

**CANDIA PLANNING BOARD  
MINUTES of December 5, 2012  
PUBLIC HEARING  
APPROVED**

Present: Ginny Clifford, Vice Chair; Albert Hall III; Judi Lindsey; Kim Byrd; Mark Siemonsma; Fred Kelley, BOS Rep; Alt, Dennis Lewis, Road Agent, Dick Snow, BOS

Absent: Sean James; Steve Bradley; Amanda Soares BOS Alt Rep;

Vice Chair Clifford called the meeting to order at 7:00pm immediately followed by the Pledge of Allegiance.

Minutes October 17, 2012, November 7, 2012

A. Hall **motioned** to accept the Minutes of October 17, 2012 as amended. J. Lindsey **seconded**. Vice Chair Clifford, J. Lindsey, F. Kelley and A. Hall **were in favor**. K. Byrd abstained. The November 7, 2012 minutes will be voted on at the next meeting

**Waiver Request: John Cole & Scott Komisarek 38 & 39 Fieldstone Lane, Candia NH 03034; Property Owner: Candia Crossing LLC 38 Fieldstone Lane, Candia NH 03034; Property Location: High Street, Candia NH 03034, Map 406 Lot 016; Intent: Request waiver of Section 5.06: 14 Maximum Building Height.**

Applicants John Cole and Scott Komisarek were present. Abutters Arlene Richter 34 Deerfield Road. Thomas Seward 72 Deerfield Road and Tom DiMaggio 42 North Road were present.

Vice Chair Clifford said the reason this waiver request comes to the Planning Board is because the Board has the authority within the Conditional Use Permit Regulations to waive a provision of the ordinance. She read the following from Section 5.04 10. Waivers, "... 1) *that when requiring compliance with the particular provision for granting of a Conditional Use Permit would create an unreasonable hardship and 2) that the application would be consistent with the spirit and intent of this ordinance. Request for waivers must be written and the Planning Board must vote on each waiver request at a properly notice public hearing.*" She invited the applicants to come forward to present their request.

K. Byrd said he felt this type of waiver is under the authority of the ZBA. Vice Chair Clifford said according to consultation with town attorney, the Planning Board does have the authority because the waiver is written into the Conditional Use Regulation. She read Section 5.04 10. Waivers, "*Any provision of this ordinance may be waived, when, upon the application by the applicant to the Planning Board, the Board shall determine in its sole discretion.*" She said it does give the Planning Board authority to grant a waiver. K. Byrd said then how do you know which requests for waivers go to the Planning Board and which go to the ZBA. Vice Chair Clifford said this particular waiver is for this Conditional Use Regulation.

Vice Chair Clifford read into record the letter dated October 15, 2012 from the applicant, "... to the town of Candia Planning Board, regarding a request for a waiver for 119 High Street. Dear Mr. Chairman and members of the Board, We would like to request a waiver of provision 14 (Maximum Building Height. All buildings shall be single story in height) for the project known as Candia Crossing located at 119 High Street. Our reasoning is as follows: The real estate market has gone through a fundamental shift since receiving conditional approval. The market is now increasingly focused on smaller, more affordable and more energy efficient housing. The 55 + market is not elderly per se and our strategy has been to offer housing that allows the residents to age in place. Our floor plans will be ADA adaptable with the master bedroom on the first floor. Our market research indicates that the majority of buyers in this market segment want a full basement despite the need to use stairs and that significant number want a second floor for office space or for

