

CANDIA ZONING BOARD OF ADJUSTMENT
Minutes of July 23, 2013
APPROVED

Place: Town Hall; Meeting room

Call to Order: 7:00 pm

Members Present: Boyd Chivers, Chairman; Judith Szot Vice Chair; Ron Howe; Ingrid Byrd; Amanda Soares, Alt; Bob Petrin, Alt

Members Absent: John Easter

Pledge of Allegiance

Chair Chivers asked Amanda Soares to sit for John Easter

Approval of Minutes

Members Sitting for Approval of Minutes: B. Chivers; J. Szot; R. Howe; Ingrid Byrd; A. Soares;

MOTION: made by J. Szot, seconded by B. Chivers, to approve the minutes of June 25, 2013 as amended. The motion carried with a vote of 2-0-3. J. Szot and B. Chivers were in favor Ingrid Byrd; Ron Howe; Amanda Soares, Alt abstained.

Case 13-596 Applicant: Jon Thibault 538 South Main Street, Manchester NH 03102; Owner: T-Built, LLC 538 South Main Street, Manchester NH 03102; Property Location: 194 Raymond Road; Map 409 Lot 107; for a Variance under Section 6.02 Table of Dimensional Requirements to permit the construction of an 30 x 40 garage within the front and rear setbacks in a Commercial Zone.

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

Applicant/Agents Present: Jon Thibault 538 South Main Street, Manchester NH 03102

Abutters/Public Present: Adam Sicard, 197 Raymond Road

Chair Chivers said the applicant has plans showing they propose to build a garage 33 feet from the front setbacks and 8 feet from the back property line where the applicants needs 50 feet and 25 feet setback respectively. He said what is material however is a memo from the Building Inspector saying we should hold off granting the variance until the applicant finishes a project that was started 6 years ago. The permit was issued to the prior owner to rebuild the house which is still in disrepair. He read the concluding paragraph from the Building Inspector's memo dated July 23, 2013, "Is is my opinion that the original project needs to be completed before starting another because I do not believe we want another unfinished building on this commercial lot. I am unaware of the septic design on this particular lot and have concerns about enough area to have a septic system, well and the proposed building. I would like to see a septic design for the existing home before any further structures are built. The land parcel, map 409 lot 107 is only .26 of an acre according to the tax map." Chair Chivers said now with that in mind it seems to me the application runs afoul of Zoning Regulations Section 2.01 on page 8 which says, "No building or other structure shall be constructed or altered nor land used except in conformity with this Ordinance unless such structure or use is a valid non-conforming use as defined in this Ordinance unless

such building or structure or use is a valid non-conforming use as defined in this Ordinance.” Chair Chivers said it sounds like the land is presently not used in conformance with the ordinance and therefore the Board would be barred from granting a variance and said this is his summary of the case.

J. Thibault said when he purchased the property he thought he bought $\frac{3}{4}$ of an acre. He realized when he went to build a garage last year the back parcel was not transferred even though he has been paying taxes on it. He said he brought it to the town and explained what happened. He said what happened was when the property was sold by the heirs of Mr. Beane to Allen Bartlett the second parcel wasn't transferred to Allen Bartlett. He said he has contacted Elizabeth Garon daughter of Mr. Beane and have worked it out with her but two other siblings have to sign off on it but the problem was when Mr. Beane passed away and the estate went to probate, it took two years for them to sign off the first time and said it is in process but not sure how long it will take.

J. Thibault said the reason he hasn't finished the house is because a lot depends on the garage and said when he bought the property the use was residential and had never been commercial. He said when he bought the property his first goal was to make the house presentable as it was an eyesore so he finished the outside that faced the street where it is visible from the road to look decent. He said the siding in the front and sides is new and the front of the roof has been done and he said from the street the house is very presentable.

Chair Chivers said the property is in the Commercial District and the property has been abandoned as a residential property years ago. He said George Beane was living in the house and after he passed, Allen Bartlett bought it and when it foreclosed the applicant bought it. Chair Chivers asked how long the applicant could get a building permit for a residential building. D. Murray said the residential home still exists. J. Szot said but it has been abandoned. She said if you have a non conforming use and you do not use it within a year the right to use the nonconforming use ceases. Chair Chivers questioned if the current building permit was still valid for the residential structure. D. Murray said he was allowed a building permit in 2009.

J. Szot read “*Section 2.02A. Right to Continue: B. Change and Expansion: No legal non-conforming use shall be changed to another non-conforming use and no non-conforming use shall be enlarged or extended.*” She said by putting on a garage you are enlarging the use. “*Section 2.02 D. Abandonment: Any legal non-conforming use or structure that is discontinued or abandoned for a period of one year or more cannot be resumed but can be replaced by a conforming use.*” J. Szot said you cannot use the house anymore and is now commercial use only. D. Murray asked what the definition of abandonment is if he has been working on it. J. Szot said it is not occupied.

