

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES of November 27, 2007

Present: Boyd Chivers, Chair; Ron Howe, Arlene Richter, Judy Szot, Ingrid Byrd, Alternate; Amanda Soares, Alternate

Absent: Frank Albert, Vice-Chair

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

Arlene Richter excused herself from the board. Ingrid Byrd was seated for Arlene Richter and Amanda Soares was seated for Frank Albert. Judy Szot arrived at 7:05 p.m.

Case #549 – Applicant: Candia Crossing LLC; Owner: Candia Crossing LLC; Location: High Street, Map 406 Lot 016; For a Variance under Section 2.05 to build more than one residential building on a lot and For a Variance under Section 5.06-7B to allow an elderly housing community on one parcel or lot with more than one building on the parcel or lot.

John Cole, Scott Komisarek, Attorney Brad Westgate, and Kevin Camm from Civil Construction Management were present. Atty. Westgate presented the Board with handouts. He explained that Mr. Cole and Mr. Komisarek have been to three Planning Board meetings. At the October 18th meeting the Board decided to not accept Candia Crossings application as complete due to a lack of a subdivision application. Atty. Westgate went on to explain that Candia Crossing would like to build 34 single family dwelling units and 3 triplexes and a variance from section 2.05 would allow them to do so. Mr. Camm presented the Board with a plot plan which showed where the single family dwelling units would be in reference to the lot. Atty. Westgate stated if each unit needed a 1 acre lot, it wouldn't allow the grouping in a certain fashion (pods). Mr. Camm explained this development was not a cluster development. It would be condo units with 1 piece of land and the owners would have a 1/43rd share of it. He discussed the elevation and stated it was not a good lot for a conventional subdivision. It's a development for people 55 and older and limited to 2 bedrooms in each unit. There would be a condo association to manage it. There would be a community well system and common septic areas for each grouping of dwellings. The driveway has been approved to access the property. Chair Chivers asked what the maximum numbers of units would currently be allowed. Mr. Camm replied from the current density provision of the ordinance, the development could be a cluster of 37 triplexes. It is not possible to get 43 1 acre lots. Atty. Westgate stated granting a variance would allow the project to stay in line with and maintain a consistency with the zoning ordinance. He further explained that condo ownership is a statutorily allowed form of ownership and is common in elderly housing. He stated that requiring a subdivision is like fitting a square peg in a round hole.

Chair Chivers put the meeting on hold so Amanda Soares could temporarily excuse herself. The Board decided to review the minutes of October 23, 2007. Judy Szot

moved to approve the minutes of October 23, 2007 as presented. Ron Howe **seconded**. **All were in favor.**

Chair Chivers asked if some of the Board members would like to service on a committee to amend the zoning by-laws. Judy Szot and Ingrid Byrd will serve on the committee.

Amanda Soares returned and excused herself from the meeting at 7:35 p.m. Chair Chivers explained to Atty. Westgate that his clients were entitled to a 5 member board and would they like to continue with 4 members. Atty. Westgate stated they would like to continue with the hearing.

Atty. Westgate discussed the ownership of the open space. He then went through the 5 criteria of a variance.

1. No diminution in the value of surrounding property would be suffered. Granting the variance would provide more flexibility in the layout and configuration in a manner that far more suitable to the topography and geography of the site.
2. Granting of the variance would be of benefit to the public interest. It would be in the public interest to allow a better form of development. Atty. Westgate submitted an impact study of local 55+ adult communities. He summarized by stating it is consistent with the statute that condominium form of ownership is not to be discriminated against in local land use regulations. Judy Szot asked where he referenced the state statute. Chair Chivers replied RSA 356-B: 5. Chair Chivers read from the Town Attorney's October 16th letter which references this RSA.

For the 3rd criteria Atty. Westgate then referred to the variance criteria of Simplex and Boccia. The Simplex would be for a use variance and the Boccia would be for an area (dimensional) variance. He reviewed the Boccia variance criteria.

- I. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. It is a permitted use under the elderly housing ordinance. It's a unique property because of the wetlands and topography.
- II. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. In this case the Planning Board has made a determination to not proceed any further unless Candia Crossing subdivides into separate lots, so they would need a variance to continue.

Atty. Westgate then reviewed the Simplex variance criteria.

