

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF April 27, 2010

Present: Boyd Chivers, Chair; Judith Szot; Ingrid Byrd; Ron Howe; Fred Kelley, Chair Board of Selectmen; Carleton Robie, Board of Selectmen

Absent: Frank Albert

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

Approval of Minutes

R Howe **motioned** to accept the minutes of March 23, 2010 as amended. I. Byrd **seconded**. **All were in favor**. The following amendments were made:

- Page 3, 7th line remove “in” after “living”

Continuance 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.

James and Jeanne Richardson were present. No abutters were present. Chair Chivers summarized the case. He said the case was heard last month and was continued until tonight. Mr. & Mrs. James Richardson own property in a commercial district that is a preexisting legal nonconforming use. It is a residential use in a commercial district. The applicant wants to park a vending truck type restaurant facility in the front portion of the lot that would be open part of the year with a permanent lot and utilities and during the fair season the unit will be removed. The applicant applied for a building permit and was denied by the Building Inspector stating expanding a nonconforming use in the Commercial District. The case came before the Board last month and it was the census of the Board to get an opinion from the Town Attorney. The Board received a letter dated April 21, 2010 from the Town Attorney. Chair Chivers said the Town Attorney cites three reasons upon which the Board should support the Building Inspector and deny the application for the building permit.

Chair Chivers said the first reason is the Zoning Ordinances limit one structure per buildable lot. With the catering unit and house there would be two structures on the property. The second reason would be expansion of a non conforming use. Currently it is a residential use in a Commercial District and if you add commercial use the property would become mixed use which is an expansion of use. Chair Chivers said there is a mixed use zone in Candia where you can have one building with both residential and commercial use.

Lastly the third reason is historically the Town of Candia has limited the number of allowable principal structures on a lot to one. Unfortunately the lot lacks sufficient frontage to subdivide.

Chair Chivers said the issue is the use. He said it can be argued that it is on wheels and not a permanent structure but you will have some permit facilities around the unit.

J. Richardson said it is movable and not permanent. Chair Chivers said you were denied on the Building Permit on Section 2.02 Non-Conforming Uses. Chair Chivers read from the letter dated April 21, 2010, “No legal non-conforming use shall be changed to another non-conforming use and non-conforming use shall be enlarged or extended.” Chair Chivers said the applicant is in fact expanding the non-conforming use of the property.

J. Szot stated the issue is the use not so much the additional structure. She read into record from the Town Attorney’s letter dated April 21, 2010, “I do believe that converting the property to a Mixed Use, Mr. Richardson would arguably create a new nonconformity since his parcel is located within the Commercial District. To allow the commercial use to be included with the nonconforming residential use would arguably expand the nonconforming use, which is not favored in New Hampshire.” J. Szot said the Town Attorney goes on to cite case law and continued, “because nonconforming uses violate the spirit of the zoning laws, any enlargement or extension must be carefully limited to promote the

purpose of reducing them to conformity as quickly as possible. In addition, to allow the addition of a second use to the property, this could add value to the lot and prolong the continuance of the original nonconforming residential use.”

R. Howe asked if they were putting up a permanent sign, paved parking area, electricity and the applicant replied no. J. Richardson said the vehicle is self contained. J. Szot said it is not whether it is permanent but the use. If the Board allows the expansion to mixed use then there would not be anything to stop the next applicant from asking for mixed use and this would effectively change the district from Commercial District to Mixed District. R. Howe was concerned with the catering vehicle being referred to as a structure because it is a registered vehicle. I. Byrd said it is a structure but not permanent. J. Richardson brought up an ice cream truck which is a vending unit that stops in residential areas if they have a restriction on how long they could stay at residential property. J. Richardson said they already have a vending food permit from the State of NH. He said they came to the Town to get a vending permit. R. Howe said the Town of Candia does not have vending permits.

Chair Chivers said he could see the applicants point as to the argument on the structure and asked the applicant if they could see the Board’s argument on the use. J. Szot said the contention is the use not the structures.

