

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
June 23, 2020
APPROVED**

ZBA Members Present: Bob Petrin, Chairman; Judith Szot, V-Chair; Boyd Chivers; Ron Howe; Mark Raumikaitis; Anthony Steinmetz, Alt.

Audience Present: Dave Murray (BI); David Bowie (applicant); Chris Lewis (applicant); Kathy Carlson (abutter); Marsha Stafford (abutter); Dick Snow (resident); John (resident)

Bob Petrin, Chair called the meeting to order at approx. 7:06pm immediately followed by the Pledge of Allegiance.

Case #20-003:

Applicant: Susan & David Bowie, 4 Healey Road, Candia, NH 03034; Owner: same; Property Location: same: Map 405 Lot 122; For an Appeal from an Administrative Decision from the Building Inspector under Article II Section 2.05: Buildings on one lot, Article XV Section 15.04(E): Specific Special Exception Uses: Accessory Dwelling Units and Article X Section 10.06(B): Buffer Provisions.

Intent: to be allowed to have Tiny Homes on the property.

B. Petrin starts by asking the applicant about the setback issue and D. Bowie notes that was taken care of by moving the location of one of the units. He is then asked about the water supply and adequate toilet facilities and the applicant states that they have toilet facilities, but they are not conventional like a regular house would have. They have no sewage or runoff. They have either composting or a camper like toilet devise with a small holding tank of about 3gal that they dump every few weeks, usually directly in the septic tank.

B. Petrin asks the D. Murray (BI) if he considers that adequate facilities and he says not for renter properties. If it was a campground or something to that effect, it may be different but not this situation.

J. Szot asks the applicant to confirm that the small 3gal tank is dumped every couple weeks. The applicant states that the ones that don't have a composting toilet, yes. J. Szot says that doesn't seem reasonable and the applicant says it equivalent to an outhouse, not a flush all tank and it's a single person use.

B. Chivers asks how many structures are on this parcel of land and how many are occupied, and the applicant says 3 structures, each with 1 person living in them. He then asks if this has been approved as a special exception under section 15.04? You are not calling them accessory dwelling units then are you? The applicant says they are not dwelling units. That was a big part of this. 2 of the violations are basically about buildings and these are trailers. These are vehicles. Registerable vehicles with axels and tires, brakes, tailgates and regulated by the DOT. B. Chivers asks, in which someone lives in correct? The applicant confirms this to be true. B. Petrin asks if the applicant disputes that is contrary to the ordinance and the applicant states that the ordinance doesn't address residence, it reflects codes for building and basically these aren't buildings. B. Petrin says so you are suggesting because it's a trailer, they are approved to live in them? The applicant says no, they are vehicles and vehicles are not subject to these particular ordinances that they are written for. There may be others that regulate vehicles, but I've gotten no violations for vehicles, I have violations written for buildings. D. Murray states that 15.04(E) is for accessory dwelling units and when anyone is living in any kind of structure, it becomes a dwelling. Whether it's a bus, a car or whatever, it's not allowed. B. Petrin asks the applicant if he disputes the BI comment. The applicant says that's not actually what that section says. He continues and says he and Dave have spoken about this and agrees these are not attached as the description states and says correct, but these are trailers, they couldn't be attached, they are not designed to be permanently affixed.

R. Howe asks the applicant if he has a permit to have a trailer park and he says no, he doesn't have a trailer park. He said he considered that and R. Howe asks then which is it?

D. Murray confirms with the Board that they all have pictures of the 3 units.

M. Stafford (abutter) lives next door to the applicant and states that she is not for this one bit. The main reasons are the health code violations, composting toilets, pretty much an outhouse in the trailer. She notes that she was informed that extension cords are being run across the lawn for electrical service, which is a fire hazard.

B. Chivers states to the applicant, your argument is that these are not residential dwellings but vehicles in which people live and therefore are not subject to the zoning ordinances. Is that my understanding of your

argument? The applicant says almost it basically sums it up. These are vehicles, that have regulations but the regulations that I was being cited for are not for vehicles. B. Chivers reads over section 5.01(D) of the zoning ordinance which prohibits equipment to be stored in the front yard area in the R district or living, sleeping or housekeeping in any district in the Town of Candia. So, you're arguing that these are not residences, they are not structures, and it seems like you are suggesting they are like recreational vehicles and they are also prohibited in the Town of Candia. The applicant says he was not written in violation for that. He only disputes the violations that he was written. B. Chivers asks the applicant if he wants the BI to amend the complaint or address what's on the table? B. Chivers notes to the applicant that the BI may have missed violating him under 5.01(D) so it is something that could possibly be amended and the BI states that he didn't violate him on that because he didn't believe these are recreational vehicles. He asks the Board if they feel the office trailer in the pictures really look like a recreational vehicle. D. Murray states that however you want to label them, campers, trailer, whatever, you can't live in them on your property. Only the primary residence and 1 accessory dwelling that you already have, that's it.

