

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
April 23rd, 2024
APPROVED MINUTES**

PB Members Present: Judith Szot, Chair; Boyd Chivers, Vice-Chair; Ron Howe; Tony Steinmetz; Bill Keena; Gale Pellegrino, Alt.

PB Members Absent:

*Judith Szot, Chair called the ZBA meeting to order at approximately 6:30PM, followed immediately by the Pledge of Allegiance

New Business:

- **Case #24-003:** **Applicant:** James Hurley, 357 Critchett Road, Candia, NH 03034; Owner(s): James Hurley, 357 Critchett Road, Candia, NH 03034; Property Location: 357 Critchett Road, Candia, NH 03034; Map 407 Lot 53.
Intent: Seeking a special exception, as provided in Article XV, Section 15.04E, to build an attached, 750 square foot ADU over the garage.

J. Hurley: I previously got it approved. It was chopped up a lot more. I was gonna nix doing an ADU cuz I wanted to make it kind of like a family room too. Whoever would live there, their second means of egress is through my house. I was talking to Bob the Building Inspector, and I figured what I would do is do some of the work to make it so it could be an ADU later and he suggested I go through with it, so I revamped the floor plan, so it was way more open. I am more or less going to use it as a guest bedroom for now with a kitchenette and a three-quarter bath.

J. Szot: There are two houses on this lot. How did that happen?

J. Hurley: The original house that I bought, and I lived there and then I built the other house, but I had to decommission the old house. I took down some walls, I took down doors, I took out the kitchen sink and the building inspector went through and inspected it. Now I just use it for woodworking. I play the drums; I have my little rehearsal space there. Storage.

J. Szot: So basically, it's not a house now?

J. Hurley: Yes.

B. Chivers: So, this is the only residential structure on the property?

J. Hurley: No, there is the old house that is up on the front of the property, but it's not used as a house. I had to take down the non-supporting walls and open it up, take the doors down.

B. Chivers: But nobody lives in it?

J. Hurley: No.

J. Szot: Is that the big white house? No one is living in there?

J. Hurley: No.

R. Howe: You must have heat in this building still? The old building has heat in it?

J. Hurley: No.

J. Szot: So, you are living in the new house and that building is basically you said, empty and you just use it for woodworking and stuff?

J. Hurley: Yes.

J. Szot: That's a fairly large building.

J. Hurley: When I built the new house, then they gave me six months to tear down the walls, move out of the whole house.

J. Szot: So you are saying no one is living in that structure.

J. Hurley: No, I can't. It's not allowed.

J. Szot: No. Okay.

R. Howe: Do you have heat?

J. Hurley: No.

B. Chivers: How many bedrooms?

J. Hurley: Four now and there will be five with the ADU.

B. Chivers: What is your septic system?

J. Hurley: Five. I had it designed for five.

B. Keena: Do you plan to rent it?

J. Hurley: Not at first. I'm going to use it as a family room.

T. Steinmetz: What is up there now?

J. Hurley: Open space.

R. Howe: I assume you have closet space behind the knee wall.

J. Hurley: No.

J. Szot: I was looking at your property in the GIS Maps, in the back part of your property, there is a very long, narrow lot and there seems to be a building that is half on that property and half on your property.

J. Hurley: Oh, that's the neighbor's shed. When they put it up, it was before I even moved there. Then when I had it surveyed to do the new house, we found out that their shed was partway on my property. I didn't care. She is a nice lady.

J. Szot: This is easy because it meets the requirements. Are there any abutters here for this project? No abutters. We can close the hearing and make a decision. We have to go through the special exception standards.

Section 15.02: Special Exception Standards:

Special Exceptions shall meet the following standards provided by this Ordinance for the particular use:

1. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;

All were in agreement.

2. 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;

All were in agreement.

3. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;

All were in agreement.

4. Limitations on the size of buildings and other structures more stringent than minimum or maximum requirements of this Ordinance;

All were in agreement.

5. No significant increase of storm water runoff onto adjacent property or streets.

All were in agreement.

