

**CANDIA ZONING BOARD OF ADJUSTMENT**  
**Minutes of February 25, 2014**  
**APPROVED**

**Place:** Town Hall; Meeting room

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

**Members Present:** Boyd Chivers, Chairman; Judith Szot Vice Chair; Ingrid Byrd; Ron Howe; A. Soares, Alt.

**Members Absent:** John Easter; Bob Petrin

**Pledge of Allegiance**

Chair Chivers asked Amanda Soares to sit for John Easter

Approval of Minutes January 28, 2014

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

MOTION: Motion made by, seconded by, to approve the minutes of January 28, 2014 as presented. The motion carried with a vote of 4-0-1. B. Chivers; J. Szot, A. Soares, R. Howe were in favor. Ingrid Byrd abstained.

Case 14-600 Applicant: Kevin Dumont 446 Raymond Road, Candia NH 03034; Owner: 446 Raymond Road LLC 446 Raymond Road Candia NH 03034; Property Location: 446 Raymond Road; Map 408 Lot 031; for a Variance under Section 8.06: Signs Size Restrictions: to permit the construction of an additional 16 foot by 8 foot sign next to existing sign and a Variance under Section 6.02 Table of Dimensional Requirements to erect 2 - 65 feet high movie screens in the Light Industrial 1 Zone.

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

Applicant/Agents Present: Kevin Dumont, 446 Raymond Road, Candia NH 03034, Adam Gerhard & Regina Franz, Capture the Dream LLC 204 S. Main Street, Newmarket NH 03857

Abutters/Public Present: Kathryn Tierney 30 Island Road, Candia NH 03034; D. Murray Building Inspector; Carlton Robie, Board of Selectmen; Fletcher Perkins

K. Dumont said he has joined with Adam Gerhard and Regina Franz, Capture the Dream LLC to bring a Digital Drive-In Movie Theatre to Candia. He said he has the location and unutilized space and they have the expertise and knowledge of the Digital Drive-In Movie Theatres. He said the location is zoned for a drive-in theatre however to have a drive-in theatre you need the movie screens that are actually big enough to show movies on. He said he hopes the Board will take that into consideration that the use is permitted and they need the large screens. He said the first movie screen is at least 1500 feet or more from Route 27 and will not be seen because of the elevation drops off from Route 27 and the screen is below the tree line. He showed a drawing rendition of a movie screen facing towards route 27 showing the screen below the tree line and continued there is

a large buffer of trees going out to Route 27. He said they are within the setbacks and said there should not be a sound issue because the movie is played over the car stereos. There would not be a light issue either as the movie is directed to the screen and is similar as if you were in at the movies when the movie is played it is very dark in the theatre and continued the screen's back is to the road.

In order to be able to project the movie they need an adequate size screen which will be constructed with wood poles and or steel construction as shown in a sample picture submitted. They are working out the engineering with their construction team and will work with the building inspector to meet all the requirements.

K. Dumont said if you are familiar with the property there is a long access road before you get to the gravel parking area there is a grassy area in front of where the screen will go, as seen in the picture. He said the other screen will be on the other end of the parking lot even further away from the road.

I. Byrd asked what the red line meant on the drawing and said the drawing does not show the abutters or the entire parcel or shows setbacks. She also said it is two drive-ins because there are 2 screens. K. Dumont said the red line is the edge of the pavement and that it is one drive-in with 2 screens with 2 different movies playing. I. Byrd asked where the water park and his house are in relation to the drawing submitted. She said now you are asking for a third use on your property.

J. Szot asked if the easement with DES was done. K. Dumont said they are finished with the easement and they are just awaiting the final approval number from them. I. Byrd said she would like to see this in writing.

R. Howe said a plan showing the entire parcel would be helpful. K. Dumont confirmed the existing parking lot is being used and that the screens the screens are 45 feet high by 80 feet wide and 20 feet off the ground making the total height 65 feet tall.

A. Gerhard said they will be broadcasting the movie through car radios with a code. He said there will be a 12 foot by 12 foot 2 story projection screen booth built in the parking lot and 2 screens so they can play 2 different movies at the same time. He said they want to operate May through Sept. K. Dumont said the water park closes at 5pm and the drive in will open around 6 to 7pm with the last movie getting out around 1am.. They are hoping to run the drive-in 7 days a week. There was discussion on the traffic and K. Dumont said if necessary they could hire a police officer but he has already done traffic studies for the water park and since they have opened they have not had any issues with the traffic. A. Gerhard said it is not uncommon for up to 2/3 of the people to leave prior to the end of the second movie making even less traffic latter after the second movie ends.

