

**APPROVED**  
**CANDIA ZONING BOARD OF ADJUSTMENT**  
**MINUTES OF April 26, 2011**

**Present:** Boyd Chivers, Chairman; Frank Albert, Ron Howe; Ingrid Byrd; Amanda Soares, Alt & Board of Selectmen; John Easter, Alt

**Absent:** Judith Szot, Vice Chairman

Chairman Chivers called the public meeting to order at 7:00 p.m. immediately followed by the Pledge of Allegiance. John Easter sat for Judith Szot.

**Approval of March 26, 2011 Minutes**

I. Byrd **motioned** to accept the minutes of March 22, 2011 as presented. R. Howe **seconded. All were in favor.**

**Rehearing Case 11-585** Applicant: Theodore R. Spooner 429 New Rye Road, Epsom, NH 03234 & Amy M Hebsch, 291 Donovan Road, Candia, NH 03034; Owner: Estate of Dorothy Spooner, 463 Chester Turnpike, Candia, NH 03034; Map 411 Lot 30; For two variances under Article VI Section 6.02 Table of Dimensional Requirements: A variance to create a lot with less than 200' frontage on Chester Turnpike and a variance to permit frontage for a lot on Donovan Road, a Class VI road not recognized for frontage purposes under Section 6.02 and under Article III, Definitions.

Chair Chivers said the applicant submitted a request for rehearing and also requested a joint hearing with the Board of Selectmen and Planning Board. He said the Board must first consider the request for rehearing. If the Boards finds there is new information not previously present and agree to hear the case at a future time and then the next stage would be to decide whether to hold a joint public hearing with the other Boards. Chair Chivers said RSA 676:2 that governs joint hearings does not give the applicant a statutory right to a joint hearing but an option available to both the applicant and Board. He said with the absence of a statutory right the Board can decide whether it would be expeditious to have a joint hearing with the Selectmen and Planning Board who have jurisdiction over subdivisions and building permits.

Chair Chivers said the Board is going to consider the applicant's request for rehearing. He said the Board will analyze it and decide if there is any information or material that wasn't previously submitted or considered by the Board that is relevant and would impact the Board's decision. F. Albert said he did not find anything in the request that warrants reconsideration. R. Howe said he did not see anything new and further said Class 6 Road ordinances are quite clear. I. Byrd said the Board has considered everything very carefully as seen in the minutes. She said she does not see any new information in the request and said she feels the Board did not made a mistake. J. Easter said the request appears to bring up the same material that was brought up at the hearing. F. Albert said if the lot on Donovan Road a class 6 was a parcel all by itself there wouldn't be an issue. Chair Chivers said the applicant would be requesting a building permit from the Board of Selectmen but the applicant is requesting a subdivision.

T. Spooner asked if the applicant could comment. Chair Chivers said as a matter of courtesy will let him speak. He said in the letter he gave evidence that 291 Donovan Road was a subdivision that was allowed on a class 6 road with a variance. He said regarding the variance for less than 200' frontage there have been numerous lots awarded building lots with less than the 200' requirement, specifically one on Tower Hill Road that gave its frontage to another lot and was granted a 30' easement/access to build his home outback on his created land locked piece of land. He said if they gave their frontage to another lot then they could essentially be able to access the land like the Tower Hill Road that was granted with a 30'easement?

T. Spooner said he has this as evidence and brought the plan and deed the property on Tower Hill Road that allowed that land owner to sell the front property and allowed him the 30' easement by the Town. T. Spooner said given that, if the 50' piece was given to his brother's lot than he could petition for an easement through his land to the lot outback and be allowed to build too? T.

T. Spooner said the process has been confusing. He first went to the Board of Selectmen and then talked to Building Inspector but did not petition for a permit but signed it that day for the ZBA hearing. He asked if that was the correct procedure and if now would like to know before he leaves tonight. Chivers said it seems you want to subdivide the property and that would be the Planning Board which would be the first level of denial. Chair Chivers said the ZBA can only process the applications that come through the ZBA. Chair Chivers said if it was the right place to start or not the ZBA is obligated to hear it. T. Spooner asked, isn't the Town supposed to assist a resident through the correct procedure and feels this has not happened. Chair Chivers apologized and T. Spooner accepted his apology and said he appreciates it but it does not help their situation. Chair Chivers said there are three Boards involved so the ZBA is eliminated.

