

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF May 25, 2010

Present: Boyd Chivers, Chairman; Frank Albert, Ingrid Byrd; Ron Howe; Amanda Soares, Alt

Absent: Judith Szot

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

Approval of Minutes

I. Byrd **motioned** to accept the minutes of April 27, 2010 as amended. R. Howe **seconded**. **All were in favor**. The following amendments were made:

- Page 1 3rd paragraph, 4th line change “they” to “the”, 4th paragraph, 2nd line add “on a lot” after “structures”, 5th paragraph, 2nd line change “form” to “from”.
- Page 2, 4th paragraph, 3rd line add “the” after “to”.
- Page 3, 3rd paragraph, 9th line change “outback” to “out back”.

Case #10-578 Applicant: Mr. & Mrs. David Bowles, 434 Critchett Road, Candia, NH 03034; Owner: Same; Map 407 Lot 033; For a variance under Section XI 6.02: Table of Dimensional Requirements: To permit construction of a wrap around porch that encroaches within the front setbacks.

David Bowles, the applicant was present. No abutters were present. The Board received a letter from an abutter that could not be present. Abutters have been notified. Chair Chivers summarized the case saying the applicant has come to the Board to ask to build a farmers porch on the front of his house within the front setbacks. He said it is 200 year old house built close to Critchett Road and already encroaches on the front setbacks and the applicant wants to improve the house by adding a farmers porch. Chair Chivers asked the applicant to come forward and explain his plans to the Board. D. Bowles said the house is 40’ from the center of the road and 29’ from the edge of the pavement road.

There was discussion where the actual lot line is located and who owns what portion of the road. The issue is that 90% of the road layouts in Candia are unknown. Roads have shifted over time. Chair Chivers said they do not know if the Town has an easement or if the owner owns the land under the road. R. Howe said this has been an issue in the past and is not the home owner’s fault. I. Byrd said the front setback in the ordinances is 50’ from the lot line.

D. Bowles said that his house was built over 200 years ago by John Critchett and the house across the street was also built by John Critchett a few years later so the road between the homes does not appear to have moved. He said the house across the street has a farmers porch that is even closer to the road than what he proposes.

F. Albert asked if there was any portion of the house that projected out. Mr. Bowles showed photos of the house with a roof over the front granite steps and explained he is remodeling the house from the foundation up and this roof would come down for the farmers porch. He said the roof is 5 ½ feet and was there for safety reasons because there is an ice build up in winter on the granite step.

Chair Chivers said in the past the Board has permitted these variances provided they do not encroach any further than what is existing. D. Bowles asked what would be the cons versus the pros of adding a porch. This would add value to the property and surrounding properties. F. Albert said he has no problem as long as the farmers porch does not encroach any further out than the existing roof. A. Soares does not see harm and understands I. Byrd’s point on the setbacks. She felt reducing the porch down to 5 ½ feet would be the best option but still felt uncomfortable with the close proximity to the road. R. Howe felt 5 ½ may not be wide enough to do anything but something should be over the door and feels the porch is warranted to make it architecturally pleasing.

D. Bowles said the road has few travelers and that is one reason he bought the house even though it was close to the road. Chair Chivers said there is a safety concern of ice build up and the need for a roof over the door almost concede to improve the entire front of the house and tie in architecturally and have the applicant sign a document holding the Town harmless for any damage to building by ice or snow by snow plows. R. Howe was in agreement. I. Byrd said that 21' was to the pavement that may not be the edge of the property and she felt the Board was being sidetracked on the architecture of the building and the focus should be on the legal nonconforming use where you are not allowed to expand. R. Howe felt if it was new construction it should be 50' but not on old homes on old roads.

Chair Chivers said when the Town adopted the zoning ordinances they did not envision a 200 year old house built close to a road that may be in need of a porch. The applicant's property line is still unknown and can possibly be to the middle of the road. F. Albert asked the applicant if the Board allowed a 5 ½ foot porch if he would do that and the applicant said he would do what the Board asked.

Chair Chivers had the secretary read in to record the abutter's letter: *"To the Candia Zoning Board of Adjustment, Re: case 10-578, Applicant Mr. & Mrs. David Bowles. Dear Board Members: I am currently in an extremely hectic period and I am uncertain if I will be able to attend the meeting on this matter. In the event that I cannot attend, I would like to convey my views to the Board. Dave has explained his proposed modifications to me. It is my feeling that it will add value to his home and, in turn, to the neighborhood. I am in favor of granting a variance to the Bowles for this project. Best Regards, John Jusczek 431 Critchett Road, Candia NH 03034"*.

