

TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
SEPTEMBER 27, 2007
REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of September 27, 2007 to order at 7:30 P.M. at the Loudon Community Building.

ROLL CALL:

The following members were present: Howard Pearl, Roy Merrill, Chairman Dave Powelson, George Saunderson, and Alternate Jonathan Huntington.
Jonathan Huntington was appointed to sit on the Board in the absence of member Ned Lizotte.

I. ACCEPTANCE OF MINUTES:

Jonathan Huntington made a motion to approve the minutes of August 23, 2007 regular hearing; seconded by George Saunderson. All were in favor.

Howard Pearl made a motion to approve the minutes of the August 30, 2007 site walk; seconded by Dave Powelson. All were in favor.

II. DISCUSSION:

Dan & Paulette Rouse – Building Permit Extension Mr. and Mrs. Rouse submitted a letter to the Board to outline the reasons for their request. They stated that they have not been able to sell their current house due to the slow real estate market and that it would cost \$40,000 to do a foundation and site work on the new lot. George Saunderson asked how long of an extension they are requesting. Mrs. Rouse said that they would like an extension of one year because six months would bring them into winter when homes do not sell well. She said they would ask for a year, rather than six months and possibly having to come back. Jon Huntington said that the matter of the Cross Brook Bridge being out and affecting the sale of their current home makes the request more favorable as far as he was concerned. Mrs. Rouse said that the bridge went out on Mother's Day, 2006 and that their realtor said not to market the house while that was out and they were using the alternate road to access their property. Roy Merrill said that he did not see any reason not to extend the permit.

Howard Pearl made a motion to extend building permit #07-002, Map 12, Lot 54, 39 Thistle Hill Road, for twelve months; seconded by George Saunderson. All were in favor.

Tony Merullo – Home Occupation Mr. Merullo stated that he was speaking on behalf of Karen and Lester Maloon who are interested in a piece of property currently owned by Peter & Gary, LLC that is before the Planning Board for a minor subdivision. Mr. Merullo said that he has a purchase and sale agreement on the parcel and he hopes to build a home there for the Maloons. Mr. Merullo said that the Maloons operate an over-the-road trucking business and would like to have a 40' x 60' garage at the residential property for their business. He explained that the garage would be for maintenance and that there would be a parking area for the tractors. Mr. Merullo stated that the trucks leave on Monday and return on Friday. He said there are currently two trucks and two employees and that Mr. Maloon is in the process of obtaining a third truck for himself. Dave Powelson said that he assumed that Mr.

Merullo had been through the requirements of minor and major home occupations. It was noted that they are limited to three non-family employees.

Mr. Merullo pointed out that the Maloons currently live on Creek Water Lane and that they have tried to find another area to move the business as it grows. He said that should the business grow beyond this lot, they would move to a different location in the commercial zone. Mr. Merullo said that the plan is to do that, with this being a stepping-stone. He said that the house and garage would be designed for future personal use. Dave Powelson said that they would have to apply for a Special Exception and demonstrate that they could meet those requirements. He asked if there would be trailers onsite. Mr. Maloon said that there would be 48' trailers onsite. Mr. Merullo explained that there would be a 100' area with 30' to the left and 30' to the right of the 40' garage. He said there would be a 100' x 100' footprint for the area that would include where they would store up to four tractor-trailers. Mr. Merullo pointed out that the trailers are currently left in Concord. He said that they would only be brought home for the weekends and he pointed out that the trucks are not coming and going on a daily basis. He said that are not loading or unloading anything, just parking on weekends.

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Dave Powelson read the points of S 502.5 of the Zoning Ordinance. Howard Pearl asked what the purpose of the garage would be if not storing trucks in it. Mr. Maloon explained that the garage would be used for maintenance and minor repairs of his trucks during inclement weather. Roy Merrill asked how this business is different from that of Mike Labonte and other contractors. Jon Huntington asked why the Board had turned down the same type of business on Lovejoy Road. It was explained that that was also the Maloons and they had withdrawn the application, not been denied. Mr. Merullo said that was due to an abutter concern and that the Maloons wanted to be friendly and good neighbors so they withdrew the application and the purchase of that property. Referring to S 502.2, he said that this would be like other contractors in the area, noting that this is one half mile from Milligan and less than a mile from Labonte. Mr. Merullo said the garage and parking area would be at the back corner of the property.

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Mr. Merullo asked if the best way to proceed would be to submit an application for a home occupation and if that was the best way to term this business. He said the Maloons would have an office in the home, no vehicles coming in and out, and no deliveries to the

property. Dave Powelson said that there is no concern about an office in the house that would be a minor home occupation or an almost expected home residential use. Roy Merrill said that they allow that for everyone even without a minor home occupation. Howard Pearl noted that they would not have to have anything if there were no trucks. George Saunderson asked if Mr. Merullo would have the lot line adjustment by the time that he submitted the proposal. Mr. Merullo said he probably would not. He explained that the subdivision is to come before to the Planning Board next month. He said that once that is done, they can go with the ZBA request and work on the lot line adjustment the following month. Mr. Merullo said it would probably be a three meeting process, one planning, one zoning, and back to planning. He said if the ZBA would conditionally approve on the lot line adjustment to enlarge the lot then that would work. Mr. Saunderson confirmed that Mr. Merullo would be all right if it was conditional on the lot line adjustment. Mr. Merullo said absolutely. He said that a lot line adjustment takes a little time because of wetlands, surveying, and topography as well as looking at the feasibility of expanding the lot. Roy Merrill pointed out that if the home occupation did not go through with the ZBA, he would not need the lot line adjustment. Mr. Merullo agreed.

