

APPROVED
CANDIA ZONING BOARD OF ADJUSTMENT
MINUTES OF June 28, 2011

Present: Boyd Chivers, Chairman; Judith Szot, Vice Chair; Ron Howe; Ingrid Byrd; Amanda Soares, Alt; John Easter, Alt

Absent: Frank Albert

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

Approval of March 26, 2011 Minutes

I. Byrd **motioned** to accept the minutes of May 24, 2011 as presented. R. Howe **seconded**. **All were in favor.**

Case 11-588 Applicant: Lucille Stevens 66 Diamond Hill Road, Candia NH 03034; Owner: Same; Map 409 Lot 139; For a Special Exception under Section 5.02 F-2 Large scale full-time agricultural operations including animal husbandry; Use Variances under Section 5.02 c-2 Craftsman's or contractor's shop including a carpenter's shop, welding shop, ornamental iron works electrical and machine shop excavating and heavy equipment operation, Section c-1 Manufacturing, assembly, processing, packaging, research and testing operations including the following uses, provided that such operations shall be conducted entirely within an enclosed building or structure & Section c- 1-a Products developed from previously refined or similarly processed materials such as bone, ceramic, cloth, grass, leather, metals, plastics, paper, rubber (except tires); to permit use of property for screening purposes in the Residential Zone.

Applicants Lucille Stevens and Mr. Stevens were present. Abutters Kimberly Otis 58 Diamond Hill Road, Mr. & Mrs. Brian Miller 74 Diamond Hill Road and April & Richard Caswell 57 Diamond Hill were present.

Chair Chivers said before he opens the public hearing he wanted to state that he has done prior business with the applicant including trucking and site work and purchased material in the past. He said in preparation of the meeting, he examined the standards for disqualification for land use boards, under RSA 673:14 and jurors standards RSA 500: A:12 and case law. He said he could not find anything that would disqualify himself, however, he wanted to bring this to the Board to comment and decide before the public hearing starts. R. Howe said he did not see a problem with B. Chivers hearing the case as he only purchased goods & services and is not in business dealings with the applicant. Chair Chivers said he has no financial stake or personal interest in the outcome of the case. I. Byrd said in a small town if you live here long enough you end up knowing and or having dealings with many of the residents that may come in to a Board you are sitting on. Chair Chivers asked J. Easter to sit for F. Albert.

Chair Chivers summarized the case saying Mrs. Stevens is here tonight in response to a cease & desist brought against her by the Town of Candia alleging zoning violations and seeking an injunction to prohibit her from using her property to run their trucking business. Mrs. Stevens had two choices, go to court without any defense or follow the Building Inspector's recommendations and apply for a variance and special exception to bring the use of their property into conformance with the Town's ordinances. Chair Chivers said the Town cited the applicant under two sections of the zoning ordinances Section 5.02 f2 & 5.02-c-1. Chair Chivers said the applicant is seeking two more use variances under Section 5.02 c1 a and 5.02 c 2. The applicant submitted a site plan with the volume of material they have on site.

L. Stevens said in order to get the loam out they need to screen the loam and truck it off site. Approximately 1500 yards are left and they are not taking any more material in. She said she had a discussion a year ago with the Building Inspector in which he stated he did not want any more material

brought in. L. Stevens said once the loam is screened and sold and trucked off site there will not be any more loam brought in. She was not sure how long it will take to sell the loam because the economy is slow. Chair Chivers said the applicant is requesting a use variance to screen the 1500 yards. J. Szot said once a variance is granted it stays with the life of the property.

S. Stevens said Charlie Mewkill was the building inspector at the time he applied for a building permit to build a garage to put their equipment in. He said when they came to a meeting a number of years ago, Chief Gatcomb was police chief, he said they could leave their trucks on their property as long as they were registered. S. Stevens confirmed they have been operating out of the home for 38 years. Chair Chivers ask if the scale of the business now the same. S. Stevens said it was small when he started and do not believe it will get any bigger. He said they run 3 trucks out of the location. He said most nights the drivers take the trucks home with them. R. Howe asked about any other heavy equipment he owns. S. Stevens said they usually always have a loader on site. He said the excavators and dozers are usually on jobsites unless he is working on the equipment in the garage.

