

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF April 25th, 2023
APPROVED MINUTES**

PB Members Present: Judith Szot, Chair; Tony Steinmetz; Mark Raumikaitis, Ron Howe

PB Members Absent:

Boyd Chivers, Vice-Chair

*Judith Szot, Chair called the ZBA meeting to order at approximately 7:00PM, followed immediately by the Pledge of Allegiance

Old Business:

- **Case #23-001: Continued**
Applicant/Owner(s): Bob and Claudia Carr – 17 Vassar Street, Manchester, NH 03104.
Property Location: 669 High Street, Candia, NH 03034; Map 405 Lot 48.
Intent: *to request a variance to waive terms as stated in, Article II, Section 2.05 to build multiple dwellings on one lot.*

J. Szot: Let the record show that there is no one here representing the applicant. The agreement was drafted by Mr. Carr's attorney. Our board submitted questions and comments to our attorney. The document has been changed a couple of times. We sent the final copy of the document to Mr. Carr's attorney, with the changes that our attorney requested. We have not heard back from Mr. Carr's attorney, relative to the changes that we have suggested in his document. We don't know if he will agree to them or not. My understanding is that we have 90 days from the time an application is submitted to the board for the board for us to make a decision and that includes the time that we spend working on documents, such as the one with the declarations that came with this meeting. I believe this is the 86th day. Unfortunately, we missed a meeting in February because of a snowstorm, so that's pushed us to the 90 day limit. We have to make a decision tonight on this or Mr. Carr's attorney has to request an extension. Has to allow us to have an extension to give us permission to extend the decision-making process for another 30 days. And without that, we have to make a decision based on this. So, we have two choices tonight. We can deny this application, because we don't have enough information, in which case Mr. Carr would have to start all over again. Or we can, I am not even sure if we can see if Mr. Carr can get us a letter by Friday, asking us to extend this. It's a real uncomfortable situation because we don't have the information, we need to make a decision.

M. Raumikaitis: May I ask a question for clarification? The 90 Day Rule from the initial filing of the application. If we made a decision this evening, on day 86, what stops the applicant from appealing. If we made any decision and we send a notice of that decision, we give the, the applicant always gets the ability to appeal. Just because the 90 days is close to 90 days. If we made a decision within 90 days, cannot the applicant still appeal it? Because he has 30 days to appeal, so I don't know if that 30-day appeal notice has anything to do with the 90 days because it is 90 days for us to make a decision.

J. Szot: There is difference between him appealing and him extending the 90 Days. He is the only person who can give us more time. He can say, I will allow you another 30 days to work on this and make a decision. Appealing, if we deny...

M. Raumikaitis: What if we accept it.

J. Szot: We don't if he accepts it.

M. Raumikaitis: No, we accept it, as a board and he has the ability to appeal if he doesn't like it.

J. Szot: Here is the thing about appeals. My understanding is that you can appeal a decision of the zoning board of adjustment but in order to appeal, you have to have information that was not available to you that was not available to you at that time. It's very narrow and very specific, the reasons to appeal. Reads from the RSA:

"Section 677:2 - Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions

Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date following the date upon which the board voted to approve or disapprove the application in accordance with RSA 21:35; provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 5 business days after the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed..."

M. Raumikaitis: So, my interpretation would be it is somewhat subjective by the board with their ability to accept an appeal. It doesn't really go into specifics about the reason.

R. Howe: I don't see what the issue is. If we approve or disapprove. We send it to their people, if they agree, they sign. If they don't agree, they appeal.

M. Raumikaitis: I am kind of leaning here with Ron because I do believe they have the right to appeal.

R. Howe: Obviously, if they look at it, you would think that the attorney would have gotten back to you if he had a problem with any part of that.

T. Steinmetz: We can't assume.

R. Howe: No, we don't know if he is going to accept it or not. We really can't. We approve, basically, what we have here in front of us, is what we approve. If you don't like it, then appeal it.

T. Steinmetz: What does saying nothing mean? On the other side.

R. Howe: I don't know.

T. Steinmetz: What's that tell us, if they say nothing?

M. Raumikaitis: It could say, they forgot. It happens.

R. Howe: I doubt that they forgot.

M. Raumikaitis: It could say that they felt that they didn't need to be here. You know, that they didn't have any objections.

J. Szot: I don't like to make assumptions about the fact that they have accepted this. I would have liked to hear from them, that they understood what exactly we meant here because we have euphemisms for agricultural buildings. There is a difference between putting on a 20x40 foot greenhouse and growing vegetables for your family AND putting up 10, 30x150 foot greenhouses and growing tomatoes, which you process in the barn and then ship out someplace...or spinach or some other thing and suddenly you realize your mother has a great recipe for spinach...

But we've said that the use of the barn and, I think it needs to be in the minutes, that the use of the barn is for non-commercial use. And he stated very specifically in the minutes that it was for his personal use and that there could be.

M. Raumikaitis: I am going to read Boyd's, what Boyd said at the last meeting: *"Said restrictions shall be recorded at the Rockingham Registry of deeds in a format acceptable to the town of Candia. So, they provide us with the restrictions, they can draft up what the restrictions are, the ones that they think are going to satisfy this board. They provide them to us; we give them to counsel. Counsel signs off on it, they get the variance."*

Amy, may I ask you a question? You emailed the attorney, or you emailed the applicant?

