

**CANDIA ZONING BOARD OF ADJUSTMENT**  
**Minutes of November 27, 2012**  
**APPROVED**

**Place:** Town Hall; Meeting room

**Call to Order:** 7:00 pm

**Members Present:** Boyd Chivers, Chairman; Judith Szot, Vice Chair; Ron Howe; Frank Albert; Ingrid Byrd; John Easter, Alt, Bob Petrin, Alt

**Members Absent:** Amanda Soares, Alt

**Pledge of Allegiance**

**Approval of Minutes**

Members Sitting for Approval of Minutes: Boyd Chivers, Chairman; Judith Szot, Vice Chair; Ron Howe; Frank Albert; Ingrid Byrd

**MOTION:** I. Byrd made a motion, seconded by R. Howe, to approve the minutes of October 23, 2012 as amended. The motion carried with a vote of 5-0-0.

**Case 12-593** Applicant: Susan & Dennis Tremblay 109 Brown Road, Candia NH 03034; Owner: Same; Map 413 Lot 019-1; for a special exception under section 15.04 E. Accessory Dwelling Units: to permit an in-law apartment attached to house.

Members Sitting for this Hearing: Boyd Chivers, Chairman; Judith Szot, Vice Chair; Ron Howe; Frank Albert; Ingrid Byrd

Applicant/Agents Present: Dennis & Susan Tremblay, 109 Brown Road, Candia NH 03034

Abutters/Public Present: None

Chair Chivers read the Building Inspector's letter dated November 20, 2012 into record, "...In regards to the Tremblay's request to construct an in-law apartment at their Brown Road residence, I have met with them, gone over the project thoroughly, and see no issues. The location is approximately 350 feet from the road. The side setback is approximately 150 feet from wetlands with an additional 15 feet in elevation increase. The rear setback is approximately 200 feet. The residence has an approved 4 bedroom septic in place and two bedrooms have been eliminated. (1 for storage and 1 for a playroom). The in-law apartment would consist of 1 bedroom for a total of three. The in law apartment will be 592 square feet of heated living space and our ordinance requires less than 600 square feet. There is ample parking on site as well. As I stated before, I see no issues with the Tremblay's request due to the fact that they have and will meet all of the state and local regulations..."

Chair Chivers asked the Tremblay's if they had anything else to add that isn't in the file and they said no. He asked I. Byrd to read the special exception standards for an accessory dwelling.

I. Byrd read Article 15.04E Accessory Dwelling Units, "Any dwelling in a residential zone may be converted or built to contain one Accessory Dwelling Unit on the following conditions by Special Exception 1. There shall be only one bedroom in the accessory dwelling unit." She said

the unit contains one bedroom. “2. Adequate sewer and water service shall be provided. One septic system shall serve the entire property” Chair Chivers said the Building Inspector has confirmed this. “3. There shall be a maximum of 600 sq. ft. of heated living space in the accessory unit.” Chair Chivers said the unit is 592 sq ft. “4. Onsite parking for one additional vehicle shall be provided.” Chair Chivers said the Building Inspector has confirmed this. “5. All existing set back ordinances must be met.” Chair Chivers said the Building Inspector has confirmed this. “6. The accessory unit shall be within or attached to the main dwelling unit or located in an accessory building that exists on March 15, 2003, located on the same lot as the main dwelling.” Chair Chivers said the Building Inspector has confirmed this. “7. The residential character of the area must be retained.” It was confirmed it did. “8. Density requirements of article 14:04C will not apply. 9. So long as an accessory dwelling unit is occupied, either the primary dwelling unit or the accessory dwelling unit shall be occupied by the owner of the property.” Chair Chivers said the owners live on the property.

Chair Chivers said the applicant has met all the criteria of the special exception standards and the building inspector has confirmed it.

I. Byrd questioned even if a bedroom is used as something else what would stop a new owner from using the room as a bedroom and then you would have 5 bedrooms on a 4 bedroom septic system. She said she would like to have it on record from the Building inspector that this is not going to be an issue. J. Szot said even though the rooms are not being used as bedrooms they still are bedrooms. She said then the septic system would not be adequate because you will have 5 bedrooms not 4. F. Albert suggested adding a condition stating the property would be limited to 4 bedrooms with the existing septic system.

MOTION: F. Albert made a motion and revised the motion, seconded by R. Howe to grant the special exception for the in-law apartment with the condition the property would be limited to the use of 4 bedrooms with the existing septic system. The motion carried with a unanimous vote of 5-0-0.

