

**APPROVED**  
**CANDIA ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF March 23, 2010**

**Present:** Boyd Chivers, Chair; Ron Howe, Judith Szot, Ingrid Byrd; Alternate, Amanda Soares; Alternate.

**Absent:** Frank Albert

Chair Chivers called the meeting to order at 7:00 p.m. He asked Amanda Soares to sit for Frank Albert.

**Approval of Minutes**

Ingrid Byrd **motioned** to accept the minutes of October 22, 2009 as presented. Amanda Soares **seconded**. **All were in favor.**

**Other Business**

**Office of Energy and Planning:** Chair Chivers noted that the Office of Energy and Planning will be having a spring conference on Saturday, May 8<sup>th</sup>. There is nothing in the budget to pay for it, but they are to welcome attend on their own expense.

**AT&T Law Suit:** Chair Chivers noted that since they met in October AT&T has filed a law suit. On March 4<sup>th</sup> they made a motion for summary judgment. He would like someone who is familiar with this case to go over their pleadings and identify any items that should be brought to the attention of Town Counsel, so when we prepare our defense we can bring up any facts that were misrepresented and any information that was left out that was pertinent to this case. Ingrid Byrd and Judy Szot volunteered to review the information. Chair Chivers asked them to do this in sufficient time, so Atty. Surge can prepare their defense. Judy Szot thought they had to respond within the next couple of weeks. Chair Chivers suggested sending an email to Atty. Surge regarding the time frame.

**Case #10-575 Applicant: Robert Martel, 613 High Street, Candia NH 03034; Owner: same; Map 405 Lot 54; For a Special Exception under Section XIII 13.04 (E): Accessory Dwelling Units: To permit new construction of an accessory dwelling unit.** Bob Martel of 613 High Street was present. He presented the Board with maps and explained the location of the house and accessory dwelling unit. He noted that the house will be set far back from High Street. Chair Chivers asked if the house was existing or is it going to be built. In addition does it conform to zoning and is it an existing parcel of land. Mr. Martel explained his current house is on the 3 acre parcel and he is building his house on the 76 acre parcel. Chair Chivers noted the only issue before the Board was the special exception for the in-law apartment. It meets all of the zoning requirements. The Board reviewed Mr. Martel's plans. Chair Chivers explained the only issue is with the special exception is the accessory unit has to be attached or within the dwelling unit. Chair Chivers asked the Board if they felt the breezeway constituted as an

attachment based on 13.04 (E). Ron Howe noted the only problem is that it's not an existing building. Ingrid Byrd asked if it was an enclosed breezeway. Mr. Martel replied yes and its will be heated. It will all be on one foundation. The board reviewed the criteria of Section 13.04E of the Zoning Ordinance.

1. There shall be only one bedroom in the accessory dwelling unit.
2. Adequate sewer and water service shall be provided. One septic system shall serve the entire property.
3. There shall be a maximum of 600 sq. ft. of space in the accessory unit.
4. On site parking for one additional vehicle shall be provided.
5. All existing set back ordinances must be met.
6. 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.
7. The residential character of the area must be retained.
8. Density requirements of Article 13:04 C will not apply.
9. 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.

Mr. Martel met all of the criteria. Mr. Martel explained there will be two doors into the breezeway. The Board reviewed the criteria of Section 13.02 of the Zoning Ordinance.

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 the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;
4. No creation of a traffic safety hazard or a 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.

Chair Chivers asked the Board if thought the applicant meets the criteria and standards. Judy Szot questioned the run off of the water when Mr. Martel starts clearing. She noted that the water should swale so it runs in a certain way and make sure he doesn't increase the water flow. Mr. Martel noted he probably wasn't going to pave the driveway. Judy Szot asked Mr. Martel to be mindful when he starts to clear the land. Chair Chivers asked the Board if he met the special exceptions standards. Chair Chivers asked if any abutters were present. No abutters were present. Chair Chivers closed the hearing. Judy Szot motioned to approve the request for the special exception to put the accessory dwelling unit on Mr. Martel's property. Seconded by Ron Howe. All were in favor. Motion carried.

**Case 10-576 Applicant: James S. Richardson & Jeanne Richardson, 103 Raymond Road, Candia, NH 03034; Owner: James S Richardson; Map 409 Lot 194; For a variance under Section 2.02 Non-Conforming Uses and Structures: to allow a mobile catering vehicle on the front portion of the lot:**