A. Accessory Dwelling Units:

Any single-family dwelling unit in the residential or mixed-use districts may be converted or constructed to provide for one accessory dwelling unit subject to conformance with Section 15.02, Special Exception Standards and any additional requirements imposed by the Board of Adjustment under Section 15.03, Special Exception Conditions and subject to the following restrictions:

- 1. There shall be no more than one accessory dwelling unit for any single-family dwelling.*
- 2. There shall be no more than two bedrooms in the accessory dwelling unit.*
- 3. Adequate sewer and water service shall be provided in accordance with the State of New Hampshire Septic System Regulations. (2022)*
- 4. There shall be a maximum of 750 square feet for the accessory dwelling unit.*

5. *On-site parking for one additional vehicle shall be provided.*
6. *All existing setback requirements shall be met.*
7. *The accessory unit shall be within or attached to the main dwelling unit.*
8. *Architectural enhancements will be employed for the purpose of maintaining aesthetic continuity with the principal dwelling unit resulting in both units appearing as a single-family dwelling unit.*
9. *Either the primary or the accessory dwelling unit shall be occupied by the owner of the property.*
10. *The current State Building and Fire Codes for two family dwellings shall apply.*

It appears that he meets all of those requirements.

Boyd Chivers: **Motion** to grant permission for an Accessory Dwelling Unit to Mr. Hurley for 357 Critchett Road, Candia. B. Keena: **Second**. All were in favor. **Motion passed**.

- **Case #24-004:**

Applicant: Peter Chivers, 105 Depot Road, Candia, NH 03034; Owner(s): Peter and Marissa Chivers, 105 Depot Road, Candia, NH 03034; Property Location: 105 Depot Road, Candia, NH 03034; Map 408 Lot 3.

Intent: *Seeking a special exception, as provided in Article A.5, Section 5.02, to allow short-term rental accommodations allowable in the R district by special exception, subject to the provisions of section 15.02.*

Boyd Chivers: Madame Chairman, I am obligated to recuse myself. I am somewhat related to the applicant.

Gayle Pellegrino will be sitting in for Mr. Chivers.

P. Chivers: I am building a new home at 105 Depot Road in Candia. We own the property at Mapy 408, Lot 3. And I am seeking a special exception under 5.02 A-5 of the ordinance that allows short-term rental accommodations not to exceed 184 days subject to the provisions of section 15.02 of the ordinance. This special exception is for four primitive campsites. I've just got four wooden tent platforms and firepits along the river that people can come and have a night's stay. Just to give a brief description of how I meet the special exception standards from Section 15.02. I'm just going to go through these five items.

Section 15.02: Special Exception Standards:

Special Exceptions shall meet the following standards provided by this Ordinance for the particular use:

1. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;

I don't think I am a hazard there because it's a carry-in / carry-out campsite. The fires are permitted and inspected annually by the Candia Fire Department.

2. 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;

I have minimal structures at the campsite, only a couple of tent platforms so you can't even see it from any other homes. So it's really hidden in the woods. I don't think that one applies.

3. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;

I only have five tent bookings per week, even in the peak season. So there is usually no significant number of cars I am bringing to the neighborhood.

4. No excessive demand on municipal services.

I receive, no...there are no municipal services at this location, so that one doesn't apply.

5. No significant increase of storm water runoff onto adjacent property or streets.

It's a mile from Depot Road so I definitely don't affect any of the storm water runoff.

So, just to summarize again, I am seeking a special exception for my four little campsites in the woods and I hope you guys will approve my request and that's all I got.

J. Szot: What kind of water system is available for campers?

P. Chivers: It's carry-in / carry-out. I don't provide any water.

J. Szot: You do know that the state has regulations for camping and one of the regulations is that you have to provide water. RSA 216-I:3 It requires a private water supply system be approved by the Department of Environmental Services.

P. Chivers: Well, I can give you an example of Tripoli Road of Exit 32 in Lincoln is dispersed campsites that are provided by the state, and they have no water available. There's just a river. There is no water at all, so. I don't provide any water. Just like lots of other campsites in the state that do not provide any drinking water.

J. Szot: Have you been through the planning board? The site-plan review process?

P. Chivers: No.

J. Szot: So, you just built it and now you are coming in for approval for it?

P. Chivers: Yes.

J. Szot: Okay. But the state does require you, I have the regulations here and the state does require water. It does require a source of water.

P. Chivers: Well, I got a river.

J. Szot: It says an accessible adequate safe and potable supply of water shall be provided to each recreational campground. When a satisfactory public water supply is not available, a private water supply system may be used if approved by the Department of Environmental Services.

P. Chivers: If people need drinking water they can go get it from our cabin. We have drinking water less than a quarter mile from the site and I have actually provided people with water.