*a quest bedroom. The 55+ market is very competitive and complying with provision 14 puts us at a disadvantage to competing projects. We believe that a waiver would allow us to build a more affordable, more energy efficient home that has the floor plans that buyers want and that many competing projects have. If granted this waiver request, we feel our application would be consistent with the spirit and intent of the ordinance.*” S. Komisarek said if you look at the original plans A3.04, it shows the cross section with the loft. K. Byrd asked if this was the 2nd story they were requesting for all of the units and J. Cole said not for all of them but would like to have the option to be able to put a loft in. He said the height of the building would not change. He said a letter in with the packet talks about the changes since 2008 to today and what people are looking for when moving into these communities. He said 55+ is not old and most are still working so there is a greater need for office space in a smaller more affordable house. He said when these developments were started in 2002-3, 100 % of the people sold their homes, now it is less the 50%, with either people taking money out of pocket or taking out loans to move in and the demographics have changed; they want to be closer to family and not necessarily close to the city. He said recently in the new he heard 10,000 people a day qualify for Medicare. He said by the year 2020 45% of all households will be 55 and older and the demand will increase for these types of developments. S. Komisarek said it is common sense to consider what a consumer wants for a product whether they are 70 years old or 55 years old. He said his parents and his in-laws both live in a cape with an upstairs and basement. He said the units will be ADA compliant so they can age in place. He said a single story house puts them at a disadvantage if the consumer can go somewhere else and get a second story. He said he does not see where the cost to the town would be if they could offer a consumer the option to have a second floor.

K. Byrd said he is not concerned with the office but is concerned with the second level becoming a living space for example for children who have children that will go into the school system. S. Komisarek said that cannot happen. J. Cole said nothing is going to change within the ordinance as far as the restrictions of number of bedrooms and occupants. K. Byrd said if they allow another story what can prevent them from becoming bedrooms? J. Cole said in the ordinance there can only be a maximum of 4-55+ adults, 2 per bedroom. S. Komisarek said the ordinance states deed restrictions, use limitations, covenants or other legally enforceable instruments to permanently restrict occupancy of all elderly dwelling units to persons who meet all applicable restrictions regarding age. K. Byrd asked who enforces this. F. Kelly said the code enforcer. J. Cole said they have to submit a letter of who lives in there periodically. K. Byrd said that should go with the tax payment. Vice Chair Clifford said the ordinance describes the deeds and covenants that have to be placed on the property and it has to be a legally enforceable instrument that will get recorded when the subdivision gets recorded. S. Komisarek said the applicant/owner of the development also has to provide a written enforcement mechanism satisfactory to the Planning Board and Town Counsel on an annual basis as to the age base census and upon any change of ownership and occupancy. The changes will be given to the BOS within 30 days. K. Byrd asked if this was something that was going to be adopted or already adopted and J. Cole said they are already adopted and part of the ordinance. J. Cole said it is not going to increase the amount of units.

Vice Chair Clifford said Chair James had asked the Building Inspector to comment on the minimum building height particularly because at the last meeting one story was discussed knowing this waiver was coming forward. She said the Board members really didn't understand among themselves what the definition of a story was. She read the Building Inspector's letter in response to the definition of what a one story is into record, *“In Regards to ARTICLE V; SECTION 5:06-14. MINIMUM BUILDING HEIGHT. The Ordinance now states that All Buildings shall be single story above grade in height.” I do not see a problem allowing these units to be a maximum of TWO STORIES in height above grade. Basements are not to be included in this calculation providing they do not extend more than six feet above grade. Any basement that does extend vertically more than six feet above grade will then be considered a story by itself. If the basement has a walkout section*

*it is still not considered a story. The grade is calculated to an average elevation, six feet away from the surrounding perimeter of the foundation in its entirety. ARTICLE V; SECTION 5;06-12 now states that “NO DWELLING UNIT SHALL CONTAIN MORE THAN 2 BEDROOMS.” We will need to keep this stipulation in place and not change it. Keeping this ordinance as written will not allow anymore occupants than were allowed before we make any changes. Feel free to contact me with any questions..”*

J. Cole said allowing the 2 stories would allow them to make smaller foot print. Vice Chair Clifford said you have commented that you have the flexibility to change and make adjustments, but she was under the understanding that the plan was approved as presented. J. Cole said it is approved as presented as far as setbacks and distances between the units and the number of units. He said for example, where it shows a single family that could become a duplex if it made the same setbacks, as long as the amount of living units did not change. She said I am not sure if that is the case. S. Komisarek said that is not the issue at hand. J. Cole said changes would have to be presented to the Planning Board. S. Komisarek said they are going to try and have more green area if allowed and have more affordability such as duplexes. She said if you want to change the plan you would need a new application. S. Komisarek said he had a discussion with Sean regarding this. He said they never got to the point of establishing at what the point would there be too many changes and they would have to submit a new application. J. Cole said they had discussion on this when they first designed the project we asked what if and didn't seem to have a problem. Still have to go back and review the well.

