byrd said you did not. He said when he was selectmen he suggested that information be forwarded to other boards. I. Byrd said you were selectmen then you could have made sure that all the boards knew.

M. Laliberte asked the applicant if this was approved tonight when were they going to start construction and the applicant said they were contracted in January and they were to start in June but may be moving this date up. M. Laliberte asked D. Snow how fast can this process be done, if they wish to have this done. D. Snow said if the project review committee were to review and have comments with no concerns and normally would not do this unless there is an application conceivable there would be a wetland application should be done he said he does not know as he has not looked at it. He said the shortest period he could do this would be starting at the end of this month may starting in June. A. Dufour said they wanted to start the pool in May as that is their time slot with the installer.

D. Murray said he feels they applicant does not need an application with DES where the pool is to be located. M. Laliberte said knowing that there is no wetland issues are there some way to expedite this review with LRAC. D. Snow said he was not sure. He said if the Building Inspector's opinion on the wetlands is correct he said that is what their review committee looks at because they advise DES on projects that require wetland permits. Vice Chairman J. Szot asked who was on this committee. D. Snow said they meet Thursday with several engineers one retired from DOT one a hydrologist. He was asked for names and if they were Candia residents and D. Snow said they are not from Candia. He said himself and A. Hall are the only ones from Candia on this committee that comprises 14 towns.

R. Howe said in looking at this zoning map on the very corner he sees the word branch which must be the North Branch River and said just looking with a scale looks like they are 800' feet. Vice Chairman J. Szot said this does not take topology into consideration but the project is certainly within ¼ mile. M. Laliberte asked what authority the committee has and how does it serve local government on granting a variance where LRAC is going

to have control of a ¼ of a mile on each side of the branch. He feels it's a legal entity to approve or deny somebody's the use of their land. D. Snow said they have no control they are only an advisory committee and only advise local municipalities and DES. He said this group was set up by legislature because they couldn't pay anyone from DES so they asked for volunteers to help serve and advise local municipalities and said these people do not have the expertise on complicated projects which this is not but still that is their job. B. Petrin said duly noted.

M. Laliberte said what if the committee looked at the project and found it was good except for x and the Board is okay with all of it including x and it is approved what then. He said if LRAC has an issue or concern and the Board approves the project anyway will there be any legal challenge to the Town or applicant. D. Snow said he didn't think so but the issue he brought before the Board was whether you followed proper procedures. He said he is perfectly willing to state in court he talked to the ZBA the Board notified him and he looked at it and came back with this information and did not find anything that required them to notify the DES or DOT of anything. B. Petrin said correct him if wrong but in your bylaws it stipulate that municipalities should contact your organization like an abutter and D. Snow said it is in the statute 483:8-a III (a) "shall". R. Howe said this has great implications that mean every time you have a permit you have to look at everything.

Vice Chairman J. Szot asked why this could not have been brought up before the meeting so the applicants would not have to wait another month as it is a very small swim season and they will be lucky to get in their pool by August. She asked D. Snow when he knew this was coming up would it have been more appropriate to contact the secretary so they could have gotten the information to him. D. Snow said are you saying I deliberately delayed coming to you? He said he saw it in the newspaper that the project was on New Boston Road. Vice Chairman Szot said since the Board is not aware of LRAC it would have been appropriate to notify the secretary who could have notified everyone before the public hearing. Vice Chairman Szot said it appears what D. Snow is saying is procedure is the first thing the courts will challenge.

I. Byrd **motioned** to close the hearing and go to the deliberation. Vice Chairman Szot said they need to hear more discussion. I. Byrd **withdrew the motion**.

A. Dufour said she was confused would the pool itself be challenged because it was not reviewed by the LRAC. D. Snow said there could be a legal challenge by anyone who doesn't want you to put your pool in for whatever reason but if they could raise an issue that the Board did not follow proper procedure. A. Dufour said you knew about the pool but you are saying you do not know anything about the project? Vice Chairman Szot said there are no abutters here tonight therefore there are no concerns. Vice Chairman Szot said the RSA reads a municipal official shall inform of any projects. D. Snow said he does not know if the project is within ¼ mi and that is up to the Board to decide. Vice Chairman Szot said it has been established that it is within a ¼ mile. She asked what the committee needed and D. Snow said a copy of the application. She said LRAC will be given a copy. R. Howe said it appears the LRAC needs more then what the Board has before them and they may need topography that would require a site plan. Vice Chairman Szot said you are looking at few thousand dollar investment in engineering. D. Murray not sure if they will require that much information but do not know.

