

**CANDIA ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF
August 19th, 2024
UNAPPROVED MINUTES**

ZBA Members Present: Judith Szot, Chair; Tony Steinmetz; Bill Keena, Gale Pellegrino, Alt.; (sitting in for Ron Howe)

B. Chivers – Present. Recused himself. He felt it was not appropriate to sit on the rehearing when he wasn't present for some of the meetings.

ZBA Members Absent:
Ron Howe (excused)

*Judith Szot, Chair called the ZBA meeting to order at approximately 6:30PM, followed immediately by the Pledge of Allegiance

Old Business:

MOTION FOR REHEARING (Case #24-001) Pursuant to RSA 677:2, the board will act on a motion for rehearing with respect to their June 25, 2024 decision to deny an application to expand the current facility. No testimony will be taken at this time. The board will make a determination as to whether a rehearing is in order based solely on the information described in the motion for rehearing as submitted by the applicant.*

Case #24-001:

***Applicant:** Candia Tank Farm, LLC, 6 Hillside Avenue, Amherst, NH 03031; Owner(s): Candia Tank Farm, LLC, 6 Hillside Avenue, Amherst, NH 03031; Property Location: 5 High Street, Candia, NH 03034; Map 406 Lot 201.

Intent: To request to expand the current facility to include the addition of three additional fuel oil storage tanks and three 30,000 Gallon Propane Tanks.

Michael Courtney – Town Counsel – Advised the Board to begin with the new clarification of the findings of fact. To discuss and vote on each one individually. The Board discussed that the denial of the application was supported in the Notice of Decision and Meeting Minutes. For further detail, the ZBA discussed the five variance criteria and the written finds of fact.:

1. The variance will be contrary to the public interest because the proposed additional fuel storage threatens the health, safety and general welfare of the public because it is dangerous in this area where there are many vital uses nearby, including the Moore School, Fire Department, Smyth Library, Historical Society Town Hall, Post office and County Courthouse.

J. Szot: The proposed improvements pose an increased risk to both the environmental and life safety to both the Town's municipal infrastructure and adjacent properties. Because of these dangers this use was specifically denied in this area. There is no mention in the Master Plan of this use in this compact area. This use is permitted in the town in areas that are isolated and away from most housing, business or other structures.

B. Keena: This has been a challenging application for me. Over the months of meetings we have had about this request I have worked hard to discern a thoughtful and just opinion in this matter. I have listened carefully to the comments and questions given by all parties while not relying exclusively on any one speaker or comment and done what I could to educate myself on what to me are the key issues such as safety, property values, zoning ordinances and supporting a business that is necessary (and save for the location of this tank farm), welcome in our community. I note the safety measures designed in to the proposal and applaud them, but after careful consideration, I cannot avoid the essential fact that the risk of a fire, oil in our groundwater - or worse, a conflagration - is increased by having these additional tanks and oil in the very heart of our town. I have learned through the statements made in these meetings and in the research I have done independently— as well as my own experience - that it is impossible to say “It can never happen”. In fact, the applicants own presenters admitted that they could not say it could never happen. No one can in truth guarantee that a fire or other safety hazard can never occur with these tanks or that the addition of this many tens of thousands of gallons, no matter how well designed, will eliminate the risk. It is common sense to say that with the old tanks still on site, adding more tanks and transportation of more volume of oil in and out of the site (No matter the effect on traffic or number of trips) that the risk is increased, though by how much seems open to debate. Now, I understand that the risk might be acceptable to the applicants and his team but as I considered this request for a variance, I saw the wisdom of having a zoning board comprised of community citizens whose sole interest and duty is to protect, serve and help the town to prosper. It makes it clear to me that if a disaster were to occur, I would have to live with the fact that I approved the risk in an area that was not zoned for such use and that it sits adjacent to other homeowners, our school, our town hall and more. I would not want this to be adjacent to my property and I would not want someone to decide to put my children in a school this close to such a facility, so how can I decide in favor of this for others? As a result, I must conclude that this variance is contrary to the public interest and is a threat to the safety and welfare of our town and its people.

T. Steinmetz: I agree.

B. Keena: **Motion** was made to add this to the original notice of decision. **Second:** G. Pellegrino. The vote was 4 yes, 0 no. **Motion passed.**

2. The Spirit of the Ordinance is similarly not observed as the findings of fact detailed that this expanded proposed use is dangerous in this area where there are many vital uses nearby, including the Moore School, Fire Department, Smyth Library, Historical Society Town Hall, Post office and County Courthouse. This expanded use injures public and

private rights of nearby properties and residents. The Commercial district requires: “good design to promote public safety,” and Mix Use district uses shall be: “designed and arranged in an efficient manner in keeping with the goal of making Candia an attractive town.” The safety issues found violate the spirit of both districts.

