

Approved
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF SEPTEMBER 26, 2006

Present: William Stevens, Chairman; Frank Albert, Vice-Chairman; Judith Szot; Arlene Richter; Ron Howe; and Ingrid Byrd, Alternate

Absent: Boyd Chivers, Alternate

The Chair opened the meeting at 7:00 p.m. Ingrid Byrd was seated for Judith Szot. Judith Szot arrived at 7:06 and Ingrid Byrd stepped down.

Minutes

Judy Szot **moved** to have the minutes of August 22, 2006 re-written and postponed the acceptance until the next meeting. Ron Howe **seconded**. **All were in favor**. Motion carried. It was the intention of the Board to have the minutes condensed and in addition that the following corrections were requested:

- Page 2, last sentence, change sentence to “Their hardship is that approximately 90% is in the residential zone and approximately 10% is in the commercial zone”.

7:15 PM – Continuance of Case #523 – Applicant: John Seidner & Jennifer Wise, 26 Isinglass Lane, Chester, NH 03036; Owner: Same; Location:15 Langford Rd., Map 409 Lot 122; For an Administrative Appeal from Section 6.02 Article VI to construct a single family residence.

John Seidner and Jennifer Wise were present, accompanied by their Attorney Donald Sienkiewicz. The Chair explained that the case was a continuance and after checking with Town Counsel it was determined that the ZBA did have the power to make a decision on the case which is not covered in the zoning ordinance that it is allowable or unallowable. The Chair explained the lot was a corner lot and that the requested frontage is for the Langford Road portion. The Chair further explained the frontage portion on Rt. 27 (Raymond Road) would be viewed as commercial frontage however it is considered unusable due to wetlands in the area. The Chair pointed out that directly across from their requested frontage on Langford Road is a residence only. Chair Stevens thought the request was reasonable and felt that the lot had a hardship against it due to the fact that the lot is zoned approx. 10% commercial and approx. 90% residential with wetlands situated in the commercial portion. The Chair thought the situation would meet all 5 criteria to give a variance. Chair Stevens reiterated that Town Counsel felt they could make a decision especially considering the rarities of the lot. At Judith Szot’s request the members reviewed the map of the lot. Judith Szot questioned the PSNH easement. The Chair answered the easement was owned by the state. Chair Stevens thought commercial development was unlikely due to the wetlands located on the Raymond Road portion. The ZBA discussed the possibility of placing a condition on the lot so that it could be used residentially noting there is no usable frontage in the commercial zone. Mary Girard expressed concerns on the possibility of a future sale and subdivision. Attorney Sienkiewicz pointed out that they haven’t applied for a variance and noted it was actually an administrative hearing of a denial of a building permit. Attorney Sienkiewicz stated if his applicants decide to ask for a variance, the application should be amended and he would want to be sure a variance would be defensible in order to protect his

clients. The Chair answered there was nothing in the zoning ordinance that was a description for it or against it and felt the Building Inspector left it open for that reason. The Chair pointed out section 6.02/dimensional requirements as a possible reference. ZBA members felt there was no variance in this case to identify. Attorney Sienkiewicz noted two conversations with the Town's Attorney Bart Mayer. As a result of the conversations Attorney Sienkiewicz questioned why his clients would need relief by the ZBA. Attorney Sienkiewicz noted his interpretation of the ordinance is that his clients should be able to proceed with their request without a variance or allowance because there is no by-law to prevent it. Arlene Richter questioned the possibility of granting a permit with conditions. Attorney Sienkiewicz was not in favor of placing conditions on the lot because he felt the applicants' request was allowed. Applicant John Seidner added he was concerned about conditions affecting the value of the land. Attorney Sienkiewicz mentioned other communities with by-laws that would prevent situations that are not covered within the ordinance pointing out that Candia does not have them in their ordinances. After some discussion on the matter Attorney Sienkiewicz and the Chair both agreed that Building Inspector Hallock should have granted the owner a building permit. Chair Stevens felt Building Inspector Hallock could have handled the situation initially by calling Town Counsel. Ron Howe asked to clarify that if approved could the lot be subdivided at a later date. The Chair noted it could be possible but the lot would have to meet all requirements such as proper frontage, wetland setbacks and town road specifications (if applicable). Attorney Sienkiewicz pointed out that it could not be done without the proper Board's approval. There was no further discussion.

