

**CANDIA PLANNING BOARD
MEETING MINUTES OF
December 4, 2019
APPROVED**

PB Members Present: Rudy Cartier, Chair; Robert Jones, Alt; Brien Brock, BOS Rep.; Mark Chalbeck, V-Chair; Joyce Bedard; Josh Pouliot

PB Members Absent: Mike Santa, Alt.; Scott Komisarek; Judi Lindsey

Audience Present: residents -Judith Szot, Matt Cobb, Max Nicosia & Andilee Colprit (676 Old Candia Rd.)

*Rudy Cartier, Chair called the PB meeting to order at 7:00pm immediately followed by the Pledge of Allegiance.

The 4 Corners Village District:

R. Cartier states that at the 11/20/19 PB meeting, the Board closed the public hearing and did some deliberating, but still needs to make a formal vote to have the amendment put onto the Town Warrant.

B. Brock made a **motion** to submit the proposed 4 Corners Village District Zoning Amendment for the Town Warrant. R. Jones **seconded**. **All were in favor. Motion passed.**

R. Cartier asks the Board to refer to the original 4-page Draft of the 4 Corners report from Carol Ogilvie (see website for review), that the Board has been working with as a guide. This information was submitted to town counsel for review in order to make the amendment ballot ready. The original 4 pages have been narrowed down to 1 page, with the potential of further reduction to a single paragraph, which covers the legal perspective of the warrant article. The Board further discusses the importance of more descriptive details and the addition of another paragraph with language that highlights the purpose and essential information of the District, so the community has a more informed concept of what they will be voting for. The Board agrees to include an additional paragraph and will submit as such.

R. Jones notes that with the possible assistance of either SNHPC or an outside source, a possible infographic will be made available to show what the potential of the 4 Corners District could look like. The Board will leave this to the sub-committee to work on and obtain a contract from the source to have approved.

The Board agrees on the language for the amendment. R. Cartier will work with the Land Use Secretary to make sure all required aspects are included and provide a copy for review to the Board no later than the next scheduled meeting on 12/18/19.

Minutes -October 29, 2019:

The Board agrees to defer the minutes to the next scheduled meeting date.

Minutes -November 18, 2019:

R. Jones made a **motion** to accept the minutes with the correction that J. Bedard came in late to the meeting but was in attendance. J. Bedard **seconded**. M. Chalbeck & J. Pouliot **abstain**. **Motion passed.**

Minutes -November 20, 2019:

J. Bedard made a **motion** to accept the minutes with the correction that Carl be changed to Carol in line #28. J. Pouliot **seconded**. R. Jones **abstain**. **Motion passed.**

Case #19-006 (Final):

Applicant: Armand & Susan Hebert, 2001 Cedar Street, McKenzie, TN 38201; Owner: same; Property Location: Currier Road, Candia, NH 03034; Map 402 Lots 51 & 57.

Intent: MAJOR subdivision. To consolidate the two existing lots (402-51 & 57) and then subdivide into 5 frontage lots for residential use.

Applicant requests a continuance for at least 1 month. The case will be added to the January 15, 2020 PB meeting agenda.

R. Cartier will go before the BOS on 12/9/19 to request an additional 90-day extension for the Board to make an application decision.

Review Zoning Ordinances for potential Warrant Articles:

R. Cartier reads and discusses revisions with the Board the 17 proposed Zoning Ordinance Amendments that will go to the ballot. He opens the meeting up to public comment or questions.

M. Cobb notes that from an agricultural standpoint, the Commission and community would rather have open and permitted land with out any restrictions, but the listed amendments are a good compromise for the majority at this time.

R. Jones asks about the idea of having the Ag. Comm. part of the decision-making process with the ZBA. B. Brock notes that counsel has advised that there is enough in the state statutes to protect agriculture. They can go as an advisory group to the meetings to provide recommendations as part of the community and their expertise, but not on a legal basis. M. Cobb states that hopefully other Boards in Town will continue to work with the Ag. Comm. in the future.

J. Pouliot made a **motion** to change the 3 acres on Zoning Amendment #16 to 2 acres. B. Brock **seconded**.

M. Chalbeck **opposed**. **Motion passed**.

J. Pouliot states that under Zoning Amendment #12 -Home Service Contractor, the #4 criteria item for nuisance seems vague. R. Jones notes that was deliberate, so the BI has some discretion on a case-by-case basis. R. Cartier also notes that the community has the right to appeal those decisions and that works as a checks and balance system.