L. Stevens said they screened twice this year so far. J. Szot asked what other equipment may be on the lot besides the loader. L. Stevens said if the equipment isn't on job it is located on the property. S. Stevens said the equipment is generally on a jobsite 30 days. He said he has 3 excavators, 3 loaders and 3 dozers. S. Stevens said two of the trucks leave in the morning and one comes back every 2nd day to refuel. He said the other two commute. J. Szot asked doesn't a diesel truck need to idle to warm up before you drive away?

Chair Chivers asked the applicant when they made application for the current garage how was it described. S. Stevens said he told Charlie Mewkill he was using the garage for his business repairing the trucks. He said he has a commercial sized overhead door in the rear to get the vehicles in and out. The ceilings are 16.5 feet tall to accommodate the trucks. The 36' x 40' garage was built in 2005. Chair Chivers asked the applicant if it was their intention to continue running the trucking company & site work business from their home but no more loam once the pile is gone.

Chair Chivers said the ordinances do not have a section that relates specifically to screening. Chair Chivers asked if those were the only two uses of the property, removing the loam and parking the trucks onsite. He asked how far from Diamond Hill Road do they park the trucks and S. Stevens said 250' and the screening is 305'. Chair Chivers asked if there was a fence and the applicant said there was a fence. K. Otis said she can see the trucks very well. R. Howe said driving up the road you can hardly see the trucks behind the garage. L. Stevens said they used to park the trucks out front but the previous owner of 58 Diamond Hill Road, Dot Kurlis, complained so they moved them out back. I. Byrd asked if he still had the fuel tank and S. Stevens said he does still have the tank in fact he has two fuel tanks. I. Byrd said weren't you supposed to remove the fuel tank back in 1987? Ingrid Byrd said she was not sure Section 502-f-2 would apply to Mr. Stevens. Chair Chivers said that is how the applicant was cited.

B. Miller read the definition in Earth Regulations "*Agricultural Excavation means excavation of earth by the owner of the land to be used on the owners land exclusively for agricultural use.*" I. Byrd said they have to go by the zoning ordinances. B. Miller said under Commercial Excavation definition states "*...Any material leaving the property for whatever reason is considered to be a commercial operation.*" Chair Chivers said to let the applicant finish their presentation then the Board will question the applicant followed by the abutter's questions.

Chair Chivers asked if this is their summary; that once the 1500 yards of loam is gone no more loam will be screened and they will continue to use the property as they always have for 38 years. R. Howe asked if this predated zoning and J. Szot said it did not predate zoning. I. Byrd said the zoning regulations were adopted in 1965 and the Stevens built their home in 1973. J. Easter said whatever zoning regulations were in effect at the time would apply. J. Szot agreed with J. Easter. I. Byrd said the applicant may not have violated any ordinances in 1973. J. Szot said this is not the first time this issue has come before the town. She said there are letters dating back to 1986 addressing this same issue where the applicant was told to cease & desist and told to move his business which he did.

Chair Chivers said the Board is going to address what is before them tonight and not what happened in 1986. He said the Board cannot sit and decide this case on what happened years ago. Several abutters said that is the case. J. Szot said Stevens moved as a result of what happened in 1986 to a commercial area and then slowly moved their equipment back. Mr. Holt, former abutter, kept writing letters to the Board of Selectmen stating the Stevens were not complying with the cease & desist. She said back then during that period of time there were people who felt the zoning ordinances shouldn't be followed exactly and that people should be allowed to do what they want on their property. She said if they felt this way they should have followed the procedure and repealed the zoning ordinances which would let everyone do what they want, but if you have zoning ordinances in place they need to be followed. She said given the fact he moved his business, S. Stevens knew he was in violation of the Zoning Ordinances.