Serving liquor was brought up and K. Dumont said they would not be serving liquor but will be serving food. R. Howe said it seems drive-ins have all but disappeared and ones still open are struggling. K. Dumont said it is a large cost to start up a digital drive-in and but they already have the location and parking and will only have to build the projection booth with \$90,000 digital projectors and erect two movie screens signs and hopefully will be profitable within a couple of years which is their business module. A. Gerhard said the movies will range from G to R rated but will be mostly be rated G through PG13 as they want to keep with the family entertainment theme like the water park. He said they will promote the drive-in at the water park.

I. Byrd said on the drawing there is proposed gravel parking area. K. Dumont apologized for using copy of plans that were not finalized Liquid Planet plans as the gravel parking area already exists and other proposed items on the plan submitted are already built. He said since Beach and Jones have bought out Richard Ladd he has to pay a lot to get copies of the plans. He said they are working on plans for the Planning Board Minor Site Plan. I. Byrd took offense and was not happy that the Zoning Board of Adjustment was not good enough for the applicant to get full sized finalized plans. She said she needed to see the whole site. K. Dumont said we are before you for the height of the screens and sign. I. Byrd said they also need to know where the projection booth is going. R. Howe asked why they need to know about the projection booth. I. Byrd said the projection booth may affect how they may look at the issue. She said she wants people to be upfront and is not happy they do not have a plan showing everything that is going to be proposed. Chairman Chivers said they will be going to the Planning Board. K. Dumont said they were going to go the Planning Board first but was advised to come to the ZBA first to make sure they get these variances before they go through the whole Planning Board process. Chairman Chivers said it would be helpful if you showed the elevations at the route 27 and the elevations at the screens.

Chairman Chivers sees the applicant's point on why he is waiting to get full sized final plans as they need approval from the ZBA before they bring their site plan to the Planning Board. J. Szot said she cannot make a decision because the map presented isn't clear where the drive in will be situated on the property because it does not show the entire property. She said she would like to see a drawing showing the entire property with abutters and contour lines from the road to the where the proposed drive- in screens would be.

It was discussed that a more complete plan was needed as the Board was having trouble visualizing the project on the property. K. Dumont said a drive-in is a permitted use in the Light Industrial 2 but because of the sign regulations they are before the ZBA tonight seeking a variance on the height of the movie screens which they need to operate a drive-in. He said he felt the ordinances contradicted themselves and said it is confusing to allow a drive-in but not the screens needed for the drive-in.

R. Howe asked if they used balloons for the height and K. Dumont said that is how they got the location of screen in the picture submitted. He said it was difficult and would be hard to schedule a site visit for the Board because of the wind moving the balloons. He said the trees shown behind the screen in the picture are taller than the screen. J. Szot said they can't see how this will affect any of the neighbors without seeing a complete drawing.

J. Szot said she would like to see them come back with a complete plan. K. Dumont said they are to go to the Planning Board March 5<sup>th</sup> and J. Szot said most likely they would not get approval for their site plan at the Planning Board the same night and would most likely go into April and they could come back to the ZBA on March 25<sup>th</sup> with complete drawings. K. Dumont did not see why the site plan would take more than one night as they are only putting up a 12 x 12 screen projector building and two screens everything else is existing. Chairman Chivers said he sees where they would not want to invest the money in a site plan if the variances are not granted the site plan would be of no value. K. Dumont said he would like to bring up again is it is already a permitted use to have a drive-in per the regulations and they are asking for a variance to allow them to have the screens for the drive-in which is allowed.

Chairman Chivers read the variance standards into record: "Section 14.02 C. Variances: The Board of Adjustment shall hear and decide requests for variances from the terms of this Ordinance. No variance may be granted unless ALL of the following criteria are met:1. The variance will not be

*contrary to the public interest; 2. The spirit of the ordinance will not be contrary to the public interest; 3. Substantial justice is done; 4. The values of surrounding properties are not diminished; and 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*” Chairman Chivers asked K. Dumont if he was prepared to answer each one. K. Dumont said the variance would not be contrary to the public interest and that drive-in movie theaters are allowed in the L1 Industrial District. He continued the spirit of the ordinance would not be contrary to the public. He said there would be substantial justice done as the use is permitted by right and drive-in movie theatres require these large screens. He said the property values would not be diminished and said that literal enforcement of the provisions would result in unnecessary hardship because a drive-in movie theatre requires these large screens to operate.