Judith Szot **motioned** that a letter be sent to the Building Inspector stating the ZBA has reviewed the case and felt there is nothing within the zoning ordinance to prohibit the issuance of a building permit for the construction of a single family residence within the residential portion of the lot and further the Inspector should issue a building permit.

Arlene Richter seconded. All were in favor. Motion carried.

7:40 PM - Case #524 – Applicant: William Stewart, 429 Critchett Road, Candia, NH 03034; Owner: Same; Location:429 Critchett Rd., Map 407 Lot 45; For a variance from Section 6.02 to permit the construction of a porch within the front setback. William Stewart was present. Mr. Stewart explained he would like to build a farmers porch. The Chair noted that William Stewart had been before the ZBA on a prior request for a gazebo. The Chair pointed out that the lot in question was a pre-existing non-conforming lot in which the house placement currently does not conform to current front setbacks. It was noted that the porch would be constructed on the side of the house (making side setbacks) but due to the existing non-conformance of the house, the proposed porch would also not meet front setbacks. The Chair pointed out that the new construction would not encroach the front setbacks any further than the existing house. Mr. Stewart stated the Building Inspector measured his front setback from the center of Critchett Road and found that the proposed structure would be within the 50' setback. Ron Howe questioned why the Inspector would be measuring from the center of the road and why not from the right of way. The ZBA members debated the front setbacks and from where the measurements could be taken from. Mr. Stewart presented the Board with pictures. Frank Albert thought the ZBA had previously instructed the Building Inspector in cases like these to go ahead and issue a permit. Judy Szot disagreed stating the ZBA should address cases such as these explaining if they grant variances, then in the future when the property is sold, there will be

no impedance to the property. The Chair asked if there were any abutters present. There were no abutters present.

The Board the deliberated the variance request for Case #524. The Board determined:

1. No diminution in the value of the surrounding property would be suffered.
2. Granting the variance would be of benefit of the public interest.
3. Denial of the variance would result in unnecessary hardship to the owner arising out of special conditions affecting the land and/or buildings that distinguish the property from other similarly restricted property in the area. The property predates zoning and cannot be moved.
4. Granting the variance would result in substantial justice, because it is a pre-existing condition.
5. The residential use will not be contrary to the spirit of the ordinance.

Judith Szot **moved** to grant the variance from 6.02, due the preexisting, non-conforming use and the applicant would not encroach any further into the frontline set back. Frank Albert **seconded**. **All were in favor.**

7:49 PM - Case #525 – Applicant: Jon Godfrey, 72 Old Deerfield Rd., Candia, NH 03034; Owner: Michael & Carol Lucier; Location:164 Merrill Rd., Map 403 Lot 1; For a variance from Section 6.02 to permit the construction of a 2 Bedroom single family home with 57.8 feet of frontage.

