

CANDIA ZONING BOARD OF ADJUSTMENT
Minutes of April 26, 2016
APPROVED

Place: Town Hall; Meeting room

Call to Order: 7:00 pm

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

Members Absent:

Pledge of Allegiance

Approval of Minutes July 28, 2015

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

MOTION: Motion made by *M. Laliberte*, seconded by *I. Byrd* to approve the minutes of July 28, 2015 as presented. *B. Chivers, J. Szot, M. Laliberte, I. Byrd* were in favor. *Bob Petrin; Ron Howe* abstained. The motion carried with a vote of (4-0-2).

Case 16-610 Applicant: Christine Martel 610 High Street Candia NH 03034; Owner: Same; Property Location 610 High Street; Map 405 Lot 043; for a Special Exception under Section 5:02b-13 Kennel in a Residential District. It was noted that notices and abutters have been notified. David & Christine Martel applicants were present.

Abutters present None

Residents present Claudette Bessette 586 High Street, Candice Stamatelos 731 High Street

Chairman Chivers asked the applicant to present the case. C. Martel said she would like to have a kennel license from her home. She said nothing is going to change from what she is doing now, no boarding no grooming or anything else just to be able to have a license from her home from the State of NH instead of renting a place in Hooksett to have her kennel license with NH. She said she can sell up to 50 puppies from her home without a license but she wants to be licensed and she is licensed.

C. Martel said she raises Bernese Mountain Dogs and sells puppies. She said the law allows you to sell 50 puppies from your home and if you sell more than 50 puppies you have to have a license with state of NH which she has. She said the State know her dogs live at home here in Candia. I. Byrd asked her how many she was planning to sell from her home. C. Martel said it is always different. I. Byrd asked how many breeding bitches she had and C. Martel said she has 9 females and 5 males and some of her females are older and not used to breed anymore. She said she has been breeding since 1999 all here in Candia. Chairman Chivers said you cannot estimate the number of puppies every year. C. Martel said it is never the same she bred 4 females last year and none of them got pregnant and this year she bred 3 and they all got pregnant. D. Martel said you don't know ahead of time if you will have 2 puppies in the litter or 10-12 puppies. I. Byrd said are you planning on increasing from 9 females and C. Martel said she is not planning on increasing just want to be able to have her license at home so she doesn't have to pay for a commercial place in Hooksett so she would have to be approved as a kennel from the town for her state license from her home. She said she is coming forward and would have not been approved by her neighbor last year and now she is gone and now she has a chance to get her kennel license. B. Chivers said so you assume your neighbor would have objected.

D. Murray, Building Inspector gave a brief history, the Martels purchased the house in 1999, 2002 septic failure which they took care of. He confirmed with C. Martel that she was breeding back then. 2013

there was medical case that is irrelevant but the police did talk to some of your neighbors one being Mrs. Bessette and she was concerned with dogs defecating on her lawn and worried about being bit but he feels these types of dogs are pretty calm. At the same time May 17, 2013 Mrs. Packard was complaining about barking dogs and over the years there were multiple complaints from Mrs. McDuffie who is no longer their neighbor about traffic and out of state cars. He said you have 25 dog licenses with the town. C. Martel said she has more dogs than are what at her house. When a dog doesn't work out they sell or place the dog but they need a rabies shot for the dog and she vaccinates the dogs and she doesn't even have them. D. Murray asked how many puppies that had last year and C. Martel said she had 6 to 7 litters and she doesn't have to keep track because she is license with the State but believes she had 38 puppies. D. Murray asked how they remove all the dog manure and she said she has a dumpster with buckets and it is removed every 2 weeks. D. Murray commented that is good management practices. In 2008 they had a store in town but it didn't work out as economy got tight in 2008. Their Hooksett location is on Londonderry Turnpike and she has never had to use it only has it for her license. I. Byrd said please explain why you would have a Hooksett store and not use it in order to have a license. C. Martel because of the complaints to the state running a business and selling puppies she got the license and it stopped the complaints. She said again she never passed 50 puppies which are legal to sell from a home but decided to get a license with the state to protect her and stop the complaints.