J. Szot: It says shall be provided in each recreational campground or camping park. When a public water supply system or private water supply system may be used. So, they have to go to the house and get water from the house every time they want it.

P. Chivers: Well, no one does that. I would let them do that if they needed water but no one does that because everyone just brings their own water.

J. Szot: But the state says you have to provide water. These are the state regulations.

P. Chivers: I wasn't aware of that, and I would be surprised, I am sure there are exceptions to that because I know, I am an avid camper and I know of many campsites actually in the north country that do not provide any drinking water whatsoever. For example, Tripoli Road is dispersed camping. There is a difference. There is dispersed camping and then there is camping at campgrounds and it's probably different. Because there is first come, first serve camping that's free and it's dispersed camping and it's all over the place in NH and there is no water available at those campgrounds.

J. Szot: What kind of septic system do you have?

P. Chivers: There is an outhouse.

J. Szot: Has it been approved by the state?

P. Chivers: No, it's a primitive outhouse. There's no septic system. There is just an outhouse.

J. Szot: It says, an approved disposal system shall be provided in all recreational campgrounds or camping parks. The word shall in state language is mandatory. May is not mandatory. Shall is mandatory. Has it been approved?

P. Chivers: I was not aware of aware of an approval body for outhouses in the woods, but I do know there is a code and I know that my outhouse meets the code by being greater than 75 feet from any water body. And I know that is the code for installing backcountry outhouses. That there is precedence. There's lots of backcountry outhouses in the state. And the only rule is that they have to be installed greater than 75 feet from a water body. And mine is installed about 110 feet from the water.

J. Szot: Do you have a registration system? What kind of registration system.

P. Chivers: Yes, the campgrounds are booked via a platform called Hipcamp. It's like Airbnb but it's free and geared towards camping.

J. Szot: It says all recreational campgrounds or camping park owners or operators or their agents, shall upon the registration of each camper, cause an entry to be made on a registration book or card system which will record the campers or guest, agreed upon departure time and date. Do you have a system? Or you're saying that's what Hipcamp does?

P. Chivers: Hipcamp does that. I get everyone's name, phone number, address, dates of stays, everything.

R. Howe: And how would that be available to emergency services here in the town?

P. Chivers: They would ask me and then I would get that to them.

R. Howe: But you're not there all the time.

P. Chivers: No, I'm never there. It's a self-service campground. It's not manned. But I can be called. I have a phone number; I have a phone.

B. Keena: Is there cell service?

P. Chivers: Yes.

B. Keena: Anyone who would camp there would be likely to have a phone, right?

R. Howe: You don't have electricity?

P. Chivers: Nope.

R. Howe: What do you have?

P. Chivers: It's just primitive camping. Ya know, people like the wilderness experience and I designed this to be primitive wilderness campsite, so a lot of my clientele are people from Boston. I provide an easy alternative to the white mountains. Instead of them having to drive four hours, they can drive one and half or two and come get the real woods experience in Candia.

R. Howe: How about parking?

P. Chivers: I built a parking lot that accommodates all the cars I need.

T. Steinmetz: How long have you been operating this facility?

P. Chivers: Two years.

T. Steinmetz: And why are you coming before the Board now?

P. Chivers: Well, initially, I thought I could do it by right as an accessory to my farm.

T. Steinmetz: What gave you that idea?

P. Chivers: Because you are allowed to engage in agritourism as an accessory to farming.

T. Steinmetz: What farming?

R. Howe: You don't have a farm.

P. Chivers: Well, I am building a farm and I do actually farm.

T. Steinmetz: You are putting the farm before the facility here.

P. Chivers: If you'll let me finish. I am building a farm. And then, I actually I thought I was allowed to do it by right. And then someone complained and I got a cease and desist letter from the town so I shut down my operations. I stopped accepting reservations. We talked to a lawyer and with the advice that

we got, they told me you're right, you're not farming yet. And I said, woops, I'm sorry. I shut down the operation and I learned that I can do it with a special exception so that that's why I am here today. To try to do it with a special exception instead of doing it by right as an accessory use to my farm.

T. Steinmetz: What made you think you could do it by right? Where did you get that thought? That idea?

P. Chivers: Well, cuz I'm farming. And I have a farm. Even though I don't live there yet and it may not be a farm that looks like Ron's or it looks like someone else's but I am planning crops, I'm planting crops, I'm buying seed. I'm building fields, I'm building barns, I'm building houses. Like, I am doing all the things that farmers do. Even though I am not selling products yet, I'm still doing all the things that a farmer does.

