

**DRAFT**

**TOWN OF LOUDON  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF  
AUGUST 28, 2008**

**REGULAR HEARING**

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of August 28, 2008 to order at 7:00 p.m. at the Loudon Community Building.

**ROLL CALL:**

The following members were present: George Saunderson, Chairman Dave Powelson, Vice Chairman Ned Lizotte, Roy Merrill, and Alternates Jim Venne and Jon Huntington. Jim Venne was appointed to be a voting member in the absence of Howard Pearl.

**ACCEPTANCE OF MINUTES:**

**Regular Hearing – Ned Lizotte made a motion to approve the minutes of July 24, 2008; seconded by Jim Venne. All were in favor.**

**DISCUSSION:**

Debra Rattee – Request for building permit extension. A request was received from Ms. Rattee to extend building permit #07-028 for one year. Ms. Rattee was unable to attend or have a representative in attendance at the meeting. Ms. Rattee's letter states that she has a buyer for the property that has this permit and the buyer would not be ready to build until 2009. There was discussion that this permit was extended once in January 2008 and how this would be a different owner once the sale is completed. Jim Venne stated that it would not be changing the total number of building permits. The process of carryover of unused permits was discussed. Roy Merrill said that the new owner could come to the ZBA. Dave Powelson suggested that the new owner could apply for a new permit in their own name. Ned Lizotte and George Saunderson said that they did not see a problem with the extension or either suggestion. Mr. Saunderson said that he thought the safest way to handle this might be to have the buyer come before the Board. Jim Venne said that he felt the Board should allow the extension. Jon Huntington said that they are assuming that the buyer will build a house with the permit but they do not really know. He said that he is alright with the extension as long as there is an abundance of building permits. Ned Lizotte discussed what has been considered on similar extension requests and that he feels this is a reasonable request based on the fact that Ms. Rattee has a buyer for this piece but they are not prepared to build until next year. The chairman asked if there was any advantage to waiting a month. Mr. Lizotte asked if it would be prudent to go with just the letter or if they should have someone come to the Board in person to address the request. The chairman pointed out that this would be the second extension,

noting that extending one year is not much of a hurdle but he was not sure about a second time. Roy Merrill stated that a second extension should be handled on a case by case basis. Mr. Lizotte asked if the buyer should come in and explain their intentions to the Board if they were going to handle these on a case by case basis. Mr. Merrill said that it would not be a bad idea to at least find out where the building permit list stands at this point. Mr. Huntington said that they could let Ms. Rattee sell the lot and the new owners would then apply for a 2009 permit. Mr. Merrill said that he was not sure that there are not cases that cannot be extended a second time. Ned Lizotte stated that the building permit is in effect until the end of the year so there is no rush to make a decision. George Saunderson said that he would like more information and postpone a month. **Ned Lizotte made a motion to postpone discussion for one month; seconded by George Saunderson. All were in favor.** Discussion tabled to meeting of September 25, 2008.

#### **PUBLIC HEARINGS:**

Case # 08-19, Steve Jackson – Special Exception for Real Estate Office, Map 20, Lot 40. A letter asking that this application be withdrawn was received from the applicant on this date.

Case # 08-20, Richard & Denise Byrne - Special Exception for an Accessory Structure and Building Permit Extension, Map 12, Lot 56. Mr. Byrne explained that they would like to build a barn on their lot on Thistle Hill Road so that they can start cleaning out their current house while waiting for it to sell. He also explained that the building permit that they have was originally for 2009 in Wayne Thistle's name and it was moved to 2008. Roy Merrill asked if the Byrnes has personally bumped the permit to 2008. Mr. Byrnes said that it was automatically moved up. Mr. Merrill explained the building permit process, saying that the owner is given the choice but the permits are not automatically moved up. Dave Powelson asked if the Byrnes would be in a position to build in 2009. Mr. Byrne said that was their plan as long as the economy turns around and they can sell their Concord house. Mrs. Byrne said that at the very least they might have to put in the house foundation. Dave Powelson stated that would count as a substantial start on the building according to the Zoning Ordinance. Mr. Byrne said he had thought that the shed would keep the permit active but found out that the permit is for the main residence only.

Chairman Powelson stated that the Board has two parts to consider, one being the extension and the other being the special exception. Mrs. Byrne said that they would like to build the accessory building now and the house next year. Jon Huntington pointed out that the sketch shows a barn and a shed and asked which they are asking to build. Mr. Byrne explained that the proposal is for a 28' x 30' structure with two separate rooms, one being a 16' x 30' with a second floor as the main barn and one being a 12' x 16' smaller area with one level. George Saunderson asked if this would be for storage or animals. Mr. Byrne said it would be for storage, saying that they would park a car in it instead of renting a storage space as well as store items from their current house. Mr. Saunderson asked if there would be electricity, plumbing, water, heat, or insulation. Mr. Byrne stated that there would not. Roy Merrill asked if they had plans of the building.