Dave Powelson mentioned that four large trucks seemed like a stretch. Howard Pearl said that he has a tough time separating this from local contractors bringing home trucks with excavators and other equipment. Roy Merrill pointed out that there is one on Currier Road that brings home a tractor-trailer every night. He said that is part of Loudon and that not everyone can have an office job and that is why contractors are listed under the section. Tony Merullo stated that 'contractor' can mean an excavating contractor but there are other types of contractors. Dave Powelson pointed out that it does say local contractor and he is not sure this would qualify. Mr. Merullo pointed out that it says 'local' but the ordinance reads that permitted uses "include but are not limited to". Dave Powelson said he thought that the Board had approved Mike Labonte but he was not sure about Milligan, which was sort of a different issue. Roy Merrill said that some local contractors are in and out every day and this is out on Monday and in on Friday, which is better than ten trips a day with equipment and trucks. Dave Powelson said that Mr. Merrill might be right and they would have to see what happens at the hearing.

Ray Cowan – Lazy Pines Mr. Cowan explained that the mobile home park was started forty years ago and has fifty-seven lots that were approved in stages. He said there is a two-story house in the middle on Lot 33 that was built by his folks in 1972 who lived there for ten years. Mr. Cowan said that his son currently lives in the house. He said it is a three bedroom split-level and has individual accesses to the garage and from outside. Mr. Cowan said he that he began to look at putting an apartment in the lower half. He explained that he talked to Bob Fiske about a permit and was told that he could not do it without three acres and 250' of frontage. Mr. Cowan said that Lot 33 has more than 250' of frontage on their road and that the lot is one and a half acres.

Mr. Cowan handed out copies of the park layout to Board members. He explained that the crosshatched areas are open space that is owned and maintained by the park. He said if he added all of those, he would have almost three and a half acres so he went back to Mr. Fiske with that proposal. He stated that Mr. Fiske talked with the Board of Permit and it was decided that he still did not meet the criteria. Mr. Cowan said he then realized that two of the originally approved lots are no longer being used. He explained that Lot 5 was taken out of use when developing the back section. He said that for many years they had the laundry there, noting that the concrete pad was there up until two years ago. He said the lot was never officially abandoned as far as the town was concerned. Mr. Cowan said that Lot 22 is also vacant. He explained that when they did the leach bed for the final twenty-two lots, it was not advantageous to use Lot 22 as a lot and it remains abandoned. Dave Powelson asked if Lot 22 is unusable. Mr. Cowan said there is no sewer to it at this point.

Mr. Cowan pointed out that the rectangular area to the right of Lots 34-37 and at the upper part of Lots 23 and 22 is not part of the original purchase. He said he now owns it and he could expand into that with two lots and meet all current criteria to do that. Dave Powelson asked about the size of that parcel. Mr. Cowan said it is four and a half acres. He said he is now proposing something different. He said that he went to Bob Fiske about possibly giving up Lots 5 and 22 for the basement apartment. He stated that Mr. Fiske wanted to check with the Planning Board for what was recorded in the plans and apparently, the records are sparse. Mr. Cowan said that there is one plan that shows the lower lots, Lots 1-32, and another that shows Lots 34-57.

Roy Merrill asked how long Lot 22 has been vacant. Mr. Cowan said it has been since the late 70s or early 80s. Mr. Merrill said that it does not exist by today's regulations if it has been vacant for more than eighteen months. Ray Cowan asked if they were saying that they could take away his lot. Dave Powelson explained that the town can take away non-conforming uses if abandoned. He said they would have to ponder whether Lots 22 or 5 were conforming uses. Mr. Merrill referred to Section 602.4 of the Zoning Ordinance. Dave Powelson said that there are also rules of manufactured housing parks and developments. He said he is not sure how close this one may be to meeting the current rules. Roy Merrill said that the four acres may be a possibility but the smaller pieces that do not have trailers cannot have trailers put on them now.

Ray Cowan said he had taken another avenue with a letter to the Planning Board because that is where Bob Fiske said to go next. He explained that he then got a call from the Planning Board chairman who recommended that he go to the ZBA because this was more of a zoning issue. Dave Powelson asked about the size of the lots. Mr. Cowan said that Lot 5 is not usable because it is not big enough and that was the reason that they did not use it. He said the original area required in 1967 was 5000 SF and that lot was probably 6000 SF. He said that Lot 22 is probably 8500 SF, which was current at the time of that phase. Mr. Cowan said that Lot 5 is not buildable. He stated that he was granted fifty-seven lots and thought that is what he still had. Roy Merrill said he would agree if Mr. Cowan had kept using those lots. Mr. Cowan said he does not see the issue of an apartment since he meets the criteria other than the lot size. He said in order to pursue this it would appear that he would have to come for a variance. He said that in his mind Lazy Pines is a residential community whether they live in an 8' x 50', a 24' x 50', or an apartment, it is still a residential community. Mr. Cowan said that he was willing to give up those two lots so that he could have the apartment.

Dave Powelson said that he was not sure that this could fit into a special exception. Roy Merrill said it would be an area variance. Mr. Powelson asked if Mr. Merrill thought it would be an area variance for a two family on three acres. Mr. Cowan said that the three acres is set for density. He said that the density for Lazy Pines would be down one from what was permitted if he was granted the variance. Mr. Powelson asked how many acres Mr. Cowan has in total. Mr. Cowan said there are twenty-five acres in what is seen on the plan and there are four and a half in the separate parcel. George Saunderson asked about the size of the house lot. Mr. Cowan said that the house lot is one and a half acres. Dave Powelson said that he thinks that the house itself is non-conforming. Roy Merrill said that the house is part of the park. Ray Cowan said it is all one. He said that the lot that the house is on was Lot 33 and then in the 80s he presented the plan for the rest of the lots. Mr. Powelson said that the current regulations would require all manufactured homes. Mr. Cowan said the house is a modular. Howard Pearl read the definition of manufactured housing.