I. Byrd said on the first page of the subdivision regulations "*Pursuant to the authority granted by the voters, the Candia Planning Board adopts the following regulations governing the subdivision of land.*" She said the subdivision regulations state to subdivide you have to go to the Planning Board. T. Spooner asked if they were supposed to go to the Planning Board initially then can the ZBA vacate this decision and they can address this at a later date. Chair Chivers said in order to vacate the decision they would have to provide information that was not previously available or new information. He said he assumes the facts will not change and the dimensions are the same. T. Spooner said he had asked for a joint hearing last month and it was made a motion and seconded but then was changed. F. Albert said if you go to the Planning Board with a plan there is nothing stopping you from coming back to the ZBA again. T. Spooner said he thought his only remedy from a denial for a rehearing was to go to Superior Court. F. Albert said the plan is complicated because it is a subdivision and that is what differentiates it from all the other lots in the applicant's area.

Chair Chivers said the request for rehearing is what is being considered tonight. He said the Board has read the applicant's request for rehearing asked the Board to grant or deny the request for the rehearing.

Ingrid Byrd **motioned** to deny the request for rehearing due to no new information submitted that wasn't previously heard or considered. R. Howe **seconded. All were in favor.**

Chair Chivers said the motion carries and said the applicant's next step would be to go to Superior Court. He gave the applicant the RSA's that govern the rehearing process and development of land on a class 6 road. T. Spooner thanked him for the information but he said the Town has granted exceptions in the past. T. Spooner submitted a letter for record dated 1976 that was from the Town's Attorney that assured them at that time that building on a class 6 road could not be refused.

**Case 11-586** Applicant: Joseph Sobol, Wildcat Land Development Services LLC, 43 Lawson Farm Road, Londonderry NH 03053; Owner: CCS Realty Trust LLC, 424 Old Candia Road, Candia NH 03034; Map 413 Lot 111; For a Special exception under Section 8.02 Signs Not Advertising Use Of Lot On Which Located, and a Special Exception under Section 8.06 Size Restrictions – Commercial, Light Industrial: to permit construction of a 50 foot high, 17' x 20' (340 sq ft), commercial sign off site in the Light Industrial 2 Zone.

Chair Chivers asked if the abutters had been notified and they were. Abutters Mr. Douglas Leib, 468 Old Candia Road and Mr. Sarno 424 Old Candia Road were present. Chair Chivers said they first need to clarify whether the application should be considered under Section 8.02 or Section 8.06. J. Sobol said they are coming forward under Section 8.02 only. Chair Chivers said, Section 8.02 Signs not advertising Use of Lot On Which Located, limits the sign to

2 sq ft. He asked if they were going to withdraw Section 8.06 and asked to have the request in writing. Chair Chivers said the Board will consider the application for a special exception and variance under Section 8.02.

C. St. Peter passed out a packet with drawings and information on the proposed sign which the Board took a few minutes to look through. He thanked the Board for hearing them again and said they had come to the Board November 2010 with a larger sign, 20' x 30' (600 sq ft) with multiple displays. Tonight, he said they have come forward with a smaller version seeking a special exception under Section 8.02 for an off premise sign in a Light Industrial 2 zone and a variance under Section 8.02 for a sign larger than 2 sq feet. He said they listened to the Board and came up with a smaller vertical more esthetically pleasing sign that he feels blends in better. C. St. Peter said the sign is a directional informational sign for the traveling general public going east and west on 101. He said if someone runs out of gas or break down, they will not know there are public services available at exit 3. He said since they have opened they have sold several empty gas tanks and there have been instances where people have broken down and didn't know they were there and one instance the Candia police picked up someone broken down and brought them to Candia First Stop. C. St. Peter said it is dangerous to have people walking on the highway if they break down or run out of gas. This sign would let motorists know they can stop at exit 3 and not have to try to make it to either exit 2 or exit 5. People will know over time that this facility is located here for public services and basic needs. The sign is a benefit to the community and a benefit to the general public. Also, the public will come in for information which they offer and other such as public facilities accessible to handicap persons.

C. St. Peter said an off premise sign highway sign requires the DES to review plans for traffic drainage and safety. They have done the review again on this sign. He said the State has extended the approval for a larger sign (720 sq ft) than the one originally proposed and the sign tonight is considerably less at 340 sq ft. He said they want to get this right as part of the community, as a land owner.

C. St. Peter went through the special exception standards. On the first standard he said the construction of the off premise sign in a light industrial zone 2 meets the special exception criteria. He read the second criteria, "*No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.*" C. St. Peter said the sign is not going to create any of these; it is located adjacent to the right of way for Route 101. He said there was a feasibility study done and they hired a sign consultant and studied the 101 feasibility for placing the sign. Because of obstructions, elevations, ledge and trees this site was the only one available in a commercial area. He said it would be virtually impossible to cut trees. You can apply to the state but they have not allowed tree cutting so far.