R. How said no matter what it doesn't solve the issue of the well and the septic. Chair Chivers said if the applicant had title to the back piece he could put the garage back there and free up room around the house for the septic and well.

J. Thibault said the septic is behind the house and the well is in the front right corner of the house and appears to be a dug well. I. Byrd asked who all the abutters were and wrote them down. She said she is always more comfortable knowing who the abutters are. There was a discussion of who the abutters were. I. Byrd asked who actually owns the property Jon Thibault or T-Built. J. Thibault said it is owned by T-Built and he is the owner of T-Built. I. Byrd stated he is speaking for himself and T-Built and how does he separate the two. J. Thibault said he doesn't he is an LLC. I. Byrd said a business is a different personality. Chair Chivers asked who the public noticing went to for the parcel in question. It was confirmed that it was sent to Elizabeth Garon. I. Byrd asked why he is building a garage bigger than the house and what his plans were for the garage. J. Thibault said he is planning to store cars and do some

restoration. I. Byrd for a commercial use? J. Thibault said maybe eventually. I. Byrd said that is another problem then it becomes a double use and it is commercial use only. A. Soares said the only way to have a house and a commercial property is to be zoned mixed use not commercial.

J. Szot asked Mr. Thibault if he was planning on using the house as residence or an office. J. Thibault said he may use it as an office if able to build the garage and start a business however if it went the other way and he cannot get the land behind him and if denied the variance he would keep it as residential. I. Byrd said no, you cannot use it as residential. She said you should have looked at it closer before you bought the property. J. Thibault said when he bought the property it was listed $\frac{3}{4}$ of an acre on the tax maps and it was used as residential. I. Byrd asked if he had a survey done. J. Thibault said he did not.

Chair Chivers said the question before the Board is, can the Board grant a variance to continue a non conforming use? I. Byrd said it is not a nonconforming use. Chair Chivers said yes it is. A. Soares according to what you have read you can't. Chair Chivers said they have abandoned the use. R. Howe said the garage is conforming use as long as you don't live in the house. J. Szot said the problem is even if he uses the garage if you look at the site when you think about the requirements of how far away your well has to be from septic in order to be legal not sure you can get both on site with the garage and she continued it might be better served to withdraw the application until the applicant solves the problem with the back parcel. She said then the applicant can join the two parcels together and do whatever he wants and build the garage and he would not need a variance only a building permit.

Chair Chivers asked how close he was with an agreement with the heirs of George Beane. J. Thibault said he does have an agreement and can show the Board the paperwork but the heirs of estate have to sign off and seeing it took two years the first time, it may be that long again. He said if he has to wait he will and said he doesn't want to throw money into the building, adding and fixing if he can't. He said he has been trying to expedite this.

Chair Chivers said if he had title to the lot he could just go to the Planning Board and do a Lot Line Adjustment make it one lot and then a variance would not be needed then he could work it out with the Building Inspector over whether there is a valid building permit and whether it is residential or commercial use. He said because there are so many flaws with the use of the property that this Board would be ill advised to consider a variance but he is not sure if the Board agrees with that position or not.

Chair Chivers asked what his intention in respect to the Building Inspectors concerns about the property getting finished? J. Thibault said for the outside he just has to finish the siding on the back and the back roof and depending where he puts the windows will be how he layouts the inside for the bathroom and so on.

I. Byrd said the Building Inspectors letter said no other inspections were performed and asked about electrical and so on. J. Thibault said the electric was looked at. D. Murray said just the main service panel upgrade and J. Thibault confirmed yes and one outlet. Chair Chivers said the building permit expired almost 3 years ago and said now the only permissible use would be commercial.

R. Howe suggested turning the garage 90 degrees attached to the end of the house and said you could get a building in that size lot and meet the setback requirements. J. Thibault said his only concern was being able to access the back lot. Discussion continued, on how that would work.

Chair Chivers asked Mr. Thibault if he would consider withdrawing the application and he replied yes. He said the ZBA's only choice is to consider the application and either accept or reject it and it looks like the acceptance is somewhat unlikely. J. Thibault said he would like to withdraw the application. Chair

Chivers asked to have the request put in writing and sent to the town, stating he is withdrawing the case without prejudice.

Chair Chivers asked if there were any other comments from the Board hearing none closed the Public Hearing.

Other Business

Hearing no other business asked for a motion to adjourn.

Adjournment

MOTION: J. Szot made a motion, seconded by A. Soares, to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 7:32pm.

Respectfully submitted,
Sharon Robichaud
Recording Secretary