Dave Powelson said that they have a proposal where Mr. Cowan would like to have an apartment and that he is not sure that he sees where the Board could fit it into the regulations, or anyway that they could do it short of a variance. He said that variances are possible but are sort of hard to come by. Roy Merrill asked if it would require two variances where Mr. Powelson is saying that it is not conforming with a trailer park. Mr. Powelson said

that it would not conform to the regulations for a manufactured housing park and it would not conform to the regulations for multiple family dwellings. He said he would have to check that and see what is required for multi family. Howard Pearl said this is a unique situation where they have allowed an adjusted amount of housing in a small area. George Saunderson asked if would make anything worse. There was discussion of park location and density. Mr. Powelson said that it is Mr. Cowan's right to apply for a variance but he is not sure that they are looking at it particularly favorably at this point. Mr. Cowan said that he could expand onto the four and a half acres as a fallback. There was discussion of the two parcels, deeds, current regulations, what Mr. Cowan has in mind for the additional parcel, and access to that parcel. Mr. Cowan stated that what bothers him is that all zoning is for the protection of heirs and the rights of others and that he cannot see any reason why an apartment in that house and giving up two lots is going to affect anything but make it better for the Town of Loudon. He said that he is frustrated by the fact that he has a dwelling that meets the setback requirements and is structurally set up to do what he wants but he cannot legally do it.

Dave Powelson said that another option would be that Mr. Cowan could change the ordinance by petition to allow two-family dwellings in houses in manufactured housing parks. Roy Merrill noted that a lot of people have two acres and would like to put an apartment in their house but they cannot. Mr. Cowan said that he doubts that anyone has the same situation as him. Mr. Powelson said he does not see any simple way to help other than a variance or change in ordinance. Mr. Cowan said that variances are allowed. Mr. Powelson said that it would be something that Mr. Cowan could try for and that he would have to demonstrate the fairly stringent criteria. Mr. Cowan said that the issue appears to be to present an application for a variance, asking if it would be two variances. Dave Powelson said that manufactured housing parks only allow manufactured housing and there is the lot size and other requirements for a multi-family dwelling. Mr. Cowan confirmed that the Board is saying that this situation would be pre-existing and non-conforming.

III. PUBLIC HEARINGS:

Case # 07-16, Pete & Heidi Hanson – Chairman Powelson stated that this public hearing has been rescheduled to the October 25, 2007 meeting due to an inadvertent error in abutter notification.

IV. UNFINISHED BUSINESS:

III. V. RULES OF PROCEDURE:

The draft Rules of Procedure were presented to the public for review and comment. There were no questions from the Board or public. **Howard Pearl made a motion to approve the Rules of Procedure as presented; seconded by Roy Merrill. All were in favor.** Chairman Powelson reminded members that the amended rules change the meeting time to 7:00 p.m.

IV. VI. BOARD DISCUSSION:

VII. ADJOURNMENT:

George Saunderson made a motion to adjourn the meeting at 9:00 p.m., seconded by Howard Pearl. All were in favor.

Respectfully submitted,
Donna White, Administrative Assistant

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that it would not conform to the regulations for a manufactured housing park and it would not conform to the regulations for multiple family dwellings. He said he would have to check that and see what is required for multi family. Howard Pearl said this is a unique situation where they have allowed an adjusted amount of housing in a small area. George Saunderson asked if would make anything worse. There was discussion of park location and density. Mr. Powelson said that it is Mr. Cowan's right to apply for a variance but he is not sure that they are looking at it particularly favorably at this point. Mr. Cowan said that he could expand onto the four and a half acres as a fallback. There was discussion of the two parcels, deeds, current regulations, what Mr. Cowan has in mind for the additional parcel, and access to that parcel. Mr. Cowan stated that what bothers him is that all zoning is for the protection of heirs and the rights of others and that he cannot see any reason why an apartment in that house and giving up two lots is going to affect anything but make it better for the Town of Loudon. He said that he is frustrated by the fact that he has a dwelling that meets the setback requirements and is structurally set up to do what he wants but he cannot legally do it.

Dave Powelson said that another option would be that Mr. Cowan could change the ordinance by petition to allow two-family dwellings in houses in manufactured housing parks. Roy Merrill noted that a lot of people have two acres and would like to put an apartment in their house but they cannot. Mr. Cowan said that he doubts that anyone has the same situation as him. Mr. Powelson said he does not see any simple way to help other than a variance or change in ordinance. Mr. Cowan said that variances are allowed. Mr. Powelson said that it would be something that Mr. Cowan could try for and that he would have to demonstrate the fairly stringent criteria. Mr. Cowan said that the issue appears to be to present an application for a variance, asking if it would be two variances. Dave Powelson said that manufactured housing parks only allow manufactured housing and there is the lot size and other requirements for a multi-family dwelling. Mr. Cowan confirmed that the Board is saying that this situation would be pre-existing and non-conforming.

III. PUBLIC HEARINGS:

Case # 07-16, Pete & Heidi Hanson – Chairman Powelson stated that this public hearing has been rescheduled to the October 25, 2007 meeting due to an inadvertent error in abutter notification.

IV. UNFINISHED BUSINESS:

III. V. RULES OF PROCEDURE:

The draft Rules of Procedure were presented to the public for review and comment. There were no questions from the Board or public. **Howard Pearl made a motion to approve the Rules of Procedure as presented; seconded by Roy Merrill. All were in favor.** Chairman Powelson reminded members that the amended rules change the meeting time to 7:00 p.m.

IV. VI. BOARD DISCUSSION:

VII. ADJOURNMENT:

George Saunderson made a motion to adjourn the meeting at 9:00 p.m., seconded by Howard Pearl. All were in favor.