R. Howe: Okay, I can buy into that. I have trouble buying into the fact that this is agritourism though. How does camping become agritourism?

P. Chivers: Well, the definition of agritourism it says that visitation of the farm and enjoyment of the farm. Literally, agritourism is defined by enjoyment of the farm grounds. And that is what people do when they come and that's what we encourage people to do. And when I live there, I intend on selling produce to my campers.

G. Pellegrino: What type of farm is it going to be?

P. Chivers: Produce farm.

G. Pellegrino: So, no animals?

P. Chivers: I am going to get as many animals as my wife lets me get.

W. Keena: So, how many platforms are there now?

P. Chives: Four. Well, there is three, but I have space for four. I have three right now and I intend on having four.

W. Keena: Do you intend to grow it beyond that? I had the opportunity to see the property and the space. Boy Scout Dad, Scout Leader and all that. A lot of scouts do primitive camping. There is every precedent, I agree, for camping where there isn't any facility. You have to carry in and carry out. You take everything. You don't leave any trash; you don't leave anything there. That's a great experience. I've done it many times. I saw the spot. It's very scenic, very nice. It struck me as a positive to this town. Chivers Pond is gorgeous. It is a very nice area; it's well set up. No one would ever see these folks from the road. It's not possible to see the road or anybody. It's totally private. My recollection is it's about as big as this room. It's just a couple of platforms for tents. I know we've got to consider all of the regulations here but we are talking about a very limited spot that is well out of any public view or area where people can enjoy a beautiful property here in Candia.

T. Steinmetz: Agritourism is one thing, and a campground is another.

P. Chivers: Never mind agritourism. The only reason I mentioned that is I was trying to explain to you why I had been doing this for the last two years because I thought I could do that. I am not a lawyer. I made my own determination. Now, no agritourism. Special exception. That's it. I am seeking a special exception to the zoning ordinance.

T. Steinmetz: But agritourism is permitted by right.

R. Howe: I don't know how you define farming, but I would assume that it would be that you are filing farm income tax.

P. Chivers: I do, I have an LLC, it's called Homegrown, and I actually filed taxes for my farm business last year.

T. Steinmetz: Who do you sell your products to?

P. Chivers: Right now, I am an urban gardener. A bit of an urban gardener. I do a lot of gardening in Manchester, but I do raise, and I sow the seeds and I grow the seeds, I raise the plants on my own property. I am a gardener for hire, on the side. My product is my service.

R. Howe: Being somewhat familiar with the site down there, how do people get out to that?

P. Chivers: They use my parents' access road actually. They drive out via my parents' access road.

R. Howe: Basically, where the railroad bed is?

P. Chivers: No. On the other side of my parents' house, 189 entrance, the same road you drive to get to Chivers Pond. My land abuts my dad's in the back, in the corner. So, I built a little road going down to the river that is on my land and that's where the campsites are.

R. Howe: So, we've really got two pieces of property involved in this.

R. Howe: Is the pond open to the campers?

P. Chivers: The campers can go to the pond just like anyone else.

R. Howe: Just out of curiosity, what kind of insurance do you have to have to cover yourself in something like this?

P. Chivers: Hipcamp has a million-dollar liability policy that they cover each host.

G. Pellegrino: Nowhere does this mention the number of sites. So are you only asking for four sites or are you asking for unlimited?

P. Chivers: Right now, there is 200 feet between sites. I am only asking for a special exception in accordance with section 5.02 for short-term rental accommodations.

G. Pellegrino: But four sites versus 50 sites is a different thing.

P. Chivers: If you guys want to put a limitation on sites, I'm open to that.

J. Szot: You do know by the ADA Guidelines, you're required to have handicapped sites.

P. Chivers: My sites are handicap accessible.

J. Szot: All of your sites are handicapped accessible? You can wheelchair to every site?

P. Chivers: Yeah.

Richard Snow – Depot Road: Thank you Madam Chairman, I about the property. I don't have any problem with what he is doing down there, and I think it is consistent with the agricultural statutes.

Dean Young – Fire Chief / Warden: I have been down to Peter's property to inspect his campfire / sites and it's very well done. It's a beautiful area and I can see him being very successful with people wanting to go there to camp. It's very well done.

