

APPROVED

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
JUNE 26, 2008**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of June 26, 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, Howard Pearl, and Alternates Jim Venne and Jon Huntington.

ACCEPTANCE OF MINUTES:

Regular Hearing – **Howard Pearl made a motion to approve the minutes of May 22, 2008; seconded by George Saunderson. All were in favor.**

Site Visits – **George Saunderson made a motion to approve the site visit minutes of May 24, 2008; seconded by Ned Lizotte. All were in favor.**
Ned Lizotte made a motion to approve the site visit minutes of June 4, 2008; seconded by Howard Pearl. All were in favor.

DISCUSSION:

Web Stout for DJP Realty – Mr. Stout gave an overview of the proposed three lot subdivision on Bee Hole Road, reminding the Board that two special exceptions and a variance were previously approved for this project. He said that the applicant is currently before the Planning Board and that the town engineer has reviewed the plans and submitted comments. One concern of the engineer is that the road is in a section of the steep slope district. Mr. Stout stated that the cul-de-sac is to be dropped in elevation per the ZBA variance. He said it would technically still be in steep slopes that are manmade. Roy Merrill said that he remembers when this was brought up and he told the applicants that they did not have a variance unless they planed off the back side of the cul-de-sac. He said that they all understood that the road and driveway were discussed and approved at the same time. Chairman Powelson read the minutes of January 25, 2007 with regard to the deliberation, motion, and approval, as well as the notice of decision that was issued. Mr. Stout said that they need a clarification so that he can address the engineer's comment. Howard Pearl said that a letter of the intent could be issued. Ned Lizotte said that the notice seems to cover the road as well. He said he did not think that a motion

was necessary because the road was listed as a condition of the variance approval. Chairman Powelson asked if the Board agreed that was clearly the intent of the motion and approval. All were in agreement. A letter and copy of these minutes will be issued to the applicant for review by the town engineer.

Steve Jackson – Mr. Jackson explained that he purchased property on Berry Road four years ago. He said that there were two pieces and he recently sold the larger piece and kept the separate lot of Map 58, Lot 50. Mr. Jackson said that the buyer's title attorney said he could not justify that it is a separate lot of record and that Mr. Jackson should go to the town and get clarification. Mr. Jackson said that he has found the lot on town tax maps from the 1970s and tax cards with 1985 records. Dave Powelson asked if it is a conforming lot of record. He said the question would be if the lot was conforming or non-conforming when zoning passed in 1987. He referred to Section S601 of the Zoning Ordinance. Mr. Jackson stated that this lot has 35' of frontage on Berry Road. Roy Merrill mentioned other lots that were always considered lots of record but were not combined and were always taxed separately. Mr. Jackson stated that he has a letter from the selectmen saying this is a separate lot of record but the attorney wanted something from the Zoning Board. Discussion continued about other lots, some having been combined, others left as individual lots. It was stated again that this lot has been on the tax maps since at least 1979. Howard Pearl said the problem would be if the lot is buildable. Mr. Jackson said that he understands that a variance would be needed in order to build on this lot. Chairman Powelson read Section 601.1 of the Zoning Ordinance. Ned Lizotte asked why the frontage is only 35' instead of 50'. Mr. Jackson explained that Mr. Berry gave the abutter across the road a protective buffer at the front of this piece. George Saunderson asked if Mr. Jackson gets a separate tax bill. Mr. Jackson said that he does and that everyone has since the division of the parcels. Roy Merrill said that he does not feel that they can say that something that has always been taxed as a lot cannot be used due to zoning changes. Discussion continued about other examples, vacant lots that were not combined, and two that were combined but still did not make a conforming lot. George Saunderson asked Mr. Jackson if he is selling this as a buildable lot. Mr. Jackson said he is not currently planning to sell it and knows that it is non-buildable without a variance. Dave Powelson said that would agree with his interpretation of Section 601.1. Howard Pearl pointed out that Mr. Jackson would have to have an adjacent lot in order to combine lots and Mr. Jackson does not have that. The chairman stated that this is Mr. Jackson's lot and is non-buildable. Howard Pearl said that he would agree that it is non-buildable or non-conforming but is a lot of record. The members all agreed and a letter will be written stating that.

PUBLIC HEARINGS:

Case # 08-07 Geraldine Gowlis – Special Exception for Boarding House/Bed & Breakfast, Map 12, Lot 33. This application was withdrawn by the applicant.