Respectfully submitted,
Donna White, Administrative Assistant

TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
SEPTEMBER 27, 2007
REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of September 27, 2007 to order at 7:30 P.M. at the Loudon Community Building.

ROLL CALL:

The following members were present: Howard Pearl, Roy Merrill, Chairman Dave Powelson, George Saunderson, and Alternate Jonathan Huntington.
Jonathan Huntington was appointed to sit on the Board in the absence of member Ned Lizotte.

I. ACCEPTANCE OF MINUTES:

Jonathan Huntington made a motion to approve the minutes of August 23, 2007 regular hearing; seconded by George Saunderson. All were in favor.

Howard Pearl made a motion to approve the minutes of the August 30, 2007 site walk; seconded by Dave Powelson. All were in favor.

II. DISCUSSION:

Dan & Paulette Rouse – Building Permit Extension Mr. and Mrs. Rouse submitted a letter to the Board to outline the reasons for their request. They stated that they have not been able to sell their current house due to the slow real estate market and that it would cost \$40,000 to do a foundation and site work on the new lot. George Saunderson asked how long of an extension they are requesting. Mrs. Rouse said that they would like an extension of one year because six months would bring them into winter when homes do not sell well. She said they would ask for a year, rather than six months and possibly having to come back. Jon Huntington said that the matter of the Cross Brook Bridge being out and affecting the sale of their current home makes the request more favorable as far as he was concerned. Mrs. Rouse said that the bridge went out on Mother's Day, 2006 and that their realtor said not to market the house while that was out and they were using the alternate road to access their property. Roy Merrill said that he did not see any reason not to extend the permit.

Howard Pearl made a motion to extend building permit #07-002, Map 12, Lot 54, 39 Thistle Hill Road, for twelve months; seconded by George Saunderson. All were in favor.

Tony Merullo – Home Occupation Mr. Merullo stated that he was speaking on behalf of Karen and Lester Maloon who are interested in a piece of property currently owned by Peter & Gary, LLC that is before the Planning Board for a minor subdivision. Mr. Merullo said that he has a purchase and sale agreement on the parcel and he hopes to build a home there for the Maloons. Mr. Merullo said that the Maloons operate an over-the-road trucking business and would like to have a 40' x 60' garage at the residential property for their business. He explained that the garage would be for maintenance and that there would be a parking area for the tractors. Mr. Merullo stated that the trucks leave on Monday and return on Friday. He said there are currently two trucks and two employees and that Mr. Maloon is in the process of obtaining a third truck for himself. Dave Powelson said that he assumed that Mr.

Merullo had been through the requirements of minor and major home occupations. It was noted that they are limited to three non-family employees.

Mr. Merullo pointed out that the Maloons currently live on Creek Water Lane and that they have tried to find another area to move the business as it grows. He said that should the business grow beyond this lot, they would move to a different location in the commercial zone. Mr. Merullo said that the plan is to do that, with this being a stepping-stone. He said that the house and garage would be designed for future personal use. Dave Powelson said that they would have to apply for a Special Exception and demonstrate that they could meet those requirements. He asked if there would be trailers onsite. Mr. Maloon said that there would be 48' trailers onsite. Mr. Merullo explained that there would be a 100' area with 30' to the left and 30' to the right of the 40' garage. He said there would be a 100' x 100' footprint for the area that would include where they would store up to four tractor-trailers. Mr. Merullo pointed out that the trailers are currently left in Concord. He said that they would only be brought home for the weekends and he pointed out that the trucks are not coming and going on a daily basis. He said that are not loading or unloading anything, just parking on weekends.

Roy Merrill stated that he has been working in the area of Creek Water Lane and other than the trucks being parked there, you would never know the business is there. Dave Powelson asked if all of the trucks would be parked inside. Mr. Maloon said they would not be parked inside. He said that the garage would be small enough to use as a residential garage in the future. Tony Merullo said that he fully expects to be developing the entire parcel in time, noting that he has a purchase and sale agreement on it. He said that it is not conducive to his operation to have a huge, unsightly building on the abutting property. He stated that he has been working by the Maloons house for three years and has seen their business grow from one truck to two trucks. He said the Maloons want to stay in town and this would be a good stepping-stone for them, adding that the Maloons run state-of-the-art trucks.

Dave Powelson read the points of S 502.5 of the Zoning Ordinance. Howard Pearl asked what the purpose of the garage would be if not storing trucks in it. Mr. Maloon explained that the garage would be used for maintenance and minor repairs of his trucks during inclement weather. Roy Merrill asked how this business is different from that of Mike Labonte and other contractors. Jon Huntington asked why the Board had turned down the same type of business on Lovejoy Road. It was explained that that was also the Maloons and they had withdrawn the application, not been denied. Mr. Merullo said that was due to an abutter concern and that the Maloons wanted to be friendly and good neighbors so they withdrew the application and the purchase of that property. Referring to S 502.2, he said that this would be like other contractors in the area, noting that this is one half mile from Milligan and less than a mile from Labonte. Mr. Merullo said the garage and parking area would be at the back corner of the property.

Dave Powelson asked what is currently on the lot. Mr. Merullo said it is vacant, explaining that there is an old landing area for logging. He pointed out that this parcel is about where the power line crosses School Street. Mr. Merullo said there is a subdivision application by the current owners before the Planning Board for the 80+ acres with two acres being subdivided. He said that he would probably ask for a lot line adjustment to increase the lot to three or four acres to create buffers from eventual neighbors once he owns the parcel. George Saunderson asked if it would be closer to three or four. Mr. Merullo said three and a half. Mr. Saunderson asked about the building size. Mr. Merullo said it would be 40' x 60' maximum and that the building and parking area would be 100' x 100'. Jon Huntington asked about storage of fuel. Mr. Maloon said there would be no fuel onsite, explaining that the trucks would not be working near the home base so there is no need for onsite fuel. Dave Powelson asked if these would be box trailers. Mr. Maloon said they are flat bed with canvas sides.