- I. The zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment. It's permitted and consistent with the purpose of the ordinance.
- II. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction of the property. This development is in harmony with the ordinance.
- III. The variance would not injure the public or private rights of others. No public rights are involved.

Atty. Westgate then returned to the 5 criteria of the zoning ordinance.

4. Granting the variance would result in substantial justice. It is consistent with the elderly housing ordinance.
5. The use will not be contrary to the spirit of the Ordinance. The spirit and intent embodies the elderly housing development.

Chair Chivers asked if the Board members had any questions. Ingrid Byrd asked how many acres were buildable. Mr. Camm considered the buildable definition and wetlands in his calculation. Atty. Westgate stated there would have to be 37 buildable acres. Ron Howe asked if construction would start within six months. Scott Komisarek estimated there would be 9 units per year, and they were looking at a 3-4 year build out. Ron Howe asked if the road was private. John Cole stated that it was. There was discussion about the Planning Board sending Mr. Cole to the ZBA. Selectman Duarte stated pending on the outcome of this meeting Mr. Cole would come back to the Planning Board as soon as possible. Abutter Tom DiMaggio of 42 North Road stated his concern with his well being pumped dry. He further stated Mr. Cole needed to monitor the wells of all the abutters. He was also concerned with the amount of sewerage being dumped onto the land. He concluded by stating that this piece of land could not handle the density. Abutter Arlene Richter agreed with Mr. DiMaggio's comments. Judy Szot asked if the sewerage disposal would be in the open space. Mr. Camm replied no. Charlie Bowman of 438 High Street stated he was in favor of the development and felt it would be a benefit to the town. Carla Penfield asked if this would increase the need for emergency services in town and how was the open space being calculated. Chair Chivers stated that issue is for the Planning Board to review. Ron Howe added the density calculation is a Planning Board issue. Ron Howe asked if there were problems with the septic or wells will Candia Crossing stand behind what they have done. Mr. Camm replied the development would not be an overuse of the property. He further explained the DES requires them to test all wells within 1,000 feet and the abutters will be notified. Judy Szot asked what recourse the abutters would have if there were problems. Atty. Westgate replied if there were problems DES would address them. There was more discussion about the calculation of open space. Chair Chivers closed the public hearing and the Board deliberated the case. Ingrid Byrd asked if Mr. Cole should wait until the amendments are made to the elderly housing ordinance. Chair Chivers stated Mr. Cole should not have to wait and a decision should be made this evening. Ron Howe noted if Mr. Cole has to wait for the vote in March that would delay his project 4 months. Chair Chivers stated the applicant meets both tests under Simplex and Boccia. Ingrid Byrd stated she would like to see what other applicants would present. Ron Howe noted that was a Planning Board issue. The Board then used the Boccia variance criteria to deliberate the variance from section 2.05.

- I. The variance will not be contrary to the public interest. The Board agreed no.
- II. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.
 - B. Applicant seeking area (dimensional) variance – *Boccia* analysis
 - i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The Board agreed yes.

- ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. Chair Chivers stated the applicant demonstrated that on the open space.
 - III. The variance is consistent with the spirit of the ordinance. The Board agreed yes.
 - IV. Substantial justice is done. The Board agreed yes.
 - V. The value of surrounding properties will not be diminished. Chair Chivers referred to the letter from the appraiser stating it would not diminish the value. The Board agreed it would not diminish the value of surrounding properties.
- Judy Szot **moved** to grant a variance from section 2.05 to build more than 1 residential building on a lot. Ron Howe **seconded**. **All were in favor**.

The Board then used the Boccia variance criteria to deliberate the variance from section 5.06-7B.

- I. The variance will not be contrary to the public interest. The Board agreed no.
- II. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.
 - B. Applicant seeking area (dimensional) variance – *Boccia* analysis
 - i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. The Board agreed yes.
 - ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. The Board agreed yes
- III. The variance is consistent with the spirit of the ordinance. The Board agreed yes.
- IV. Substantial justice is done. The Board agreed yes.
- V. The value of surrounding properties will not be diminished. The Board agreed it would not diminish the value of surrounding properties.

Judy Szot **moved** to grant a variance from section 5.06-7B to allow more than 1 building on a parcel. Ron Howe **seconded**. **All were in favor**.

The meeting adjourned at 9:05 p.m.

Respectfully submitted,
Andria Hansen, Recording Secretary