Tyler Frazier: 437 New Boston Road. – A few campsites is better than ten houses.

Boyd Chivers – 165 Depot Road – I noticed in our package there has been some correspondence back and forth with the town lawyer about the distinction between a permissive zoning ordinance and a permitted zoning ordinance and the advice in there...

J. Szot: Could we save that until I have some stuff that I want to get into later about the legal structure and so, I would welcome that, when we are doing that if you wouldn't mind until we hear comments and then we will get back to the legal stuff? I was going to do that next. If that's okay with you.

B. Chivers: But I would like to point out that the purpose of this meeting is to determine whether this proposed use of the property conforms with the Candia Zoning Ordinance. If the Board grants him his special exception, it's up to Peter then to determine whether they meet handicap access and all of the other state regulations. None of which is really within the purview of this Board right here.

J. Szot: Actually, when Peter leaves here, he has to go to the planning board because he needs site plan review. All of these are just questions that we had about the site. If you would save your legal stuff until we finish this and then we will get into that.

Susan Fitzgerald – 118 Depot Road – I am directly across from Peter Chivers. I have a problem with all of it. First off, that it's been going on for two years without being planned or agreed upon by the town. Second off, all the clearing that was done, causing flooding. And I'm assuming some of it was done to make these spots and make them accessible from his property. Either way, we all know that a ton of trees were taken out and he was fined for that. And I would like those trees put back because now it is flooding into my property. The water has not gone over the road since Dennis Lewis put that new bridge in front of my house. Wood Brook goes through my front yard and now it's going over the road. The town had to fill in on my side of the road because the whole road was washed out. So, that's a big problem with me. My other problems are, I ride the railroad beds regularly. I have horses and I see burnt wood on the sides of the railroad beds all the time. I am assuming cuz this is carry-in / carry-out, well they're not carrying it out. There is also a higher level of trash in the neighborhood than I have seen before. And, he has not stopped using the site. I thought it was supposed to be cease and desist and I took pictures this weekend of tents, this Saturday. And I have videos showing the road flooded. I have pictures of the tents out there. I have pictures of the platforms after they were removed on Sunday. It's not okay. You don't just do what you want. You have to go through the process. When it affects my land, then I have a problem.

M. Chalbeck: I have a copy of the deed for Peter's property and in here, there's restrictions. Now, this a for profit business. This is on current use property. But there is also, in the deed restrictions, it says, prohibiting commercial and industrial use. Two campsites and more, by the state of NH is a commercial use. That's a commercial business. That's a commercial campground. So we've got to look at that. We've had no site review on the planning board. No storm, wastewater coming off of the product study which

would have been included in an Alteration of Terrain Permit. And, in 15.02, we do now have an abutter who is adversely affected. You're able to clear your property as far as clear cut but when you stump, that's where it becomes a problem because now all of that storm water is not getting absorbed. It goes into the brook, and we have an abutter who is adversely affected. Her property is getting washed away because of this extra runoff. I am going to leave you that copy with the deed restrictions in it because they entered into that agreement with Ingrid. She is still alive, she hasn't signed off.

G. Pellegrino: What's the deed restriction?

J. Szot: It says a restriction prohibiting in perpetuity subdivision and restricting the use of the property to a single-family home, accessory buildings, and additions and improvements related to said home and accessory buildings. Agricultural and prohibiting commercial and industrial uses except home business or as allowed by town zoning...

R. Howe: Do we have a definition of commercial?

M. Chalbeck: Anything with two site or more is a commercial operation. I don't make the rules. With a campground, we have two properties that are involved here. The access and the campground. Portions of those properties probably should be taken out of the current use, paid up the back taxes, and then you could do your site plan.

R. Howe: It is very convoluted.

M. Chalbeck: By granting this special exception, now you are denying the abutter who is actually adversely affected by the extra stormwater runoff.

P. Chivers; Can I comment on that? We did not do any clearing or stumping at the Hipcamp. No clearing that I did on Hipcamp is affecting her. Their stormwater runoff is not affected by my clearing. It's climate change, it's global warming, it's abnormal rainfall amounts. It's crazy storms. It's stuff like that. My Hipcamp did not affect her stormwater runoff. Period.

J. Szot: So, you are saying that the presence of trees does not affect what happens with water?

W. Keena: I cannot see that we can make a causal connection between whatever amount of water is moving around and where that campsite is. There is no evidence here that says...there is nothing that proves that. How far away that site is from the road, I am very skeptical of that, and I don't know that any trees were taken out. It looks pretty much native there. I hardly think that little campsite had anything to do with water going anywhere off of your property.