Case # 08-12, Chris Wittenberg – Special Exception for Reduced Setback, Map 20, Lot 5. Michael Drotar spoke on behalf of the applicant. Abutters have been notified; none were present. Mr. Drotar submitted a letter from Richard and Gladys Murphy, the abutters

most effected by this request, stating that they are in agreement with the setback reduction. Chairman Powelson stated that Board members did a site visit last month and went through the points of the application at the May meeting. He noted that the request is to reduce the rear setback from 25' to 15'. There were no questions from the public. The chairman closed the hearing to the public and opened it to the Board only. **George Saunderson made a motion to reduce the rear setback to 15' as presented; seconded by Roy Merrill. A roll vote was taken: Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous – PASSED**

Case # 08-13, Neil & Stephanie Smith – Special Exception for Reduced Setback, Map 39, Lot 58. Abutters were notified; none were present. Chairman Powelson stated that a site visit was done earlier this month. He went through the points of the application. Mr. Smith said that they are asking for the side setback to be reduced from 30' to 20', noting that the abutting lot is undeveloped at the point of encroachment. The chairman asked if there were any questions from the Board. Roy Merrill said that everything was covered at the site walk. A letter was received from abutters Kerry and Sharon Drake and a call was received from abutter Sharyn Littizio, both in agreement with the setback reduction. There were no questions from the public. Jon Huntington asked about the lot size, noting that the tax map shows it as a small lot. Mr. Smith explained that there were twenty lots created in the late 1950s. The chairman said it is a non-conforming lot. Mr. Smith said that the house was built in 1991, explaining that there was an existing foundation at the time they purchased the lot. He stated that there are covenants that allow 20' setbacks. The chairman said that he has a copy of the deed with those covenants; it was submitted for the file. It was noted that the tax maps are for reference only. The chairman closed the hearing to the public and opened it to the Board only. **Ned Lizotte made a motion to reduce the side setback from 30' to 20'; seconded by Howard Pearl. Mr. Pearl said that this is the only place on the lot to put a garage. A roll vote was taken: Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous – PASSED**

Case # 08-14, Vasilios Lazos – Special Exception for Reduced Setback, Map 55, Lot 10. Abutters have been notified; none were present. Steve Melbourne represented Mr. Lazos. He explained that this request to reduce the setback from 30' to 20' is for the placement of a 16' x 16' shed and why the location was chosen. Mr. Melbourne gave pictures to the Board to show the area, noting it is the flattest of the parcel. Roy Merrill asked where the neighbor's house sits in conjunction to this proposed shed location. It was noted that the house can be seen at a reasonable distance away in one of the pictures submitted. Howard Pearl said that this request seems to be straightforward. Roy Merrill said with the pictures and plan that were submitted he does not feel that a site visit is necessary, adding that this is a shed on blocks in a flat area.

Chairman Powelson went through the points of the application. Ned Lizotte stated that they have confirmed the location and that the shed will be on blocks. The chairman asked Mr. Melbourne for details of the shed. Mr. Melbourne said that it would be a pre-made shed with windows that looks like a little house. There were no questions from the Board nor anyone who wished to speak in favor of or against the application.

The chairman asked if Board members felt that a site visit should be done. Ned Lizotte said that he agrees with Mr. Merrill and that the pictures clearly show the layout and the relationship to the other home. Jon Huntington stated that a 16' x 16' shed is not going to take up much space on a 3 ½ acre parcel. Roy Merrill stated that there is no site work to be done so there is no disturbance of any kind. The chairman closed the hearing to the public and opened it to the Board only. **Ned Lizotte made a motion to reduce the side setback from 30' to 20'; seconded by Howard Pearl.** Mr. Pearl said that he feels that that applicant has met all of the criteria. **A roll vote was taken: George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes. Unanimous – PASSED**

Case # 08-15, Leo Boucher – Special Exception for Reduced Setback, Map 58, Lot 62. The applicant was unable to attend as he was away on business. Abutters have been notified; Roanne Sanborn and Kathi Guay were present. Chairman Powelson said that he thought the Board should go through the application even though the applicant was not present, and he read through the points of the application. Howard Pearl said that one concern would be runoff into the pond. A site visit was scheduled for July 9, 2008 at 6:00 p.m. Abutter Roanne Sanborn stated that she has no problem with the request. Abutter Kathi Guay stated that she has no problem at all with the request. **Howard Pearl made a motion to continue this application to July 24, 2008 at 7:00 p.m. at the Community Building; seconded by Ned Lizotte. All were in favor.** There will be no further notification.

Case # 08-16, Michael & Nancy Dube – Special Exception for Reduced Setback, Map 58, Lot 69. Abutters have been notified; none were present. Mr. Dube explained that this request is to allow a deck on their home which will encroach on the front setback. He explained the property location, noting that it is not on the pond side of Berry Road. Mr. Dube stated that the deck was started before they were aware that a permit was required and that the building department had sent them to the Board because of the setback encroachment. Chairman Powelson went through the points of the application. There was discussion of the point where the measurement was taken from, the width of the right-of-way, and that it should be measured from the edge of the property to the edge of the deck. A site visit was scheduled for July 9, 2008 at 6:15 p.m.

Mr. Dube stated that they only have one means of egress right now because they cannot finish the deck. Jim Venne said that he has no problem with the request after seeing the pictures that were submitted by the applicants. The chairman stated that the deck could be covered with planks for now to resolve the life safety issue. Mrs. Dube stated that she will be having major back surgery on July 2, 2008 and would feel better knowing that she could get in and out of the house safely, noting that there would no steps off the deck if not completed. Board members looked at additional pictures. George Saunderson stated that he was alright without a visit. Howard Pearl agreed.