C. St. Peter read #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 pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.*" He said the proposed highway sign will not be detrimental to these issues rather because of its location, the sign will actually create value to the Light Commercial Zone 2 area because there will be more attention paid to surrounding property. This sign is smaller than recent signs such as the Lowes & Wal-Mart signs in Epping, NH.

Item #4 "*No creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity;*" C. St. Peter said a traffic study was done through the permitting process for both parcels including Candia First Stop which took in 10 years of growth. He said through analysis of the intersection created by the curb cut and the 4 way intersection to get onto the highway, the State required them to put in a left turn lane into the facility and a right turn lane going in the opposite direction. C. St. Peter said the sign will generate a handful of people on a peak hour, when movement is critical, 5 vehicles per hour from a traffic standpoint.

Regarding light and glare, the sign is located adjacent to the highway perpendicular with only one residential property within 2000+ feet, which will only see the edge of the sign. He said there will be no glare as the sign will go on at dusk turn off at 11:00pm. C. St. Peter said at a 100', 80% of the strength of the light dissipates.

Chair Chivers asked if the grade was going to be built up. C. St. Peter said no more than 10' of fill which will be used to bury the foundation. J. Easter asked if the sign was internal fluorescent lighting and C. St. Peter said it was back lit sign double sided.

C. St. Peter said the only commercial property on which to place the sign is on the north side. There is no commercial property on the south side of the highway. Chair Chivers said the sign is not limited to commercial under Section 8.02 only under Section 8.06. C. J. Sobol said they wanted to take into consideration the residents of Candia and not ask to put the sign in someone's back yard.

C. St. Peter read, "5. *No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;*" He said the sign is not going to create any demand on any of those services. It is privately owned and maintained.

C. St. Peter read, "6. *No significant increase of storm water runoff onto adjacent property or streets.*" He said once the base is buried there will be no runoff; it will be the same material.

The variance was read next. C. St. Peter read, "1. No diminution in the value of surrounding property would be suffered." He said this is the same as the special exception that it will add value to the surrounding properties which are in the Light Commercial Zone 2. "2. *Granting of the variance would be of benefit to the public interest.*" Again, C. St. Peter it would give directional information to the public for services letting the public know if stranded there are public facilities available between exit 2 and exit 5 which is a benefit to the public interest. C. St. Peter said it has been a pleasure working with the Candia Police Department. They have brought people in and given people rides to their cars.

"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.*" C. St. Peter said a feasibility study was done and there just isn't another site without a lot of disturbance that is on commercial property. Other sites are almost impossible to build on with ledge and trees and would be cost prohibitive and are located in residential areas. J. Sobol said from a variance standpoint the uniqueness of the property chosen affords visibility to 101 and keeps the sign hidden from residents and create the least impact. In their opinion, it would be a hardship since the divided highway 101 was constructed, route 43 and 27 are not visible to see what is available for public facilities.

J. Sobol gave the example of Lowes in Epping using visibility as a hardship for a variance. They were granted a variance for a sign to be seen from Route 100 because Lowes has little visibility to Route 10. He said Candia First Stop has no visibility from Route 101 which is a hardship.

J. Sobol read, "4. *Granting the variance would result in substantial justice.*" He said granted the variance would result in substantial justice. Allowing the construction of the informational directional sign gives visibility to Candia businesses that will result in economic benefit to the tax payers, increase employment opportunities and would be in agreement with the Master Plan to build businesses at the gateway to the Town on Commercial properties. He said this is identified in the 2004 Master Plan part one page 22, "*Suggested changes may include mixed use at Exit 3, a mixed use Village Area at the four corners as well as changes in the commercial, light industrial and industrial areas that may be needed to support the growth in Candia.*"

Chair Chivers closed the hearing to deliberate the case. He said the applicant is asking for a special exception under Section 8.02: Signs Not Advertising Use Of Lot On Which Located

and a variance under Section 8.02 for a sign larger than 2 sq ft. Chair Chivers said they will consider the size variance first.

Under RSA 674:33, I. Byrd read the first criteria, “*1. The variance will not be contrary to the public interest;*” F. Albert said he did not feel it was contrary to the public interest. Chair Chivers said the public has expressed preference for a sign through the zoning ordinances limiting an offsite sign to 2 sq ft. The sign proposed is significantly larger. Chair Chivers asked the Board is the ordinance is wrong or is the request wrong. F. Albert said you have to consider the location, if it were at the 4 corners it would be too large. R. Howe said this ordinance was before Route 101 was constructed. He said from a realistic standpoint the only place to put the sign is at this location. He said the State is going to limit how many signs are on the highway. J. Easter said he believes the sign is for the public interest for identifying service that is available and said a 2sq ft sign on route 101 would not even be seen.