The applicant asked what would happen if they were denied. J. Szot said the Board will vote on the application and then they would have 30 days to appeal. The appeal has to be based on evidence that wasn’t previously available to the applicant for the Board to consider the appeal. If the Board, then turns down the appeal the applicant can then go to Superior Court. J. Richardson asked if they were approved would they get a vending permit. Chair Chivers said they would get a variance from Section 2.02 to expand the use of a non-conforming use.

Chair Chivers said seeing no more questions or comments closed the public hearing for case #10-576 for deliberation. It was the consensus of the Board that granting the variance would essentially change the district from commercial use to mixed use.

Chair Chivers read in record the following variance criteria:

“Section 13.02 C. Variances: The Board of Adjustment shall hear and decide requests for variances from the terms of this Ordinance. No variance may be granted unless ALL of the following criteria are met:”

“1. No diminution in the value of surrounding property would be suffered.”

The Board was in agreement there was no diminution in value of surrounding property.

“2. Granting of the variance would be of benefit to the public interest.”

The Board was in agreement granting of the variance would be arguable to the benefit to the public interest.

“3. Denial of the variance would result in unnecessary hardship to the owner arising out of special conditions affecting the land and/or buildings that distinguish the property from other similarly restricted property in the area.”

The Board was in agreement that there is no hardship as applicant has reasonable use of the property.

“4. Granting the variance would result in substantial justice.”

The Board was in agreement that granting the variance would not result in substantial justice.

“5. The use will not be contrary to the spirit of the Ordinance.”

The Board was in agreement that it is contrary to the spirit of the Ordinance.

I. Byrd **motioned** to deny the applicant based on the arguments made by the Town Attorney in letter dated April 21, 2010. R. Howe **seconded**. **All were in favor**. Chair Chivers informed the applicant that they will receive the Notice of Decision with specific reasons in the mail and thanked them for their patience.

Case #10-577 Applicant: Linda Lamarche, 131 Langford Road, Candia, NH 03034; Owner: Same; Map 408 Lot 018; For a special exception under Section XIV 14.04 (E): Accessory Dwelling Units: To permit construction of an accessory dwelling unit. Linda Lamarche was present along with abutter Fred Kelley, 39 Depot Road. Chair Chivers summarized the case. Linda Lamarche

has a property on Langford Road and wants to build a 15 x 20 addition with 600 sq ft heated living area attached to her house. The addition does not encroach on the septic or well and is within the setbacks. The property is in full conformance with Candia's Zoning Ordinances and the Building Inspector has advised the Board that he sees this application in full conformance with the Zoning Ordinances. Chair Chivers said the Board will look to see if the applicant meets requirements of Section 14.04 E Accessory Dwelling Units and standards under Section 14.02. Special Exception Standards.

L. Lamarche showed the Board her plot plan of her property and where the accessory dwelling would be attached to the garage/barn. Chair Chivers asked if the 15' x 20' ties in exactly and it does. L. Lamarche said the unit would be 2 stories high to match the existing structure. She did not have specific drawings of the inside of the unit as she was unsure of how she wanted to layout the interior.

I. Byrd said the Board has asked other applicants to provide a plan in more detail so they know where the doors and windows are located for access purposes. Chair Chivers said this isn't a requirement in the ordinances. J. Szot said they have asked in the past how the unit is accessed. L. Lamarche pointed out where the door will go and if a second door is needed she will comply. L. Lamarche showed where the kitchen will be and would like to have an open concept. She hopes to install as many windows as they can. R. Howe asked if there is a second floor exit door. J. Szot said they would like detail to know how the occupant would exit the bedroom in case of a fire, not just by the stairs. R. Howe said the Building Inspector will know what is required and life safety codes will be followed. I. Byrd reiterated that they like to have applicants come in with more detail of the unit itself.

