

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES of October 23, 2007

Present: Boyd Chivers, Chair; Frank Albert, Vice-Chair; Ron Howe, Arlene Richter, Judy Szot, Amanda Soares, Alternate

Absent: Ingrid Byrd, Alternate

The Chair called the meeting to order at 7:00 p.m.

Approval of Minutes

Chair Chivers **moved** to amend the minutes of September 25, 2007. Arlene Richter **seconded**. **All were in favor**. The following amendments were made:

- Page 3, Line 5, remove “the current use of the building qualifies as a legal non-conforming use and as such may continue to be used as an office”.
- Page 3, Line 10, remove sentence “Chair Chivers stated the church is also a non-conforming use and never got a special exception”.

Judy Szot **moved** to approve the minutes of September 25, 2007. Ron Howe **seconded**. **All were in favor**.

Continuance of Case #544 – Applicant: Greg Scarlett; Owner: GPS Properties; Location: Brown Road, Map 413 Lot 018; For a Variance under Section 13.04B1 to waive the requirement to have frontage on an arterial street; For a Variance under Section 13.04B2h to waive the requirement to build no more than 800 feet from an arterial street; For a Variance under Section 2.05 to build more than one residential building on a lot; and for a Special Exception under Section 5.02A3 to allow two-family and multi-family dwellings in a residential district.

Greg Scarlett and Attorney Andy Sullivan were present. Mr. Sullivan presented a site plan to the Board and audience. He explained the area in the front part of the lot is a federal floodplain and Mr. Scarlett was not aware of this when he purchased the land. He went on to explain there are 5 separate wetland crossing which the state has approved. They proposed 20 work force condominium units with a community well and septic. Mr. Sullivan stated there was a hardship because nothing can be done with the land due to the federal wetland overlay. Chair Chivers asked how many acres and how much frontage was on the lot. Mr. Sullivan replied 49 acres and 900 feet of frontage. Chair Chivers stated it was conceivable to get 4 house lots out of the property. Mr. Scarlett stated he could get 3 lots, because he would need 1.5 contiguous acres of buildable upland soil. Mr. Sullivan added all of the buildable land is in the back of the lot. There was discussion about the driveway and building it to town standards. Mr. Sullivan stated it would be a private road and would not be town maintained. Ron Howe asked why did Mr. Scarlett come to the ZBA and who denied him? Chair Chivers reviewed the file and confirmed there was a letter from Building Inspector Hallock. Mr. Sullivan stated they met all of the criteria of 13.04B2 of the zoning ordinance. He then went over the five criteria of section 12.02C:

1. The condo would not diminish the surrounding property values, because the condos would not be seen by the surrounding properties.
2. It would not be contrary to the public interest because it's providing a need for affordable housing in Candia. Mr. Sullivan referred to section 13.04B of the zoning ordinance and stated the condos met that stated purpose. Chair Chivers asked how it met that stated purpose. Mr. Sullivan replied the average cost of a house in Candia in 2007 was \$310,000. The condos will be marketed in the \$275,000 range.
3. It would result in an unnecessary hardship, because it is a tough lot to build on.
4. It would result in substantial justice. The town should regulate development, not prohibit it.
5. It would not be contrary to the spirit of the ordinance.

Ron Howe asked if they have discussed this with the Fire Chief. Mr. Scarlett stated he wanted a cistern, fire suppression in each unit, and a turn around. Chair Girard of the Planning Board stated Mr. Scarlett never presented the town house proposal to the Planning Board. She further explained Mr. Scarlett came to the Planning Board in December of 2006 for a three lot subdivision not for condominiums. Mr. Scarlett confirmed this was the first time he presented the condominium proposal. Abutter Marie Barnes of 167 Brown Road asked if there was any other way to get into the land, possible on the Auburn side. Mr. Scarlett replied the only road frontage is on Brown Road. Mrs. Barnes stated she rides her horses on trails on the lot, would they be preserved. Mr. Scarlett stated he was not sure. Abutter Denis Tremblay of 109 Brown Road asked if there would be three house lots in the front and condominiums in the back. Chair Chivers stated that was not what Mr. Scarlett was proposing. Mr. Tremblay asked what the condominium association would be doing with the land. Chair Chivers asked if the condominium association grant an easement on the property to restrict some of the development. Mr. Sullivan replied if the town wanted an overlay on a restricted section that would be fine. Ron Howe asked if it was possible for the condo association to put an athletic field on the property. Mr. Sullivan replied if the Board put restrictions on it, then it could not be done. Planning Board Chair Girard noted anything that needs this many variances can not be in the spirit of the ordinance. Abutter Thomas Clark of 18 Clarks Drive asked about the acreage and the number condo units allowed. Mr. Scarlett stated he had the land surveyed and it is 49 acres. Mr. Sullivan stated the calculation was based on if it was an allowable multi-family and then used those calculations (Zoning Ordinance, Section 5.02). Patrick Soares of 132 Brown stated he had concerns with the drainage and how would it impact the wetland area. His second concern was how the condos were good for the town. Mr. Scarlett replied the engineers are with the state and would address any wetlands and drainage issues. Ron Thomas asked if this really was a hardship, since the regulations haven't changed in the past three years. He further stated Mr. Scarlett purchased the land knowing there are regulations, so there is no hardship. Abutter Amanda Soares of 132 Brown Road stated most of the wetlands on Mr. Scarlett's property will be disturbed, how will the culverts handle that water flow. She added how will the run off effect her property which is directly across the street. Mr. Sullivan stated they will try not to change the run off as it presently exists. Judy Szot stated if you look