I. Byrd read, “*2. The spirit of the ordinance will not be contrary to the public interest;*” F. Albert said he feels the spirit of the ordinance is upheld because the scale along Route 101 is not the same as within the town.

Chair Chivers read, “*3. Substantial justice is done;*” He said you can argue that this is true. R. How agreed there is no other option for placement of the sign. J. Easter and F. Albert agreed

Chair Chivers read the 4<sup>th</sup> criteria, “*4. The values of surrounding properties are not diminished; and*” I. Byrd said that is not an issue.

Chair Chivers read the last criteria, “*5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*” F. Albert said a sign that size anywhere else in town would be too large but not for a sign on Route 101. Chair Chivers asked if a sign this large should go to town for a vote. R. Howe said he talked about having a town vote and feels the Planning Board should review the Sign Ordinances. I. Byrd said the ordinances have had continual review and have not been neglected. She said the sign ordinance requires review and updating. A. Soares said she will talk to Sean James about reviewing the sign ordinance at the Zoning Review & Revision Committee this year. I. Byrd brought up that participation is vital.

Chair Chivers asked the Board if it would be a hardship to make the applicant wait a year to have the ordinances updated. I. Byrd said it would be. Applicant stated no other business will advertise on the sign in the future.

Chair Chivers said the applicant meets all 5 criteria in 14.02. F. Albert **motioned** to grant the variance for a 340 sq ft sign as presented with the condition the sign be no higher than 50’ from grade and grade to be brought up no higher than 10’. J. Easter seconded. **All were in favor. Motion carries.**

Ingrid Byrd read the following Special Exception criteria,

“*1. Standards provided by this Ordinance for the particular use permitted by Special Exception;*” The Board agreed.

“*2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*” The Board agreed there was no hazard.

“*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 pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*” The Board agreed there was no detriment.

“*4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*” The Board agreed there was no creation of a traffic safety hazard.

“*5. No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;*” The Board agreed there was no excessive demand on municipal services.

“*6. No significant increase of storm water runoff onto adjacent property or streets.*” The Board agreed there was no significant increase of storm water runoff.

Ingrid Byrd **motioned** to grant construction of a commercial sign measuring 17’ x 20’ (340 sq ft) mounted on a frame not exceeding 50’ in height from ground level, offsite in the Light Industrial 2 Zone. F. Albert **seconded. All were in favor.**

**Public Hearing on Proposed By-Law Changes**

Chair Chivers summarized the proposed changes. He said the State Statutes have changed and now allow the Zoning Board of Adjustment to charge administrative fees similar to what is in place for the Planning Board.

*“ARTICLE XI REIMBURSEMENT FOR ADMINISTRATIVE EXPENSES*

*1. The Board may impose reasonable fees to cover its administrative expenses and costs of special investigative studies, review of documents, cost of copying documents, mileage, and other matters which may be required by particular appeals or applications.*

*2. Any fees required by the Board will be paid in advance based on an estimate agreeable to both the Board and the applicant. Said funds will be held by the Town until services are rendered and payment required.*

*3. The Board shall require and provide the applicant with detailed invoices showing reasonable task descriptions for services rendered. Upon request, the Board shall promptly provide a reasonably detailed accounting of expenses or corresponding escrow deductions with copies of supporting documentation.*

*Source: RSA 676:5 IV, et seq*

*RENUMBER ARTICLE X TO XI*

*RENUMBER ARTICLE XI TO XII*

*RENUMBER ARTICLE XII TO XIII”*

I. Byrd **motioned** to accept proposed By-Law changes as presented. F. Albert **seconded**. **All were in favor. Motion carried.**

**Other Business**

**AT & T Cell Tower Case North Road**

Chair Chivers announced that the case has been settled and that the Federal Court upheld the decision made by the ZBA. He said AT & T can only build a 100’ tower and there is no appeal. He said AT & T and the Town of Candia had agreed to have the Federal Court decide whether to allow AT & T a 120’ tower or uphold the Town of Candia’s decision with no appeal. The Federal Court decided in their favor of the Town of Candia and AT & T cannot appeal.

The next scheduled Zoning Board of Adjustment meeting is May 24, 2011.

I. Byrd **motioned** to adjourn at 8:55 pm. R. Howe **seconded**. **All were in favor.**

Respectfully submitted,  
Sharon Robichaud  
Recording Secretary