

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF October 28, 2008

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

Absent: Ingrid Byrd; Alternate

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

Approval of Minutes

R. Howe **motioned** to accept the minutes of July 22, 2008 as corrected. F. Albert **seconded. All were in favor.**

- Page 1, 6th paragraph, 2nd line change minutes to meeting. Third line remove no after or.
- Page 2, 2nd paragraph, 2nd line change is to was. 4th paragraph, 1st line remove “and have Sharon make a final copy.”, 2nd line replace “she will” with “I. Byrd would”

Case #08-563 Applicant: Mr. & Mrs. Edward & Barbara Thornton; Owner: Same; Location: 820 High Street, Map 404 Lot 034: For special exception under Section 13.04 E: Accessory Use Dwelling.

Mr. & Mrs. Edward & Barbara Thornton and Leah St. Laurent were present. A butters were notified and none were present. Public notice was given. Chair Chivers summarized the case. Building permit #2002-00070 was issued for an addition on 8/10/02 for one bedroom, bathroom and family room. A certificate of occupancy was issued in 2004 which stated the addition was not to be used as an In-Law Apartment. Zoning Ordinance changes were made in March of 2002, which stated an accessory dwelling could not exceed 600 sq ft. Chair Chivers said the accessory unit was 1064 sq ft excluding the 3-season porch.

Mr. Thornton said the kitchen was put in place right from the beginning. He also said the Building Inspectors never told him he could not have a kitchen. Mr. Thornton said that they were living in the addition when they were issued the certificate of occupancy and that the Building Inspector came back twice for the final. Mr. Thornton said he became aware that their In-Law Apartment was not legal when they had an appraisal done. The applicant is asking to make their In-Law Apartment legal. There was discussion about multiple inspectors being involved with the project and that the Building Inspectors never made Mr. Thornton aware that he could not have a kitchen. Inspection report 9/19/03 said the electrical upgrade was to accommodate an In-Law Apartment but the inspection report for 9/19/03 was reissued and “In-Law Apartment” wording was removed and the report said the electrical service was increased to 200 amps to accommodate additional load.

F. Albert noted sq footage exceeds 600 sq ft for an accessory dwelling. R. Howe said the applicant did not hide the kitchen and that the Town and various inspectors are at fault for not bringing this to the owner’s attention. A. Richter asked if there was a passage way between the In-Law Apartment and main building and Mrs. Thornton said there was no passage between the two. J. Szot said part of the problem with the In-Law Apartment being larger than 600 sq ft originated from the original building permit which was for an addition that has no size limitation. Somewhere in between the Thortons put in a kitchen and the subsequent inspectors must not have looked at the original application because if they had they would have known it was for an addition not In-Law Apartment.

Chair Chivers said that the Zoning Board of Adjustment was put in place to help solve hard cases such as this. The Zoning Board of Adjustment could either have the apartment reduced to 600 sq ft or deny the request and have the kitchen removed. It would be a major expense and hardship to make the apartment conform to 600 sq ft and Mr. & Mrs. Thornton live in the apartment and need the kitchen. The Board was in consensus that it would be a major expense and hardship to reduce the building.

J. Szot said Mr. & Mrs. Thornton could seek relief under RSA 674 33a Equitable Waiver of Dimensional Requirement. J. Szot read into record RSA 674 33a:

RSA 674 33a

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by an owner...or municipal official, until after a structure in violation has been substantially completed ...

The owner was never told they could not have the kitchen and they were issued a certificate of occupancy with the kitchen in place in 2004.

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner...but caused by ... applicability made by a municipal official in the process of issuing a permit over which that official has authority.

The property owner did not conceal the kitchen and multiple Building Inspectors did not tell the owners the kitchen was in violation.

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area ...

It was the consensus of the board that addition did not constitute a public or private nuisance nor diminish the value of the other properties in the area.

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

The Board was in consensus that it would be a major expense and hardship to reduce the building size to conform to 600 square feet.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 677:2 through 14. IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of the land are bound by constructive

knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

It was the consensus of the board that the applicant met all the findings and requirements of RSA 674:33. The In-Law Apartment is a permitted use. The size is the issue that requires the waiver.

R. Howe **motioned** to grant waiver of dimensional requirements under RSA 674:33 for the In-Law Apartment exceeding 600 sq ft. at 820 High Street. A. Richter **seconded**. **All were in favor.**

Chair Chivers said the board was in consensus that the applicant met all of the conditions listed under Section 13.04 E: Accessory Use Dwelling with the exception of #3 which the applicant was previously granted a waiver of dimensional requirements.

The next step is to grant the special exception. Chair Chivers asked A. Richter to read Section 13.02: Special Exception Standards before the board grants a special exception. A. Richter read into record:

Section 13.02 Special Exception Standards

Special Exception 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*
- 3. No detriment to property value in the vicinity or change in the neighborhood on account of 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;*
- 4. No creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity;*
- 5. No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;*
- 6. No significant increase of storm water runoff onto adjacent property or streets.*

The Board was in consensus that the applicant met all the requirements in 13.02 Special Exception Standards.

J. Szot **motioned** to grant special exception under 13:04 E Accessory dwelling for an In-Law Apartment at 820 High Street. R. Howe **seconded**. **All were in favor.**

The Thornton's thanked the board for their time.

Other Business

Chair Chivers asked the Board if there was any other business to discuss and hearing none asked if there was a motion to adjourn. J. Szot **motioned** to adjourn. R. Howe **seconded**. **All were in favor.**

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,
Sharon Carrier
Recording Secretary