D. snow said one thing he will mention which is kind of a personal thing is every time you drive by the property there is a pipe dumping into the river. D. Dufour said there is a drain pipe that was there when he bought the property. Vice Chairman Szot said that is duly noted and an issue for the Building Inspector on whether there is an issue of rain water being directed in to the swamp instead of washing through the applicant's yard then into the swamp he can deal with that issue. R. Howe asked if they postponed making a decision for one month would D. Snow be able to come back with a review for the Board and D. Snow said yes. I. Byrd didn't see how he could as the committee does not meet to the end of May which would push this until June. Vice Chairman Szot asked if he could look at the project tonight and provide the Board with advice and D. Snow said no.

**MOTION:** Motion made by I. Byrd, seconded by B. Petrin to close the public hearing to deliberate. All were in favor. The motion carried with a vote of 5-0-0. B. Petrin said let's make this simple and notify the LRAC and move forward and continue the hearing. I. Byrd suggested approve the application with the condition to notify the LRAC as she does not want to hold up a decision and make the applicant wait two months to put their pool in. R. Howe said we may make that decision and if they go ahead and build the pool and someone challenges it. I. Byrd said there are no abutters challenging this. R. Howe said it will be someone from the LRAC that will challenge but I. Byrd said the LRAC is advisory only.

M. Laliberte suggested going through variance criteria to determine if they meet the criteria and if they do then the Board can grant the variance pending notifying LRAC. He said this condition meets protocol of informing LRAC. He said the Board has already received advice from their experts, the Building Inspector and Road Agent however per protocol they do have to inform the LRAC which is advisory only. He said if they have faith in what

their Building Inspector said then the Board should have confidence in what they are voting on. R. Howe said even though he is favor of approving the project he has to question, how you can approve criteria #1. because there is the potential there to affect public interest. Vice Chairman Szot said D. Murray said to affect the public it would have to affect the water in some way and he said he doesn't see how the pool will affect the water. R. Howe suggested waiting for LRAC and postponing the meeting. I. Byrd asked where do you draw the line and of how far in the setbacks set by Town to when is the spirit of the ordinance not being observed.

M. Laliberte said the point he would make is they have someone who has looked at it in person written a letters and supports the project who we trust to inspect saying he doesn't see an issue with this particular structure which would meet the spirit of the ordinance. We should trust him.

Vice Chairman Szot asked if there were any more questions hearing none read the variance criteria, “1. *The Variance will not be contrary to the public interest;*” B. Petrin, M. Laliberte, J. Szot said it is not contrary to public interest. R. Howe and I. Byrd said it is contrary. (3-2-0). “2. *The spirit of the ordinance is observed;*” R. Howe, B. Petrin, M. Laliberte, J. Szot agreed. I. Byrd disagreed. (4-1-0). “3. *Substantial justice is done;*” All were in agreement. (5-0-0). “4. *The values of surrounding properties are not diminished;* All were in agreement. (5-0-0). and” “5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship*”. All were in agreement. (5-0-0). Vice Chairman Szot said it is an unnecessary hardship as this is the only place to put the pool because of the location of the house and wetlands. B. Petrin said the Board did due diligent on the five criteria and they are looking at the Candia end of it looking side of it and it just so happens at the eleventh hour information comes in that oh by the way you need to notify the Lamprey River Advisory Committee which wasn't done and they need to do this. He believes they are out of protocol because they did not notify the committee. M. Laliberte said that they are going to notify them. B. Petrin said after the fact but when is not stipulated in the RSA. Vice Chairman Szot said they will be notified and they will see what they have to say but the Board can do whatever they want. M. Laliberte said so you are saying it's okay let's inform LRAC and whatever they say they the Board can still vote the same way and there is no enforcement. B. Petrin agreed. M. Laliberte said so Board only has to inform them of the project but we are not attorneys and want to err on the side of caution. B. Petrin and for the applicant as well as they may not be able to complete their project. I. Byrd said of course they can complete the project.

**MOTION:** **Motion made** by M. Laliberte, **seconded** by I. Byrd to grant the variance under Article 10 Section 10.06b pending notification to the Lamprey River Advisory Committee advice. R. Howe said what if the recommendation comes back not to construct the pool and B. Petrin said he does not know what authority the committee would have as they are advisory only. M. Laliberte said that D. Snow stated they are not a regulatory committee only advisory. He said the one requirement of the RSA is they shall notify the committee which will be done and that will meet the procedural requirements of the RSA. A letter will be sent to the Lamprey River Advisory Committee to inform them under RSA 483:8-a III (a). **All were in favor. The motion carried with a vote of (5-0-0).** D. Snow said he will bring the project to the local advisory committee and the LRAC meets at the end of May. He said he will have something back by the next meeting either way May 26, 2015.

