

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF May 27, 2008

Present: Boyd Chivers, Chair; Frank Albert, Vice-Chair; Arlene Richter; Ron Howe; Ingrid Byrd, Alternate; Amanda Soares, Alternate.

Absent: Judith Szot has an excused absence.

Chair Chivers called the meeting to order at 7:00 p.m. Amanda Soares was asked to sit for Judith Szot.

Approval of Minutes

A. Richter **motioned** to accept the minutes of April 22, 2008 as amended. F. Albert **seconded**. **All were in favor.**

- Page 4, 4th paragraph from bottom, add s to appreciate and change has to had.
- Page 5, 3rd paragraph remove board and add to Planning Board
- Page 6, 3rd paragraph change property to properly
- Page 8, 5th paragraph detail why withdrew motion
- Page 8, 6th paragraph change to to not, low to lot, not to no and take out applicant's name on motion and put in their.
- Page 9, 3rd paragraph from bottom add **moved**.

Case #554 Applicant: Kyle & Amy Thrasher; Owner: Kyle & Amy Thrasher; Location: 72 Palmer Road; Map: 414 Lot 55-3; For a variance under Section 10.06: Buffer Provisions to permit the construction of a new two car 26' x 28' attached garage with a 12' x 14' Breezeway within setback.

K. Thrasher was present. He presented plans to construct a 2 car garage with breezeway on his property within the 50 foot set back on poorly drained soil. K. Thrasher said he was seeking a variance to build within 24 feet of the setback. R. Howe asked about removing the breezeway and K. Thrasher replied if the garage is moved to where the breeze way is shown on the plans then the garage would be on the septic tank. The septic tank is being re-configured and the tank is to be moved 10 feet off the corner of the house and line redirected down to leach field which is very costly. K. Thrasher said this is the only configuration/option that works on his lot. The lot is completely utilized and the leach field cannot be moved. A. Richter asked what Hydric soil means and R. Howe explained it was a soil classification and that there isn't a definite line between classifications. Chair Chivers asked if the applicant's plan meets all other zoning regulations and K. Thrasher replied yes. Chair Chivers asked if the abutters were notified and hearing was posted and it was confirmed they were. There were no abutters present. R. Howe asked the applicant if he would be able to get around the garage and K. Thrasher said yes, there will be approximately 10 foot to drive around the garage. Chair Chivers asked the Board if they had any questions. A. Soares, A. Richter and F. Albert said their questions were answered. Chair Chivers closed the hearing. K. Thrasher thanked the Zoning Board for their time.

R. Howe asked about the posted times for each case and Chair Chivers noted that all the times were taken off and reposted and all cases will be scheduled for 7:00pm.

Case #553 Applicant: Renee Rouse, Trustee Candia Congregational Church; Owner: Congregational Church; Location: 183 High Street, P.O. Box 62; Map 406 Lot 007; For a conditional special exception in response to Case #547, from the Zoning Board decision on October 23, 2007.

Renee Rouse, Mark Galatis, Miska Haden and Phil Packard were present. Chair Chivers asked if the abutters had been notified and if the hearing was posted and it was confirmed they were. There were no abutters present. Chair Chivers summarized Case #547. Case #547 was back in October of 2007 when the Congregational Church came before the Zoning Board for a special exception to operate a school, and at that time it was determined there was a small office in place. The Zoning Board also noted there wasn't a special exception in place for the small office and that the Board could not consider the application for the special exception to operate a school because the building was in violation of ordinances. The Zoning Board decided to help out the Congregational Church and granted a conditional special exception to operate the school provided the applicant met certain requirements such as state requirements, fire dept requirements etc.

R. Rouse said that they are now coming forward to legalize the small office use and they would not be operating a school. She explained that the Church is in transition and they would come back at a later time for a school permit if they decide to put a school in the building. R. Rouse noted the building cannot be both a small office and a school and she stressed the importance of legalizing the small office in the building. A. Richter clarified that the Joy House is located behind the Fitz Museum and asked if someone was living there and R. Rouse replied that the people displaced from the fire lived there until they could move back and that no one lived there now. Chair Chivers asked the applicant if they had something in writing showing the proposed use of the building. The applicant asked to be able to put the proposal in writing.

