

CANDIA ZONING BOARD OF ADJUSTMENT
Minutes of July 28, 2015
UNAPPROVED

Place: Town Hall; Meeting room

Call to Order: 7:00 pm

Members Present: *Boyd Chivers, Chairman; Judith Szot Vice Chair; Ingrid Byrd; Mark Laliberte Alt.*

Members Absent: *Bob Petrin; Ron Howe*

Pledge of Allegiance

Chairman Chivers asked Mark Laliberte to sit for Bob Petrin.

Approval of Minutes June 23, 2015

Members Sitting for Approval of Minutes: *B. Chivers, J. Szot, I. Byrd; R. Howe, B. Petrin, M. Laliberte.*

MOTION: Motion made by I. Byrd, seconded by J. Szot to approve the minutes of June 23, 2015 as presented. All were in favor. The motion carried with a vote of (4-0-0).

Case 15-608 Applicant: Aaron & Tanya Roux, 30 Tower Hill Road Candia NH 03034; Owner: Same; Property Location: 30 Tower Hill Road; Map 411 Lot 078; for a Special Exception under Section 15.04 E: Accessory Dwelling Units: to permit the construction of an Accessory Dwelling Unit in a Residential Zone. Aaron Roux, applicant and Steven Scholes, father in-law were present. Chairman Chivers asked if the abutters were timely notified and it was confirmed they were and none were present. A. Roux said they want to construct an accessory dwelling over a 3 car garage attached that will be connected to the house by a breezeway. He said when the house was originally built it was approved to have a 2 car garage but it was never built. He showed the original document from around 1990 with the garage showing the setback at the time on the side was 50'. He said they are adding 16' more feet to the proposed 3 car garage which would put the setback at 34' on the side. Chairman Chivers confirmed that the front set back will still be a little more than 85' and saw no issues with the back setback. He asked how many square feet the in-law apartment will be. I. Byrd said the garage is 24' x 36'. A. Roux said you can't go by those dimensions. He said the accessory dwelling is about 600 sq feet. Chairman Chivers said but you are building it on a 24' x 36' platform. A. Roux said there are knee walls, dormers and an unheated staircase with 6" on each wall that is not heated. Chairman Chivers asked him to calculate the heated living space. I. Byrd said that is not how the tax collector figures sq footage; she said they calculate it is the outside. Chairman Chivers said for a purpose of an accessory dwelling it is the heated living space. J. Szot said 24' x 36' is 864 sq ft. A. Roux said he had given the Board the drawing of the inside of the accessory dwelling with the original packet showing the in-law. Copies were made and given to the Board. I. Byrd said the stairs are part of the living space as you need them to get up and down. A. Roux said he was told the 600 sq ft was heated living space and the stairs are not heated. A. Roux calculated the sq ft of heated living space.

D. Murray, Building Inspector said he can clear this up. He said what he calculated was 620 sq ft on the plan showing 4' for a storage wall and 3' for the stairs and asked if the stairs are going to be lined to 4' which would make it 30' x 20' which is 600 sq ft. He said there are 3 dormers 3' x 6' which are heated but would not call this living space. Chairman Chivers said that is 54 sq ft. I. Byrd said he can use it. D. Murray said it is more of tunnel and would not consider this living space. I. Byrd asked if they could put storage in the knee walls and A. Roux said no. Chairman Chivers confirmed the stairwell is unheated, and the dimensions are 20' x 30' which is 600 sq ft plus three dormers at 54 sq ft. I. Byrd said how you are going to lose 4' at what is the original 26 x 34 and proposing to lose 6' on one side and 4' on the other side. Chairman Chivers said the knee walls are 6' and the stairwell is 4'. M. Laliberte asked if the dormers