Vice Chair Clifford said she wanted to be clear that what is being discussed tonight is just the waiver and they make no presumption to any changes to the plan that haven't already been approved. K. Byrd said it is critical that if the second story is allowed they cannot add another bedroom and that should be put in the waiver. Vice Chair Clifford said it is already in the ordinance #12 conditional use.

Vice Chair Clifford asked if any abutters had any questions. T. DiMaggio, 42 North Road said back a few years ago they had a written agreement on the wells and it was agreed upon that nothing would move forward until it was signed. He said it was never signed and it was never returned. He said because they did not have sufficient water the project was not going forward. He said if he cannot believe what they are telling him then, how can he believe they will hold their word now and said a man's word is law. He said he is concerned since they have not signed the agreement that they had agreed to in front of this Planning Board. He said he wants this signed before they move forward with the waiver. He said he is concerned they will have more area to use as living space and potential living quarters for someone to use in the loft.

S. Komisarek said it is his understanding that was one of the conditions of the approval and has been done. T. DiMaggio said it was never signed never turned in and he said he was told personally since they did not find water and there was no need to sign it. S. Komisarek said that is not true and not sure where he got this information. T. DiMaggio said he does not have a signed agreement. Vice Chair Clifford said, “Excuse me gentlemen.”

M. Siemonsma read *“Article III Definitions, Elderly Housing Housing intended for and 100 percent of the dwelling units are occupied solely by, persons 55 years of age or older, featuring small single-family detached or attached dwelling units and apartments. In no event shall more than four (4) occupants live in any dwelling unit of an elderly housing development.”* He said personally he would not want a loft as shown in diagram a302. M. Siemonsma said the 1600-1700 foot design is not a small dwelling unit. Vice Chair Clifford asked if these pictures were in the original application. S. Komisarek said the drawings were in the original application and they are not changing the exterior, height or elevation of the buildings. He said some of the original designs show the walk out cellar. A. Hall said that has already been approved.

K. Byrd said they are asking for a waiver to 06:14 Maximum building height. S. Komisarek said they not changing the height just the use of the second story. A. Hall clarified it is not an

exterior change just an interior change. Vice Chair Clifford said what you are saying is that the building design presented with a roof line for a second story with no living space and now they are asking to use this space. S. Komisarek said their intent was to always have a loft and as the process went along somewhere along the line it got changed to one level. He said it is clear from the drawings it showed from beginning that is what they wanted to be able to offer. He said the language was changed as they were going through the process to one story living space. M. Siemonsma asked if they have dated stamped plans showing the loft. J. Cole said yes they have a conditional approval. M. Siemonsma asked to see them. J. Lindsey confirmed the roof dimensions won't change.

J. Cole added all the dwellings had a cellar with a set of stairs. He said he is 70 years old and has no problem having his office in a loft and has no problem going down into the cellar. He asked why a cellar is okay and a loft isn't. J. Lindsey said then why do we call it elderly housing. J. Cole said it is a government definition. S. Komisarek said the first floor of the dwelling units are ADA adaptable for the owner to age in place. S. Komisarek said competing projects are building dwellings with second stories and consumers want the second story.

Vice Chair Clifford said a letter of agreement was found and it is signed by J. Cole but not signed by T. DiMaggio. She asked if he had a signed copy and he was not sure. He said he think he signed his copy and will find and give a copy to the Board. Vice Chair Clifford said this is not the issue before the Board tonight.

K. Byrd **motioned** to extend the hearing to the next meeting to allow them to bring more information forward because he feels there is not enough information. J. Cole asked what additional information he wanted. Vice Chair Clifford said she wants to give other people a chance to speak first. S. Richter said she likes one floor and said if you put a second story on it is no longer an elderly home and she is dead set against it. T. DiMaggio asked if there is going to be enough water to sustain the development and the abutters. S. Komisarek said the last time they do a test and the water is not resolved, they will either go with what they have and reduce the number of the units or look for more water. He said they are only a 1 gallon and a half short. The state per code and wants enough water based on calculations of 4 occupants per dwelling unit but realistically most units will only have 2 occupants. **Motion fails due to lack of second.** T. DiMaggio said if this goes forward and the agreement has not been signed does that mean everything stops. He said he would like time to find his copy.