Chair Chivers stated let the record show that Case #553 is to be continued later in the meeting to present a proposal in writing.

Case #555 Applicant: Aaron & Laura Hayes; Owner: Same; Location: 75 Langford Road; Map 408 Lot 25; For special exception under Section 13.04 E to allow for an accessory use of a dwelling in the residential district as provided under Section 5.02 A.

L. Hayes was present. Chair Chivers asked if the abutters had been notified and hearing was posted and they were. Chair Chivers asked the applicant if she had read Section 5.02 A and if she met all the requirements. L. Hayes replied yes and the total area was 598 square feet. L. Hayes said the building was over 20 years old and no permits appear to have been issued. The prior owners used the building as a home business and it is presently used as a quest house/game room. Tax cards were printed of the property to review. A. Richter and R. Howe asked if the garage was attached and the applicant replied that the garage was detached. The garage was built with a separate septic and water supply before the main house was built. There was discussion about the footage from the Tax Card.

R. Howe asked the applicant what brought her to the Zoning Board and she replied that she received a letter from the Building Inspector that stated there was no building permit for the entire garage. The applicant explained she went through the through the records with the Building Inspector and found that Russ Stratton built the garage and the permits that were found were very vague. Chair Chivers asked the applicant if she had provided the checklist and the applicant replied she was not making changes and that she just wanted to legalize what was already in place as an accessory use. F. Albert said he needed more detail showing dimensions and floor plans. Chair Chivers noted the tax card showed approximately 1165 square feet available on the second floor.

R. Howe asked the applicant to show where the wall is to be built so the rest of the storage area cannot be developed. L. Hayes said there is an existing wall with a locked door. R. Howe asked if there isn't a building permit for the garage, how can the Zoning Board of Adjustment; approve a special exception for a piece of a building when the entire building isn't approved. If this is the case, then the whole building has to be permitted. Chair Chivers stated that garages are a permitted use of the property and there would be no problem getting a building permit. F. Albert wanted consistency with accessory use requirements of the 600 square foot maximum as done with prior cases where the applicant had to ensure that the applicant would stay within the allowed 600 square footage. Chair Chivers stated that if the applicant didn't have the extra 700-800 square feet there wouldn't be an issue.

W. Hallock Building Inspector was asked for his comments on this case. W. Hallock commented that it would be difficult to keep to the maximum of 600 sq feet and stated that he is not sure what the requirements were at the time the garage was built. Chair Chivers asked the Building Inspector if there was anything that could be done to limit the use of more than 600 sq feet and W. Hallock replied he has never been on the property and cannot answer that. In a prior case on #10 Langford Road an area was blocked off and given a separate entrance from the outside. B. Hallock was asked to go to the applicant's property and see if there is a locked door to the storage area. R. Howe asked if the Board could have the Building Inspector go to the property and inspect and issue a permit and W. Hallock said a building permit was pulled in 1977 but was not sure if it was for the garage, as it is poorly worded, but if there was already a building permit, he did not feel it would be fair to ask for a new permit. W. Hallock said a permit was pulled for the house in 1984. W. Hallock was asked by the Zoning Board to go to 75 Langford Road and verify what the applicant has told the Board and to verify footage

Chair Chivers requested that the applicant come back to the Zoning Board to show how she intends to finish the upstairs within the 600 square feet requirement. Chair Chivers requested a drawing to scale on graph paper showing separation of the storage space from the living space. Chair Chivers told the applicant the Board does not need a detailed floor plan just the total dimensions of the living area. L. Hayes thanked the Board for their time.

R. Howe **motioned** to continue the case #555 until 6/24/08 to allow the applicant to come forth with information requested. A. Richter **seconded**. **All in favor.**

Case #553 Applicant: Renee Rouse, Trustee Candia Congregational Church continued.