Applicant John Godfrey was present. The owners of the property, Michael and Carol Lucier, are not present. As an abutter Ron Howe stepped down from the case. Ingrid Byrd was seated and questioned if applicant Godfrey had permission from the owner. The Chair read the owner's notarized affidavit. The Chair stated he was aware that the proposal for the lot had been before the Board on two occasions one being approx. four years ago. The Chair questioned what had changed with the lot. Mr. Godfrey advised he had research information that he felt would show in prior cases it seemed they had inadequate information. The Chair recalled that the lot was created after zoning as part of a subdivision (in the mid to late 70's) in which the owner held the lot specifically as a wood lot. The Chair stated for some reason at that time they kept enough front for a road Town requirements were 50'. The Chair stated it was the contention of the ZBA in order for that lot to become a building lot it would need 200' of frontage. Mr. Godfrey questioned where the record of the intent from that subdivision process was noting he had spent a large amount of time searching the town records. The Chair stated at the time of past discussions on the lot Charles Bowman and Sonny Emery knew the background. Mr. Godfrey gave examples of cases where the ZBA had granted variances for less than 200' of frontage. Judith Szot noted those were cases in which the lots were created prior to zoning and also noted some of the cases were close to the 200'. Frank Albert pointed out the Thibeault case in which they were denied for having substandard frontage. Mr. Godfrey pointed out that prior Board's had granted variance for less than 200'. The Chair agreed it was possible due to differences in board members noting the current Board has remained consistent. Judith Szot read the ZBA minutes of 07/25/02 when Mr. Lucier made a presentation on his request concerning the lot in question. It was noted Mr. Lucier was denied and told it would be okay to build a road. Judith Szot stated she did not feel the ZBA should grant relief for a lot that the owner created the hardship on. The ZBA members agreed with Judith Szot. Frank Albert stated he wished there

was a way to legally go about it because he had land with a similar situation. Abutter Caryl Jarres of 188 Merrill Road stated she was told by the original developer Jerry Handley that the lot could not be built on due to the wetlands (beaver pond and dam). Mr. Godfrey disagreed that a road was intended for the lot and thought it would be more beneficial to have one house constructed oppose to a subdivision with the potential of four lots. Judith Szot disagreed with the possibility of four lots and thought one lot, two at best was more realistic due to the wetlands. Mr. Godfrey stated there was 14 acres and pointed out land to the right of the pond. Judith Szot stated the land has to be contiguous upland soil and that he could not count the land beyond the pond. Mr. Godfrey asked Frank Albert why he voted in favor of the case in 2002. Frank Albert indicated he was of a different opinion now because the lot was created after zoning and at that time he thought otherwise. The Chair noted that the ZBA was trying to treat everyone equally. The Chair discussed wetland issues with the lot noting the wetland setbacks are now even more stringent. Abutter Ron Howe of 162 Merrill Road noted history on the lot and commented that the developer knew the lot was the wettest one out of the seven lots. There were no further comments from abutters.

The Board then deliberated the variance request from 6.02 for Case #525. The Board determined:

1. No diminution in value of the property would be suffered.
2. Granting of the variance would be of no benefit of the public interest. People of the town want to preserve the wetlands. Neighbors are concerned the right of way would cross the wetlands. Judith Szot believed it would not benefit the public interest. Frank Albert disagreed. He explained that if the owner could get a wetland-crossing permit for the driveway, he could access the land in the back. He believes it would be a benefit to build a 1 family house on the parcel. Arlene Richter added she would have a problem with building on a lot without frontage, especially after the owner had created the lot without sufficient frontage.
3. Denial of the variance would result in unnecessary hardship to the owner arising out of special conditions affecting the land and/or buildings that distinguish the property from other similarly restricted property in the area. The Chair stated that the hardship was created by the developer. Judith Szot agreed. The Chair explained they created a substandard lot within the subdivision. If the lots were divided into larger lots, it would not have been a problem. The Chair stated that the hardship was created by the developer in 1976.
4. Granting the variance would result in substantial justice. The Chair stated he did not think it would.
5. The residential use will not be contrary to the spirit of the ordinance. Arlene Richter pointed out that the spirit of the ordinance is 200' of frontage.

The Chair stated that 4 of the 5 criteria were denied noting no variances are to be granted unless all 5 criteria are met. Judith Szot **moved** to deny the request for the variance for the following reasons: not in the public interest due to the amount of wetlands on the area and the wetland crossings; the hardship does not exist because the hardship was created by the developer; there is no substantial justice because the frontage was created after zoning and is contrary to the spirit of the ordinance; and the lot does not conform with present wetlands and subdivision regulations. Arlene Richter **seconded**. **4 were in favor. Frank Albert abstained. Motion carried.** Mr. Godfrey stated he accepted and respected their decision.