at the area, all of the ground cover breaks the rainfall. Mr. Scarlett stated someone came in prior to him purchasing the land and removed a lot of the trees. Chair Chivers referred back to Ron Thomas' statement and asked how this was a hardship; Mr. Scarlett should have been aware of the zoning regulations when he purchased the land. Mr. Sullivan replied it's a hardship because of the characteristic of the lot. Judy Szot asked if the land on either side of the property is wet as well. Mr. Barnes stated it was flooded out in April. Abutter John Rollston of 31 Murray Hill Road stated he lives on the Auburn line and there is a lot of flooding in the back of Mr. Scarlett's property. There was some discussion about an increase in traffic. Chair Chivers closed the public hearing and the Board deliberated the case. Chair Chivers felt the hardship was self-imposed; Mr. Scarlett bought the property knowing what its limitations were. Chair Chivers further stated he failed to see how this proposal is in congruence with the zoning ordinance. Arlene Richter pointed out that Mr. Scarlett may be able to put a couple of houses in the front part of the lot. Ron Howe stated he thought it might be a premature subdivision and felt it was too far from emergency services. Judy Szot stated this was a self-created hardship and all the property around it is wet. It's an equally shared hardship by the land abutting this property. She added the traffic concerns were valid. The Board went through the 5 criteria:

1. No diminution in the value of surrounding property would be suffered. The Board agreed it would not.
2. Granting the variance would be of benefit to the public interest. The Board felt it would not be a benefit to the public interest, because there is a potential for an increase in water and a substantial increase in traffic.
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 Board agreed it would not be an unnecessary hardship, because the abutting properties are the same and it is a self-imposed hardship.
4. Granting the variance would result in substantial justice. The Board agreed it would not.
5. The use will not be contrary to the spirit of the Ordinance. The Board agreed it violates section 1.02 of the zoning ordinance.

Judy Szot **moved** to deny granting a variance from section 13.04B1 because it would be contrary to the public interest due to a potential increase in traffic and water; the hardship was self-imposed; and it is contrary to the spirit of the ordinance. Ron Howe **seconded**. **All were in favor.**

Judy Szot **moved** to deny granting a variance from section 13.04B2h because it violates the spirit of the ordinance and the hardship is self-imposed. Arlene Richter **seconded**. **All were in favor.**

Frank Albert **moved** to deny granting a variance from section 2.05 because it is not in the public interest. Arlene Richter **seconded**. **All were in favor.**

Frank Albert **moved** to deny granting a special exception from section 5.02A3 because it's a self-imposed hardship and not in the public interest. Ron Howe **seconded**. **All were in favor.**

Continuance of Case #547 – Applicant: Renee Rouse Owner: Candia Congregational Church; Location: 183 High Street, P.O. Box 62; Map 406 Lot 007 For a Special Exception under 5.02E6 to expand a currently non-conforming use to include a private school in a residential zone.

Pastor Renee Rouse, Phil Packard, and Mark Galatis were present. The applicant had provided a statement of intent. Chair Chivers noted the Board had received a legal opinion from the Town Attorney. Chair Chivers stated the Church never applied to the ZBA to use the Joy House as office space. He further stated the Board must first resolve this issue. The applicant has two choices they can terminate the use or apply for another special exception to operate the Joy House as an office building. Then the Board can consider the special exception to run the pre-school. The Board will require state permission first. Pastor Rouse explained the state would not come in and evaluate the building unless the Church got a special exception first. Chair Chivers replied the Board could consider granting a conditional approval. Pastor Rouse clarified that she would need to go through the same application process again. Chair Chivers stated she would. There was discussion about parking and the driveway. Mr. Galatis stated the driveway goes around the building and there is enough parking. After some discussion the Board decided to grant a conditional special exception. Judy Szot **moved** to grant a conditional Special Exception under 5.02E6 to operate a private pre-school at 183 High Street with the following conditions:

- The hours of operation will be Monday, Wednesday, and Friday from 9:00 a.m. to 2:00 p.m.
- There will be no more than 4 children and 1 teacher.
- The operators of the school need to apply for and obtain approval from the State of New Hampshire to run a pre-school from this location.
- The Candia Congregational Church must come back to the Zoning Board and legalize the present use of the building.

Frank Albert **seconded**. **All were in favor.**

Continuance of Case #548 – Applicant: Renee Rouse Owner: Candia Congregational Church; Location: 1 South Road, P.O. Box 62; Map 405 Lot 007 For a Special Exception under 5.02E6 to expand a currently non-conforming use to include a private school in a residential zone.

Pastor Rouse stated this location has the same issues as the previous case. Chair Chivers asked Pastor Rouse if they were proposing the same limitations on the Church as the Joy House (# of children, # of teachers, etc.). Pastor Rouse explained they would use the church as a back up to the Joy House and possibly use the space as a kindergarten in the future. Judy Szot stated if the Board granted a special exception it will only apply for the use of the pre-school. The Church would need to come back to the ZBA for a special exception if they chose to run a kindergarten out of this location. After some discussion the Board decided to grant a special exception with conditions. Judy Szot **moved** to grant a special exception with the following conditions:

- The hours of operation will be Monday, Wednesday, and Friday from 9:00 a.m. to 2:00 p.m.
- There will be no more than 4 children and 1 teacher.
- The operators of the school need to apply for and obtain approval from the State of New Hampshire to run a pre-school from this location (lower level of the Congregational Church).

Ron Howe **seconded. All were in favor.** Judy Szot reminded Pastor Rouse if the state approved this location for more children, they would need to come back to the ZBA.

Arlene Richter **moved** to adjourn at 8:50 p.m. Ron Howe **seconded. All were in favor.**

Respectfully submitted,
Andria Hansen, Recording Secretary