The chairman asked if there were any abutters who wished to speak in favor of or against the application. Kathi Guay stated that the applicants have done a lot of work on the property and that the deck can only further enhance it. Jon Huntington said this would certainly be comparable to others in the area. Howard Pearl noted that they do not know the actual measurement. There was discussion that a decision could be worded to

be no more than so far from the house rather than reducing the setback to a certain distance.

Chairman Powelson closed the hearing to the public and opened it to the Board only. **Howard Pearl made a motion to approve the special exception to allow construction of a deck not protruding more than 9' from the house; seconded by George Saunderson.** Mr. Pearl said that it would be pretty consistent with the area and that he does not want to hold this up in light of the health and safety concerns. He said that enough can be seen from the pictures so that a site visit would not be critical to the decision. All agreed. **A roll vote was taken: Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes. Unanimous – PASSED** The Board agreed that they would still look at the property while in the area for another site visit.

Case # 08-17, David & Karen Bast – Special Exception for Reduced Setback, Map 39, Lot 11-3. Abutters have been notified; none were present. Karen Bast explained that they want to use 5' to 8 ½' of the side setback for a turn-around and garage. She showed a diagram with the house, proposed garage, and turn-around. Mrs. Bast said that the back corner of the original garage design would be over the setback line by 3.43' but the design had to change in order to accommodate a set of stairs that would go from the garage into the mudroom. The change in the plan would cause the back corner to be over by 8' and the front corner by 5'. She said this would be for a two-stall garage but they do not have actual plans at this point. There was discussion of the driveway location. Mrs. Bast stated that construction has begun on the house and mudroom.

Howard Pearl suggested that the applicants get the turn-around and garage staked out before the Board did a site visit. There was discussion of design options. Chairman Powelson went through the points of the application. He asked if there were any questions from the Board. Ned Lizotte referred to #6 and #7 of section two on the application which address consistency with other setbacks in the neighborhood. Mr. Lizotte noted that the applicants are the first to come before the Board for setbacks in this neighborhood and that there is nothing comparable as this is a new subdivision.

Chairman Powelson asked if there was anyone wishing to speak in favor of or against the application. There were none. Mr. Powelson suggested that the applicants firm up where and what the reduction will be. He said he did not see any particular concerns from the Board. Roy Merrill asked when they plan to build the garage. Mrs. Bast said she was not sure, it could be five years. Mr. Merrill suggested that they deal with just the turn-around at this point. Howard Pearl said that they have to consider other lots because the lots in this subdivision are smaller and narrow. A site visit was scheduled for July 9, 2008 at 6:45 p.m. **Howard Pearl made a motion to continue this application to July 24, 2008 at 7:00 p.m. at the Community Building; seconded by Ned Lizotte. All were in favor.** There will be no further notification.

Case # 08-18, Gail Robinson – Special Exception for Reduced Setback, Map 4, Lot 18. Abutters have been notified; none were present. Larry Ballin of the Barn Store represented the applicant. Mr. Ballin explained that the applicant has asked his company to construct a pavilion where she currently has a riding ring. He said this would be a pole barn with a truss roof over, not enclosed. Mr. Ballin said they are seeking relief on the

front and side setbacks. Roy Merrill pointed out that a stonewall is generally the boundary line and this design looks like it would be right against it. Mr. Ballin said that he measured from the travel way. Ned Lizotte asked what is on the other side of the side boundary. Mr. Ballin said that there is a house approximately 150' to the other side of the boundary. He explained that the thought would be that this area is already disturbed rather than disturb any other vegetation. Roy Merrill said one concern would be run off from the building.

Mr. Ballin went through the points of the application. He explained that the rear of the property is sloped and has wetlands therefore would not be usable for this purpose. Roy Merrill said that a site walk should be done as he is not sure that the pavilion could not move 10' to the driveway side. Mr. Ballin said that he has suggested that to the applicant but she wants it in this location and him to present it as such. Chairman Powelson asked if there was anyone who wished to speak in favor of or against the application. There were none. Mr. Ballin said that the site is staked at three corners now, noting that the fourth would be in her driveway. He said this would be a 55' x 105' pavilion which is small for an indoor riding ring, with 60' x 120' typically being the smallest. A site visit was scheduled for July 9, 2008 at 7:15 p.m. **Roy Merrill made a motion to continue this application to July 24, 2008 at 7:00 p.m. at the Community Building; seconded by George Saunderson. All were in favor.** There will be no further notification.

BOARD DISCUSSION:

Jon Huntington asked why the discussions were held before the hearings. There was discussion of how the agenda has been organized in the past, the way that cases are heard, and that the chairman has the discretion to take the business in any order.

ADJOURNMENT:

Ned Lizotte made a motion to adjourn the meeting at 9:27 p.m.; seconded by Howard Pearl. All were in favor.

Respectfully submitted,

Donna White
Administrative Assistant