

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF June 23, 2009

Present: Boyd Chivers, Chair; Frank Albert, Vice Chair; Ron Howe; Arlene Richter; Judith Szot; Ingrid Byrd; William Hallock, Building Inspector.

Absent: Amanda Soares

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

Approval of Minutes

J. Szot **motioned** to accept the minutes of May 26, 2009 as amended. I. Byrd **seconded**. **All were in favor.**

- Page 3, 2nd Paragraph from the bottom, Line 5 add “by a Town Official” after “he was told”
- Page 3, Last Paragraph, 5th line change “then” to “than”, 7th line change “then” to “than”, last line change “then” to “than”.
- Page 5, Under Section 13.02, 1 change “concludes” to “concur”.

Continuance Case 09-567 Applicant: New Cingular Wireless PCS, LLC (“AT & T”) c/o Stephen D Anderson, Anderson & Kreiger, LLP One Canal Park, Suite 200, Cambridge, MA 02141; Owner: Paul Hunter 606 North Road, Candia NH 03034, Map 402 Lot 10: For a Special Exception under Section V 5.02 (D, d-1), Section XII 12.01(B) and Section 13.02 and Variances under Section VI 6.01(G) and Section XII 12.02C. To permit a wireless communication facility in a Residential District consisting of a 180+/- lattice tower with side yard “fall zones” of less than 150% of the tower’s height within a 75’ x 75’ fenced equipment shelter will be located. The compound will include an equipment shelter and diesel generator. A gravel access drive is also proposed and utilities will be brought in from existing sources on the property.

Abutters, Mr. & Mrs. Kevin Deslongchamps 608 North Road, Mr. & Mrs. Daniel A Deslongchamps were present.

Chair Chivers summarized that the Board had asked the applicant to pay for an appraisal study to determine the impact on adjacent properties. The study was critical to tonight’s meeting. The applicant had submitted a letter requesting a continuance until July 28, 2009 because the study would not be finished until mid July. The Board granted the continuance to the July 28, 2009 Zoning Board of Adjustment meeting. Chair Chivers advised the abutters that this is the only notice they will receive that the hearing is continued.

Chair Chivers asked the abutters if they have noticed if applicant had staked out the compound. The applicant is to place grid stakes every 25’ for the appraiser to be able to evaluate the proximity on the lot. Mr. Kevin Deslongchamps said that they have not laid out stakes yet. Mrs. Deslongchamps asked if they had an appraisal done, would the Board accept the information. Chair Chivers said the Board considers all information presented but the information must be from a licensed appraiser. He said if information is submitted from the applicant only the Board has to accept their information from the applicant’s licensed appraiser unless there is refuting data from another licensed person. He said that all information is very critical. J. Szot said that there is a considerable difference between having a view of the tower and to be 200’ from the tower. Chair Chivers said the Board asked Fremo Appraisal specifically

to address this difference. He said they were also asked to consider that there is a new high end subdivision with underground utilities that is adjacent to the tower.

A site walk was discussed. It was the consensus of the Board to wait until applicant is present at the next meeting to pick a site walk date because the applicant does not have representation at the meeting. I. Byrd agreed it was advisable to wait for the applicant to be present and also to see what the applicant will present which may answer a lot of questions and a site walk may not be necessary.

Case #09-572 Applicant: Matthew Cogswell & Jeffery Garon 143 Douglas Drive, Candia NH 03034; Owner: same; Map 410 Lot 21; For a Variance Section 6.02 to legalize existing buildings within setbacks and a Special Exception Section 13.04 E for an accessory dwelling unit.

Mathew Cogswell, Jeffery Garon and Jim Tierney were present for the applicant. The abutters were notified none were present. J. Tierney spoke for the applicants. The applicant said they bought the property on short sale and were unaware of the issues that came with the house. M. Cogswell presented a plan showing the lot line adjustment from 2004 and aerial views of the property.

Chair Chivers said they would start with the Variances under Section 6.02 to legalize existing buildings within setbacks. He said he understood the previous owner took out building permits for these buildings but did not get a Certificate of Occupancy. The locations of the buildings were not specified on the permit.

The applicant said they were not sure why the violations had not been addressed when they showed up on the Lot line adjustment in 2004. I. Byrd asked if this plan could be considered an as built of where all the buildings are. It is a surveyed plan so the locations would be accurate.

J. Tierney said the garage has a 3' encroachment, the shed a 2' encroachment and the electrical enclosure located in the front has a 4' encroachment.

Chair Chivers started with the electrical meter enclosure. J. Szot said that this should not be considered because it is a utility but to make the application clean can be included. There were no questions on the placement of the electrical meter enclosure by the Board.

