

DRAFT

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
MAY 22, 2008**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of May 22, 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 April 24, 2008; seconded by George Saunderson. All were in favor.**

Site Visits – **George Saunderson made a motion to approve the minutes of two site visits on April 24, 2008; seconded by Dave Powelson. All were in favor.**

DISCUSSION:

Colin Cabot – Mr. Cabot had previously submitted a letter to the Board about the operation of Sanborn Mills, Inc. He gave an overview of the property at 7097 Sanborn Road, explaining that they have operating mills, blacksmith and tinsmith shops. Mr. Cabot explained that he went to the building department for a permit to do an addition and renovations to the house. Because the project included a commercial kitchen, which would be a second kitchen in the house, he was instructed to see the Board. Mr. Cabot stated that they do workshops at the farm about traditional crafts such as blacksmithing, tinsmithing, and spinning, and they provide meals for attendees. They have been told by the State that they must have a commercial kitchen if they are serving to the public.

Chairman Powelson said that the Board has to look at what zoning permits now and what needs to be changed to allow this use. Roy Merrill said that this house has always had two kitchens as it was always a two family house and he does not see why they aren't entitled to make one bigger. Ned Lizotte said that the whole property is encased by itself and it is not like it sits in the center of a residential area. He talked of the historical value of the farm and that the proposal has a lot of merit. There was lengthy discussion of looking at how this fits the Zoning Ordinance, that it is not clear cut and will not necessarily fit modern zoning. The chairman said that it is worth exploring and that it could be considered for a March zoning change. There was discussion about

zoning for schools, creation of an historical district, and the long term plans for the farm. Mr. Merrill repeated his thoughts on there always being two kitchens and that he feels they are entitled to make it bigger. The chairman said they would have to look at what it would take to allow a working living farm. Mr. Merrill stated that there were a lot of uses in the AFP District long before zoning came in and those should be allowed to continue. Ned Lizotte stated that this is in the right district for what Mr. Cabot is doing with farming and the mills.

Mr. Cabot asked if the Board would allow him to apply for an addition to the house. There was discussion about there being nothing that says they cannot have commercial grade equipment if in a personal house and that it could not be used for anything that is not permitted at this point. The chairman pointed out that the proposed front porch would crowd the property line. Mr. Cabot said that they could skip the porch for now. Mr. Powelson said that he felt that the addition by itself would be acceptable. George Saunderson asked about Mr. Cabot's proposed timeframe. Mr. Cabot said that they would like to get the foundation and shell for the addition done this year. He said the rest of the renovations would wait until next year.

The Board agreed that they would like to do a site visit of the property. The visit was scheduled for May 24, 2008 at 8:00 a.m.

Knowlton driveway – The Board did a site visit at 83 Berry Road just prior to this meeting to review the construction/correction of the driveway. Chairman Powelson stated that the driveway appears to meet the criteria and expectations set at the 12/27/07 ZBA meeting. The driveway corrections were also inspected and approved by the road agent. Per the decision of 12/27/07, Dennis Moore placed \$1,000 in escrow with the town. **Roy Merrill made a motion to release the bond of \$1,000 to Dennis Moore; seconded by Ned Lizotte.** Howard Pearl said that he was not able to attend the site visit and asked if the other members were satisfied with the condition of the work. All were in agreement that the work met the Board's expectations. **All were in favor of releasing the \$1,000 bond.** Donna will notify the selectmen for release of the bond.

PUBLIC HEARINGS:

Case # 08-07 Geraldine Gowlis – Special Exception for Boarding House/Bed & Breakfast, Map 12, Lot 33. Abutters have been notified; Jocelyn Hebert was present. Ms. Gowlis explained that she would like to take in boarders to have added income to pay her taxes. She said that she has had her mother, an aunt, two sons, and a gentleman living there, adding that the aunt recently went to a nursing home, one son is moving, and the gentleman will be going to a nursing home in the near future.

The chairman read Section 204.3 B of the Zoning Ordinance. He said it is unclear how to define bed & breakfast or boarding house. He asked how many rooms Ms. Gowlis was hoping to rent out. Ms. Gowlis said that she has six bedrooms. The chairman clarified that those six included hers and her mother's. Ned Lizotte stated that a bed & breakfast generally has one kitchen. Ms. Gowlis said she only has one since she took two out as directed a year or two ago. Mr. Lizotte asked if there was confirmation of that from Code Enforcement. Donna reported that there was no indication of that in

the file. Roy Merrill asked what the septic system was designed for. Ms. Gowlis said it was a five bedroom septic.

Chairman Powelson said he would think it would be a bed & breakfast to go to six bedrooms. Howard Pearl asked if there would be state regulations about this type of business. Ms. Gowlis said that the boarders would do their own cooking. Mr. Pearl said that he would like better descriptions of a bed & breakfast and boarding house. Ned Lizotte read about multi-family dwellings. It was agreed that this would not be considered as such because there are not separate units. Chairman Powelson noted that this may need to go for site development through the Planning Board.