had a door to a mini closet would that count as heated living space D. Murray said it is still heated. I. Byrd said you are storing belongings in order to live. I. Byrd asked D. Murray for an explanation of what a knee wall is and D. Murray said the roof comes down on a 12 pitch which comes down to nothing and normally you have a 4' knee wall but in this case it is going to be a 6 knee wall which is a dead wall. Chairman Chivers drew I. Byrd a picture of a knee wall and explained that a 6 foot knee wall means a 6 foot man can stand there, all the space behind the wall is unheated space where insulation is put and that is how they shrink it to 600 sq ft as this becomes unusable space. D. Murray said normally it is 4 foot knee wall and they came in an additional 2 feet. S. Scholes said they put dormers on to match the house. Chairman Chivers said what they are talking about is this useable space. Chairman Chivers asked if D. Murray had identified any other potential issues. D. Murray said he wanted to verify the boundary on the left side to see if the house was built in the correct spot as the plan which would then make the numbers correct. S. Scholes said he measured and there is well over 34' from the boundary to the edge of garage. J. Szot asked if the garage had a dormer in the back and it was confirmed it does which answers her question as to how they get everything they show on the drawing back there. Chairman Chivers said I. Byrd asked if there is an 8'x 12' deck on the back. A. Roux said it could be accessed through the slider and there is a set of stairs off the deck. I. Byrd said they have turned people down who wanted to put decks onto their in-law apartments which she believes one they turned down was on Crowley Road. Chairman Chivers said she would have to reference the case and look at the minutes because he said they have never included a deck in the 600 sq ft of living space. I. Byrd said the Board has said no on the deck because it would have increased the living space. S. Scholes said the deck is not heated. D. Murray said he likes the second means of egress of the deck saying it is a good idea. J. Szot said the deck is a non issue and M. Laliberte agreed.

Chairman Chivers asked if the plan could be reconfigured to come up with 600 sq ft to conform to the ordinances. A. Roux said they can reconfigure it. J. Szot said the problem is it doesn't seem like a lot to give you the other 54 sq ft but it would set precedence and the next applicant comes in and they have 660 sq ft and the next one more. She said the way the law works is once they go beyond what the ordinance of 600 sq ft and change it then they can never justify going back to the 600 sq ft again. She said so if they stick to the ordinances at 600 sq ft they do not have any problems justifying that. She said they have turned people down for 20 sq ft more. She said if they wanted an accessory dwelling larger than 600 sq ft that would require coming in for a variance. He asked how he could do that and Chairman Chivers said they would have to have a compelling reason dictated by the shape of the building or some unavoidable hardship that would justify a variance. A. Roux said who voted on the 600 sq ft. I. Byrd said the town voted on this. Chairman Chivers said how it works is the Planning Board proposed changes to the Zoning Ordinances which go on the ballot at the town meeting every year and the town votes in favor or not in favor. S. Scholes said they can reduce the footprint down to 24' x 34' which will be less than 600 sq ft and it would be done by reducing the foot print two feet and he showed where on the plan he would do this. Chairman Chivers said the plan you submit to the Building Inspector for the building permit will be the revised plan showing 600 sq ft or less of heated living space. I. Byrd said they can consider a conditional approval based on revised plans. I. Byrd said she noticed the staircase going upstairs. A. Roux said the picture was to show what the addition would look like with the dormers.

Chairman Chivers said hearing no more questions for applicant closed the public hearing to deliberate. Chairman Chivers asked I. Byrd to read the special exception criteria under Section 15.04E. She read, "*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;*" It was confirmed one bedroom. "*2. Adequate sewer and water shall be provided. One septic system shall serve the entire property;*" J. Szot asked what was happening with the septic system if adding another bedroom as the septic system is approved for a certain number of bedrooms. D. Murray said they would either have to enlarge the septic system or eliminate one of the bedrooms. A. Roux said they will delete one of the bedrooms one being currently used as a craft room. "*3. There shall be a maximum of 600 sq ft of heated living space in the accessory unit;*" The Board was in agreement. "*4. Onsite parking for one additional vehicle shall be provided;*" The Board was in agreement

there was sufficient parking. “5. *All existing setback ordinances must be met.*” D. Murray said he is going to verify that one measurement on the side. I. Byrd maybe make a note that this would be a condition. The Board was in agreement “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;*” I. Byrd asked if the garage been built and A. Roux said no and will be attached to the house with a breeze way. “7. *The residential character of the area must be retained;*” The Board was in agreement. “8. *Density requirements of Article 15.04c 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.*” The Board was in agreement. Chairman Chivers said he has met all the criteria for the special exception.

