

CANDIA ZONING BOARD OF ADJUSTMENT
Minutes of May 26, 2015
APPROVED

Place: Town Hall; Meeting room

Call to Order: 7:00 pm

Members Present: *Boyd Chivers, Chairman Judith Szot Vice Chair; Ron Howe; Bob Petrin; Mark Laliberte Alt.*

Members Absent: *Ingrid Byrd*

Pledge of Allegiance

Approval of Minutes April 28, 2015 were postponed until the following meeting lack of a quorum.

By-Laws Amendments

Chairman Chivers said he was not present at the last meeting when the bylaw changes were proposed. He asked for any comments. M. Laliberte said he had made some comments and they appeared addressed. B. Petrin said should they add in reference for the applicant to notify the Lamprey Advisory Committee if they are within the quarter mile Lamprey River watershed corridor and he suggested page 14, Appendix 1: B Checklist, or page 16 where the abutters are listed and they would become an automatic abutter. M. Laliberte felt they should be listed as an abutter. Chairman Chivers said then they become a default abutter and all cases will be automatically notified. M. Laliberte said so the applicant will be absorbing that cost to notify the LRAC even if they are not within the corridor and Chairman Chivers said it is not fair. B. Petrin said then perhaps they should put it on page 14 on the checklist to make the applicant aware of this. Chairman Chivers said the LRAC only has any jurisdiction if the applicant is in the watershed and suggested putting it on page 14 and note they may be required to send notification to LRAC. B. Petrin said then it falls on the applicant to determine if their project falls within the watershed. B. Petrin said the question would be the wording on how to notify the LRAC. Chairman Chivers said make a separate line to determine if your project falls within the corridor and the applicant is required to notify the LRAC if you live within ¼ of a lamprey river watershed.

D. Murray, Building Inspector said they can use the LRAC wording. M. Laliberte said they can cite the RSA. Chairman Chivers said a separate line to determine if required under RSA 483:8a. under the checklist and provide evidence they notified LRAC. J. Szot said isn't it our responsibility to notify LRAC? B. Petrin wasn't sure if was the applicant or town notified LRAC. Chairman Chivers said there will be a separate line on the Appendix 1: B Checklist.

R. Howe said he felt D. Murray should mention this to everyone because applicants don't know how far they maybe from a brook if not visible. J. Szot asked is there a way the Board could map out showing the tributaries which could be handed out to the applicant to look at. Chairman Chivers said they have a wetlands map at the town. J. Szot suggested adding a comment for the applicant to check the wetlands map in the Town Offices. M. Laliberte said the applicant will have to do their due diligence on whether notice is required. The map will be available. R. Howe said the case last month there is a brook behind the house and D. Murray said the LRAC didn't even take that into consideration because it was beyond a ¼ of a mile. R. Howe said where do you decide what comes under their jurisdiction. Chairman Chivers asked what does the RSA say. B. Petrin said major branches mapped out which is the North Branch for Candia. D. Murray said the way it is written main branches and the North Branch are listed and he thinks that is it. Discussion continued of what would be within the watershed corridor.

B. Petrin said he had one more change on page nine, Article XII: Finances 2. He said should they consider adding the Vice Chair in case the Chairman can't perform that duty. Chairman Chivers didn't think so and said it is presumed by default that the duties of the Chairman fall to the Vice Chair. R. Howe said he agrees with the chairman.

Chairman Chivers said they will take the proposed changes in order and started with page three.

Page 3. Article IV:3.D. to add after alternates, "**in consultation with the Chairman.**" M. Laliberte said it had a conflict with another article and this clears it up. Chairman Chivers asked if the Board was all in agreement and they were.

Page 4. Article V: 5.Line 2 replace "~~3 weeks~~" with "**twenty-one days**". Delete line three "~~news item~~" and replace with "**public notice**" The Board was in agreement. Page 4 continued, Article V: 6. Line 2 After

circumstances add *“by the Board”* M. Laliberte said the thinking was to make it clear that if the meeting was cancelled by the Board they applicant would not be held accountable for the expense.