M. Chalbeck notes that he has issues with #6 & #7 criteria on a personal level, but regardless, would still put the amendment to the voters and let them decide what they want. J. Pouliot states that the visibility issue can be questioned from a season perspective as well. What you may be able to see in the winter, will conceivably have coverage through the warmer months. B. Brock notes that all of these are compromise of what we originally had. R. Jones notes that though the criteria are independently listed, it's unlikely to have a violation of others if #4 hasn't first been committed and reported.

R. Cartier notes that the Road Agent, Dennis Lewis had mentioned the "fairness doctrine" and someone who works for outside company can park his/her truck on their property but someone who owns that truck cannot legally do that.

J. Szot says she was thinking about this truck thing and states that people who drive buses, go to the place where they store the buses, they leave their vehicles, drive the buses and park the buses there and come home. They don't have to demand trucking. They could keep there trucks there if they were no allowed to keep them in town. You drive to work, you pick up your truck and you go to wherever you're going. I don't understand why that's an issue. If you need a truck for work, then you drive to work, and you pick it up and you come home. R. Cartier says a lot of people allow their employees to commute with their vehicles, even the school buses, I know that some people park the school buses at their house. J. Szot says she understands that but if the Town doesn't allow it, then they're going to go and drive to wherever they work and pick up their vehicle and go. J. Bedard notes that the Town does allow it. R. Cartier states that the Town does not have an ordinance that says you can't have a work vehicle in your yard. In here now it says, you can't have one that you own and park in your yard. J. Bedard states that it's because you're running the business from your house and that's the difference.

J. Szot asks what machinists do besides manufacture things? R. Cartier states that some repair items that do not manufacture the equipment but manufacture a machined part and that is not a manufacturing operation. J. Szot says they manufacture a part so that's manufacturing even though they're not putting a big thing, they're manufacturing something. So even if they're making bolts or putting threads on something and selling like 8k of them, they're manufacturing something. So, this says basically they can't make those bolts. J. Bedard says, from their home. J. Szot notes that it says machinists are considered a home service, but she doesn't know how machinists are a home service contractor. They are allowed to have a business in the residential area, but they can't manufacture anything. Or how about a carpenter who has a project where he has to make something. My husband built nurses' stations for Concord Hospital and he manufactured them at our house, and he couldn't so that if he had to build something. It says here you can't process materials, so if you can't bring wood and turn it in to something, I see contradictions here. R. Cartier states that right now you can't so any of it. J. Szot says there are probably a list of 63 or 64 people who were doing this in a town that has somewhere between 1,700 and 1,800 houses. You're talking about less than one half of 1% of the population that's going to effect 99.5% of our population. So, it allows arborists. Does that mean a guy who's got a huge crane because he takes down trees, that he gets to park that crane in his backyard because he's an arborist? Or you've got excavation contractors, so the guy gets