Chairman Chivers asked J. Szot to read the special exception standards under Section 15.02. She read, “*Special Exceptions shall meet the following standards: Standards provided by this Ordinance for the particular use permitted by Special Exception; 1. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials*”. Board was in agreement. “2. *No detriment to 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;*” Chairman Chivers confirmed no detriment and the Board was in agreement. “3. *No creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity;*” The Board was in agreement. “4. *No excessive demand on municipal services, including, but not limited to water, sewer, waste disposal, police and fire protection, and schools;*” The Board was in agreement. “5. *No significant increase of storm water runoff onto adjacent property or streets.*” The Board was in agreement.

Chairman Chivers said they have met all the specific standards in 15.04E & general standards in 15.02 and asked for a motion to grant a conditional special exception. J. Szot said the septic system is a real sticking point for her. She said they have 3 bedrooms and they are adding one and taking one out of use. She said the applicant is a young man and conceivably may have children and now you have other bedrooms being used. She said perhaps they may need to put a stipulation in that if that third bedroom is used then they have to redesign their septic system. Chairman Chivers said they will stipulate that there are three bedrooms and if they increase the number of bedrooms then they have to have the system redesigned. J. Szot said statements made by the applicant before the Board become legally binding. Chairman Chivers said this becomes a condition that attaches to the property and continue with the property even if you do not live there. I. Byrd said if you go to sell the house it will be a 4 bedroom house and you will have to deal with that somewhere down the road.

MOTION: Motion made by I. Byrd, seconded by M. Laliberte to grant the special exception under 15.04E with the following conditions. 1. Heated living space of the accessory use portion not to exceed 584 square feet; and 2. Submission of an amended floor plan reflecting the approved dimensions; and 2. Acknowledgement that the total number of bedrooms for the entire structure, including the accessory use portion, is limited to three (3) and that any increase in the number of bedrooms beyond that number will require an approved septic design and installation; and 3. Confirmation by the Town of Candia Building Inspector that the structure conforms to the setback requirements. The motion carried with a unanimous vote of 4-0-0.

Chairman Chivers told the applicants they will receive the NOD by Thursday. A. Roux thanked the Board for their time.

Case 15-609 Applicant: Linda Fletcher, 18 Depot Road Candia NH 03034; Owner: same; Location: 18 Depot Road; Map 408 Lot 86; for a Variance under Section 6.02 Table of Dimensional Requirements to construct an addition within the side setbacks and a Variance under Section 2.02b to enlarge a non-conforming use within a Residential Zone to permit the building of an replacement

home destroyed by fire in February 2015. Linda Fletcher, applicant was present. Abutter Harold French 22 Depot Road was present. L. Fletcher said originally her main purpose for coming before the Board tonight was to get a variance but since she made her application she has decided that she cannot afford to build the house after she received the builder's estimate. She said she needs to look at what her options are. She said she has been looking at keeping the property because she has her arts studio there and using that saying it has its own separate electric service and is heated. She said the art studio does not have plumbing, but just using as a work space, she doesn't see that as a huge issue. She said she would also like to keep a small garden in the country and then buy something in Manchester where there are properties that are reasonable which will give her a mortgage that would be much less and she would be able to pay off with the insurance settlement and perhaps find herself in a little better financial situation.

L. Fletcher asked if she does not build could she build at a later date when she retires or if she sells the property how is that affected as she knows it is only $\frac{3}{4}$ acre and does not meet current regulations. Chairman Chivers said right now you have a nonconforming preexisting and is a lot of record and after a disaster you have two years to rebuild on the same foot print or a different location but would have to meet all the setbacks. Chairman Chivers asked the Building Inspector if she sold the property would the successor have the same right and D. Murray said yes the rights would go with the property. L. Fletcher reiterated that even after two years that the property would still be buildable even though it is only $\frac{3}{4}$ acres as long as they met the setbacks. Chairman Chivers said they could build on the same setback within two years and if they wanted to build elsewhere on the property and is a lot of record forever. L. Fletcher said that is what she needs to know. Chairman Chivers said it is a lot of record confirmed by D. Murray. J. Szot asked if she could conceivably put a well and septic for the art studio. D. Murray said she had a working septic and leach field and well. D. Murray said putting a bathroom in the studio is an option. Chairman Chivers asked if she could convert the art studio into dwelling apartment to live in and would that be conceivable. L. Fletcher said it is 16 x 20 and has a second floor. D. Murrays said that is small for a single family and believes the minimum for a one family is 800 sq ft. He said it is conceivable to convert the art studio. L. Fletcher asked if she could push out the back wall for more space as she could not push the building out to side because that is where the septic and leach field is. D. Murray did not see an issue with adding on but she would need a special exception to add onto a preexisting nonconforming structure. Chairman Chivers said it is an existing dwelling and fixing it up is a thought. He said he can't speak for the whole town but that barn could be fixed up to a nice little dwelling. He said you have two years to build on the same footprint and if you want to build another house it has to be in another location on the property to meet setbacks and if you want to use the barn come see the building inspector and then come back to the ZBA for a variance to enlarge the barn if you wish. L. Fletcher said that sounds good. It was asked how far back the barn is from the road. M .Laliberte said if it is 130' from the road and proposed house the barn is about half way at 60' feet and that would be conforming but looking closer at the drawing it just makes conforming at 50'.