R. Howe: Have we got a site plan?

P. Chivers: No. I could draw you a map on a piece of paper.

T. D'Arcy – Horizon Lane: I am speaking for neither side. I am going to ask questions. I am wondering first of all, are campsites, short-term rentals, technically? What is the definition of a short-term rental? Is a campsite a short-term rental? Two, the deed which we just heard about, that is certainly a concern. Does this change the use of the property from what the deed says is allowable? And three, since the access to this is across another property, does he need to get deeded access, even though it's family?

P. Chivers: A place to stay. It's any place to stay.

T. D'Arcy: I am not asking what your belief is. I am asking what the law, the legality.

Tyler Frazier: 437 New Boston Road – There has been a lot of rain and a lot of water. I walk that rail trail with my son and my kids all the time. I noticed that the beaver damns that start on Patten Hill Road, that come down, I know there has been trapping going on there. You've got to regulate the beavers because if not, the land goes. That land has been trapped all the way down through there. Visibly I can tell. Those damns that are above all of this land. Land all the way up by the highway. Those two damns broke with all that high water. Due to, probably the trapping of the beavers, so now there is two less damns, which means there is more water flow, all the way down that. Just visibly seeing when I go on hikes with the kids.

P. Chivers: The loss of beaver damns. We lost a major beaver damn. We had above average flooding

Michael – 118 Depot Road – My girlfriend is the abutter. He mentioned earlier that he was planning on building a road out to his campsite. I was just wondering how he was intending to do that?

P. Chivers: That's not what this meeting is about.

A. Chivers: I am really concerned that we don't seem to be making the distinction between Peter's land and Hipcamp. Water, trees, cutting, brush that happened on his property is not related to short-term rentals. The Hipcamp is not next to his house lot. It's really immaterial to his approval.

M. Chalbeck: It is still part of the same property and it is still. You have not separated that.

B. Chivers: 5.02 A5 (get verbiage) The definition of an accommodation. Temporary lodgings. If you apply these two definitions to the language of the ordinance. There is no requirement here that there has to be a roof, no requirement that it has to be in someone's bedroom. It seems to be that this qualifies.

J. Szot: All of these things are talking about some type of structure. I would tend to disagree with you. It says boarding, rooming, and short-term accommodations. I don't understand how a tent platform. We have a permissive ordinance. If it is not expressly permitted, it is implicitly denied. It is not allowed.

P. Chivers: Short-term rentals. You can look at my place. People are paying rent and staying there.

J. Szot: Camping is not allowed. So, if it is not expressly permitted in the ordinance, it is implicitly denied.

W. Keena: He is not talking about tent trailers. No one is going to put a tent trailer on a platform. It's not possible to put a tent trailer on top of a platform. This whole second paragraph is not really applicable. Does this group have the authority, or do we not have the authority?

J. Szot: Under, clearly specified in the ordinance....(get verbiage from Judith).

The ordinance does not identify camping.

P. Chivers: If you think that my camping is not short-term rental.

J. Szot:

B. Chivers: Would you please show me in the ordinance that they have to be in some sort of a structure?

J. Szot: This is camping and camping is not allowed.

P. Chivers: Why am I here?

J. Szot: According to the way our ordinance is structured, there is no reference to camping. And your short-term rental is camping. It says we can't grant you an exception for something that is not permitted in the ordinance.

R. Howe: You are talking about camping that is somewhat different.

W. Keena: Let's recognize that there are new models out there. This is not a bad thing but maybe was not anticipated in the current ordinance.

J. Szot: There has to be an ordinance that allows camping. The point is, it's not allowed now. But on legal advice from our attorney, he says that camping is not allowed.

G. Pellegrino: So, for Peter to move forward, would his next step be to write an ordinance. And the planning board. He could write an ordinance.