R. Rouse presented the Zoning Board with a written proposal of how the applicant wanted to use the Joy house located at 183 High Street. Chair Chivers read into record: "Proposed: To use building for church office uses, Biblical Witness Fellowship (church mission), & Bethany Christian Services (Christian Adoption Mission). Maximum of 5 employees with potential of 5 vehicles at one time. Each mission operates up to 4 days per week, 3-4 hours per day. Office is operated 3 days per week, 3-5 hours per day." Chair Chivers clarified with the applicant that there are two office uses. Chair Chivers asked if the abutters were notified and hearing was posted and they were. There were no abutters present. R. Howe clarified that there will be only offices in the Joy House. Chair Chivers asked if the Board had any questions. A. Soares said her questions were answered, A. Richter noted legalizing the use is important, F. Albert had no questions with the proposed use and R. Howe was in agreement with the proposal. R. Rouse thanked the Board for their time.

Chair Chivers closed the meeting to deliberate on the cases.

Case #553

Chair Chivers asked the for the Boards comments. R. Howe said legalizing would be good and using the building as an office is not an unreasonable use of the building. A Richter said that legalizing the use is important. A. Soares read into record “Section 13.02: Special Exception Standards. Special Exceptions shall meet the following standards:

1. Standards provided by this Ordinance for the particular use permitted by Special Exception;
2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

Chair Chivers asked the Board if there was any finding. It was the consensus of the Board that there were none.

3. No detriment to property value in the vicinity or change in the neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;

R. Howe noted that the Zoning Board of Adjustment does not know the requirements of the Fire Department. Chair Chivers said he would make this a condition.

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;

Consensus of the Board is no.

5. No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection and schools;

Consensus of the Board is no

6. No significant increase of storm water runoff onto adjacent property or streets.

Consensus of the Board is no.

Chair Chivers noted Section 13.04 Specific Special Exception Uses A. Neighborhood Business and Professional Offices in Residential Districts.

1. Such uses are located only on an arterial street as designated in Article III.

Consensus of the Board is that this requirement is met.

2. Such uses do not have an enclosed floor area in the excess of 2000 SF.

Consensus of the Board is that the floor area is under 2000 SF.

3. Such uses do not detract from the rural aesthetics of the area.

Consensus of the Board is this does not detract from the rural aesthetics of the area.

F. Albert **motioned** to approve the conditional exception use as office space subject to meeting the Fire Departments requirements for office space. A. Soares **seconded**. **All in favor**.

Case #554

Chair Chivers noted that the applicant has talked with the Building Inspector and there is not other place to put the garage on the property. The consensus of the Board is that there is greater harm to the applicant then the gain to the community. It was noted that the applicant was moving his septic system.

A. Soares **moved** to approve the special exception variance under Section 10.06: Buffer Provisions to permit the construction of a new two car 26’ x 28’ attached garage with a 12’ x 14’ Breezeway within the setback. **F. Albert seconded**. **All in favor**.

Ken & Holly Choquette on Administrative Appeal (case #551) and Variance Application (Case #552) rehearing.

Chair Chivers asked I. Byrd to sit for R. Howe for the discussion. Chair Chivers stated that there are 2 issues before the court, none of which concerns the merit of the applicant's legal argument. The Board has to decide whether they made a mistake in the application of the ordinances or whether the applicant raises new facts or new information that was not presented at the previous hearing. Chair Chivers asked A. Soares, A. Richter, and I. Byrd if they had read the Lawyer's request and they replied yes. Chair Chivers asked if the applicant had presented any new facts or information that was not presented at earlier hearings. A. Richter, I. Byrd and A. Soares said that the applicant did not present new evidence. Chair Chivers asked the Zoning Board of Adjustment if they had erred in the interpretation of the ordinances and applying it to this case. I. Byrd answered that all information was considered and the Zoning Board of Adjustment had made the right decision. A. Richter agreed with I. Byrd. Chair Chivers said a lot of thought and consideration went into this case and feels as a Board; they gave the applicant a fair hearing and opportunity to present information.