C. Stamatelos said the state believed she was running a business out of her home and C. Martel said it was not the state that was complaining and C. Stamatelos yes I know but the state believed you were running the business out of Candia not Hooksett. C. Martel said the state knows that she has the dogs at her house. Chairman Chivers asked to have all questions directed to the Board please and to excuse the Board for a moment and the Board will get to her questions shortly. I. Byrd doesn't understand location in Hooksett while you are doing business in Candia and said it sounds like you are misleading the state. C. Martel said she had asked the state if she could rent a spot to sell any puppies over 50 she can sell legally from her home. She said the rules are that you can sell 50 puppies from your home property without being licensed. D Murray confirmed that the state is aware of this. C. Martel said the State comes to her home and inspects and the state knows the dogs are in Candia not Hooksett. Chairman Chivers asked even though you are in violation of Candia's zoning ordinances you were not in violation of the state. C. Martel said she is not in violation of Candia's ordinances. Chairman Chivers said are you not conducting a retail enterprise in a residential district and C. Martel said she is not. Chairman Chivers said if you are not in violation why are you here tonight and C. Martel said she wants to have her license with the state so could sell more than 50 puppies at her home if she wants not saying she will sell that many so she does not have to rent a commercial spot in Hooksett. She would like to have the license before they build around her home. Chairman Chivers said this application is timed to coincide with the development going in around you and you want authorization from this Board to have a kennel before you have residential neighbors that could possibly complain is that the strategy. C. Martel said not really the strategy just want to be doing what she has been doing for years. D. Murray said you are not planning to go over 50 puppies and C. Martel said no. D. Murray said this was looked into by the Town in 2008 before he was inspector there were complaints and it was looked into with them and with less than 50 puppies a year and less than 10 litters a year they did not meet the State's definition of a kennel and it was dropped. I. Byrd said you can't have puppies unless you have adults so does the commercial kennel list the total amount of adults you can have and D. Murray said it does not, the definition only speaks of puppies and litters. He read the definition of a kennel from the State, "*Any person, business, corporation or other entity that transfers 10 or more litters or 50 or more puppies in any 12 month period is a commercial kennel,*" which she doesn't go over.

R. Howe said if this is approved they would have a kennel license at their home in Candia in which case that would not stop her from having 50 dogs onsite once the license is issued. His concern is they already have had an issue with Pet-Agree when he was on the Board when they went through this with the noise issue with the dogs and neighbors complaining. He said where they are located is even more tightly settled than Pet-Agree. D. Murray said she is not looking for a commercial approval and doesn't want to go to that level. Chairman Chivers said once authorized she could. D. Murray suggested

they could put stipulations to never reach that level. Chairman Chives said that would be hard to enforce. R. Howe confirmed she lives on 4 acres. I. Byrd asked about kennels saying most people have an enclosed building on concrete with fenced in area for one dog. C. Martel said they do not have that her dogs have dog houses and large pens and 2-3 in each. D. Martel said there are 6 big pens roughly the size of meeting room and some larger and she has decks for them to go on. I. Byrd asked if they were planning on building more and C. Martel said no. She said she may have to change her pen configurations around to make easier access. B. Petrin asked if the state imposes square footage requirements in order to have a license. D. Murray said he does not know. C. Martel said that AKC comes and inspects a couple times a year and they have had a problem. J. Szot asked if they had a plot plan and where her house and neighbor's houses and dog pens are. C. Martel showed her drawing saying the dog pens are highlighted in yellow and pointed out the house, pool, and pool house and a horse trailer and pointed out her driveway.

Chairman Chivers said while they have the map in front of them he said the property that surrounds them is scheduled for a subdivision and asked what the configuration will be when complete when they put in an access road. The plan for the proposed subdivision to come forward next week at the Planning Board was shown. D. Martel showed the lot line triangle of the existing lot and how it would be made more regular and squared off and showed where the proposed road would be that would give her frontage on it. Chairman Chivers confirmed that when the subdivision is approved they would have two new abutters and 4 more abutters in back. I. Byrd asked for clarification of all pen configurations. D. Martel gave clarification saying for the pregnant dogs it is an 8 x 12 divided in half with decent size space to come in and be out of the weather. I. Byrd said a dog the size of a Burmese Mountain Dog 8 x 6 is nothing to brag about. C. Martel said they also have an invisible fence. Chairman Chivers confirmed that if the subdivision goes through that they would make the 25 foot setback and they do. The proposed Planning Board plan for a subdivision and Lot Line Adjustment was explained by the secretary and confirmed by D. Martel and showed where the Proposed Road would be when the developer come back later for the subdivision of the rest of the land.

I. Byrd said you are not going to run a kennel with nine dogs what is your goal in the number of dogs you are planning on having and does the State set a number of how many bitches you can have. C. Martel said there is not a set number and she is not planning on having more than 20 dogs no more than what she has now and I. Byrd said that includes females, males and puppies? C. Martel females & males.