Jon Huntington asked what was planned for landscaping, noting that it is only raw land right now. Mr. Merullo said they would build the house with a driveway and landscaping. He said that the Board could see the Maloons current house and know that it is not their style to have an unkempt lawn and property. Mr. Maloon said that they care about their property and take measures to keep it nice. Mr. Merullo referred back to the discussion about the use of the garage. He said that it would be used for some light maintenance, probably including oil changes. He said that storage of oil will not be a concern because Mr. Maloon would use the waste oil in a waste oil furnace. Howard Pearl asked about yearly mileage. Mr. Maloon said the company does 350,000 to 400,000 miles per year. There was discussion about oil changes, usage, and heat.

Tony Merullo said that some might have concerns of noise from the trucks. He stated that these are new trucks that have APUs (auxiliary power unit) which are small generators that run and warm the engine and fuel rather than having the diesel engine idling for long periods of time. Dave Powelson said this sounds like it might be a potentially offensive business but Mr. Merullo has described it well. He said the Board would have to see how the application comes in. Jon Huntington said he does not feel that it fits the requirements of home occupations with a trucking company in a residential area and that he feels that it belongs on Route 106. Mr. Merullo suggested that the Board might see the trucks and feel differently. He said that he feels this business meets the criteria, particularly where they are addressing the matters of noise and pollution. Mr. Maloon explained that because of new emission laws it is purely vapor that is emitted from the trucks, not smoke. Dave Powelson said he thinks this business could be a bit of a stretch but they could bring in an application.

Mr. Merullo said that the lot being discussed has a 2007 building permit and he is looking for ZBA input regarding extending the permit forward. He said it will take a little time for the project to get going. Mr. Merullo said he would like to get a feeling as to how the Board is proceeding with building permit extensions. Dave Powelson said he does not think that the Board has extended any permits for commercial developers, only individual residents and have not extended for more than a year. He said he is not sure what the total limits might be or how far they would stretch them. Mr. Merullo said that one year is certainly useful. He said that he has seen it happen for residents, one earlier in this meeting, and has seen it happen in the past. Mr. Powelson asked if he has had a bridge wash out on his road. Mr. Merullo pointed out that that was a year and a half ago. Mr. Powelson said that was correct but it tied them up a whole summer. Mr. Merullo asked if the bridge had been put back in place last fall. Mr. Powelson said that was correct and that they had missed one summer and now the market seems to be tighter. Mr. Merullo said he would agree and that would be one of the reasons that he is concerned about extensions. He said that it would appear that the board still has not looked favorably at extending building permits for developers. Mr. Powelson said he did not think that they have but he could apply for an extension. Roy Merrill said that he thinks they have done it in the past, maybe not in the last year. Tony Merullo said he has a couple of houses that are not selling and that he had anticipated selling those to build others. Mr. Powelson said that he understands that that puts Mr. Merullo in an awkward spot. Mr. Merullo said that he would be facing losing the building permits. He said that in reading and understanding the Growth Management Ordinance, he knows that the town has spoken and limited the permits to approximately 30 per year. He said if he loses his two, then the town would only get 28 new homes, which is not the spirit of the ordinance. George Saunderson said he thinks that is right but in a hypothetical situation, if none were built for three years and then ninety were built in one year that would not be in the spirit either. Mr. Saunderson asked that Mr. Merullo give the town time and they might be able to work it out for everyone.

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that it would not conform to the regulations for a manufactured housing park and it would not conform to the regulations for multiple family dwellings. He said he would have to check that and see what is required for multi family. Howard Pearl said this is a unique situation where they have allowed an adjusted amount of housing in a small area. George Saunderson asked if would make anything worse. There was discussion of park location and density. Mr. Powelson said that it is Mr. Cowan's right to apply for a variance but he is not sure that they are looking at it particularly favorably at this point. Mr. Cowan said that he could expand onto the four and a half acres as a fallback. There was discussion of the two parcels, deeds, current regulations, what Mr. Cowan has in mind for the additional parcel, and access to that parcel. Mr. Cowan stated that what bothers him is that all zoning is for the protection of heirs and the rights of others and that he cannot see any reason why an apartment in that house and giving up two lots is going to affect anything but make it better for the Town of Loudon. He said that he is frustrated by the fact that he has a dwelling that meets the setback requirements and is structurally set up to do what he wants but he cannot legally do it.

Dave Powelson said that another option would be that Mr. Cowan could change the ordinance by petition to allow two-family dwellings in houses in manufactured housing parks. Roy Merrill noted that a lot of people have two acres and would like to put an apartment in their house but they cannot. Mr. Cowan said that he doubts that anyone has the same situation as him. Mr. Powelson said he does not see any simple way to help other than a variance or change in ordinance. Mr. Cowan said that variances are allowed. Mr. Powelson said that it would be something that Mr. Cowan could try for and that he would have to demonstrate the fairly stringent criteria. Mr. Cowan said that the issue appears to be to present an application for a variance, asking if it would be two variances. Dave Powelson said that manufactured housing parks only allow manufactured housing and there is the lot size and other requirements for a multi-family dwelling. Mr. Cowan confirmed that the Board is saying that this situation would be pre-existing and non-conforming.

III. PUBLIC HEARINGS:

Case # 07-16, Pete & Heidi Hanson – Chairman Powelson stated that this public hearing has been rescheduled to the October 25, 2007 meeting due to an inadvertent error in abutter notification.

IV. UNFINISHED BUSINESS:

III. V. RULES OF PROCEDURE:

The draft Rules of Procedure were presented to the public for review and comment. There were no questions from the Board or public. **Howard Pearl made a motion to approve the Rules of Procedure as presented; seconded by Roy Merrill. All were in favor.** Chairman Powelson reminded members that the amended rules change the meeting time to 7:00 p.m.