to have a bulldozer and a backhoe that he parks in his yard? That's not home service contractors. An arborist is not, that needs a different definition. Home service contractors are plumbers, electricians and carpenters and yes we have a lot of those people and they should be able to work out of their homes, but some people who have class 8 vehicles, 6, 7, & 8 vehicles, are not the same contractor with a ladder on his roof as a tractor trailer. I think that if you want to protect or allow the home businesses, excavation contractors are not home service contractors and arborists are not home service contractors. What this does is makes every single residential property in our town mixed use. We no longer have residential, no longer single family residential, you have mixed use because any person can come in and put those big trucks on residential properties and they are allowed to do it. So you got to ask yourself, do we want to deal with the situation that we have and correct it or do we want to allow this for everyone because this ordinance changes the basic structure of our zoning ordinance and makes everything mixed use. Just like we no longer have single family residential. The State took care of that with accessory dwelling units, so there is no longer such a thing as single family residential because every single-family home can have an accessory dwelling unit. This changes basically the whole structure of the zoning ordinance. R. Cartier says it does, and that's what counsel had referred us to before. That's why we narrowed things down, for example, when you're talking about 6 or 7 vehicles, no. One of the things we looked at was you can only have the owner of the premise and 1 other person. J. Szot clarifies that she said class 6 or 7 vehicles not 6 or 7 vehicles. The largest vehicles are class 8 vehicles, bulldozers. R. Cartier states that right now there is no prohibition against someone parking a tractor trailer at their house if they work for a company outside of Candia. J. Szot says if our zoning ordinance said you couldn't have it, they would have to go someplace and get their truck and go to work. R. Cartier says so what you want us to do is outlaw that in town. J. Szot says no I don't think they belong in residential. I don't think these big trucks belong and it doesn't matter who owns them, they don't belong in the residential area. R. Cartier states that if someone works for a private company and they drive the vehicle home, there is nothing that prohibits that in town. J. Szot says unless you write an ordinance that says you can't have it. R. Cartier, J. Bedard and B. Brock all state that the Board is not going to do that. R. Cartier states that would create chaos for any of the small contractors, carpenters, electricians, etc. J. Szot states that they drive class 2 vehicles. B. Brock states that they are not getting into vehicle size. J. Szot says you need to. B. Brock states that he doesn't agree with her. He goes on to say, this is a town that represents blue collar, the guy that does the construction that you say is not a home service contractor, yet if you need your septic fixed, he's going to come to your home and fix your system with a backhoe and probably a dozer and a dump truck. To me, that's still a home occupation contractor (R. Cartier clarifies home service contractor), a small-time guy, and that's what we are in this town. J. Szot states that there are like 63 people in town. B. Brock states that we don't mind encouraging that type of livelihood in this town. J. Szot says then that goes against the MP. She reads a couple statements from the MP, noting the small-town charm, its appeal as a bedroom community and its rural character (see website for review). B. Brock asks what's wrong with the rural character with the guy with the dump truck and bulldozer in his backyard? That to me is pretty rural character. What do you call a bedroom community then? J. Szot says a bedroom community is a residential community. This is right out of the MP. M. Nicosia states that it is very difficult for him to speak without his lawyer present. That's kind of unfortunate that's how things have become. Made to feel so...I'm not trying to start any arguments. I'd like to point out a couple different things and it's not to start an argument. Somebody had said in meeting minutes Judith, that Judith had spoken about her husband that owned a contracting business. The meeting minutes, typed meeting minutes, were changed. So, if you go back in the audio, her contractor husband, she demoted the business as a small truck and a little trailer and it wasn't really a business, and it is. I was a contractor half my life and I know all about that. Secondly, in the meeting minutes also, if you go back to a couple of the originals when my case started, Judith and the other Board members had spoke about other larger companies, and I hate to use his name but it was brought up by one of the Board members (Ingrid), Paul Valley. He's a contractor in town, he has 20 acres, he's got a 10k sq. ft garage, has a couple dump trucks, excavators, dozers, machines and all kinds of stuff and I think he should be able to have the right to continue on as well. They said he was fine because he had so much land that you couldn't see his stuff and it was out back. Technically you can see it even during the summer months, but he was ok because he had a lot of land. So I do want to commend all of you that have been working on this, and there are a lot of differences and not everyone sees eye to eye. I think you all have put in a ton of work regardless of the outcome of everything, regardless of how the town votes on it. You guys have really put in a ton of work for this and I know that it kind of stirred up from me and my case. I tried to approach everything very