D. Murray said he has spoken the developer so he would know what was going on and he had no problems saying he has been working with the Martels on the Lot Line Adjustment. Chairman Chivers said his concern is the people who will buy property there. He said if they approve this variance request they will have every right to raise and sell as many of these dogs as they want. What they have is a potential subdivision with 6 new house lots to be created in that area around the Martels who have been in business since 1999 and this it is 2016 and it is no coincident that they are coming in here to the ZBA before the subdivision goes before the Planning Board. He said once these lots get created and they get neighbors they will be affected by whatever noise or traffic the kennel will generate. C. Martel said they would have come here sooner but their prior neighbor would not have approved of the kennel and Chairman Chivers said what makes you think that the new neighbors would not be as opposed to this as Mrs. McDuffie was. C. Martel said it was not only the dogs it was everything else. D. Murray said the shared driveway has always been a problem. R. Howe asked about the distance from the barn to the house. D. Martel said there is a 25' foot setback. D. Murray said he measured it and from the barn to the well is 43' to the deck was 73' and 81' feet to the house from the barn.

C. Stamatelos as far as the driveway not sure if it was a right of way and not a driveway so is there issues with that being open to a business. Chairman Chivers said that is beyond this Board, they have a legal right to enter their own property and customers have the legal right to enter. C. Stamatelos said does she have to provide financials to see how many puppies she is selling? Chairman Chivers said any representation made to the Board are taken as fact and suppose they could ask for some verification or corroboration of facts and would be within their rights to ask.

Mrs. Bessette said her issue is the barking they cannot go to their pool which is in their back yard they bark and they hear the dogs bark all summer long. C. Martel said they do not bark all day long. Mrs. Bessette said they pretty much do bark all the time, they bark when they go out back or walk to the shed or pool and half the time the Martels are not there. C. Martel said they do not leave unless they leave someone at the house. Mrs. Bessette said the kids are not in charge. Mrs. Bessette said she hears Pedigree all the time and C. Martel said she hears them too. Mrs. Bessette said she has been illegal since she has been selling from your house. C. Martel said she was not illegal before as per the state you can sell up to 50 puppies from your home. Chairman Chivers said Mrs. Bessette your point is that you are bothered by the barking. C. Stamatelos said how is the town going to deal with new neighbors if the town gets new complaints for the noise and will they be told the dogs were there before they came and they have to deal with the noise? Chairman Chivers said that will be something that the Board will have to address tonight when they decide.

Chairman Chivers read from the ordinances where they are requesting a kennel use, it is under Commercial uses, "*Section b-13 "animal hospital or commercial kennel providing that such use shall not be within 50 feet of any dwelling and within 200' of any residential district and the kennel area shall be completely enclosed within a wall or a fence."* He said this is permitted by right in the Commercial District and L1 District and expressly prohibited in the Residential District, Mixed Use District and L2 District. He said they are right in the middle of the Residential District and the ordinance has contemplated the kind of use you are asking for and it is expressly prohibited. He said to ask this Board for a variance to permit this use particularly in light of the fact that the land around you is being subdivided and you are going to get more neighbors that are going to have to look at this forever makes it a heavy burden on their part to convince the Board that it is an appropriate use.

D. Snow said it is noticed as a special exception under Section 5.02 b-13 so where did the variance come from. J. Szot said it was noticed as a special exception but it requires a variance because it is not permitted. Chairman Chivers said it was noticed incorrectly and should have been for a use variance. He said the Board is going to have to make a procedural decision. J. Szot because it was noticed improperly procedurally they should not go forward but she said even if they went through and noticed as a variance again not sure would have any different people or any other different input. The Board was in agreement that they can only address what is noticed. Legally what they can do now is dismiss the case without a finding. Chairman Chivers said they can ask the applicant to withdraw and resubmit as a variance request. C. Martel said that wouldn't change opinions. He urges them to get resolved and not go on another 17 years in limbo get some kind of determination from the town on what you are doing. C. Martel said what she is doing is not illegal. And she doesn't even need to have an office in Hooksett as she doesn't even sell more than 50 puppies but to stop all the complaining and threats she got herself licensed a couple of years ago. I. Byrd asked threats and C. Martel said that went really bad and she does not want to talk about it. C. Martel said whether she gets approved or not the dogs are still going to be there. B. Petrin said they could either withdraw or dismiss without finding.

MOTION: Motion made by R. Petrin, seconded by J. Szot to dismiss the case without finding due to error in noticing. Amended to include, applicant may come forward again at no charge and will be noticed properly. The motion carried with a unanimous vote of 5-0-0. Chairman Chivers said they want to make application for a variance under the right section the Board will be happy to accept that no charge and have another hearing and he apologized.