Page 5. Article VI: 2. Change ~~“two weeks”~~ to *“twenty-one days”* Chairman Chivers said this is a significant change going from two to three weeks, this allows more time to post the public hearing notice. The Board was in agreement. B. Petrin said this change conflicts with page 13 first paragraph half way through two places need to change to three weeks. This will be addressed when they reach page 13. J. Szot said since this is a new change and first time being noticed. Chairman Chivers asked if they were empowered to make the changes tonight and J. Szot said not at the next meeting as two public hearings are required and the next subsequent meeting the changes can be voted in. Page 5 continued Article VI: 6. Line 2 after “he” add *“/she”* All were in agreement. B. Petrin said in the second paragraph the application must be received three weeks and throughout the document talk in days suggest changing to days. The Board was in agreement to change any other place that states 3 weeks change to 21 days also found on page 4.

Page 6. Article VII: 1. A. Change ~~“with”~~ to *“within”* Change ~~“5”~~ to *“10”* Article VII:1 B. Line one add after applicant *“,or”* Article VII: 1. B. Change ~~“5”~~ to *“10”* Article VII: 2. A. & B. Make A into B and B into A. Board was in agreement with changes on page 6.

Page 7. Article VII: B. 7. Line one capitalize **B** on board, line two change ~~“a”~~ to *“at”* Board was in agreement grammatical errors corrected.

Page 9. Article X: 1. Change under application fee: ~~“\$25.00”~~ to *“\$50.00”* Change under noticing fee: ~~“\$50.00”~~ to *“\$75.00”* Change under abutters fee: ~~“\$6.54”~~ to *“\$7.49*”* Add after abutter’s fee:

**Noticing fee subject to postal rate changes* J. Szot with the note on noticing fees if the postal rates go up the fee can be changed without having another public hearing. She said when she spoke to the secretary she said the fees were not being covered with current fees in place. R. Howe said on page 10 left out until the updates are finished and approved, all were in agreement.

Page 11 Appendix I: A 10th line change ~~“conditions.”~~ to *“criteria;”* Update 5 Variance criteria. Chairman Chivers said if the RSA changes then they will have to change the bylaws. B. Petrin asked what are the chances the RSA will change. M. Laliberte said chances are it could be changed based on a court case as it has happened in the past. If the courts want to vary the 5 criteria then a change will be made. Chairman Chivers said the 5 criteria now are different then 5 to 10 years ago. B. Petrin suggested not referencing the RSA. M. Laliberte said the RSA should stay in his opinion. J. Szot said the RSA number doesn’t change. She said the criteria have changed several times while she has been on the Board. R. Howe said is there any way to reference the RSA so if there is a change made they do not have to change their bylaws. J. Szot said M. Laliberte said when changes are made there is usually enough time to get the changes done before it is enacted. The Board was in agreement to leave the specific wording of RSA 674 as is and the Board was in agreement.

Page 12 Appendix 1: A -Add Special Exception Standards. Chairman Chivers said these are specified in the zoning ordinances do you want to reiterate what the zoning ordinances already say in the bylaws or just leave it that they have to meet the special exception criteria in the zoning ordinances? M. Laliberte said it doesn’t hurt to list them again and J. Szot said if the ordinance changes it would be a simple change. Chairman Chivers said it would be a good idea to revisit the bylaws on a yearly basis and the Board agreed.

Page 13

Two locations change ~~“14 days”~~ to *“21 days”* which were not listed so they need to be heard a second time. Grammar change on ~~“months”~~ to *“month’s;”* J. Szot maybe add some kind of verbiage in the ordinance or bylaws that would allow them to make spelling and grammar corrections that do not need to be publically noticed with a public hearing.

M. Laliberte had a question with page 13 top of paragraph 4, *“If you believe the Board’s decision is wrong, you have the right to appeal”*. He said sometimes multiple decisions come from this Board and if you have a split decision which they almost had at last month’s meeting where the applicant could have theoretically appealed saying the Board was delaying their approval of putting in the applicant’s pool. He asked if there are multiple decisions can you say you believe the Board’s decision is wrong and do you

have the right to appeal any decision by this Board. J. Szot said if you believe the Board's decision is wrong you have the right to appeal. M. Laliberte said the Board last month gave the applicant a conditional approval and maybe the applicant felt they wanted a full approval. B. Petrin said, "You believe the Board's decision is wrong" is up for interpretation. Chairman Chivers said they could use the wording you have the right to appeal. "Discussion ensued. It was stated conceivably anyone could repeal a decision. The state land use book was consulted.