Chair Chivers asked the applicant if he had a paving business at that time and he said he did and the dump trucks always remained at his house. S. Stevens said when Mr. Holt a former abutter complained about the fuel tank located by the road he moved the tank back. He said he had the fuel tanks by the road so he could fuel his trucks on the road. He confirmed the two fuel tanks he has now are above ground.

Brian Miller, 74 Diamond Hill Road, abutter, said he stands opposed. He said he feels the commercial business has diminished the value of his home and has unreasonably changed the character of the neighborhood with the truck traffic and excessive noise which is incredible. He said the trucks are there at all hours of the day and consistently start before 6am and run until 6-7pm at night including Saturdays and Sundays. He said there is also a shed, stone piles and a stone crib right on his property line with no consideration of setbacks. He said the continuation of this commercial operation he feels is unduly hazardous and injurious to the public health and welfare of the abutters due to the noise, dust, exhaust fumes, fuel fumes from filling equipment and fuel tanks with no measures to control erosion, sedimentation or water or air pollution. He said the dust is just incredible. He said he feels he is living like a prisoner and cannot open his windows on that side of his house and the east side due to the dust, noise and fumes. He said the dust is not just from the screening of the loam but is also caused by the trucks that come and go. He said he hears tail gates slamming all day and horns blaring to announce they are there.

B. Miller said he is glad to see the loam pile addressed and to see it moved but that does not address truck traffic that includes other company's trucks. He said the applicant will still be doing repairs and continue to park heavy commercial vehicles in the residential zone with continued truck traffic. He said he has seen vehicles idle for an hour. He said he has seen customer trucks parked at the Steven's home for over a year in particular, a lull that has been parked for 1 ½ years on his property line. B. Miller said the trucks entering and exiting and idling even on Sundays has restricted the use of his property for BBQ's or even trying to mow his lawn. He says his house smells of diesel. He presented pictures from 1997 showing the progression of the growth of the business. He said in one of the pictures it shows where the loam was stripped back to fix a drainage issue so Stevens could drive trucks to the back of his property but the drainage was never fixed. Another picture showed where vehicles enter and exit and park right next to his property. He said he bought a home in a residential zone not in a commercial zone.

B. Miller continued and said there are truck repairs until 11pm at night outside of the garage with trucks running all hours all year long. He said if this is left to continue it will cause undue hardship because his property and the neighborhood value will diminish and the current market is already tough. He says he feels if he wanted to refinance and the bank walked his property he would not be eligible. He asked if the large scale fuel tanks are set up to any regulations and if they were legal.

B. Miller said this operation has unreasonably accelerated the deterioration of the road and left the residents in the neighborhood with numerous safety hazards. The road width has diminished to the point when a 60 thousand pound dump truck is oncoming it forces you to use the shoulder which is

soft and you sink. He said the trucks will not go on the shoulders because they will sink even more. It is a difficult challenge in the winter and spring months. He said the road has become so compacted the water runs down the center of the road and does not even go into the swales causing further deterioration. He said there is a past history of this business being told to cease & desist. He said the scale it has now become, coupled with the lack of consideration for the residents, if allowed to continue will mean more trucks and more traffic for the residents of Diamond Hill Road.

Abutter April Caswell 57 Diamond Hill Road said she has lived there her whole life. She said Charlie Mewkill the building Inspector, who gave Stanly Stevens the building permit for his garage worked for the him at the time the building permit was issued. She felt that was a conflict of interest. She said the new garage was much larger than the existing garage it replaced. She said her dad filed complaints back in 1986 and that S. Stevens was told to move his business but since then he has moved the business back. She said within the last 6-7 years the business has grown larger to a full scale commercial operation. Trucks are present all the time going in and out. She has never seen it so busy and said the road has a lot of damage and the shoulders on the road are washed out.