B. Chivers notes section 2.05 which states only 1 building shall be on a lot unless approved under Innovative Land Use Controls and asks the applicant if he has been approved under this section? The applicant says no.

D. Bowies talks about laws on a state and federal level and that ordinances are only rules. J. Szot tells the applicant that ordinances are laws. She then says, you don't want to call them residences, you want to call the trailers. You are not allowed to live in trailers and you are not allowed to have multiple residences on your property and you're trying to spin this so nothing applies. Trailers can not have people living in them and you can not have multiple buildings on your property. The applicant says that would be a good argument if he was applying for something. J. Szot notes that is the problem, he didn't apply for anything and that is why he is here.

The applicant notes that there is a bill regarding tiny homes that has been tabled and he is very upset about this. A. Steinmetz notes the state bill has not been approved yet. J. Szot asks the applicant to stay on the subject and B. Petrin says the Board is going to move on to address the violations.

B. Petrin states the setback issue has been resolved and D. Murray confirms this. B. Petrin states the issue of having people live in other structures is not resolved. D. Murray states the setbacks on the wetlands has not been resolved either. J. Szot asks what about all the health issues? B. Petrin notes the issues of the inadequate facilities and lack of running water.

R. Howe asks the applicant about grey water; what is happening with that as well as permanent water and electric for these units? The applicant states there is no permanent water plumbed or hoses to these guys. They basically use a small faucet at best, like a garden faucet. They are going off site for laundry, not even using the main house for that. The electricity is outdoor extension cords and D. Murray can come check that out. They go to 2 of the locations and 1 is off the grid setup completely.

***B. Petrin closes meeting to the public at 7:29pm**

B. Petrin asks if there are any other comments from the Board and how we should proceed? B. Chivers notes he is prepared to make a motion on the case:

MOTION:

B. Chivers made a **motion** to deny applicant Susan Bowie's appeal of a Notice of Violation dated 4/27/20 in which the Code Enforcement Officer cited violations of Candia Zoning Ordinance sections 2.05, 15.04E, and 10:06.3. This motion is made for the following reasons:

1. Section 2.05 Buildings On One Lot clearly states "There shall be only one residential building on a lot unless otherwise approved under Innovative Land Use Controls."
 - The only lot of record is Map 405 Lot 122 on which there are multiple structures presently occupied and can only be considered residences. The applicant has failed to document receipt of approval under Innovative Land Use Controls.
2. Section 15.04 E Accessory Dwelling Units clearly restricts the size, number, location, and architectural requirements for accessory dwelling units as well as requiring adequate water and sewer provisions. The section, moreover, also requires a Special Exception and conformance with the required Special Exception conditions. It has been clearly established that the applicant has not met the required standards by:

- Failure to obtain a Special Exception as required under Section 15.02; and
- Exceeding the number of allowable accessory dwellings; and
- Failure to attach any dwelling unit to the main dwelling unit or to comply with architectural standards; and
- Failure to observe setback requirements; and
- Failure to provide adequate sewer and water service.

3. Lastly, Section 10.06B of the Candia Zoning Ordinance prohibits building activity within either 100' of very poorly drained soils or 50' of poorly drained soils. The record clearly demonstrates violation of this ordinance as well as RSA 147:8 requiring approval of septic systems by NH authorities.

J. Szot **seconded** the motion made by B. Chivers. **All were in favor. Motion passed.**

B. Petrin tells the applicant that they have been unanimously denied relief from the administrative decision and will receive a notice from the Board with their decision. He then states that they have a few options, which include applying for a rehearing, applying for accessory dwelling units, or taking it to the Superior Court level where the “tiny homes” issue have been in discussion.

Case #20-004:

Applicant: Chris Lewis (Brady Sullivan Properties), 670 North Commercial Street, Manchester, NH 03101; Owner: Brady South LLC; Property Location: 366 South Road, Candia, NH 03034; Map 410 Lot 147; For a Variance under Article V Section 5.02A(2): Table of Use Regulations; Type of Land Use -Residential and Article XV Section 15.04(E): Specific Special Exception Uses: Accessory Dwelling Units.

Intent: to allow an accessory dwelling unit to be created in an LI-2 zone with an increased square footage area above the maximum.

After discussion, the Board and applicant decided to continue this case until the next scheduled meeting on 7/28/20. The applicant is going to file an additional variance request to be heard along with this case by Monday, 6/29/20 under Article II Section 2.02(B) to allow for the expansion of the existing residential use.

Approval of Meeting Minutes -January 28, 2020:

B. Petrin **motioned** to approve the minutes as presented. B. Chivers **seconded**. M. Raumikaitis **abstained**. **All others were in favor. Motion passed.**

MOTION:

J. Szot **motioned** to adjourn the ZBA meeting at approximately 8:03pm. B. Chivers **seconded**. **All were in favor. Motion passed.**

Respectfully submitted,
 Lisa Galica
 Land Use Secretary
 cc: file