Vice Chair Clifford said the waiver before them tonight is separate from all the other conditions placed on the development. T. DiMaggio said the agreement has not been met. Vice Chair Clifford said she cannot attest to that. Vice Chair Clifford said if the conditions placed on the project are outstanding then the approval is not an approval and conditions have to meet for the project to go forward. T. DiMaggio said when do they do it if not tonight? He said if they are granted the waiver tonight can they move forward? A. Hall said he would feel better with a full Board and would like to hear the full Board's opinion. F. Kelley said they have quorum.

Vice Chair Clifford said this brings us back to the question in hand does their request rise to the standards to grant the waiver. She said the question is if it's a hardship to keep at a one story and is it in the spirit of the ordinances and does not violate them.

A. Hall **motioned** to continue the public hearing for the waiver request until December 19, 2012. K. Byrd **seconded**. F. Kelley said there are enough Board members present tonight to vote on the waiver. J. Lindsey, F. Byrd, A. Hall, G. Clifford **were in favor**. F. Kelley **was not in favor**. Motion carried 4-1. Vice Chair Clifford said this is the notice to the abutters that the hearing has been continued until December 19, 2012 and she closed the public hearing at 7:48pm.

#### Other Business

##### Michael Thompson Court Case update

Vice Chair Clifford said an appeal went to the Supreme Court. The court had asked if the Town of Candia would consider mediation and after consultation with town attorney, it was

determined that mediation would not be appropriate so now it is in the hands of Mr. Thompson to choose if he will go forward with the appeal.

#### SNHPC Planner's Roundtable and Natural Resources Advisory committee meeting

Vice Chair Clifford said SNHPC is having a Planner's Roundtable and Natural Resources Advisory Committee meeting Thursday December 20, 2012 at 10:30am at their office in Manchester.

#### Proposed Zoning Change

Vice Chair Clifford said they have some proposed changes to the Zoning and Subdivision Regulations. The proposed subdivision amendments were from the ZRRC and the zoning change was proposed by the Building Inspector.

Vice Chair Clifford read the zoning amendment, "**ZONING AMENDMENT #1: Amend under Article V, 5.02C Industrial and Transportation (c-7) Storage for coal, fuel oil, bottled gas, and similar materials, provided that such use shall not be located nearer than ~~300~~ 75 feet to any existing or permitted dwelling and that such use shall be subject to any state or local laws relating to the storage of such materials. Fuel storage tanks shall be surrounded by a dyked area sufficient to contain stored fuels.**" She said this was a request that was brought forward from the building inspector and the Fire Chief had no issue with. J. Lindsey asked why. Vice Chair Clifford said he brought it forward because he felt it was excessive. A. Hall asked if there was any reason or explanation on why he wanted to change it. Brian Miller, 74 Diamond Hill Road said the change is 110%. He said this article is in a law suit issue concerning a land use regulation. Vice Chair Clifford said thank you for bringing it up that is why they have public hearings. K. Byrd asked does this apply just to just commercial or every private individual who has a fuel tank. F. Kelley said it is in industrial and transportation and does not apply to homeowners. Vice Chair Clifford the question is whether the Planning Board wants to move this forward to a public hearing or not. She said if the Board votes to move it forward to a noticed public hearing to determine whether to go to ballot or not. Vice Chair Clifford asked what the pleasure of the Board is on the zoning Change. F. Kelley said he would like more information on why the Building Inspector wants to change it from 300 feet to 75 feet. A. Hall and J. Lindsey said they would like to know more on why he wanted the change. The Board decided not to vote and move the proposed zoning amendment forward. She said if the ZRRC wants to pursue it they can get more information on why it would be beneficial to make the change.