Abutter Kimberly Otis 58 Diamond Hill Road said she just purchased the property from Dot Kurlis in January of 2011. She had no idea a commercial business was next door. Being from out of state, she only visited the home once at 2pm on December 26, 2010 before she purchased it. She said she saw snow covered mounds next door but did not know what they were. She said she moved in January 31, 2011 and the very first day there were two dump trucks idling for over an hour in the road. She said there a lot of diesel fumes. Since then the dump trucks have been constant. They start at 10 minutes to 6:00 and run all day long including Saturdays and Sunday. She said before she moved she made sure the home was in a residential area that would be quiet for her family that includes her elderly parents and husband with cancer.

Beverly Cole 95 Diamond Hill Road said when she moved in she thought it was going to be a nice quiet neighborhood and she couldn't understand why the town would allow a commercial operation in the residential district. She said she moved to a residential area to get away from anything commercial.

Chair Chivers said let the record show the Commercial District is 800' from route 27. He said part of Diamond Hill is commercial. K. Otis said the Commercial District does touch on her property but not on the Steven's property. J. Szot said one of the letters from 1986, the selectmen state that the Steven's property is not in the commercial district. Chair Chivers said he scaled it off the map and the back corner of the Steven's property is 50' from the Commercial District because of the angle of Diamond Hill Road. He said where they service their trucks is 300' from the commercial district.

April Caswell said the previous owner Dot Kurlis of 58 Diamond Hill Road said she had to sell her house for less than the appraisal due to the commercial business next door. She said there should be complaint letters on file from Dot Kurlis. K. Otis said at the closing for 58 Diamond Hill Road she was told of a cease & desist order on the business next door. She was told by Dot Kurlis there are dump trucks in and out all day long and she has filed many complaints. Mrs. Caswell said K. Otis's house assessment was \$400,000 and K. Otis said it was listed for \$299,000. Mrs. Caswell said the residents of Diamond Hill Road pay a view tax.

B. Miller said when he bought the house in 1997, S. Stevens had only one truck and now he has 3 trucks, excavators and loaders. He asked if the Stevens were going to purchase more equipment such as a crane or bulldozer. Mrs. Caswell said if the Stevens were granted a variance, would that allow him to continue to run his business. Chair Chivers said if granted a variance, conditions could be attached as to hours of operation, number of trucks. B. Miller said they need someone to enforce the ordinances. He said even if there were restrictions on a variance, who would enforce it? R. Caswell said he is puzzled by the Board for not following what was already established. He said the records are very specific. He said if this has already been addressed back in 1986 and corrected why isn't being followed. He said now it has escalated and grown much larger and needs to be enforced. In regard to

the road, it is obvious the Town sees what the home owners see and they do not want to invest in a road that is being deteriorated by the trucks.

B. Cole asked if there was a load limit on the road. D. Lewis, Road Agent said they post a 33,000 pound limit. He said they did not post this spring as the frost went out quickly. He said the Steven's trucks would meet the posted weight with an empty truck and that Mr. Stevens knows he can only truck empty during that time. B. Cole said she has never seen it posted. B. Miller said since he has been there he has only seen it posted once. D. Lewis said they only started posting the roads 9-10 years ago. The prior road agent did not post. D. Lewis said the road is in bad shape along with many roads in Candia. He said the dirt portion of Diamond Hill was paved a few years ago.

R. Howe said there are dozens of people running small businesses in this town that could be adversely affected by the decision that may be made tonight. He said the Board needs to look at the big picture. Mrs. Caswell said is anyone else having complaints? Mrs. Caswell said she understands what he is saying but he is no longer a small business. She asked where do you draw the line. She said if this door is opened then anyone next to you can have a business this large. Mr. Caswell said if the previous finding of the applicant was enforced then they would not be here today. He wanted to know why this issue has to be revisited, it should just be enforced.

R. Howe asked if the Stevens had ever been to the ZBA for any of these issues. J. Szot said they have been before the Selectmen for this issue not the ZBA. She said there are many letters on file from the Selectmen and the Town Attorney including a cease and desist order that stated his business was found to be commercial. She said the Stevens did move their business into a commercial area but moved it back. She said there are letters on file from Russell Holt stating the Stevens were moving their business back and asked what the BOS were going to do.