8:30 PM - Case #526 – Applicant: Dennis Kounas, 16 Douglas Dr., Candia, NH 03034; Owner: Dennis & Anita Kounas; Location: 16 Douglas Dr., Map 410 Lot 41; For a variance from Section 6.02 to permit the construction of a shed within the rear setback.

Ron Howe was seated and Ingrid Byrd stepped down. Dennis Kounas was present. Mr. Kounas presented a map with house location and new proposed shed. Chair Stevens noted Mr. Kounas currently has a shed on the property that he will be removing. The 16 X 20 shed would be placed directly behind the house 15' off from his rear setback. Current zoning requires 25'. The Chair stated Mr. Kounas is looking for relief of 10' on the setback requirement. The Chair asked if the shed would be obstructing the neighbors view. Mr. Kounas thought the house on the right side would have a partial view of it. Rear abutter June Goulson of 136 Douglas Drive questioned the height of the shed. Mr. Kounas and Chair Stevens thought it would be no more than 13' (standard shed height). June Goulson stated Mr. Kounas was a good neighbor and she had no issues with the request. Chair Stevens asked if there were any other abutters present. There were none. **8:37 p.m. Chair Stevens closed the Public Hearing.**

The Board then deliberated the variance request from 6.02 for Case #526. The Board determined:

1. No diminution in value of the property would be suffered. Rear abutter spoke in favor.
2. Granting of the variance would be of benefit of the public interest. Shed can not be seen from the road. Old shed to be removed as a result.
3. Denial of the variance would result in unnecessary hardship to the owner arising out of special conditions affecting the land and/or buildings that distinguish the property from other similarly restricted property in the area. Chair Stevens noted original subdivision allowed 1-acre lots which would make shed placement difficult with current house placement.
4. Granting the variance would result in substantial justice. The Board felt it would.
5. The residential use will not be contrary to the spirit of the ordinance. The Board felt it would not. It was noted that the Zoning Board was recently in support of allowing closer setbacks (in some circumstances) and they determined that they wanted to hear cases of this nature to ensure there were no problems with abutters.

Based upon fact case #526 meets all criteria, Judith Szot **moved** to approve the variance to reduce a 15' setback for the placement of a shed, with the condition that the existing (old) shed be removed by summer 2007. **Seconded by Ron Howe. All in favor. Motion carried.**

8:45 PM - Case #527 – Applicant: Kevin Dumont, 446 Raymond Rd., Candia, NH 03034; Owner: Same; Location: 446 Raymond Rd., Map 408 Lot 31; For a variance to have a Residential Use on a Light Industrial Lot, allowing a caretaker to reside in one of the existing houses.

Kevin Dumont/Liquid Planet President and Tyler Libby/Liquid Planet Vice-Chair were present. Mr. Dumont stated he spoke with the prior Building Inspector who did not place his comments in writing but felt he should be able to retain the non-conforming residential use while expanding the use for a water park. Mr. Dumont noted current Building Inspector Hallock agreed and placed his opinion on the matter in a Memorandum to the Planning Board dated 09/15/06. The