A. Richter **motioned** to deny the re-hearing of Case 551 & Case 552. I. Byrd **seconded**. **All in favor.**

Other Business

By-Law Subcommittee Review

Chair Chivers asked to have a copy mailed to all the members of the board. The consensus of the Board was to have the final review of the By-Laws on June 24, 2008 for any amendments. Once this is done the By-Law changes will be sent to the Board of Selectmen for comment and review. Then the Zoning Board will have a final vote on the By-Laws at the July 22, 2008 Zoning Board of Adjustment meeting. I. Byrd asked if the Board of Selectmen disagrees with what the Zoning Board has proposed, who has the final word. Chair Chivers replied that the Zoning Board has the final word but that the Board of Selectmen has to review the By-Laws per RSA regulations. I. Byrd went on record saying that the Zoning Board of Adjustment has the final voice on the By-Laws.

A. Soares said the subcommittee was discussed at the last Planning Board meeting and the Planning Board asked if anyone was interested in being the Chair for Zoning/Planning subcommittee. A. Soares said she was not sure if anyone was going to step up and she asked if an alternate could head up this committee, if no one else wanted the position. The Planning Board said they would take this into consideration, if no one was going to volunteer. A. Soares asked if the Zoning Board wanted to come to the next Planning Board meeting and bring any questions they may have.

Chair Chivers said that each Board was asked to bring to the roundtable discussion, 3 issues to have considered. One of the issues Chair Chivers noted was legalizing illegal not permitted uses and to identify them and enforcement. I. Byrd stated the Zoning Board has had these issues for buildings already in existing with violations and most likely will see more. I. Byrd asked if the Building Inspector could identify nonconforming buildings and asked if this information could come from the tax cards. Chair Chivers said the Board struggles with enforcement issues and the Zoning Board of Adjustment is not the Board to enforce this.

I. Byrd said there has been unfair applying of the rules. For an example, a property owner was required to cut out an area for a deck to keep at the maximum of 600 sq ft yet another property owner added a porch that was not considered living space in addition to his 600 sq ft. I. Byrd feels the Zoning Board of Adjustment needs to be consistent or the purpose of existence is nullified. I. Byrd feels that the spirit of ZBA should be carried out in fairness and consistency.

F. Albert pointed out some of the complaints he hears from applicants is that they go to a Board for a decision; they do not get a decision but are given a punch list to address for the next meeting. Then the applicant comes back to the next meeting and someone different is sitting on Board and more concerns are brought up I. Byrd pointed out that everything that is required of the applicant is in the Zoning Board regulations and other regulations, and the applicant does not read the regulations and if the applicant is reminded of what they need the applicant states the Board did not tell them about it at the last meeting. It was discussed that the application comes with a checklist for the applicant to follow. F. Albert said things get overlooked. I. Byrd noted that the applicant is asked if they read the paperwork and the applicant usually has not and she feels it is easier for the applicant to blame the Building Inspector, Planning Board or the Zoning Board of Adjustment.

Chair Chivers said it was a good point that as a board, try not to nickel and dime the applicant and that the applicant is aware of every issue that is going to be raised at the next meeting and not to bring up new issues if the Board has not thought about it the first time. I. Byrd asked if the applicant should get a follow up letter of what is required to present at the next meeting. Chair Chivers replied it is clarified to the applicant at the meeting and this is the time for the applicant to ask what is required at the next meeting.

A. Soares asked if the applicant is not proficient at drawing that graph paper or a form could be given to the applicant with the application. Chair Chivers said how far the Board should go as all the requirements are in the application.

F. Albert asked if the standard operating procedures could be that everything is mailed out and not to use email. It was agreed by the Board to mail instead of using email.

I. Byrd **motioned** to adjourn. A. Soares **seconded**. **All in favor.**

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,
Sharon Carrier
Recording Secretary