Case 16-611 Applicant: Berry Surveying & Engineering 335 Second Crown Point Rd, Barrington, NH 03825; Owner: Slate Rock & Gravel Co. c/o National Finance Corp 2 Linden Street Reading MA 01867; Property Location Raymond Road; Map 407 Lots 66 & 71; for a Special Exceptions and Variances under Article V Section 5:02: Table of Use Regulations B. & C. Commercial and Industrial uses in a Residential District. It was noted that notices and abutters have been notified.

Abutters present Rick & Sherry McGregor 29 Island Road, George & Sandra Faust 22 Island Road and Kathryn Tierney 30 Island Road

Chairman Chivers asked J. Szot to read the letter received from the applicant, “*Letter dated April 22, 2016, Candia zoning Board of Adjustment c/o Sharon Robichaud Re: Slate Rock & Gravel Co. variance application Dear Board, This firm has only recently been retained to represent Slate Rock & Gravel Co. with respect to their variance application currently pending before you and scheduled for a public hearing on Tuesday April 26, 2016. In order to allow us to get up to speed and ensure our office is on the same page as the applicant and engineer, we request that you continue consideration of our application to the June meeting, scheduled for June 28, 2016. Should you have any questions or concerns, please do not hesitate to contact my office.*” She said this is from Cronin Bisson & Zalinsky Attorneys at Law. Chairman Chivers said this is their formal request to continue this hearing will honor this request and the abutters should know this is the only notice they will receive as you won’t receive anything in the mail and suggest marking on your calendar and come back on Tuesday June 28, 2016 same time. He said we are not going to hear anymore on this case tonight as they do not have representation present and will not be taking any statements from abutters.

Other Business

Chairman Chivers said it would be improper for him to be Chairman of this Board as he is Chairman of the Board of Selectmen so he would voluntarily relinquish his position. He said it has been an honor serving as chairman for the past few years and it is a great group to work with.

Elections

MOTION: Motion made by B. Chivers, seconded by J. Szot, to nominate as Bob Petrin as Chairman. J. Szot, I. Byrd, Boyd Chivers, R. Howe were in favor. B. Petrin abstained.

MOTION: Motion made by B. Petrin, seconded by I. Byrd, to nominate Judith Szot for Vice Chair. The motion carried with a vote of 4-0-1. J. Szot, I. Byrd, B. Petrin, R. Howe were in favor. Judith Szot abstained.

Application Process

B. Petrin reiterated what was brought up in the past that they have to have appropriate drawings. Discussion ensued. D. Lewis suggested having the application reviewed by the chairman to make sure it is complete. The Board was in agreement that no case is to be accepted unless complete with appropriate drawings submitted at time of application and it is the applicant’s responsibility to be complete.

Recording ZBA cases on Property Cards

J. Szot said she needed to bring up two things one being a need to have some kind of policy if there is a variance or special exception hearing to make a notation on their property tax card stating case number and outcome of hearing. D. Murray said that is an excellent idea.

Non Public Hearings

J. Szot said if there is a question whether something is allowed by the ordinance and D. Murray said is not absolutely clear it needs to come before the Board, that decision cannot be made by other people it has to come before the Board as an informational if it is not crystal clear that it is allowed. It is not a decision that can be made by one or two people it is a decision that should be made by the Board. B. Petrin said he agrees it would be made between the Building Inspector and the Board for clarification. J. Szot said if the Building Inspector is not clear he should send the applicant come before the Board for an informational. J. Szot said she is leaving out a lot because she had asked for a nonpublic hearing and it is not something she feels comfortable discussing in public but wanted it on public hearing to discuss it and she asked for this last October but the ZBA had not met. She said it needs to be discussed in nonpublic and is entitled by law because it discusses people under RSA 91.a. Since it was not noticed they cannot have a nonpublic tonight.

Chairman Petrin congratulated M. Laliberte on his new position as a Selectman. M. Laliberte said sitting on the Board of Selectmen he felt he should not be an alternate. He said he has learned a lot in the past two years as an alternate on the ZBA. He said he will look around to see if anyone might be interested in being an alternate for the ZBA. The Board thanked him for his time saying it was a pleasure having on the board. M. Laliberte thanked the Board.

Chairman Petrin said he also wanted to thank B. Chivers for his hard work and also good luck in his future endeavors.

Adjournment

MOTION: Motion made by B. Petrin, seconded by R. Howe to adjourn. The motion carried with a unanimous vote of 5-0-0. The meeting adjourned at approximately 8:14pm.

Respectfully submitted
from recording,
Sharon Robichaud Recording Secretary