Chair directed Secretary Chabot to read the letter for the record. It was noted that members Stevens, (alt.) Byrd and Szot were all present at the Planning Board meeting when Mr. Dumont was advised to apply to the zoning board on his request. The Chair referenced earlier case #523 and noted again that this was the situation where there is nothing in the zoning ordinance that states he would need to discontinue the residential use. Mr. Dumont stated the Planning Board expressed security concerns because the business is open seasonally from June to Labor Day and it is his request to live as a caretaker on the property to oversee the business year round. Judith Szot reviewed out loud section 2.02/Non-Conforming Uses and Structures. It was noted there was not a section in the Zoning Ordinances to cover the request. Judith Szot expressed concerns because she was not sure about having two uses on one property. The Chair pointed out that there were no provisions within the Ordinance that state he would have to discontinue the use. Frank Albert thought the situation was covered with the newly established mixed use zoning. It was pointed out that the lot in question was zoned Light Industrial. The Chair reiterated that there is nothing in the Ordinance stating he would have to discontinue the non-conforming use and also noted historically the house on the property has been a primary residence. Planning Board Chair Girard stated from the Planning Board's point of view they do not approve of the two uses. Chair Girard stated the Planning Board was okay with a caretaker apartment but felt if Liquid Planet were to sell and cease Water Park operations there would need to be a condition that the lot would be Light Industrial and the Residential Use would go away. Ron Howe noted if allowed it should only be for a caretaker and not for a rental property. Abutter Peter Mastro of 30 Island Road felt the Town would be asking for trouble if they did not allow a caretaker residence on the property noting he was aware frequented trails in the back. Planning Board Chair Girard commented that the site plan was still in the works and felt if the site plan was denied the owner should be allowed to live there. The ZBA members agreed. The Chair commented to Chair Girard there was a security concern expressed by the Planning Board. Chair Girard agreed. Judith Szot commented that she thought the Planning Board erred in judgment when they granted a waiver on lighting noting lighting is an important safety factor. Planning Board Chair Girard commented that was a Planning Board function and was not an issue for the Zoning Board. Judith Szot stated she felt strongly and wanted to express her opinion. The members continued to discuss the fact they could not find anything in the Zoning Ordinance to prohibit the continuance. Judith Szot thought if the Water Park were to cease operations the lot should become light industrial and the residential use should go away. The Chair told Mr. Dumont his request was not covered by a variance. After some discussion the Zoning Board was in favor of issuing a letter to the Planning Board on the matter in effort to give the Planning Board guidance on the matter. Planning Board Chair Girard stated she had no problem with the house being part of the water park. Ron Howe stated what would happen to the residence if the water park were to become a zoo and there was still a need for a caretaker. The Board agreed in cases like that the owner would need to go before the Zoning Board. Ingrid Byrd questioned if the lot could be subdivided. The Chair stated no. Judith Szot stated she did not have a problem with the house on the lot but was concerned about setting precedence with the two uses on one lot. The Chair felt that both uses were allowable uses for the lot. The Chair stated he did not have a problem with allowing a pre-existing use with another use noting his property had a similar situation as well as Charmingfare Farm. Frank Albert noted it was in the best interest of the Town to allow Mr. Dumont or an employee to reside there as a caretaker. Tyler Libby questioned if the caretaker property could be viewed as a commercial use because it was for the sole purpose of taking care of the property. Judith Szot stated the request made sense

she was just unsure of allowing two uses. Fred Kelley of Depot Road disputed Judith Szot's concerns about the two uses on one lot pointing out examples in Town of other commercial businesses with residences located on the same lot. Arlene Richter asked if all of the buildings would be held under one deed. Mr. Dumont stated they would. Mr. Dumont clarified that the white ranch with a gambrel roof with gross square footage of 2,776 would be utilized as the residence. The Chair asked about the other residence. Mr. Dumont stated the white ranch with the standard pitch roof with the three car garage would be part of the site plan as office and storage space. Planning Board Chair Girard stated if the ZBA was not granting a variance the Planning Board would like a letter on their position. The Chair pointed out that the applicant stated there would be one owner for the property and thought they should view the residence as an accessory unit for the purpose of allowing a caretaker on the property. All ZBA members were in favor of having a letter drafted from the ZBA to the Planning Board regarding their opinion that the legal non-conforming residential use should continue as an accessory use to the proposed Liquid Planet Commercial operation for the sole purpose of allowing a caretaker to reside on the property and in the event Liquid Planet ceases operations the right to continue using this property as residential would no longer be allowed as the owners had changed the use of the property to a conforming legal use.

Other Business: none

9:20 p.m. The Chair **moved** to adjourn the meeting. **Seconded by Judith Szot. All in favor. Motion carried.**

Respectfully Submitted by:

Recording Secretaries Andria Hansen and Dawn Chabot