A.Spencer: All three. The attorney, the engineer, and the applicant.

M. Raumikaitis: I am going to make the assumption, that may get me in trouble, is that they don't have any concerns because all three of them received a document.

T. Steinmetz: Let me get clarification. You just said that the attorney signed off on it. He didn't sign off on it, he made adjustments.

J. Szot: Our counsel did.

M. Raumikaitis: What it talks about is, they provide us with the restrictions.

M. Steinmetz: That's the declarations, right Mark?

M. Raumikaitis: Yes. They can draft up what the restrictions are. The ones that they think are going to satisfy this board. They provide them to us. We give them to counsel, which indicates our counsel. Counsel signs off on it, which he has. The way I read this is, that they gave us a document, our counsel had to sign off on it, which they did by making adjustments. We have given this document to the applicants, plural and the attorney for the applicant and they're not here. I would take that to mean that they have no objections. I would like to move forward with accepting this document. And if the applicant and the applicants' attorney has a problem, I believe they can appeal because there is new information. To use that as a criteria, which is very subjective. They could say that they didn't realize they had to be here. That's very subjective. I think that they have a remedy if they don't like it. By delaying another 30 days, I view that as even more of a burden on the applicant, when this document is actually exactly what we asked for and has been approved by our counsel.

J. Szot: We don't have the authority to go beyond this meeting because we have to make a decision tonight. I think Tony said something earlier that Mr. Carr has made a list of rights that he feels that he has but our attorney has, I think, made it very clear to him that he reserves the following rights and then he added for non-commercial use, which is what we said. Non-Commercial. Subject to satisfying all Town of Candia Land Use Regulations. So, he reserves these rights but we're telling him, you may reserve yourself those rights, but you have to get, in some cases, permission from the zoning board or the planning board to exercise those rights and those rights have to be within what is allowed withing the town ordinances.

T. Steinmetz: Do they accept that. That's "x". We don't know.

A.Spencer: What about the specificity of the conservation easement?

J. Szot: He did specify that he would be amenable to a conservation easement, but we cannot force him. Mike said we cannot force him to give us a conservation easement.

M. Raumikaitis: I believe the applicant has rights and the right to appeal. Which keeps us moving forward and if the applicant has an issue, they will make an appeal, which they have the right to do after we send them the approval of this as is, as long as we do that within five days, which I know we normally do and then they have, up to 30 Days I believe to appeal. I don't think we've removed any rights from the applicant. I think that we've said in our minutes that we were going to submit this to counsel, our counsel and we've done that. And we have a document that I am comfortable with, and I think we should move forward. That's my opinion.

R. Howe: I agree completely. We are happy with what is here. The applicant has an out if he is not happy with it. Let him appeal.

M. Raumikaitis: If we were taking any right away from the applicant, I would not be in favor of this but I don't think we are taking any rights away from the applicant because they can simply make an appeal and keep the ball rolling.

R. Howe: If he was that concerned about the time factor, then he should have been here and approved or disapproved it at that point.

J. Szot: Did they know about the 90 Days, don't they, Amy?

A. Spencer: I don't know.

M. Raumikaitis: They have counsel.

J. Szot: This is true. Tony, did you have any comments?

T. Steinmetz: I would just like to see him accept this before the 90 Days is up. Can that be done by way of email or?

J. Szot: No, it has to be done at the meeting here or if we don't accept this because he has not given us his approval of this, then we have to deny his application and he has to start all over.

R. Howe: And we don't want to do that to him.

J. Szot: We're not doing it to him Ron, he's doing it to himself. If our board feels, we know that he has been notified, if our board feels that this covers the conditions that we set upon him to allow him to build those three buildings but that he can't subdivide the land and he understands that he needs to follow all, he has set forth a set of rights that he believes he has but we are saying to him, only if they meet the requirements of the Town of Candia, either planning or zoning.

M. Raumikaitis: The bottom line to me is that I believe this document, this declaration, protects the town and that is where I come down in favor of this. It protects the town, and it maintains the right of the applicant to appeal.

My concern is that I didn't want our board to sign a document that gave away the town's rights, so this applicant could come in at a further time and say: "but it says right here that I have the right to do this." And Mike and I have gone back and forth and he very specifically added those sections about limiting the rights to non-commercial use and allowing. And he can appeal. He can either go to zoning or planning.

Motion: I make a motion that we accept this document as presented by town counsel.

R. Howe: Second. All were in favor. **Motion** Passed.

NOD to be sent to applicant with his notice of acceptance.

Follow up at the next meeting to make sure it was recorded.

Review of Minutes: M. Raumikaitis: **Motion** that the minutes be approved as presented.
R Howe: **Second**. M. Raumikaitis – Abstain – Remaining members in favor. **Motion passed.**

Actual cost of postage plus \$2.00. will read

We will write up a procedure that we can put in the manual. We will have to have two meetings about it.

R. Howe: **Motion** to Adjourn. M. Raumikaitis **Second**. T. Steinmetz. All were in favor.
Motion Passed.

Adjourn:7:36PM

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file