J. Szot said the fact the Stevens moved their business to a commercial area means they understood they were too big for a residential area. She said she will talk about the elephant in the room. There is a group of people in town people who were Selectmen at the time who didn't believe in enforcing the ordinances and didn't care what the residents said and just let it go. She said she cannot understand with all the equipment why anyone would think it is a small business and that what he is doing is agriculture. She said he is running a large commercial construction company in a residential area.

Chair Chivers said he has the Stevens file going back to 1986 and he encourages the Board members to read. S. Stevens said he has always had 3 trucks. J. Szot said but excavators and dozers have been added. S. Stevens said he has always had loam on his property as well.

K. Otis submitted a time line of the trucking that occurred today. She said the trucks started at 5:50am with the first truck out at 6:15, second truck out shortly after. At 11:50am a dump truck came in and left at 2:00pm. At dump truck came in at 3:00pm. A dump truck & Pick up came in at 3:15 and dump truck left 3:55pm. Another dump truck came in at 4:32pm with a flatbed trailer. A pick up came in at 4:40pm and left a little while later.

B Miller asked about the Earth Regulations. Chair Chivers said the Earth Regulations are not a document the ZBA has jurisdiction over. J. Szot said the ZBA follow the Zoning Ordinances which are voted in by the town. Other regulations are adopted by the Planning Board and enforced by the Planning Board. For example, if the ZBA put a condition on a variance saying the applicant needed a site plan review then the applicant would have to go to the Planning Board for a site plan review.

J. Easter asked what the storage capacities of the fuel tanks were and how often they were refueled. S. Stevens said the fuel tanks hold 1500 gallons and are refilled once a week. I. Byrd read from the cease and desist order last paragraph, "you have the right to appeal this Cease and Desist Order to the Candia Zoning Board of Adjustment within a reasonable time. If you do not contact the Office of the Building Inspector within ten (10) days, the Town will be forced to conclude that you do not intent to respond and will take appropriate action." Chair Chivers said they had the right to come before the ZBA but did not.

Chair Chivers asked if the audience had any further questions not brought up previously before the ZBA closed the public hearing to deliberate. A. Caswell asked what the procedure would be once the public hearing portion is closed. Chair Chivers stated once the public hearing portion is closed then the Board will consider the case. The Board is bound by NH law and recent Supreme Court decisions. The Board has to consider the variance criteria and the applicant has to meet all the criteria. He said the NH constitution strongly favors the rights of the land owners and NH Supreme Court has a strong bias in favor of property rights. He said NH legislature has a strong bias in favor of property rights. He said Zoning is a concept in NH difficult to reconcile against the constitution. He said the deliberation process is tedious and requires balancing the abutter's rights, property owner rights and effects on the community. He said the Board has to consider all of this. B. Cole said it is so simple, "It is not about how many trucks it is about a construction company doing business in a residential area."

R. Howe said that seems simple, however they have been operating there for many years. B. Miller said they have already been told to move. Mr. Caswell said they have been getting away with it for years and it is time to stop. J. Easter said the Board may not make a decision tonight. He said the Board might want to take a look at this further before a decision is made so please do not get upset. He said the Board is not taking sides.

D. Snow asked the Chairman to explain what happens after you make your decision. Chair Chivers said if an abutter or applicant is not satisfied with the decision made they may request a rehearing. If there is new evidence or facts not previously submitted the Board will grant a rehearing. He said anyone aggrieved by this decision can then appeal to the Superior Court then the Supreme Court. Mrs. Soares asked if a variance or special exception is granted would it stay with the property not the owner. Chair Chivers said if a variance or special exception is granted with stipulations this would stay with the property for life. Mrs. Caswell asked if an abutter can get a copy of the decision and Chair Chivers said they can mail a copy. B. Millers asked about minutes. J. Szot said the minutes will be posted on the website. Chair Chivers said the decision and minutes have to be posted and mailed out within 5 working days.

Chair Chivers closed the public hearing at 8:16pm. J. Szot said the abutters are welcome to stay and listen to the deliberation but they cannot contribute because the Public Hearing portion is closed.