Mr. and Mrs.. Richardson were present. All of the abutters were notified. Chair Chivers explained the application is to park a motored catering truck on the applicants property located at 103 Raymond Road. The issue is it's a commercial district and they already have a residential building on that district in which they are living. They currently have a legal non-conforming use. They want a commercial use of the property, so there is no special exception required by this Board to grant that permission. Chair Chivers questioned if this was permissible under Candia Zoning for one parcel of land to simultaneously have two dissimilar uses; one being a legal non-conforming use and the other a legal conforming use. The ideal situation would be to subdivide the property. However, there is not enough frontage to subdivide the property. Everything else regarding this application will be taken care of by site plan review. Chair Chivers noted this is a legal non-conforming use because the residents predated the commercial use designation. Ron Howe asked if they would be selling something out of the truck after they park it. Mr. Richardson explained the use would be mobile vending; it will be going to fairs and other events. When it's not at fairs they will have it parked out front. Ron Howe thought the parking shouldn't be the way it is. Chair Chivers explained the State of NH has a 60 foot right away, which is 30 feet from the center of the road. Your parking has to commence at a point 10 feet beyond that distance, so the parking can't occur closer than 40 feet from the center line in Raymond Road. Mr. Richardson stated the way the parking was explained to him was that they just needed an area for people to pull in. Chair Chivers noted that is an issue Mr. Richardson would have to take up with the State. Chair Chivers stated the issue before Board is that they have two functionally different uses on the property. The question is how they deal with two functionally different uses on the same piece of property. Judy Szot felt the parking was an issue. She referred to Section 9.03 of the Zoning Ordinance; they will need a variance if they put their parking closer than 40 feet. They are 10 feet from their right away. Chair Chivers replied there is nothing to indication that it's not closer than 40 feet. Judy Szot stated its hard to make a determination on where something is when you don't have the numbers. Chair Chivers noted this application was noticed for a variance for the use, not for a variance for the distances. Ingrid Byrd noted if we didn't address other concerns now it wouldn't be fair to the applicant to have someone call it out later. Mrs. Richardson apologized that she didn't have time to fix the plans. She noted the parking would be about 50 feet from the center line, so there isn't plenty of room to put the parking where it should go. Chair Chivers reiterated that would be a site plan review. Mrs. Richardson explained that it would be seasonal, they would be open from early spring through early fall. Dave Elliot from Zacky's Pizzeria was present. Ingrid Byrd asked who owns the 26' x 8' unit. Mr. Elliot replied this is a joint venture and they co-own the truck and all of the equipment in it. Mrs. Richardson noted at the present time the vehicle is currently registered in her and her husband's name. Ingrid Byrd asked if it's a self contained unit that needs a truck to pull it. Mr. Richardson replied no. Chair Chivers noted the section (of the zoning ordinance) that governs this is 2.02. He questioned if there was anything else in 2.02 that

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relates to this. Ingrid Byrd thought they haven't dealt with "B", because it's a legal non-conforming use as a residential use, but now you're going to add another legal non-conforming use. Judy Szot explained it was zoned for commercial use; it would be a conforming use. Ingrid Byrd wanted to know where in the zoning ordinance is this permissible, because it's not a restaurant. Chair Chivers stated if they want to open a restaurant and they met all of the requirements - what would be the Board's position. Judy Szot replied you would have to build a restaurant and you will still have two different uses on the same lot. You can't put two residential houses on a lot, but a restaurant and a house would be legal. This is permitting two different uses on the same lot. Ron Howe asked about the sewerage and water. Mr. Richardson replied that it's all self-contained. Mr. Elliot explained it has its own holding tank. Judy Szot clarified it would be a drive-in restaurant. Chair Chivers asked the Board what their position would be if they wanted to build a house instead of a restaurant. Ingrid Byrd replied they would have to subdivide, because they can't have two non-conforming uses. Judy Szot asked if he had a restaurant and he wanted to build a house. There was further discussion on different uses. Ron Howe suggested contacting Atty. Mayer and get an opinion from him. He thought they should continue this until the next meeting. Mr. Richardson asked what the timeline was for the decision. Chair Chivers replied 30 days and they will have an answer for him at the next meeting. Mr. Elliot asked if they could have an answer before the next meeting. Chair Chivers noted they have to continue this until the next meeting, because the Board has to vote on it. Chair Chivers noted they received a letter from the property owners of the post office and they are asking for certain concessions from the applicant which are relevant to a site plan review. These are Planning Board issues. Judy Szot asked if they could hear from Building Inspector Hallock and the abutters. Abutter Mrs. Gladys Baker didn't have any problems with this. Building Inspector Hallock agreed with Chair Chivers' summarization and appreciated his opinion. He thought it was a cloudy area and agreed with the Board. Ingrid Byrd asked the applicants how many days a year do you expect to be open for business and what hours. Mr. Elliot replied Memorial Day to Labor Day (except for fairs) and the hours 10:00 a.m. to 9:00 or 10:00 p.m. There was discussion about the lighting. Judy Szot motioned to continue the hearing until April 27, 2010. Seconded by Ingrid Byrd. All were in favor. Motion carried. Judy Szot suggested trying to get on the Planning Board agenda in the meantime.

Judy Szot motioned to adjourn at 7:55 p.m. Seconded by Ingrid Byrd. All were in favor. Motion carried.

Respectfully submitted,  
Andria Hansen  
Recording Secretary