## **Other Business**

### Amend By-Laws on Fees and Submission deadline

Vice Chairman Szot read By Law “*Article XIII 2. These By-Laws may be amended by a majority vote of the members at a regular meeting provided that such amendment is read at two successive meetings preceding the meeting at which the voted is to be taken. Amendments shall take effect upon passage.*” She said the changes are to be read at two consecutive months and adopted the following month. She said she talked to B. Chivers and even if they do not have a case the next two months that the Board should meet to make the changes on the By-Laws because it doesn't make sense to read the changes tonight and wait for a case say until August and read it a second time and then not have another meeting until November to have the changes approved. She said the proposed changes are listed and in red in the document.

R. Howe asked where the changes came from and Vice Chairman Szot said the secretary asked to have the changes in fees as they do not cover postage and notices and timing because of the newspaper lead time to get notices publishes. R. Howe said these are procedural changes she put together. Vice Chairman Szot said she had talked with the secretary who had mention proposing these questions and she talked to the Chair and the Chair asked her to go through and make the changes. Vice Chairman Szot said if there are other changes they can also work on them. I. Byrd said Page 2 #11 and Page 3 #3D have both the chair and the secretary orientate new members. B. Petrin added wording on Page 3 #3D “*in consultation with chairman.*” Vice Chairman Szot said they

can add any other changes today along with changes listed to be the first reading of the changes. M. Laliberte suggesting on p.4 #5 strike ~~news item~~ and replace with “public notice”. I. Byrd asked about page 4 #6 re-noticing at no cost. Vice Chairman Szot said this has always been meant weather related. If members are sick we have alternates. I. Byrd said if meeting is cancelled by the applicant for any reason then the Board has to pay to re-notice. Change page 4 #6 after circumstances add, “*by the Board.*” This will clear up that the Board will pay for re-noticing if they cancel the meeting for any reason. Page 5 Article VI: #6 add after he “*/she*”; page 6 Article VII:1. A. change with to “*within*”; page 6 article VII:1.B. add “*or*” after applicant. Page 6 Article VII:2. & A. & B. to be swapped. Page 7 Article VII:2 B.7. Board to be capitalized and next line change “a” to “*at*”; Page 9 Article X 1. Change \$25 to “*\$50.00*”, change \$50.00 to “*\$75.00*” and change \$6.54 to “*7.49*” and add after abutter “*\**” & following add “*\*noticing fee subject to postal rate changes.*” Page 11 Appendix I; A line 10 change conditions. to “*criteria;*” and add updated 5 variance criteria. Page 13 change months’ to “*month’s*”; Page 14 Appendix 1:B check line #7 change \$24.00 to “*\$50.00*”, \$6.32 to “*\$7.49\**”, change \$50.00 to “*\$75.00*” and same line add after notice, “*\*noticing fee subject to postal rate changes.*”, check list #9 change twenty to “*twenty-one*”, check list #5 add “*on graph paper provided*” after scale; Page 16 Appendix I’d bottom paragraph change \$6.54 to “*\$7.49\**” and \$50.00 to “*\$75.00*” and add at end of paragraph “*\*Noticing fee subject to postal rate changes.*”; Page 19 Appendix III Notice of Decision add after DECISION add “*CONDITIONS*”.

Discussion on adding Lamprey River Advisory Committee as abutter to every case

R. Howe said to in order to avoid the disaster they just sat through tonight he suggested to include the LRAC in the list of abutters for every case. He said decisions that building inspector would normally make with no problem at all are now are impacted by this. He said right now the LRAC does not have a legal standing but it could change and they must be very aware of this and the easiest way is to include them as abutters. He said they will run into this same thing with the LRAC needing more information at the meeting and delaying voting. I. Byrd said the applicant could sue for delaying. D. Murray said it will be up to him to get the information to the LRAC. M. Laliberte said they should have a meeting and invite the chair of the LRAC to speak about the obligations of the Board. Vice Chairman Szot suggested a joint meeting with the Planning Board and have this person present to both Boards. She said she will suggest this to the ZBA Chairman.

**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 9:30 pm.

Respectfully submitted,  
Sharon Robichaud Recording Secretary