calmly and professionally and came to speak with the Board (ZBA) and unfortunately it all came to this and I do apologize for that. J. Pouliot asks what he would like to see? M. Nicosia states that he has so much to say and he is a very vocal person and tries to say it in a professional manner, but honestly with everything that's transpired through this town and the way that I was treated from the start. Not the very 1st meeting, the 1st meeting was very cordial, after that. I don't like to speak without my attorney and that's how this town has made me feel. There are a lot of great people in this town and there a lot of hard working that are hiding in corners and are afraid of this whole situation. I've been approached by many of them and it's a shame. There are so many people that just want to do their job. J. Bedard wants clarification that this was not before the PB and M. Nicosia says it was the ZBA. He notes that Dave Murray has been fantastic with him. R. Cartier notes that it goes back over a year. M. Nicosia states that it wasn't everyone but some of the ZBA members. It's been very unfortunate. He states that he wanted to be a part of the discussions for this year's amendments and with his schedule he hasn't had much time for that, and he also feels very uncomfortable doing any of that. R. Cartier states that there are current legal things going on right now and the Town is also involved so we have to respect that. M. Nicosia states that he followed the process that he was told after going before the BOS and because of that, it's continued. J. Pouliot states that the intent of this amendment is to make the home servicers legal, so they don't have to hide. So, if this effects you, I'm trying to get your opinion. M. Nicosia states that it effects him greatly. He could lose everything. R. Cartier points out that this is going to be an accessory use to the primary use of the property. The reason that is in there is so it can't be turned into a fully commercial operation. When it gets to the point of undue nuisance, processing materials or manufacturing activities, that gets to commercial an operation. The question becomes is this still an accessory use or a primary use? B. Brock notes that this is not perfect. R. Cartier states that all of the cases would have to be evaluated by the BI. J. Pouliot says, if there's a complaint correct? R. Cartier says no. Everybody that's currently doing this or wants to come in and do it, has to get a Residential Use Permit. So, the BI has to go out to each one of these that would apply to this and go through the criteria and determine whether that operation meets the intent of the ordinance. M. Chalbeck says so as soon as this is passed, all the people that are doing these things have to come in and get permits. R. Cartier notes that the Board discussed this in great depth because M. Chalbeck brought up a good point that anyone that's currently doing it should be grandfathered. How do we grandfather them if they don't come in and tell us who they are? B. Brock notes that he questioned how aggressive that process would be? J. Bedard asks if they are grandfathered or not and R. Cartier states no, currently everyone is in violation. The Board further discusses the planning regulations and how you cannot grandfather someone in these cases since it is not known for a fact if anyone has been doing these operations since before the regulations came into play. J. Szot states that her and Dave went through the list that M. Nicosia provided and most of the people were legal. J. Bedard instructs J. Szot to identify herself and ask to speak if she has something to say. R. Cartier notes that everyone would have to come in unless the operation predated March 8, 1960. This is the date that the original ordinance went into effect. If they were in operation before 3/8/1960, they could keep going as long as it was continuous operation. M. Cobb asks if the Residential Use Permit, for accessory uses, that does not apply to accessory agriculture in the residential area? B. Brock notes that is totally different and R. Cartier notes agricultural is covered by State Law and is already defined. J. Szot states that there was a period of about 15 or 20yrs when home service contractors were allowed and then the ordinance was rewritten (possibly late 80's early 90's), and that section for Home Contractors was left off. Some people came in and were legal at the time they did what they did. So, most people who were listed, were legal because they came in under that time. Why that section was left off the ordinance when it was rewritten, we don't know but there was a period when they were allowed and a whole section referring to it and for some reason it was taken off. R. Cartier says so what we're doing is bringing that back. It was allowed up until the 80's or 90's? J. Szot states it was late 80's earlier 90's. R. Cartier states then why should we penalize someone who started their business in 1993 when someone else has been able to do it when it was taken out for a reason no one knows, and we are putting it back in. R. Jones notes that he feels that goes back to the idea that M. Chalbeck had about people being grandfather in. But once this passes, they won't be grandfathered in again? R. Cartier states that is true and there could be a group that is legal, but we don't know for a fact who they are. The Board discusses the potential of a list that could be legal based on the information that was looked into by J. Szot and D. Murray. R. Cartier states that the important factor is to get the ordinance passed, get it back in place and identify everybody whether they're pre or post 1993 and have everybody on solid ground. If the BI identifies someone that

comes in has been in operation during the predated years, he can possibly gather additional proof and can cover those people and cover anyone after that piece got pulled out.

J. Bedard reads #3 of the criteria for the amendment and notes that there are business in town that violate that and what happens to them? R. Cartier asks when did they start? He then states that they can't do it now and can't do it after because it's illegal. R. Jones notes unless it was a potential 1980's business and R. Cartier confirms that idea. J. Bedard notes that some people have been doing this and have many, many acres and no one will complain. R. Cartier states that is a commercial operation and no longer an accessory use if they're running a full-time business. There can always be exceptions for pro and con about this, but as a Board, what we have come up with is a reasonable compromise in order to level the playing field. To protect the Town from over commercialization as well as unduly influencing someone's ability to make a living in town. Hopefully we've got something that's a starting point and if we find it needs to be amended, we can do that. M. Chalbeck says put it to the voters and let them decide. J. Bedard states that if it is voted down, nothing changes. R. Cartier says no. If they vote this down, the BI has to start enforcement actions against anybody who was not in business prior to when it was taken out of the ordinance. J. Pouliot says that is what's scary because the word reasonable is used and he hasn't lived in town long enough to know the "65 people". If more of them than not have more than 1 employee or manufacturing activities, we're opening a whole can of worms. R. Cartier says we are, but as he said before, right now the BI has to start enforcement actions against all of them. This is a compromise to determine if the individual situation is still a home services operation and if it's not, they will need to go into a commercial area of town and run their business. It's to get the really small businesses in here and give them a starting point and once that grows, they can move into commercial property from there. J. Pouliot notes that he worries about the impact of the neighbors. If the business isn't in an earshot of someone, why are we making them stop? R. Cartier states that we can find examples for everything. J. Pouliot states that he would have to rely on the BI and other people that know those 65 people. B. Brock states that the BI was specifically asks if he was comfortable with making a lot of these decisions based on these criteria and he was. Understanding that next year there will probably be issues that come up that may need clarification. Some of these may need to be changed to accommodate that because I agree with site specific. Someone that has a lot of land and nobody's around, the likely hood that somebody's complaining is probably nil. R. Jones states that it isn't about a complaint though. We don't have anything about site specific in here. B. Brock says no we don't, but it could become an issue. J. Pouliot asks if we can make an exception if someone doesn't meet the criteria? B. Brock states that may be something that needs to be legally clarified and it will have to wait until next year to do that.