R. Howe asked what the reason for the 50' setbacks was. I. Byrd said the Planning Board proposed it and the Town voted it in. A. Soares said that most towns have setbacks. Chair Chivers said that starting this year there is a new procedure in place for adopting zoning regulations where they would have to state what the of the public benefit would be for the proposed amendment and questioned whether this would be going forward or could be applied to previous amendments. Chair Chivers said one thing to take into account is the Land Owner's rights; he bought the home with his own money, pays taxes and has rights. I. Byrd also bought the house with all its flaws. D. Bowles said it is his first home and wasn't completely sure what he was getting into, he does now. He said this would be a typical farmers porch, not screened in.

Chair Chivers read the performance standards and the Board discussed them. *"1. No diminution in the value of surrounding property would be suffered."* It was the consensus of the Board that there would be no diminution. *"2. Granting of the variance would be of benefit to the public interest."* There was a discussion about the benefit to the public interest. Chair Chivers said the Board did receive a letter form an abutter and he was favor of the porch and would be a benefit to him by raising the value of his home and neighborhood. *"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."* Chair Chivers agreed it would be an unnecessary hardship. *"4. Granting the variance would result in substantial justice."* D. Bowles asked to have this criteria explained to him. F. Albert said that for the applicant and the abutter who sent the letter in it would for them result in substantial justice. *"5. The use will not be contrary to the spirit of the Ordinance."* I. Byrd said none of them would have a problem if encroachment was on side setbacks. Chair Chivers said before the Board can grant the variance the applicant must meet all 5 criteria. A. Soares asked if the porch could be wrapped around the back but there is an existing deck in back. . D. Bowles the farmers porch was for value and looks.

Chair Chivers asked if there any more questions, seeing none closed the public hearing to deliberate the case. He started by citing the criteria 12.02 C Variances. *"12.02 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."

It was the consensus of the Board there was no diminution in value.

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

F. Albert felt it would be a benefit by enhancing and adding value to the property. I. Byrd felt the Board was treating this differently than other cases. F. Albert **motioned** that granting the variance would benefit the public interest. A. Soares **seconded**. B. Chivers, F. Albert, R. Howe, A. Soares were in favor, I. Byrd opposed. **Motion carried 4-1.**

“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.”

R. Howe **motioned** that denial of the variance would result in unnecessary hardship. F. Albert **seconded**. B. Chivers, F. Albert, R. Howe, A. Soares were in favor, I. Byrd opposed. **Motion carried 4-1.**

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

F. Albert **motioned** that granting the variance would result in substantial justice. A. Soares **seconded**. B. Chivers, F. Albert, R. Howe, A. Soares were in favor, I. Byrd opposed. **Motion carried 4-1.**

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

F. Albert **motioned** that the use is not contrary to the spirit of the Ordinance. B. Chivers **seconded**. I. Byrd said the ordinances say 50' so this would be contrary to the spirit. F. Albert said the reason for voting on the 5 criteria by the ZBA Board is to be fair. A. Soares asked if a house is 200+ years old and grandfathered why would it have to be considered legal nonconforming. Chair Chivers felt the 50 foot setback applies to new construction. R. Howe said he would feel differently if the property had high traffic and that the Board should look at each case individually on where you are. F. Albert said he felt this is not contrary to the spirit. Chair Chives asked to have the motion voted on. B. Chivers, F. Albert, R. Howe, A. Soares were in favor, I. Byrd opposed. **Motion carried 4-1.**

F. Albert **motioned** to grant the variance under Section 6.02 to allow construction of a 5 ½ porch per amended plan not to be enlarged, expanded or screened in. R. Howe **seconded**. B. Chivers, F. Albert, R. Howe, A. Soares were in favor, I. Byrd opposed. **Motion carried 4-1.**

Chair Chivers thanked Mr. Bowles for his patience and that he would be receiving a NOD in the mail. Mr. Bowles thanked the Board for their time.

Other Business

The next scheduled Zoning Board of Adjustment meeting is June 22, 2010.

A. Soares **motioned** to adjourn at 8:00 p.m. F. Albert **seconded**. **All were in favor.**

Respectfully submitted
Sharon Carrier
Recording Secretary