J. Szot: The intent of a zoning ordinance restricting combustible storage facilities from being located within the municipal zoning district is to minimize the potential environmental and life safety within a more densely populated area, locations of businesses and schools. The Safety standards provided by the applicant’s Engineer, Robert P. Coluccio, mentioned multiple reasons of concern for health and safety. Foam has to be used to put out a fire. Some of These are toxic to the environment.)

G. Pellegrino: **Motion** was made and to add this fact to the original notice of decision. **Second:** T. Steinmetz. The vote was 4 yes, 0 no. **Motion passed.**

3. Substantial justice is not done as the danger to the general public outweighs the loss to the applicant because the use is not safe, considering the nearby uses and this dense area of the Town. T. Steinmetz: **Motion** was made to add this fact to the original notice of decision. **Second:** B. Keena. The vote was 4 yes, 0 no. **Motion passed.**
4. Applicant failed to meet their burden of proof showing that surrounding property values would not be diminished as the board found that this is a dangerous expanded use, and the applicant did not properly mitigate the dangerous conditions. Accordingly, it is reasonable and common sense that property values will be diminished.

J. Szot: The applicant submitted a letter from Dan Scanlon about whether the expansion would have a detrimental impact on surrounding properties. He states that the property is almost five acres but omits that there is a house with several outbuildings on the front of the property. He stated that there were houses abutting the rear “Some distance from the lot line, probably hundreds of feet, although I don’t know the exact number.” The neighbor expressed concern that they would be looking at the tanks. He further stated that “From what Jeff tells me, there would not be any significant increase in truck traffic.” If you are tripling the capacity, it doesn’t stand to reason that there would be no increase in delivery traffic. In reference to safety he stated, “I am not qualified to address that.” It doesn’t make sense that a home buyer with two comparable houses would choose to look at oil tanks instead of the woods. I believe it most likely would lead to a decrease in property values.)

B. Keena: We heard debate around whether property values of abutting and nearby properties would be affected. I recall the letter stating that it would not be. I recall abutting homeowners’ saying it would. I remember one citizen asking why we were even considering this and not just denying the application outright. My thought is that it comes down to common sense – if I were considering purchasing one of two properties of the exact same price in lots that are the same and houses that are the same except one backs up to the tank farm as proposed – with more and larger tanks, with all that comes with it – would I see them as equally valuable? I would not. Would others? I think not.

T. Steinmetz: Agreed.

B. Keena: **Motion** was made to add this fact to the original notice of decision. **Second: G. Pellegrino.** The vote was 4 yes, 0 no. **Motion passed.**

5. Applicant failed to show that the property is unique or contains special conditions that distinguish it from other properties, and the location of the property makes the variance unreasonable as detailed in the findings of fact because of the dangerous conditions to the public.

J. Szot: The Board looked at the tax maps and determined that this property was distinctly similar to most other properties in this area. There was nothing that distinguished this property from the others with the exception of an area of wetlands. This property can be used as the zoning ordinance describes, in fact the property zoned for this use is close to Exit 3, with little or no other buildings in the area.

B. Keena: I think it is important to note that there are other locations here in town where we would welcome the proposal and that the risk to public safety would be mitigated while supporting this business. Zoning ordinances exist for situations such as this and the only unique thing about this property from the applicants view that I can see is that it would likely be cheaper for the business to expand there than to establish a new facility but that does not overcome the grave overriding safety concerns we have noted.

G. Pellegrino: Motion was made to add this fact to the original notice of decision. **The Second: T. Steinmetz.** The vote was 4 yes, 0 no. **Motion passed.**

The Board proceeded to review the Motion for Rehearing. (Please See Attached)

Points one through seven: The Board felt they covered these seven comments when they previously discussed and voted on the additions to the Findings of Fact.

Count 8:

A brief explanation of the role of Emergency Management

Emergency Managements role is to identify, evaluate and plan for disasters. Those disasters can be natural, as in earthquakes, tornados, flooding, and blizzards. They can also be manmade like plane crashes, roadway crashes and spills, major fires that far exceed normal capabilities and resources, as well as hazardous material incidents of various magnitudes.

The purpose for this role is to ensure a safe and continuous infrastructure and environment for the citizens, the community and local government to function on a daily basis.

When evaluating the required plans, the LEPC identifies possible "Worst Case Scenarios" to consider if the local available resources would be capable of responding to and adequately dealing with the situation in a safe manner.