Mr. Byrne said that their contractor has the building plans. George Saunderson asked about the barn foundation. Mr. Byrne said that it would be a slab.

Roy Merrill asked if this is the lot with the paved driveway. Mr. Byrne said that it was, explaining that Wayne Thistle put the driveway in and they had it paved. Mr. Merrill stated that the Planning Board did a site visit on the road to review several items and noted that the driveway is not pitched correctly. Mr. Byrne said that Mr. Thistle had mentioned that when they put the second coat on and that Mr. Thistle was planning to do something to redirect the water. Mr. Merrill talked about options to correct the situation or the applicant might have to come to the Board for a variance. George Saunderson asked if Mr. Merrill thought they could extend the building permit with the condition that the driveway be corrected. Roy Merrill said that the Board could do a site visit. Donna informed the Board that town engineer Tony Puntin did an inspection of the road construction on the previous day and had addressed the problems with the driveways being at the wrong pitch in his inspection report to Mr. Thistle and the Planning Board. Chairman Powelson said that the driveway should be cleaned up separately as it is not involved with the application or extension. Mr. Merrill said that the Board saw plans with a similar request on Bear Hill Road. Mr. Powelson said that that was different because the Board had tried to be sure that was an accessory building to a permitted use. He pointed out that the Board would not generally have anything to do with a residential accessory structure as far as the design is concerned.

George Saunderson said that the extension is fairly simple, stating that it was originally for 2009 and has not been extended previously. **Ned Lizotte made a motion to extend the building permit for one year; seconded by George Saunderson.** There was discussion about the applicants being able to build the accessory structure if the permit is extended back to 2009. Dave Powelson pointed out that the applicants could do their foundation now without the special exception but there is some real concern of having a foundation in the ground due to damage from it freezing. **All were in favor of the extension.**

The chairman went through the points of the application. #3 special conditions – the chairman pointed out that Section 208.4 requires that driveways slope away from the road. Roy Merrill said that it not necessarily a requirement for this application but it should be noted that there is a problem with the driveway for this lot. He said that it would need to be corrected or the applicant should seek a variance. Chairman Powelson said that he was not sure that it needs to be considered by the ZBA if it is being addressed elsewhere. Mr. Merrill mentioned another driveway that was discovered to be incorrectly built at the time that the owner asked for their occupancy permit and had to be bonded until it could be corrected in the spring. He said the Byrnes needed to be warned that it should be corrected before they get to the point of wanting their occupancy permit.

George Saunderson suggested doing a site visit, noting that the applicants could still pour their slab after the September meeting. Mr. Byrne said that they are on the contractor's list for the end of September. Dave Powelson said that he was not sure that the Board needed to see the end of the driveway to decide the special exception application. Jim Venne said that they have plenty of time to fix the driveway before being ready to get their CO. The chairman completed the review of the seven points of the application. He asked if there was anyone wishing to speak in favor of or against the application or if there were any questions from the Board. Hearing none, he closed the

public hearing and opened it to the Board only. **Roy Merrill made a motion to approve the special exception to construct an accessory structure prior to the residence; seconded by Jim Venne. A roll vote was taken: Jim Venne – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous – PASSED**

Case #08-21, Concord Ventures Area Development (CVAD), LLC – Special Exception for Building Height, Map 1, Lot 49. Tony Marcotte represented CVAD. Ned Lizotte said that he thought the Board had already handled all areas of concern on this project. Mr. Marcotte said that they thought the same but have since received comments from town engineer Tony Puntin after his review of the proposed project on Route 106. Mr. Marcotte said that he feels that they met the Ordinance with the access to the building being at the front and where they will be installing a 20,000 gallon fire cistern. He said that Mr. Puntin raised the issue of the building being too tall if accessed from the rear which has a lower level, designed that way because of the terrain. He said that he asked the Planning Board for a decision on Mr. Puntin's comments and was instructed to see the Zoning Board for a special exception. Mr. Marcotte explained that the state has amended their shoreland protection act as of July 1<sup>st</sup> and this property now has to have a shoreland protection permit because it is 230' from the river at the rear. He said that the site specific permit is now being held up because of having to apply for the additional permit.