### **Other Business**

#### Appeal NOD Candia Sand and Gravel dated October 23, 2012

Chair Chivers said Mr. Cole of Candia Sand and Gravel applied for a rehearing or reconsideration of the Board’s decision not to hear their application until they satisfy certain court orders. Copies of the appeal letter and their original application were passed out to the Board.

Chair Chivers said before they discuss this he would like to caution the Board to limit their discussion to the issue before the board to reconsider hearing the application not whether to approve or disapprove the application.

Chair Chivers said at the meeting the applicant contested a lot of the information presented saying he had complied with a lot of the various court orders such as he paid the engineering fees, paid legal fees and had a reclamation plan. Chair Chivers said since the meeting on October 23, 2012, he verified the engineering fees have been paid, legal fees paid and that the town accepted a lien on the property in lieu of paying the \$10,000 fine. He said there were two issues left the reclamation plan and the performance bond. He said the BOS has not accepted the reclamation plan saying they have provided a plan that is really an expansion of the operation not something designed to reclaim the existing pit.

Chair Chivers said there are the two grounds for the Board to approve a rehearing. He said either the applicant provides information that was not previously submitted or the Board made an error in application of the law in the original case.

R. Howe asked if the town engineer in fact signed off on the reclamation plan and does the town engineer speak for the Selectmen and Chair Chivers said no. J. Easter what happens if the town engineer approves it and the town doesn't? J. Lindsey said the town engineer just advises the town. Chivers said he is appealing the Board's decision not to hear the application. F. Albert said it is only right that they hear the applicant and felt they would be making a mistake not to give them a hearing.

R. Howe said he can't see any reclamation that is going to be acceptable that does not blast because without blasting to reclaim how do you get the correct slopes. He asked who is going to issue the permit to blast is it the BOS? Chair Chivers said you are assuming they need to blast to reclaim, they can haul fill back in. J. Szot said the point is he knows he has to reclaim so you structure what you take out so when you are done you have these slopes but that wasn't done. R. Howe said there should have been an engineering plan in place. R. Howe asked if the town could live with the property not reclaimed. I. Byrd questioned if left unclaimed are we creating an attractive nuisance that could cause issues in the future. J. Easter said an incident happened recently in Greenfield NH, a child fell.

J. Szot said we are getting off the subject. She read from the Handbook for the Zoning Board of Adjustments, *"no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of his first hearing. The evidence might reflect a change in conditions that took place since the first hearing or information that was unattainable because of the absence of key people because of valid reasons. It's geared towards the proposition the Board should have the first opportunity to correct any action if correction is necessary before appeal with court is filed."*

Chair Chivers said a lot of thought went into preparing for the October 23, 2012 meeting. After the decision was made the applicant had plenty of time to come and say the Board was wrong and show cancelled checks or show the reclamation plan but he didn't. He said he went ahead after the October 23, 2012 meeting and did verify they paid Stantec, paid the lawyer, satisfied the \$10,000 fine by providing a lien against the property but there isn't an approved reclamation plan or bond in place. He said the November 2007 letter from Town Counsel states there is no reclamation plan. J. Easter understands why he won't post the bond unless he can do the work. Chair Chivers said he doesn't have to come to the ZBA to put up the reclamation plan or make arrangements for the bond to satisfy the court orders. J. Szot said these are not recent court orders they go back to 2005.

The Board members were in agreement that once he satisfied the court orders they would hear his application.

MOTION: J. Szot made a motion to deny Mr. Cole's request to reconsider the Board's decision to defer consideration of his application for a variance until the applicant meets the orders of Rockingham County Superior Court dated May 3, 2005. R. Howe seconded. The motion carried

a vote of 4-1-0. B. Chivers, J. Szot, I. Byrd and R. Howe were on favor. F. Albert was not in favor.

Agenda Format

I. Byrd suggested including on future agendas under other business “*Discussion of any other matter to come before the Board.*” Chair Chivers asked to make it standard on future agendas.

Frank Albert’s resignation

F. Albert announced to the Board his resignation after 20 ½ years on the ZBA. He said he started in April of 1992 and that it is now time to retire. He said it has nothing to do with board matters and that tonight was his last night. He thanked the Board to have had the opportunity to serve. Everyone wished him well.

**Adjournment**

MOTION: J. Szot made a motion, seconded by R. Howe, to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 8:02 pm.

Respectfully submitted,  
Sharon Robichaud  
Recording Secretary