Additionally, there is the ability to return the community to normal, pre incident and response. This often includes environmental and infrastructure concerns.

Since 9-11, we must consider terrorism a possibility.

J. Szot: I have worked with Bob Panit on and off for several years. Bob was a fire fighter for many years. He has been Candia's Emergency Management Director for several years. His job has been to anticipate and plan for unexpected emergencies. When we first received the plans for the tank farm, Mr. Panit was the person who knew where to find the information about what kind of emergencies could happen at this type of storage facility and how to deal with such an emergency.

Brian Ruoff has been the Town Engineer for several years. He is familiar with our ordinances and although he had not previously done such an analysis for the Zoning Board, he has advised the Planning Board on numerous occasions. The scope of work performed by Bryan Ruoff on behalf of Stantec was relating strictly to safety concerns and our ordinances specifically. In reference to the legal criteria, he advised that the Board discuss those amongst themselves.

B. Keena: As I stated, I listened to the statements of all parties but did not rely on or was swayed by any one person. I tried to weigh the sometimes-contradictory comments against my own experience, research and judgement and to do my duty to the town and its residents. Isn't that what we are supposed to do? Doesn't our democracy rely on the judgment of its citizens?

Count 9:

J. Szot: The ZBA did not have a nonpublic session on the day Mr. Swiniarski stated. In fact the meeting we had tonight with our attorney was the first time in memory that we have had a nonpublic meeting and I have been on this board for over 30 years.

B. Keena: I have no idea where this comment comes from and have no recollection of such a non-public meeting.

Count 10:

J. Szot: The applicant presented a revised application at the May 28th meeting. I explained at that time that I had not heard their new proposal so I didn't think I could be biased. In addition, I reminded the applicant's Attorney that RSA 673:14 states, "Reasons for disqualification do not include knowledge of the facts gained in the performance of the members' official duties." As to the drafting of "secret" findings of fact, it was my understanding that findings of fact are usually developed by one person and discussed at the next meeting. To have discussed them with other members of the board would constitute an illegal meeting. They were not given out to the public at the June meeting because as I explained to Mr. Wenzel, they were only a draft, to be discussed and amended by the entire board. This process was discussed at the May 28 meeting (See minutes of May 28th meeting lines 867,868) where Mr. Swiniarski was present, and he raised no concerns about this process. Mr. Swiniarski's allegation that these findings of fact were "distributed on paper (and perhaps otherwise) to other Board members outside of a public

meeting" is purely conjecture and not based upon fact and is a blatant attempt to damage my character and credibility.

B. Keena: Even if you had recused yourself, we each made up our own minds and voted unanimously. The outcome would not have changed had you recused.

Count 11: The Town has complied with the Applicant's Right to Know request a multitude of times. Stantec also complied. No mention of incompleteness was noted when submitted to the Applicant's Attorney by Town Counsel.

Count 12:

J. Szot: See minutes of March 26, lines 844, 845 844 B Chivers: "You are going to extend that 90 days for us?" 845 Swiniarski: "Yeah, I have already extended it for as long as necessary"

Count 15:

J. Szot: At the June 25th meeting, T Steinmetz, tried to bring up the previous variance and I cut off the discussion with comments that that decision had nothing to do with what our board was looking at that day. That a previous board could not bind a future board. Mr. Swiniarski made a statement about my having animus and bias about this project that stems from my disagreement about the way a previous variance was granted. He made these assumptions from a discussion about the reasons the variance was granted that I did not agree with the previous variance. They are his assumptions NOT my thoughts or opinions. His statement that "denying the variance would be a way to ultimately end the business on the Property" was pulled from thin air. I have repeatedly stated that regardless of what the Board decided, Mr. Wenzel has every right to continue doing business on the site.

B. Keena – This strikes me as odd because I recall the applicant being amicable and open to the extensions

Count 17:

J. Szot: If we thought this was a new use, why did we ask him to apply under an expansion of a nonconforming use

Motion – T. Steinmetz: After careful review and consideration of the 17 items raised in the applicant's Motion for Rehearing, the Zoning Board of Adjustment moved to **deny** the Motion for Rehearing based on their determination no technical errors were made with respect to the process and/or interpretation of the Zoning Ordinance, the decision was not unlawful or unreasonable, nor was any new evidence presented that was not available to the applicant at the time of the original hearing. **Second:** B. Keena. All were in favor. **Motion passed.**

Motion to Adjourn: G. Pellegrino **Second:** B. Keena. All were in favor. **Motion passed.**

Meeting adjourned at 7:35