

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
August 19th, 2024
APPROVED MINUTES**

PB Members Present: Judith Szot, Chair; Tony Steinmetz; Bill Keena, Gale Pellegrino, Alt.; (sitting in for Ron Howe)

B. Chivers – Present. Recused himself due to the fact that he did not previously sit on this case.

PB Members Absent:
Ron Howe (excused)

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

Old Business:

MOTION FOR REHEARING (Case #24-001) Pursuant to RSA 677:2, the board will act on a motion for rehearing with respect to their June 25, 2024 decision to deny an application to expand the current facility. No testimony will be taken at this time. The board will make a determination as to whether a rehearing is in order based solely on the information described in the motion for rehearing as submitted by the applicant.*

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.

The Board proceeded to review the Motion for Rehearing. (Please See Attached)

Points one through seven: The Board felt they covered these two comments when they previously discussed and voted on the additions to the Findings of Fact.

Count 6:

G. Pellegrino: I am not a realtor, however, as a home buyer, if I was looking at a property abutting this storage facility and a similar property elsewhere in Candia. This would definitely have an impact on my selection, and I would rather have woods behind my property instead of oil storage.

Count 8:

A brief explanation of the role of Emergency Management

Emergency Managements role is to identify, evaluate and plan for disasters. Those disasters can be natural, as in earthquakes, tornados, flooding, and blizzards. They can also be manmade like plane crashes, roadway crashes and spills, major fires that far exceed normal capabilities and resources, as well as hazardous material incidents of various magnitudes.

The purpose for this role is to ensure a safe and continuous infrastructure and environment for the citizens, the community and local government to function on a daily basis.

When evaluating the required plans, the LEPC identifies possible "Worst Case Scenarios" to consider if the local available resources would be capable of responding to and adequately dealing with the situation in a safe manner.

Additionally, there is the ability to return the community to normal, pre incident and response. This often includes environmental and infrastructure concerns.

Since 9-11, we must consider terrorism a possibility.

J. Szot: I have worked with Bob Panit on and off for several years. Bob was a fire fighter for many years. He has been Candia's Emergency Management Director for several years. His job has been to anticipate and plan for unexpected emergencies. When we first received the plans for the tank farm, Mr. Panit was the person who knew where to find the information about what kind of emergencies could happen at this type of storage facility and how to deal with such an emergency.

G. Pellegrino: Attorney Swiniarski states that Mr. Panit is not qualified as an Emergency Management Director because he is a volunteer. The ZBA are all volunteers and take our responsibilities seriously. Mr. Panit provided a detailed count of his qualifications and how in his opinion this variance poses an increased risk to the town.

Brian Ruoff has been the Town Engineer for several years. He is familiar with our ordinances and although he had not previously done such an analysis for the Zoning Board, he has advised the Planning Board on numerous occasions. The scope of work performed by Bryan Ruoff on behalf of Stantec was relating strictly to safety concerns and our ordinances specifically. In reference to the legal criteria, he advised that the Board discuss those amongst themselves.

Count 9:

J. Szot: The ZBA did not have a nonpublic session on the day Mr. Swiniarski stated. In fact the meeting we had tonight with our attorney was the first time in memory that we have had a nonpublic meeting and I have been on this board for over 30 years.

Count 10:

J. Szot: The applicant presented a revised application at the May 28th meeting. I explained at that time that I had not heard their new proposal so I didn't think I could be biased. In addition, I reminded the applicant's Attorney that RSA 673:14 states, "Reasons for disqualification do not include knowledge of the facts gained in the performance of the members' official duties. As to the drafting of "secret" findings of fact, it was my understanding that findings of fact are usually developed by one person and discussed at the next meeting. To have discussed them with other members of the board would constitute an illegal meeting. They were not given out at the June meeting because I explained to Mr. Wenzel that they were only a draft, to be discussed and amended by the entire board. This process was discussed at the May 28 meeting (See minutes of May 28th meeting lines 867,868 where Mr. Swiniarski was present, and he raised no concerns about this process. Mr. Swiniarski's allegation that these findings of fact were "distributed on paper (and perhaps otherwise) to other Board members outside of a public meeting" is purely conjecture and not based upon fact and is a blatant attempt to damage my character and credibility.