Chair Chivers read: "*E. Accessory Dwelling Units, Any dwelling in a residential zone may be converted or built to contain an accessory dwelling unit on the following conditions by special exception: 1. There shall be only one bedroom in the accessory dwelling unit.*" The unit is one bedroom and there would be stairs within the 600 sq ft of heated living space. "*2. Adequate sewer and water service shall be provided. One septic system shall serve the entire property*" There is one septic system to service everything. "*3. There shall be a maximum of 600 sq. ft. of heated living space in the accessory unit.*" The applicant's plot plan shows 600 sq. ft. of heated living space. "*4. On site parking for on additional vehicle shall be provided.*" Chair Chivers asked if there was parking and L. Lamarche said there is plenty of parking out back and if more is required she has plenty of space and will comply. "*5. All existing set back ordinances must be met*". The unit meets all setbacks and is attached to the main dwelling. "*6. The accessory unit shall be within or attached to the main dwelling or located in an accessory building that exists on March 15, 2003, located on the same lot as the main building.*" The plot plan shows the unit will be attached to the main house. "*7. The residential character of the area must be retained.*" The Board was in agreement that the residential character of the area is 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.*" The applicant occupies the main house. It was the consensus of the Board that the applicant meets the requirements under Section 14.04 E Accessory Dwelling Units.

Chair Chivers read each special exception standard into record: "*Section 14.02: Special Exception Standards, Special exceptions shall meet the following standards: 1. Standards provided by this Ordinance for the particular use permitted by Special Exception;*" Chair Chivers said this does not apply to the applicant. "*2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*" It was the consensus of the Board there was no hazard. "*3. No detriment to property value in or change in the neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, unsightly outdoor storage of equipment, vehicles or other materials;*" It was the consensus of the Board there is no detriment. "*4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*" It was the consensus there is not traffic issue. "*5. No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police, and fire protection, and schools;*" It was the

consensus of the Board there no excessive demands. “6. *No increase in storm water runoff onto adjacent property or streets.*” It was the consensus of the Board there is no increase in run off.

Chair Chivers asked if there were any abutters and Fred Kelley was present. F. Kelley gave full support to Linda Lamarche.

Chair Chivers seeing no more discussion closed the public hearing on case 10-577. R. Howe **motioned** to grant the Special Exception under Section 14.04 E as requested. I. Byrd **seconded. All were in favor.** Linda Lamarche thanked the Board for their time.

Other Business

Application procedure

J. Szot said when you apply for anything in Manchester they give you graph paper for drawings. She suggested that Candia follow the same procedure so the Board will have plans that make sense, not scribbles on a cocktail napkin. I. Byrd said they have had this discussion before. Chair Chivers said the plot plan clearly showed it was 15’ x 20’ and asked how much clearer the applicant could be. R. Howe said in this case he agrees with Chair Chivers but there have been other cases that are not as clear. I. Byrd said everything presented to the board is legal. Chair Chivers asked if this should be in the By-Laws and J. Szot said it was. Chair Chivers read Application Procedure “Article VI: 3 D. Plot plan, drawn to scale, or plat.” It was the consensus of the Board to pass out ¼” grid paper graph paper so applicants could draw out their plans to scale.

Appointments

B. Chivers **motioned** to recommend to the Board of Selectmen to reappoint Judith Szot to the Zoning Board of Adjustment. I. Byrd **seconded. All were in favor.**

R. Howe **motioned** to recommend to the Board of Selectmen to reappoint Frank Albert to the Zoning Board of Adjustment. B. Chivers **seconded. All were in favor.** It was the consensus of the Board to recommend Frank Albert. If he does not want to be on the ZBA Board he can decline.

Elections of Chairman and Vice Chairman

I. Byrd **motioned** to appoint Boyd Chivers as Chairman. J. Szot **seconded. All were in favor.**
I. Byrd **motioned** to appoint Judith Szot as Vice Chair. R. Howe **seconded. All were if favor.**

The next scheduled Zoning Board of Adjustment meeting is May 25, 2010.

I. Byrd **motioned** to adjourn at 7:48 p.m. R. Howe **seconded. All were in favor.**

Respectfully submitted
Sharon Carrier
Recording Secretary