B. Petrin said some of the wording is out of order as a paragraph before this the last sentence reads, "*You and all other parties will be invited to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted*" and the next paragraph it talks about decision then back to appeal and felt this sentence should go with the other paragraph about appeal.

J. Szot read from the handbook and said so if you are not directly involved you have no standing. Chairman Chivers suggested removing the sentence B. Petrin pointed out. J. Szot said they are telling an applicant how the Board works and as an applicant they have the right to appeal the decision. Chairman Chivers suggested putting them together and as an Applicant you have the right to appeal any decision by this Board with respect to their case. It was agreed to move the sentence about appeals and put it with the other one about appeals. J. Szot read said maybe instead of saying the decision is wrong; they disagree with the decision of the Board and have the right to appeal.

After a lengthy discussion the following is how page 13 Appendix 1: A Procedure was agreed upon and shall read:

APPENDIX 1: A

PROCEDURE:

The Board meets and holds public hearings on the fourth Tuesday of every month. To insure that your appeal may be heard by the Board at its next regularly scheduled meeting, your completed application (including all exhibits and lists of abutters) must be received at least fourteen days before the date of the next meeting. If your completed application is received less than fourteen days before the Board's next meeting, the hearing on your appeal may be delayed until the following months' regularly scheduled meeting.

After you have submitted your application, accompanied by all other forms and paid the necessary fees, a public hearing will be scheduled. Public notice of the hearing will be printed in a newspaper of general circulation within the town, posted outside the Selectmen's office and mailed to you and to all abutters by certified mail at least five days before the date of the scheduled hearing. "*You and all other parties will be invited to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted.*" (move to first sentence in new paragraph #5.)

After the public hearing, the Board will reach a decision. You and all other parties to the case will be sent a notice of decision.

~~If you believe the Board's decision is wrong, you have the right to appeal.~~ **Any person affected has a right to appeal this decision made by the Board.**

The motion for rehearing must be received within 30 days of the Board's decision. The motion for rehearing made in the form of a letter, must set forth all the grounds by which you claim the decision is unlawful or unreasonable. The Board may grant such a rehearing if, in its opinion good reason is stated in the motion. Whether or not a rehearing is held, you must have first requested one before you can appeal to the courts. ~~When a rehearing is held,~~ **During the rehearing, the same procedure is followed as for the first hearing, including public notice and notice to the abutters. See RSA Chapter 677 for more detail on rehearing and appeal procedures.** (move the last two

sentences to end of new paragraph #5).

The following paragraph #5 is new (see notations from other paragraphs):
You and all other parties will be invited to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted. When a rehearing is held, During the rehearing, the same procedure is followed as for the first hearing, including public notice and notice to the abutters. See RSA Chapter 677 for more detail on rehearing and appeal procedures.

If your appeal is approved by the Board, you will have one year to implement the use permitted by your variance or special exception. If you have not undertaken the use granted by a variance or special exception within one year, your variance or special exception will expire.

Page 14

Appendix 1:B Checklist

5th item

Add at after scale, ~~“on graph paper provided”~~ After discussion this was deleted.

8th item

Update filing fee from “\$25.00” to “\$50.00”

Update abutters list “\$6.32” to “\$7.49*”

Add at end: “*Noticing fee subject to postal rate changes.”

9th item

Change “20 days” to “Twenty-one days”

Add Item #12 on checklist: “Applicant will be responsible for advising the town if they are within the quarter mile Lamprey River watershed corridor.”

Page 16

Appendix 1:D

Change “\$6.54” to “\$7.49*”

Change “\$50.00” to “\$75.00”

Add at end: “*Noticing fee subject to postal rate changes.”

Page 19

Appendix III

Add after DECISIONS:

“CONDITIONS”

Other Business

No other business was discussed.

Adjournment

MOTION: Motion made by R. Howe, seconded by B. Petrin to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 8:00 pm.

Respectfully submitted

from recording,

Sharon Robichaud Recording Secretary