Next the garden shed located on a side setback was discussed. The garden shed measures 20' x 10'. R. Howe asked if it could be moved. J. Tierney said that it is too heavy to move. The garden shed encroaches 2' into the side setback. There were no other questions from the Board.

The last building, the garage was discussed. The dimensions are 22' x 24' with an 18' x 18' attached addition. The Garage encroaches 3' on the rear left corner of the building.

Chair Chivers closed the public hearing in reference to the variances only.

The Building Inspector, Bill Hallock said the previous building Inspector had done some inspections on the garage. There was no mention in the files that they had encroached in the building setbacks or had placement issues. R. Howe said this is why it is important that the building permits require a building plan that shows the location of what they are building. This doesn't have to be a surveyed plan but a fairly accurate drawing.

J. Szot said Mathew Cogswell and Jeffery Garon 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 ...

(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.

(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 ...

(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.

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.

I. Byrd **motioned** to grant the variance based on RSA 674.33A, Equitable Waiver of Dimensional Requirements. R. Howe **seconded**. **All were in favor.**

Next Chair Chivers discussed the Special Exception under Section 13.04 E for an accessory dwelling unit. J. Tierney said the garage is open and unfinished. The upstairs area is 852 sq ft with a loft for storage. The downstairs is 528 sq ft. Pictures were provided to the Board. The floor plan presented showed a one bedroom accessory unit at approximately 574sq ft. The other room on the floor plan is for unheated storage and can only be accessed from outside stairs. There was discussion that a door could be made to enter the storage area from the inside but it was pointed out that this area is unheated and the Board has to look at what is presented.

J. Tierney showed where they would remove the sliders on the rear of the building and install windows. A slider would be installed at the outside entrance to the storage area with outside stairs to be constructed to the slope of the ground. The entrance to the unit is the 18' x 18' addition which is at ground level which would be an easy access for their elderly mother.

I. Byrd and F. Albert were not comfortable about the amount of storage area that could conceivably be made into living space. Suggestions were made to limit the size of the building by making the 18 x 18 area into a deck. The applicant said this is the ground level front entrance into the living room area. J. Tierney said the wall separating the unit from the storage area will have a firewall like the separation from a garage to a house.

There is electric and water out to the garage. They are going to install a holding tank and a pumping station to the leach field. It was confirmed it is a 3 bedroom septic system. The house has 2 bedrooms; the third room is an office.

The Board had no more questions.

Chair Chivers closed the public hearing to deliberate. R. Howe said that we have to work with what is presented and the proposed accessory dwelling unit is less than 600 sq ft. The

applicant has done the best that they can do given the situation. J. Szot has no problem with what is presented. There were still concerns that the storage area could become living space at a later date.

I. Byrd read into record:

E. Accessory Dwelling Units

Any dwelling in a residential zone may be converted or built to contain one Accessory Dwelling Unit on the following conditions by Special Exception:

There shall be only one bedroom in the accessory dwelling unit.

Adequate sewer and water service shall be provided. One septic system shall serve the entire property.

There shall be a maximum of 600 sq. ft. of heated living space in the accessory unit.

On site parking for one additional vehicle shall be provided.

All existing set back ordinances must be met.

The accessory unit shall be within or attached to the main dwelling unit or located in an accessory building that exists on March 15, 2003, located on the same lot as the main dwelling.

The residential character of the area must be retained.

Density requirements of Article 13:04 C will not apply.

So long as an accessory dwelling unit is occupied, either the primary dwelling unit or the accessory dwelling unit shall be occupied by the owner of the property.

It was the consensus of the Zoning Board of Adjustment that the applicant has met all the criteria.

I. Byrd confirmed they would be living in the house. J. Szot said they cannot move out and rent both places. F. Albert confirmed they have a 3 bedroom septic. I Byrd said she would be more comfortable if part of approval clearly states that the storage space is not to be converted to living space. F. Albert added that the stipulation should also say that the living space is not to exceed 600 sq ft.

J. Szot **motioned** to approve the request to construct an accessory dwelling unit in the existing garage at 143 Douglas Drive. The accessory dwelling unit shall not exceed 600 sq ft of heated living space and further the area designated as storage area on the plan shall not be converted to heating living space. R. Howe **seconded**. B. Chivers, J. Szot, R. Howe **were in favor**. F. Albert **was not in favor**. I. Byrd **abstained**. **Motion carries 3-1.**

Other Business

July 28, 2009 is the next scheduled Zoning Board of Adjustment meeting.

J. Szot **motioned** to adjourn. F. Albert **seconded**. **All were in favor.**

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

Respectfully submitted

Sharon Carrier

Recording Secretary