Mr. Marcotte stated that he feels that they meet the requirements of a special exception because Section 208.2 allows for sites larger than required for the proposed use to increase the height of structures by 10 feet per additional acre up to a maximum of 50 feet. Chairman Powelson asked what height the applicants are looking for. Mr. Marcotte said that they would like approval for 50' at the back of the building. He said that they could make the building with a flat roof but they had designed it based on the 106 Corridor Study's design preferences. George Saunderson asked how high the building is at the front. Mr. Marcotte said it is 34'. Mr. Saunderson said that was in the spirit of the Ordinance.

Chairman Powelson went through the points of the application. #2) Mr. Marcotte stated that he feels that the building fits the New England style and would not be detrimental to the neighborhood. #3) Mr. Marcotte said the site was designed to take advantage of the slope. #4) Mr. Marcotte said there would be a 20,000 gallon cistern at the front of the building. #6) Mr. Marcotte said that there would be no adverse impact on the environment whether flat or pitched roof.

The chairman asked if there were any questions from the Board. Ned Lizotte asked Mr. Marcotte if they needed 50' or a little more. Mr. Marcotte said that 50' would be enough. Mr. Lizotte asked if it would be prudent to have a little more. Mr. Marcotte stated that he did not think that the Ordinance would allow more than 50'. Dave Powelson stated that they have always allowed taller structures in the C/I district but they have been uninhabited structures whereas this building is intended to be occupied. He said that this one would probably closer fall under the 50' special exception for having extra land. Roy Merrill said that if Mr. Marcotte was comfortable with 50' it would fit. Jon Huntington stated that the additional height cannot be seen from the road. Mr.

Marcotte said that leaving it at 50' would be workable, noting that they could bring the roof down a little if necessary.

Chairman Powelson asked if there was anyone wishing to speak in favor of or against the application. There were none. Donna stated that an abutter, Mr. Bresciani, had called the office to inquire about the application and had no concerns with the request. The chairman closed the public hearing and opened it to the Board only. **Ned Lizotte made a motion to grant the special exception for the height of the building to be a maximum of 50' as measured at the rear of the building; seconded by Roy Merrill.** Mr. Merrill said that he personally thinks that the town has run into this before as there are a good number of houses around town that do not meet the 35' height restriction. He said that this matter has been discussed in the past about buildings being measured in the front. Mr. Merrill said that this project meets the 35' in the front, noting that it would be impossible to build a two story commercial building or with a basement. Ned Lizotte said that this property is conducive to this design. Mr. Merrill said that this is a good use of this lot. Mr. Lizotte said that he would agree. **A roll vote was taken: Jim Venne – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous – PASSED**

Case #08-22, Jake Bronnenberg – Special Exception for an Accessory Structure, Map 7, Lot 4. Mr. Bronnenberg explained that he has a building permit and plans to start building his home in the spring but wants to put up a pole barn first. There was discussion about the building permit and whether it is for 2008 or 2009. Members explained to Mr. Bronnenberg what the options were if it is a 2008 permit, those being that he put in the foundation this fall or get an extension to 2009. Mr. Bronnenberg said that the barn would be a 30' x 50' structure for forestry and agricultural purposes. He stated that he is a licensed forester and has a seventy-four acre woodlot with a conservation easement that permits a building of this nature to manage the tree farm.

George Saunderson asked if the barn would be insulated or have electricity. Mr. Bronnenberg said it would not, explaining that it would be four walls, a roof, and sliding doors. Roy Merrill asked about the map and lot for clarification. Mr. Bronnenberg explained that the seventy-four acres consist of a 2.9 acre house lot and the remainder is in the conservation easement. He said that he would be putting the barn on the conservation section, not on the house lot. Jon Huntington asked how far it is back to the swamp. Mr. Bronnenberg pointed out the wooded area, brook, swamp and grassy area.

Chairman Powelson said this is a bit of an awkward spot because the applicant is looking for building a house and then on a separate parcel wants to build a barn. Roy Merrill asked if there are two deeds. Mr. Bronnenberg said that it is one lot, one deed, easement and non-easement sections. Mr. Powelson asked if they could put an accessory use for a house in the forest preserve or if they could put an accessory use for forestry if it was part of the house. Mr. Bronnenberg asked what the issue would be. There was discussion of current use, the easement, and the intent of the Ordinance. Mr. Powelson stated that the applicant has an easement to control some of the land. He asked if the easement allows the applicant to build buildings. Mr. Bronnenberg said that it does as long as it is for use with forestry or agriculture. Mr. Powelson asked if this structure would be considered to be an accessory structure to be built in the house part of the lot. Roy Merrill said that it is not going to be built in the house portion. Ned Lizotte said that

this would be similar to the situation on Bear Hill Road and that the barn would be built to house equipment for that use. Roy Merrill asked if Mr. Bronnenberg was putting the barn in the proposed location because the house portion of the lot is not large enough to accommodate the house and the barn. Mr. Bronnenberg said that was part of it but also that he is in the process of getting approval to build a woods road that would access the wood lot and be going by this barn.