IV. VI. BOARD DISCUSSION:

VII. ADJOURNMENT:

George Saunderson made a motion to adjourn the meeting at 9:00 p.m., seconded by Howard Pearl. All were in favor.

Respectfully submitted,
Donna White, Administrative Assistant

TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
SEPTEMBER 27, 2007
REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of September 27, 2007 to order at 7:30 P.M. at the Loudon Community Building.

ROLL CALL:

The following members were present: Howard Pearl, Roy Merrill, Chairman Dave Powelson, George Saunderson, and Alternate Jonathan Huntington.
Jonathan Huntington was appointed to sit on the Board in the absence of member Ned Lizotte.

I. ACCEPTANCE OF MINUTES:

Jonathan Huntington made a motion to approve the minutes of August 23, 2007 regular hearing; seconded by George Saunderson. All were in favor.

Howard Pearl made a motion to approve the minutes of the August 30, 2007 site walk; seconded by Dave Powelson. All were in favor.

II. DISCUSSION:

Dan & Paulette Rouse – Building Permit Extension Mr. and Mrs. Rouse submitted a letter to the Board to outline the reasons for their request. They stated that they have not been able to sell their current house due to the slow real estate market and that it would cost \$40,000 to do a foundation and site work on the new lot. George Saunderson asked how long of an extension they are requesting. Mrs. Rouse said that they would like an extension of one year because six months would bring them into winter when homes do not sell well. She said they would ask for a year, rather than six months and possibly having to come back. Jon Huntington said that the matter of the Cross Brook Bridge being out and affecting the sale of their current home makes the request more favorable as far as he was concerned. Mrs. Rouse said that the bridge went out on Mother's Day, 2006 and that their realtor said not to market the house while that was out and they were using the alternate road to access their property. Roy Merrill said that he did not see any reason not to extend the permit.

Howard Pearl made a motion to extend building permit #07-002, Map 12, Lot 54, 39 Thistle Hill Road, for twelve months; seconded by George Saunderson. All were in favor.

Tony Merullo – Home Occupation Mr. Merullo stated that he was speaking on behalf of Karen and Lester Maloon who are interested in a piece of property currently owned by Peter & Gary, LLC that is before the Planning Board for a minor subdivision. Mr. Merullo said that he has a purchase and sale agreement on the parcel and he hopes to build a home there for the Maloons. Mr. Merullo said that the Maloons operate an over-the-road trucking business and would like to have a 40' x 60' garage at the residential property for their business. He explained that the garage would be for maintenance and that there would be a parking area for the tractors. Mr. Merullo stated that the trucks leave on Monday and return on Friday. He said there are currently two trucks and two employees and that Mr. Maloon is in the process of obtaining a third truck for himself. Dave Powelson said that he assumed that Mr.

Merullo had been through the requirements of minor and major home occupations. It was noted that they are limited to three non-family employees.

Mr. Merullo pointed out that the Maloons currently live on Creek Water Lane and that they have tried to find another area to move the business as it grows. He said that should the business grow beyond this lot, they would move to a different location in the commercial zone. Mr. Merullo said that the plan is to do that, with this being a stepping-stone. He said that the house and garage would be designed for future personal use. Dave Powelson said that they would have to apply for a Special Exception and demonstrate that they could meet those requirements. He asked if there would be trailers onsite. Mr. Maloon said that there would be 48' trailers onsite. Mr. Merullo explained that there would be a 100' area with 30' to the left and 30' to the right of the 40' garage. He said there would be a 100' x 100' footprint for the area that would include where they would store up to four tractor-trailers. Mr. Merullo pointed out that the trailers are currently left in Concord. He said that they would only be brought home for the weekends and he pointed out that the trucks are not coming and going on a daily basis. He said that are not loading or unloading anything, just parking on weekends.

Roy Merrill stated that he has been working in the area of Creek Water Lane and other than the trucks being parked there, you would never know the business is there. Dave Powelson asked if all of the trucks would be parked inside. Mr. Maloon said they would not be parked inside. He said that the garage would be small enough to use as a residential garage in the future. Tony Merullo said that he fully expects to be developing the entire parcel in time, noting that he has a purchase and sale agreement on it. He said that it is not conducive to his operation to have a huge, unsightly building on the abutting property. He stated that he has been working by the Maloons house for three years and has seen their business grow from one truck to two trucks. He said the Maloons want to stay in town and this would be a good stepping-stone for them, adding that the Maloons run state-of-the-art trucks.

Dave Powelson read the points of S 502.5 of the Zoning Ordinance. Howard Pearl asked what the purpose of the garage would be if not storing trucks in it. Mr. Maloon explained that the garage would be used for maintenance and minor repairs of his trucks during inclement weather. Roy Merrill asked how this business is different from that of Mike Labonte and other contractors. Jon Huntington asked why the Board had turned down the same type of business on Lovejoy Road. It was explained that that was also the Maloons and they had withdrawn the application, not been denied. Mr. Merullo said that was due to an abutter concern and that the Maloons wanted to be friendly and good neighbors so they withdrew the application and the purchase of that property. Referring to S 502.2, he said that this would be like other contractors in the area, noting that this is one half mile from Milligan and less than a mile from Labonte. Mr. Merullo said the garage and parking area would be at the back corner of the property.