M. Nicosia states that he can appreciate the comment about the 1 employee. As some know, he had 2 employees and 5 trucks, 2 didn't operate and 3 did. He told the Town he was going to sell his other trucks and he did and also got rid of his employees like he promised. With that being said, he knows that most of the companies operating in town have more than 1 employee and will take an extreme hardship for you to dismiss their other employees. I'm suffering greatly, but I don't think it's fair unless they have...but they will take a huge hit on trying to survive. It will make that nearly impossible for them. J. Pouliot asks numerous people and M. Nicosia says more than numerous. More than $\frac{3}{4}$ of that list have multiple employees. R. Jones says that is what his question was. 65 now are not in compliance. When the new one goes in probably....R. Cartier states we don't know. We need to get a starting point and determine if it would be reasonable to change it from 1 additional employee to 2. But then there's a question of why not 3 or 4? At some point we have to say no, and they need to move into the commercial zone. There is plenty of commercial property out there. We could be encouraging commercial development by this as well. If someone gets to a certain point and has a couple employees and trucks, they can see it as well and is time for them to go into the commercial zone. This is only a start, but if we get into this and see it's a huge undue hardship for a lot of people, then we need to take another look at it. And look at it from a standpoint is the hardship on someone that's a microbusiness or larger? Is that hardship on them the problem of the Town or is it their problem that they need to think about going into commercial zoning?

A. Colbrit states that she has researched the Town of Candia and about 42 of those companies on the list have big trucks such as theirs. If they are all going in front of a Board and hitting criteria, there's a lot of homeless, hungry people at the end of the day. That is scary and I never wish what we're going through on upon anybody. I want to throw that number out there and it's not just 42 companies, that's their families, employee's families and that's huge.

R. Cartier states he wants to tell everyone about the process of what the Board is doing. In this particular meeting, the Board is discussing this as an internal discussion. As Chair he can allow public input or not. In this particular situation tonight, there are only 4 individuals in the audience. On 12/18/19 there will be a public hearing on this so a lot of the questions we are discussing as a Board internally are valid concerns. Some of the other information we are getting from J. Szot and from you in the commercial world are good comments. What we as a Board are very cognizant of is listening to public comment and that's why I allow it in public meetings and not just public hearings. My suggestion is that we will have a public hearing on this on 12/18/19, you've done research on 43 companies, we've heard 63+ companies and there's probably many more out there. The people that are effected by this the most, whether they be residential only or small commercial operations at their residences should come to the public hearing. We will base our judgements on what the people want. We know there's a problem and have a potential solution. It's not perfect but we need to get more input and that's what the public hearings are for. We take that information, closes the hearing, the Board deliberates and decides if things need to be adjusted accordingly. If significant adjustment is necessary, an additional public hearing will be held.

J. Bedard asks why we are doing this now since it's been going on since 1960? R. Cartier states that at the current time the Town has a legal aspect going on because of the lack of this ordinance not being in place and therefore the lack of enforcement behind it and has to be addressed.

J. Bedard made a **motion** to present the Draft 2020 Proposed Zoning Ordinance Amendments dated November 20, 2019, with the one exception right now from the 3 acres on Zoning Amendment #16 to 2 acres and go to a Public Hearing on December 18, 2019. B. Brock **seconded for discussion. Motion passed.**

B. Brock asks if at that point, are there still changes that can be made and R. Cartier confirms that. He notes that if there are substantial changes made, an additional public hearing will have to be held.

M. Nicosia asks for confirmation that public comment will be heard at the 12/18/19 hearing and R. Cartier confirms this. M. Nicosia asks if there will be sufficient time for the hearing based on past hearings and R. Cartier confirms this. R. Cartier notes that there will be guidelines for public comment, and he will go over that before the meeting.

MOTION:

J. Bedard **motioned** to adjourn the PB meeting at approximately 8:47pm. J. Pouliot **seconded. All were in favor. Motion passed.**

Respectfully submitted,
Lisa Galica
Land Use Secretary
cc: file