Chairman Chivers said if she does not want the original variance to withdraw her application. L. Fletcher formally withdrew her application. Chairman Chivers said let the record show that L. Fletcher has withdrawn her application and a Notice of Decision is not required and that the Board has discussed her options and the applicant will come back when she makes her decision. D. Murray said H. French may have had a question. H. French asked what was happening tonight and Chairman Chivers said the application was withdrawn and nothing will be done tonight and now she has to decide what she wants to do with the property whether eventually either rebuild the house or move the house or fix up the barn to live there and she has two years from February 2015 which is approximately 18 months. H. Frank asked what the legal distance from his well to L. Fletcher's septic was. Chairman Chivers said this is interesting because in NH if both are all on one property it has to be 75' between them but your well is close to her leach field and he was not sure if a well driller could put it in within 75'. H. French said being in town a long time when the land was passed onto L. Fletcher the well out front was filled in when she put the new well in the back that well should have been put up front and the leach field in the back of the property and now the leach field is too close to his property and he has a rubble foundation with no way to water proof it. He said the use and proper maintenance of a leach field should be grassed in and he said there is

carpeting and stone and she grows things on top of her leach field which he feels is not the proper use. Chairman Chivers said the leach field functions by draining water. H. French said doesn't some evaporate from the top and Chairman Chivers said some are designed that way but most perk into the ground. H. French said the leach field is less than 14' from his house. L. Fletcher said before she bought the house a new well and septic was put in. D. Murray said they have the approval from the state. J. Szot said the state had to have sent someone out to look at the septic when it was put in 13 years ago. H French said he never saw the state come out and never inquired to where his well was. J. Szot said that had to have been on the plan the state approved. L. Fletcher thanked the Board for their time.

Final acceptance of By-Law Changes

Chairman Chivers said this is the final acceptance to all the changes to the by-laws that have been proposed at the last three meetings. The changes are shown in red.

Proposed changes to the ZBA By-Laws in red

Page 3. Article IV:3 D. Add after alternates “, *in consultation with the Chairman.*”

Page 4. Article V: 5.Line 2 replace “~~3-weeks~~” with “*twenty-one days*”. Delete line three “~~news-Item~~” and replace with “*public notice*”

Article V:6. Line 2 After circumstances add “*by the Board*”

Page 5. Article VI: 2. Change “~~two-weeks~~” to “*twenty-one days*” Article VI: 6. Line 2 after “he” add “*/she*”

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.

Page 7. Article VII:B. 7. Line one capitalize **B** on boardLine two change “~~a~~” to “*at*”

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*”

Page 11 Appendix I:A 10th line change “~~conditions.~~” to “*criteria;*” Update 5 Variance criteria

Page 12 Appendix 1:A Add Special Exception Standards

Page 13

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 these two sentences to end of new 5th paragraph).

The following 5th paragraph 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”** 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 #12 check off item to end of 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”**

MOTION: Motion made by J. Szot, seconded by I. Byrd to accept the changes to the By-Laws. The motion carried with a unanimous vote of 5-0-0.

Adjournment

MOTION: Motion made by J. Szot, seconded by M. Laliberte to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 8:00pm.

Respectfully submitted
from recording,
Sharon Robichaud Recording Secretary