Chairman Chivers read the special exception standards into record: “Section 15.02 Special Exception Standards *Special Exceptions shall meet the following standards 1. No Hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials; 2. No detriment to the 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. 3. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. 4. No excessive demand on municipal services including, but not limited to water, sewer, waste disposal, police and fire protection, and schools; 5. No significant increase of storm water runoff onto adjacent property or streets.*” and then asked K. Dumont if he was prepared to answer each one. K. Dumont said there would be no hazard to the property or abutters or detriment to the property values. He said the sign would not create a traffic safety hazard. I. Byrd said what about the traffic leaving at the same time and A. Soares said this is about the sign only. I. Byrd said it all ties together. K. Dumont said the water park closes at 5pm which is rush hour night traffic and they have never had any problems with traffic. He said this will be a similar amount of cars later at night and not at rush hour. He said they did a traffic study for the water park and said they have never had an issue with traffic with the water park. Chairman Chivers said there is no demand on municipal services and it does not apply.

A. Gerhard said the sign out front is a marquis sign to display the movies and would be placed on the other side of the entrance. He said it would have to have 12” tall letters to be able to read safely going 50 MPH. K. Dumont said his existing sign is 8 feet x 10 feet and they have a variance for 10 x 10 feet. He said they need an 8 foot by 16 foot sign to be able to fit 4 movies and ratings. He said the letters will be 12” high and sign will be lighted. K. Dumont said they could put the light on a timer to go off by the regulation requirements of 11:00pm.

R. Howe asked if this is being run as two separate businesses and K. Dumont said it is but is a cooperative effort. R. Howe said if they are different businesses then they should be able to have different signs and in the Sign Ordinance it is 40 square feet for each business. Chairman Chivers agreed. R. Howe said then there may not even be an issue. He asked if this was going to be run as a separate business and K. Dumont said yes.

R. Howe didn’t see where there would be any sound or visual issues. K. Dumont did confirm that the projection onto the screens does not go beyond into the trees and the projection matches the screens per A. Gerhard. Chairman Chivers asked if they could have a smaller movie screen. K. Dumont said usually the screens are 90 feet they are asking for 80 feet. R. Howe said the older movie screens were even larger. A. Soares asked if being open 7 days a week doesn’t work would they be able to cut back and they said they would. I. Byrd asked about the location change written in

on the plan for screen #2. K. Dumont said they had approval from DES to place it in the easement but now they are moving it closer to the parking lot and outside the setbacks to the river and the easement. J. Szot asked about the sound because it will be during the summer and people will put their windows down instead of running their air conditioners which will this create a lot of sounds. K. Dumont said with the mosquito issue and the fact it cools down at night most people will have their windows up. R. Howe said he remembers that even back in the day with the speakers in the windows there wasn't a noise issue. J. Szot said I know there are questions about mitigation that was supposed to be done but that is a Planning Board issue. Chairman Chivers asked if there was a drive-in theatre in the area they could look at and K. Dumont said there is one in Milford off 101a.

Chairman Chivers said the only question the Building Inspector had in his memo was the structural integrity of the sign. D. Murray said since that letter he has had those questions answered by the applicant. He said he would like to put to rest the fears of the Board saying the land drops off significantly from route 27 and the movie screens would not be visible and said the additional sign out front will be visible.

Chairman Chivers said it appears what the Board is trying to say is they need a complete drawing showing the entire parcel and the abutters and elevations and where the screens and sign are actually placed on the property.

MOTION: J. Szot made a motion seconded by R. Howe to continue the public Hearing until March 25, 2014 to have the applicant come back to the Board with a complete more detailed plan. The motion carried with a unanimous vote of 5-0-0.

Chairman Chivers asked K. Dumont to list the items that the Board has asked him to put on his plan for when he comes back to the Board on March 25, 2014. K. Dumont said he will be coming back with a full sized sheet showing the entire parcel, all the abutters, elevations from route 27 to the parking lot, exact locations of the movie screens and proposed location with setbacks for the marquis sign out front and to clean up the plan so there is no information that is irrelevant to the case.

### **Other Business**

#### Appointments

Boyd Chivers and Amanda Soares terms expire in 2014 and are up for reappointment.

MOTION: Motion made by I. Byrd, seconded by R. Howe, to send a memo to the Board of Adjustment for the reappointment of Amanda Soares and Boyd Chivers to the Zoning Board of Adjustment. The motion carried with a unanimous vote of 3-0-0.

Hearing no other business Chairman Chivers asked for a motion to adjourn.

### **Adjournment**

MOTION: Motion made by J. Szot, seconded by A. Soares, to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 8:55pm.

Respectfully submitted,  
Sharon Robichaud  
Recording Secretary