Count 11: The Town has complied with the Applicant's Right to Know request, a multitude of times. Stantec also complied. No mention of incompleteness was noted when submitted to the Applicant's Attorney by Town Counsel.

Count 12:

J. Szot: See minutes of March 26, lines 844, 845 844 B Chivers: "You are going to extend that 90 days for us?" 845 Swiniarski: "Yeah, I have already extended it for as long as necessary"

Count 15:

At the June 25th meeting, T Steinmetz, tried to bring up the previous variance and I cut off the discussion with comments that that decision had nothing to do with what our board was looking at that day. That a previous board could not bind a future board. Mr. Swiniarski made a statement about my having animus and bias about this project that stems from my disagreement about the way a previous variance was granted. He made these assumptions from a discussion about the reasons the variance was granted that I did not agree with the previous variance. They are his assumptions NOT my thoughts or opinions. His statement that "denying the variance would be a way to ultimately end the business on the Property" was pulled from thin air. I have repeatedly stated that regardless of what the Board decided, Mr. Wenzel has every right to continue doing business on the site.

G. Pellegrino: This variance covers increasing the capacity at the current storage facility. It does not in any way change the original approved variance as the business is running today and can continue to run in the future.

Count 17:

G. Pellegrino: We are not considering a new use for the facility, the board is evaluating the increased risk for expanding this facility with the proximity to the school, courthouse, fire station and town offices.

The Board reviewed, evaluated, and voted on the five variance criteria:

1. The variance will not be contrary to the public interest

For a variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?

R. Howe: Yay.

B. Keena: Yay.

G. Pellegrino: Yay.

T. Steinmetz: Yay.

J. Szot: Yay.

2. The spirit of the ordinance is observed

To be contrary to the public interest, the variance must unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives.

R. Howe: Nay.

B. Keena: Nay.

G. Pellegrino: Nay.

T. Steinmetz: Nay.

J. Szot: Nay.

3. Substantial justice is done.

Perhaps the only guiding rule is that any loss to an individual that is not outweighed by a gain to the general public is an injustice. A board of adjustment cannot alleviate an injustice by granting an illegal variance.

R. Howe: Nay.

G. Pellegrino: Nay.

B. Keena: Nay.

T. Steinmetz: Nay.

J. Szot: Nay.

4. The values of surrounding properties are not diminished.

The ZBA members may draw upon their own knowledge of the area involved in reaching a decision on this and other issues. Because of this, the ZBA does not have to accept the conclusions of experts on the question of value, or on any other point, since the function of the board is to decide how much weight, or credibility, to give testimony or opinions of witnesses, including expert witnesses.

R. Howe: Nay.

G. Pellegrino: Nay.

B. Keena: Nay.

T. Steinmetz: Nay.

J. Szot: Nay.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. The property owner needs to establish that, because of special conditions of the property, the application of the ordinance provision to his property would not advance the purposes of the ordinance provision in a "fair and substantial" way.

R. Howe: Nay.

B. Keena: Nay.

T. Steinmetz: Nay.

J. Szot: Nay.

G. Pellegrino: Nay.

J. Szot: Your request for a special exception has been denied and you will receive an official Notice of Decision.

Other Business:

- Review of Minutes

R. Howe: **Motion** to approve the minutes of May 28th as amended. B. Keena: **Second**. All were in favor. **Motion passed.**

- Any other matter to come before the Board.

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

Meeting adjourned at approximately: 7:30PM

Respectfully submitted,

Amy M. Spencer

Land Use Coordinator

cc: file