Dave Powelson asked what is currently on the lot. Mr. Merullo said it is vacant, explaining that there is an old landing area for logging. He pointed out that this parcel is about where the power line crosses School Street. Mr. Merullo said there is a subdivision application by the current owners before the Planning Board for the 80+ acres with two acres being subdivided. He said that he would probably ask for a lot line adjustment to increase the lot to three or four acres to create buffers from eventual neighbors once he owns the parcel. George Saunderson asked if it would be closer to three or four. Mr. Merullo said three and a half. Mr. Saunderson asked about the building size. Mr. Merullo said it would be 40' x 60' maximum and that the building and parking area would be 100' x 100'. Jon Huntington asked about storage of fuel. Mr. Maloon said there would be no fuel onsite, explaining that the trucks would not be working near the home base so there is no need for onsite fuel. Dave Powelson asked if these would be box trailers. Mr. Maloon said they are flat bed with canvas sides.

Jon Huntington asked what was planned for landscaping, noting that it is only raw land right now. Mr. Merullo said they would build the house with a driveway and landscaping. He said that the Board could see the Maloons current house and know that it is not their style to have an unkempt lawn and property. Mr. Maloon said that they care about their property and take measures to keep it nice. Mr. Merullo referred back to the discussion about the use of the garage. He said that it would be used for some light maintenance, probably including oil changes. He said that storage of oil will not be a concern because Mr. Maloon would use the waste oil in a waste oil furnace. Howard Pearl asked about yearly mileage. Mr. Maloon said the company does 350,000 to 400,000 miles per year. There was discussion about oil changes, usage, and heat.

Tony Merullo said that some might have concerns of noise from the trucks. He stated that these are new trucks that have APUs (auxiliary power unit) which are small generators that run and warm the engine and fuel rather than having the diesel engine idling for long periods of time. Dave Powelson said this sounds like it might be a potentially offensive business but Mr. Merullo has described it well. He said the Board would have to see how the application comes in. Jon Huntington said he does not feel that it fits the requirements of home occupations with a trucking company in a residential area and that he feels that it belongs on Route 106. Mr. Merullo suggested that the Board might see the trucks and feel differently. He said that he feels this business meets the criteria, particularly where they are addressing the matters of noise and pollution. Mr. Maloon explained that because of new emission laws it is purely vapor that is emitted from the trucks, not smoke. Dave Powelson said he thinks this business could be a bit of a stretch but they could bring in an application.

Mr. Merullo said that the lot being discussed has a 2007 building permit and he is looking for ZBA input regarding extending the permit forward. He said it will take a little time for the project to get going. Mr. Merullo said he would like to get a feeling as to how the Board is proceeding with building permit extensions. Dave Powelson said he does not think that the Board has extended any permits for commercial developers, only individual residents and have not extended for more than a year. He said he is not sure what the total limits might be or how far they would stretch them. Mr. Merullo said that one year is certainly useful. He said that he has seen it happen for residents, one earlier in this meeting, and has seen it happen in the past. Mr. Powelson asked if he has had a bridge wash out on his road. Mr. Merullo pointed out that that was a year and a half ago. Mr. Powelson said that was correct but it tied them up a whole summer. Mr. Merullo asked if the bridge had been put back in place last fall. Mr. Powelson said that was correct and that they had missed one summer and now the market seems to be tighter. Mr. Merullo said he would agree and that would be one of the reasons that he is concerned about extensions. He said that it would appear that the board still has not looked favorably at extending building permits for developers. Mr. Powelson said he did not think that they have but he could apply for an extension. Roy Merrill said that he thinks they have done it in the past, maybe not in the last year. Tony Merullo said he has a couple of houses that are not selling and that he had anticipated selling those to build others. Mr. Powelson said that he understands that that puts Mr. Merullo in an awkward spot. Mr. Merullo said that he would be facing losing the building permits. He said that in reading and understanding the Growth Management Ordinance, he knows that the town has spoken and limited the permits to approximately 30 per year. He said if he loses his two, then the town would only get 28 new homes, which is not the spirit of the ordinance. George Saunderson said he thinks that is right but in a hypothetical situation, if none were built for three years and then ninety were built in one year that would not be in the spirit either. Mr. Saunderson asked that Mr. Merullo give the town time and they might be able to work it out for everyone.

Mr. Merullo asked if the best way to proceed would be to submit an application for a home occupation and if that was the best way to term this business. He said the Maloons would have an office in the home, no vehicles coming in and out, and no deliveries to the

property. Dave Powelson said that there is no concern about an office in the house that would be a minor home occupation or an almost expected home residential use. Roy Merrill said that they allow that for everyone even without a minor home occupation. Howard Pearl noted that they would not have to have anything if there were no trucks. George Saunderson asked if Mr. Merullo would have the lot line adjustment by the time that he submitted the proposal. Mr. Merullo said he probably would not. He explained that the subdivision is to come before to the Planning Board next month. He said that once that is done, they can go with the ZBA request and work on the lot line adjustment the following month. Mr. Merullo said it would probably be a three meeting process, one planning, one zoning, and back to planning. He said if the ZBA would conditionally approve on the lot line adjustment to enlarge the lot then that would work. Mr. Saunderson confirmed that Mr. Merullo would be all right if it was conditional on the lot line adjustment. Mr. Merullo said absolutely. He said that a lot line adjustment takes a little time because of wetlands, surveying, and topography as well as looking at the feasibility of expanding the lot. Roy Merrill pointed out that if the home occupation did not go through with the ZBA, he would not need the lot line adjustment. Mr. Merullo agreed.

Dave Powelson mentioned that four large trucks seemed like a stretch. Howard Pearl said that he has a tough time separating this from local contractors bringing home trucks with excavators and other equipment. Roy Merrill pointed out that there is one on Currier Road that brings home a tractor-trailer every night. He said that is part of Loudon and that not everyone can have an office job and that is why contractors are listed under the section. Tony Merullo stated that 'contractor' can mean an excavating contractor but there are other types of contractors. Dave Powelson pointed out that it does say local contractor and he is not sure this would qualify. Mr. Merullo pointed out that it says 'local' but the ordinance reads that permitted uses "include but are not limited to". Dave Powelson said he thought that the Board had approved Mike Labonte but he was not sure about Milligan, which was sort of a different issue. Roy Merrill said that some local contractors are in and out every day and this is out on Monday and in on Friday, which is better than ten trips a day with equipment and trucks. Dave Powelson said that Mr. Merrill might be right and they would have to see what happens at the hearing.