P. Chivers: We can't let common sense

J. Szot: I did find definitions of the words and you did not like my definitions.

P. Chivers: Is he actually saying that they have to be defined in the ordinance?

J. Szot: He doesn't say it has to be defined. He says it's not defined.

P. Chivers: I am a well-meaning person. Why are we splitting hairs?

W. Keena: It does not reference a campground. If it not listed as a permitted use.

D. Snow: Thank you, Madam Chairman. I appreciate what you are saying and what the learned attorney up in Concord. You spoke that the ordinance, the legislative body, the town meeting does not have legal authority to tell me. In my mind, he is renting space on the ground in his property. That's not camping. What he is doing makes sense. People are allowed to go on properties and do things without zoning and planning and the rest of it. What your question was to them, the thing that they are asking to do. The zoning ordinance can only cover certain things, it can't tell me what to do. Don't tell me my grandchild can't camp in my background.

J. Szot: That's camping.

M. Chalbeck – Podunk Road – We are still talking this is a commercial in a residentially zoned area.

C. Penfield – Jane Drive: If the Board were to grant Mr. Chivers a waiver to do this, does that then open up?

D. Young – I just have a hypothetical question here. Peter has farm. He has a pumpkin patch. Can he let people stay on his property for free and sell them a pumpkin for \$40?

J. Szot: I understand what you are saying. I don't think it's applicable here.

Closing of the Public Hearing

R. Howe: Permitted uses within current use and agriculture is one of those. So, you have no issue with whatever you are doing with agriculture. I am not really sure where that is going to shake out and whether camping, I would buy into agrotourism as part of that. It's kind of the cart before the house.

W. Keena: First of all, I want to acknowledge your comments about trying to help this town and living here and raising a family. I just want to say I think that is a great thing. I don't want this discussion to color that for you. We are pleased to have that here. If in fact, we have to rely on our counsel, If in fact, the ordinance as it stands, where camping must be stated and it is not, it does not mean that the ordinance should stand forever. I hope that one good that comes out of that is that discussion takes place here in Candia. I do want to acknowledge what you are doing there and what you have done. We are being asked to answer a narrow question. Do we understand this to be a campsite? If that is not permitted, then that is the case. If we don't like that as a community, we need to make a change.

G. Pellegrino: I agree with Bill. Your property is lovely. Maybe you would have to modify the current use. For saying that we as a Board should think without our counsel. I don't know if we can get our lawyer to define these a little bit more. I think there is a lot of grey area in there.

J. Szot: I have already talked to a member of the planning board about defining.

T. D'Arcy: Some of the things that. We will discuss .

J. Szot: The Board has to come up with what are your rules. The people have the final say. The legislative body has given us a set of rules and said this is how we want to order our town. Those two are how our Board runs. We trust you to uphold these rules that we gave you. And when we have that situation, we do make the exception. But if our legal advice tells us that we can't make that exception. It is illegal to do something that is not allowed. That is where we are stuck right now. If it has no on the validity or how beautiful it is.

T. Steinmetz: There are times when people become victims of this ordinance.

J. Szot: But we don't have the right to change this ordinance.

R. Howe: Unfortunately, when I look at 15.02, we can't hang our hat on that. The only thing that we are going to hang our hat on is the definition.

T. Steinmetz: **Motion:** Based on the advice from the attorneys that we deny this request for a special exception. R. Howe: **Second.** All were in favor. **Motion passed.**

Old Business:

Case #24-001:

Applicant: Candia Tank Farm, LLC, 6 Hillside Avenue, Amherst, NH 03031; Owner(s): Candia Tank Farm, LLC, 6 Hillside Avenue, Amherst, NH 03031; Property Location: 5 High Street, Candia, NH 03034; Map 406 Lot 201.

Intent: *To request to expand the current facility to include the addition of three additional fuel oil storage tanks and three 30,000 Gallon Propane Tanks.*

J. Szot: The tank farm hearing is not going to be heard tonight. We are trying to figure out a date we have access to this room that also works for the applicant. Discussion about granting the request for a special meeting.

B. Keena: **Motion:** That the meeting for the Wenzel application be heard at the next regularly scheduled meeting on May 28th. T. Steinmetz: **Second.** All were in favor. **Motion passed.**

Election of the Chair and Vice Chair:

T. Steinmetz: I nominate Judith Szot. B. Chivers: **Second.** All were in favor. **Motion passed.**

Nominate Boyd. All were in favor.

We have two members who are both up this year, if you can get a letter to Amy for reappointment. If we can get it before the next meeting, we can send that off to the Board of Selectmen.

Other Business:

- Review of Minutes
- Any other matter to come before the Board.

Motion to adjourn: B. Chivers. **Second:** B. Keena. All were in favor. **Motion passed.**

Meeting Adjourned at 8:12PM

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file