#### Proposed Subdivision Changes

Vice Chair Clifford said the two proposed changes relate to each other. She said the first change is to amend Section 16.02 by adding a new letter that will make a reference to NH Storm water Volume 3. She read into record, "16.02 h. *New Hampshire Storm Water Manual; Volume 3; Erosion and Sediment Controls During Construction – Latest edition, published by the New Hampshire Department of Environmental Services.*" She said the second change that goes along with the first one it is to add wording in Section 16.03 and she read into record, "Section 16.03 *Sediment and Erosion Control Plan, the Board shall require the filing of an Erosion and Sediment Control Plan incorporating the standards outline in Article 16.02, ~~for~~ **and the proposed facilities. Plans developed as a requirement of State or Federal permits such as Storm Water Pollution Prevention Plan required for the NH Alteration of Terrain Permit or an Erosion and Sediment Control Plan developed as a requirement of the National Pollutant Discharge Elimination System may be acceptable for this purpose.***"

Vice Chair Clifford said the reason to add the wording is because there are no standards in place for a sediment and erosion plan. She said in the first section names the plan that is to be used and in the second proposed change it also describes some other types of planning the developer may have to undertake as part of state regulations. B. Miller asked if this would supersede the ordinance in place and Vice Chair Clifford said this is missing and would strengthen the current ordinance. B. Miller said that ZRRC did a good job bringing this forward. Vice Chair Clifford said because these are in the Subdivision Regulations they do not have to go to Town Vote, they would go to a Notice

Public Hearing and if they hear favorable feedback then the Planning Board has the authority to then adopt them.

Vice Chair Clifford asked the Board what their pleasure was. J. Lindsey said they make sense. J. Lindsey **motioned** to accept the proposed changes to the Subdivisions and bring them forward to a public hearing. A. Hall **seconded. All were in favor.**

Warrant Article for Master Plan update

Vice Chair Clifford said she wanted to talk about a potential warrant article regarding updating the Master Plan. She said they have talked about the update but is concerned they are not making any progress working on the update. She said she didn't know what the scope of work and cost would be and whether to ask for \$2,000 or \$10,000 or more. She talked to SNHPC and asked them to give us an estimate of two components in preparation for the Master Plan revision. She said one component would be a public outreach to bring people together similar to what was done the last time. SNHPC suggested doing a UNH community profile which was done before, and an optional additional community outreach of some focus groups which would be smaller groups of people to discuss a particular issue in more in depth.

She said the second component is to get public input which can be done through a community survey and she said SNHPC gave two options, with one being more expensive than the other but would reach more people. She said the more expensive option is a bulk mailing to reach all the residents that would including postage, paper envelopes some to develop, gather and analyze for \$4,650.00. She said the second way to do a survey would be online or put a notice in the paper offering the opportunity for a resident to come and pick up a survey. She said the response may be less but you spend less money.

Vice Chair Clifford suggested \$6,650.00 for the first phase of updating of the Master Plan and said the number came from doing the public outreach forum not the focus group and choosing the bulk mailing but she said it doesn't have to be done this way but could be a way to get started. She said they should not keep putting it off. Mrs. Miller, 74 Diamond Hill suggested the Boy Scout package that is delivered to everyone's door before the town meeting. J. Lindsey said it could be announced so people will know. Vice Chair Clifford said it still needs to be developed, printed and analyzed. B. Miller said if you are doing a mailer to the town it would cost about \$1,400.00. F. Kelley said it could be put in the town report and then it would be just the cost to print. A. Hall said it sounded good. J. Lindsey said it is a good idea because the Master Plan has to be updated. J. Lindsey said it seems they could cut off \$2,000 for the bulk mailing for a total of \$4,650.00.

J. Lindsey **motioned** to send a warrant article to ballot for the Candia Master Plan phase one update of a survey, public outreach and possible Boy scout package to read as follows: *"To see if the Town will vote to raise and appropriate the sum of Four thousand, Six hundred and Fifty dollars (\$4,650.00) for the first phase of updating the Candia Master Plan per RSA 674:3"* A. Hall **seconded.** G. Clifford, J. Lindsey, F. Kelly, A. Hall **were in favor.** K. Byrd was not in favor. Motion carried 4-1.

Sign Holt 79 Diamond Hill Road Mylar's

The Mylars were signed by the Board.

The next scheduled Planning Board meeting is December 19, 2012 at 7pm at the Town Hall.

F. Kelley **motioned** to adjourn at 8:30pm. J. Lindsey **seconded. All were in favor.**

Respectfully submitted,  
Sharon Robichaud  
Land Use Secretary