Ray Cowan – Lazy Pines Mr. Cowan explained that the mobile home park was started forty years ago and has fifty-seven lots that were approved in stages. He said there is a two-story house in the middle on Lot 33 that was built by his folks in 1972 who lived there for ten years. Mr. Cowan said that his son currently lives in the house. He said it is a three bedroom split-level and has individual accesses to the garage and from outside. Mr. Cowan said he that he began to look at putting an apartment in the lower half. He explained that he talked to Bob Fiske about a permit and was told that he could not do it without three acres and 250' of frontage. Mr. Cowan said that Lot 33 has more than 250' of frontage on their road and that the lot is one and a half acres.

Mr. Cowan handed out copies of the park layout to Board members. He explained that the crosshatched areas are open space that is owned and maintained by the park. He said if he added all of those, he would have almost three and a half acres so he went back to Mr. Fiske with that proposal. He stated that Mr. Fiske talked with the Board of Permit and it was decided that he still did not meet the criteria. Mr. Cowan said he then realized that two of the originally approved lots are no longer being used. He explained that Lot 5 was taken out of use when developing the back section. He said that for many years they had the laundry there, noting that the concrete pad was there up until two years ago. He said the lot was never officially abandoned as far as the town was concerned. Mr. Cowan said that Lot 22 is also vacant. He explained that when they did the leach bed for the final twenty-two lots, it was not advantageous to use Lot 22 as a lot and it remains abandoned. Dave Powelson asked if Lot 22 is unusable. Mr. Cowan said there is no sewer to it at this point.

Mr. Cowan pointed out that the rectangular area to the right of Lots 34-37 and at the upper part of Lots 23 and 22 is not part of the original purchase. He said he now owns it and he could expand into that with two lots and meet all current criteria to do that. Dave Powelson asked about the size of that parcel. Mr. Cowan said it is four and a half acres. He said he is now proposing something different. He said that he went to Bob Fiske about possibly giving up Lots 5 and 22 for the basement apartment. He stated that Mr. Fiske wanted to check with the Planning Board for what was recorded in the plans and apparently, the records are sparse. Mr. Cowan said that there is one plan that shows the lower lots, Lots 1-32, and another that shows Lots 34-57.

Roy Merrill asked how long Lot 22 has been vacant. Mr. Cowan said it has been since the late 70s or early 80s. Mr. Merrill said that it does not exist by today's regulations if it has been vacant for more than eighteen months. Ray Cowan asked if they were saying that they could take away his lot. Dave Powelson explained that the town can take away non-conforming uses if abandoned. He said they would have to ponder whether Lots 22 or 5 were conforming uses. Mr. Merrill referred to Section 602.4 of the Zoning Ordinance. Dave Powelson said that there are also rules of manufactured housing parks and developments. He said he is not sure how close this one may be to meeting the current rules. Roy Merrill said that the four acres may be a possibility but the smaller pieces that do not have trailers cannot have trailers put on them now.

Ray Cowan said he had taken another avenue with a letter to the Planning Board because that is where Bob Fiske said to go next. He explained that he then got a call from the Planning Board chairman who recommended that he go to the ZBA because this was more of a zoning issue. Dave Powelson asked about the size of the lots. Mr. Cowan said that Lot 5 is not usable because it is not big enough and that was the reason that they did not use it. He said the original area required in 1967 was 5000 SF and that lot was probably 6000 SF. He said that Lot 22 is probably 8500 SF, which was current at the time of that phase. Mr. Cowan said that Lot 5 is not buildable. He stated that he was granted fifty-seven lots and thought that is what he still had. Roy Merrill said he would agree if Mr. Cowan had kept using those lots. Mr. Cowan said he does not see the issue of an apartment since he meets the criteria other than the lot size. He said in order to pursue this it would appear that he would have to come for a variance. He said that in his mind Lazy Pines is a residential community whether they live in an 8' x 50', a 24' x 50', or an apartment, it is still a residential community. Mr. Cowan said that he was willing to give up those two lots so that he could have the apartment.

Dave Powelson said that he was not sure that this could fit into a special exception. Roy Merrill said it would be an area variance. Mr. Powelson asked if Mr. Merrill thought it would be an area variance for a two family on three acres. Mr. Cowan said that the three acres is set for density. He said that the density for Lazy Pines would be down one from what was permitted if he was granted the variance. Mr. Powelson asked how many acres Mr. Cowan has in total. Mr. Cowan said there are twenty-five acres in what is seen on the plan and there are four and a half in the separate parcel. George Saunderson asked about the size of the house lot. Mr. Cowan said that the house lot is one and a half acres. Dave Powelson said that he thinks that the house itself is non-conforming. Roy Merrill said that the house is part of the park. Ray Cowan said it is all one. He said that the lot that the house is on was Lot 33 and then in the 80s he presented the plan for the rest of the lots. Mr. Powelson said that the current regulations would require all manufactured homes. Mr. Cowan said the house is a modular. Howard Pearl read the definition of manufactured housing.

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IV. UNFINISHED BUSINESS:

III. V. RULES OF PROCEDURE:

The draft Rules of Procedure were presented to the public for review and comment. There were no questions from the Board or public. **Howard Pearl made a motion to approve the Rules of Procedure as presented; seconded by Roy Merrill. All were in favor.** Chairman Powelson reminded members that the amended rules change the meeting time to 7:00 p.m.

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