Discussion continued about the terms of the easement, this being an accessory use of the land or accessory structure to the primary residence, review of a previous similar situation, and the need to see a copy of the easement. Roy Merrill said that the Board should do a site visit. Mr. Bronnenberg said that he was fine with that and would get a copy of the conservation easement for the members to review at that time. He went through the points of the application. Mr. Powelson said that he is alright with the points but they do have to clarify if Mr. Bronnenberg's building permit is for 2008 or 2009 and if this would be an accessory building for a home or an accessory building for forestry. Roy Merrill said that he felt forestry would be more likely. Jim Venne asked Mr. Bronnenberg if he would have skidders where he is a forester. Mr. Bronnenberg said that they use skidders when harvesting but those would stay elsewhere. He explained that he and his father have a logging business but that is different. He said that this woodlot is management, not commercial forestry, would be low key as a homeowner, and not with big equipment. Mr. Bronnenberg said that his wife has oxen that will eventually be used to haul the logs on this property.

The chairman asked if there was anyone wishing to speak in favor of or against the application. Abutter Tom Bardwell said that he is not opposed to the application but did have some questions about property lines. Mr. Bardwell stated that the lines on the surveyed subdivision plan that Mr. Bronnenberg submitted do not agree with his deed. He said he is concerned about the placement of the barn as it pertains to the deed. Chairman Powelson said that it is not really up to the Board to figure out where the property lines are. Mr. Bardwell said that his concern is that Mr. Bronnenberg would be using the setbacks from the property lines on the plan which he feels are incorrect. Mr. Powelson pointed out that Mr. Bronnenberg's proposal puts the barn at 245' from the boundary, asking if that might be enough of a margin to compensate for what the line may be off. Mr. Bronnenberg said that he is willing to meet with Mr. Bardwell to go over the property lines. Mr. Bardwell said that he would also be interested in what is in the easement. He said he is not against the barn, he just wants to be sure it is placed on Mr. Bronnenberg's own property. There was no one else wishing to speak about the application.

A site visit was scheduled for Monday, September 8, 2008 at 6:00 p.m. Mr. Bardwell was informed that he, along with any other abutter, is welcome to attend. The hearing was continued until the next meeting on September 25, 2008 at 7:00 p.m. There will be no further notification. Mr. Bronnenberg was asked to have a copy of the easement at the site visit as well as confirm the date of his building permit.

Case #08-23, David & Karen Bast – Special Exception for Reduced Setback for Driveway Turnaround, Map 39, Lot 11-3. Roy Merrill recused himself; Jon Huntington was appointed to sit as a voting member for this case. The points of the application were covered with Mr. Bast. Chairman Powelson stated that the Board has seen the site as part

of a previous application process. He asked Mr. Bast how much of a reduction they are actually asking for. Mr. Bast said that they would like to do a 12' x 8' turnaround which would require an encroachment in the side setback of 7' at the rear of the turnaround and 5' at the front of the turnaround because of the angle of it. The chairman stated that Mr. Bast was asking for a 23' setback. Mr. Bast explained the location and layout of the proposed turnaround.

Jon Huntington said that he could not remember what the Board had decided on the size of the proposed garage that was before the Board last month. The chairman said that the application for the reduced setback for the garage was denied. He said that the Board had looked at the site and tried to figure out if there would be a reasonable alternative. Mr. Huntington said that he thought they had talked about 20' or 22'. Mr. Powelson said that they had discussed the size to stay within the 30' setback at the last hearing when the applicant had not been present so the Board had used the information available and subsequently denied the application. There was discussion of what the applicant had needed for the garage to work and Jon Huntington pointed out that the diagram submitted with this application shows a 24' garage. He wanted it noted that the Board is not in any way approving that as part of this decision. The diagram is being used to show the turnaround only and this application is for the driveway turnaround only.

**Ned Lizotte made a motion to grant the special exception for a reduced side setback from 30' to 23' for the driveway turnaround; seconded by Jon Huntington.**

Chairman Powelson asked if there were any questions from the Board. Hearing none, a roll vote was taken: **Jon Huntington – Yes; George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Jim Venne – Yes. Unanimous - PASSED**

#### **ADJOURNMENT:**

Ned Lizotte made a motion to adjourn the meeting at 8:50 p.m.; seconded by Roy Merrill. All were in favor.

Respectfully submitted,

Donna White  
Administrative Assistant