Chair Chivers said the applicant applied for a use variance under, "Section 5.02 c-2 *Craftsman's or contractor's shop including a carpenter's shop, welding shop, ornamental iron works electrical and machine shop excavating and heavy equipment operation*". Chair Chivers said this pertains to the 1500 yards of loam. He asked what would be the maximum time it will take to remove all the loam and S. Stevens replied it depends on the economy perhaps a couple of years. Chair Chivers asked J. Szot if a variance could be structured with a time limit. J. Szot if a time limit was imposed and then not followed what then? Chair Chivers said they would be in violation. Chair Chivers estimated 30 truckloads a year.

Chair Chivers said lets address the loam pile under "Section 5.02 F-2 *Large scale full-time agricultural operations including animal husbandry;*" R. Howe was in agreement that the loam pile needs to go no matter the decision appears to be a given.

Ingrid Byrd said 5.02 F-2 does not really fit can we say it doesn't fit but Mr. Stevens has agreed the loam pile will be removed in a certain period of time. To make this happened a variance would have to be granted with time.

Discussion ensued on how Steven's company fit into the sections cited. Chair Chivers said regardless whether these sections fit or not they have to be considered because the applicant was cited and noticed under these sections. J. Szot said if this operation is not permitted in a residential area than why is there a discussion to allow it? She suggested starting with the Section 5.02 c-2

Chair Chivers read, "Section 5.02 c-2 *Craftsman's or contractor's shop including a carpenter's shop, welding shop, ornamental iron works electrical and machine shop excavating and heavy equipment operation.*" He said the variance has to be decided under the criteria under RSA 674:33.

Chair Chivers continued with the first criteria, *“The zoning board of adjustment shall have the power to: (a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and (b) Authorize, upon appeal in specific cases, variances from the terms of the zoning if: 1. The variance will not be contrary to the public interest;”* J. Szot said they have had a lot of testimony from the public that it is contrary to the public interest for enjoyment and the use of their property and that they are subjected to noise, noxious fumes. Chair Chivers said the public interest can also have a larger scale, than the neighbors on either side. I. Byrd said it is the whole community. J. Szot said then how is the community benefiting from someone running a commercial operation in a residential neighborhood? She said if allowed, the Board would essentially be saying come buy a home in Candia in residential area and it doesn't matter what the zoning ordinances say because if the person living next door wants to run a commercial operation out of their house, disturb you at all hours of the day, 7 days a week with trucks noise smells that is okay because Candia is not going to stand up for the people that live here. Chair Chivers said there are a lot of people who operate business out of their homes that are not described specifically in the zoning ordinances and are working well. He said her own husband ran a construction company out of their home. J. Szot said yes her husband ran his business out of the house but they only had one pick up and landscape trailer. J. Szot said they have heard testimony that when the Stevens started that business he did not have all the equipment and he has tripled his equipment. I. Byrd asked how was S. Stevens described when he was asked to move, was he called a landscaping business, construction, dirt moving business? R. Howe said he is troubled by this and there is no question that the neighbors have a problem with the business. He said he is looking at the bigger picture in town on how to deal with small businesses. He said were do you draw the line. Chair Chivers asked the Board if they could craft a decision tonight that would address some of these concerns as well as putting a cap on this business that would not contrary to the public interest, abutters ,neighbors and community. J. Easter said from what he read in the file there was a violation from the order he was given in 1986 because he moved the business back.

I. Byrd said she said she is looking at this from all sides. She said the abutters have valid concerns and they should not have to listen to the noise, smell the diesel and put up with the dust however, the Stevens have run this business for years. She said the selectmen did tell him to move but then the selectmen by their inactions have allowed it to continue. She said she would like to know what ordinances were in place at the time he built his home and started his business. Chair Chivers said he is not here to punish Mr. Stevens for what he has been doing for the past 38 years and said he cannot hold him accountable for what happened in the past. He said the Board has to address what they have today and going forward and take Mr. Steven's rights into consideration. He said he would like to uphold the NH tradition of some tolerance among neighbors, respect for people's property rights and respect for people trying to make it in a small business, a family business. He said that is what Candia is and Candia should be proud of this. Chair Chivers said they have been doing business for 38 years and the Town has just recently brought it as far as this. He said the Stevens built a business model around operating out of that house. He said the public interest is larger than just the abutters on Diamond Hill. He said looking around town there could be a number of residents sitting in his chair. He said does the Town want to force business to relocate Hooksett or Raymond. He said there is a tradition of tolerance in Candia in respecting other people's properties. He said if the variance is properly crafted, restricted to scale that the operation is today taking into consideration for example hours of operation to allow the Steven's to continue, he feels would be in the public interest.

R. Howe said the town virtually said it was okay to run their business when they allowed the building permit and granted an occupancy permit as it was obvious the intent of the garage was to be a maintenance facility. Chair Chivers asked if they had a building permit for the fuel tanks. J. Easter said because of the questions posed the Board should continue the hearing to look at the ordinances that were in place when he started the business and any permits they may have had. J. Szot said she understands about tolerance but the job of the Board is to enforce the ordnances and enforce them

fairly. She said given the fact the selectmen chose to do things that were in direct violation to the Zoning Ordinances for whatever reason they chose to, doesn't make what they did correct. The same Building Inspector allowed a building to be built within 15 of running water. She said the Building Inspector who issued the permit worked for Mr. Stevens at the time

J. Szot said Mr. Stevens had the opportunity to come to the Zoning Board to fix the problem but he chose not to and the fact that he moved his business tells her that he accepted the fact he was running a commercial business in a residential area She said the Board should fairly enforce the Zoning Ordinances. She said the neighbors present have as much right as Mr. Stevens. She said the abutters moved to rural Candia because it was the country but they are now subject to hearing trucks and truck repairs at all hours of the day, 7 days a week, dust and diesel fumes. She said this is not fair.

R. Howe asked Mr. Stevens if he built the garage before or after he moved his business and he said afterward. Mr. Stevens said at the time he had 17 employees and moved a portion of his business into the commercial area.

Chair Chivers said if the Board wants to research the Zoning Ordinances then the meeting should be continued. R. Howe said even if ordinances were in effect, he wouldn't object to sitting down and make stipulations to try and improve the situations for the neighbors. The abutters have as much right as the Stevens and their concerns should be addressed by finding a compromise. Chair Chivers asked that Board what was their pleasure.

I. Byrd **motioned** to close the public meeting deliberations at 8:45pm and re-open the public hearing at 8:46pm. I. Byrd **seconded. All were in favor.**

Mr. Caswell said he had a statement to make not a question. He apologized if he was being abrupt and said the abutters were told it was improper to speak during deliberations and asked why Mr. Stevens was directly questioned and allowed to speak? He felt this was improper and wrong and it makes it look like there is something going on between the Board and Mr. Stevens. Chair Chivers said that was wrong and apologized to Mr. Caswell. He asked the Board if they wanted to continue the meeting.

The Board clarified the Stevens built their home in 1973 and started their business then. I. Byrd said she wanted to know what was grandfathered at that point. J. Szot said if the construction company was not legal in 1973, and he has been running it illegally that would not make it grandfathered. Chair Chivers said the Board needs to read the 1973 ordinances. The Board was in agreement. Mrs. Caswell said in 1986 the Stevens were given a cease & desist and asked why the Board would have to look at the ordinances. I. Byrd said it is important to know what was allowed in 1973 because even if he wasn't doing it then Mr. Stevens had a right to do it and would have been grandfathered under that ordinance.

Chair Chivers asked the secretary to find the 1973 ordinances and the building permit in question and said the case will be continued to July 26, 2011.

Other Business

The next scheduled Zoning Board of Adjustment meeting is July 26, 2011.

R. Howe motioned to adjourn at 9:00 pm. J. Easter **seconded. All were in favor.**

Respectfully submitted,
Sharon Robichaud
Recording Secretary