Jim Venne asked how many are currently living in the house. Ms. Gowlis said there are five people there now. Mr. Venne asked if those people would be leaving and paying boarders coming in. Ms. Gowlis said that three would be staying, herself, her mother, and one son. She said she does not want this to be a business, she just wants to earn extra income to help with the taxes.

Chairman Powelson stated that there would be multiple vehicles. Roy Merrill asked how much parking is available, noting that that would be part of the Planning Board's concern. Howard Pearl said this is putting a business in a residential neighborhood. The chairman noted that it is allowed by special exception. Mr. Pearl said that the Board has to be prudent and consider the abutters and neighborhood. Mr. Powelson said that they could do a site visit if the Board felt it would help clarify some points. There was discussion of the difference between multi-family and boarding house, the number of bathrooms (4), if a commercial kitchen would be required, and what the state requirements might be.

Chairman Powelson went through the points of the application. Page 2, #2 – Ms. Gowlis said that she does not see where it would affect the neighborhood. #3 – Ms. Gowlis stated that she did not see any special conditions only that she might have to add to the leachfield or have the tank pumped annually. The chairman stated that Ms. Gowlis had indicated that she would have enough off street parking and that there is a five bedroom septic but a six bedroom house. #4 – Ms. Gowlis said that there would be no children so there would be no demand on schools. Page 3, #5 – Ms. Gowlis said the traffic volume would depend on who rents as some may not drive.

The chairman asked if there were any questions from the Board. Roy Merrill asked if this was a boarding house or bed & breakfast. Howard Pearl asked if her plan was to take someone in to rent a room for a month as compared to an overnight customer. Ms. Gowlis said that was the plan. Mr. Pearl said that would be more a boarding house than bed & breakfast. George Saunderson pointed out that if this was approved, it would always be a boarding house and that the Board has to consider the neighbors.

Chairman Powelson asked if there were any abutters who wished to speak in favor or against the application. Jocelyn Hebert stated that he lives next door and has several questions/concerns. He said this is in a single family home neighborhood and asked how this would be enforced. Some of his concerns are: pets, cars, or children per tenant; inspections; could they put in a stove and refrigerator and end up with small apartments; and could the current occupants all move out and the house be occupied by tenants only. Mr. Hebert said he would like all of these concerns considered. Ned Lizotte said that it would have to have owner occupancy. The chairman noted that the Board received a letter from another abutter with concerns. It will be addressed during

the Board's deliberation. Jon Huntington asked if the fire department would have to be involved. The chairman stated that that would be another thing to be considered. Howard Pearl suggested that the fire chief and code enforcement officer be asked to attend the site visit. The chairman noted that Ms. Gowlis had mentioned elderly boarders and he said that might need to be addressed with regard to handicap access and egress.

A site visit was scheduled for June 4th at 6:00 p.m. An invitation to attend will be sent to Jeff Burr and Bob Fiske. **Howard Pearl made a motion to continue this application to June 26th at 7:00 p.m. at the Community Building; seconded by Ned Lizotte.** There will be no further notice.

Case # 08-08, Kristen Cote – Special Exception for Reduced Setbacks, Map 59, Lot 20. Abutters have been notified; none were present. Ms. Cote stated that the request is to allow an 18' x 30' oval swimming pool to encroach on the side and rear setbacks, explaining that the pool would be used for her son's therapy. Chairman Powelson stated that this is a small lot so there are not many options for the pool placement. There was discussion of the pool's location, the need for handicap capabilities, and how the exception stays with the property. Ms. Cote stated that the pool would have to be removed if they moved because it is coming out of a trust fund and that is a condition of the fund. Jon Huntington stated that it is not like this is a foundation, it would be like a temporary structure.

The chairman stated that it is in the RSA's that if this is granted, it could be stated that it is to be removed when the use no longer existed. He said that is relative to handicap access ramps and other similar items. Howard Pearl said that he was not sure there would be a concern even if the pool use stayed with the property. The chairman went through the points of the application. He stated that the setbacks that are being asked for are 19' at the sides and 26' at the rear. He pointed out that the property line at Voted Road should actually be considered as a front setback as stated in the Zoning Ordinance on corner lots. Ned Lizotte asked if the area would be fenced. Ms. Cote said it is fenced now.

The chairman asked if there were any questions from the Board and if there was a need for a site visit. George Saunderson said this is for a temporary structure. Howard Pearl stated that it is for an aboveground pool only. Mr. Powelson stated that there did not appear to be any particular concerns from the Board. He closed the hearing to the public and opened it to the Board only. Howard Pearl suggested that they leave a little space for leeway. **Mr. Pearl made a motion to grant the setback reduction to 15' on Voted Road and rear and side boundary lines of the lot; seconded by Ned Lizotte.** Chairman Powelson said that all points had been covered. **A roll vote was taken: Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous – PASSED**

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 explained that they want to put an addition on the side of the house. He gave an overview of the current structure, the odd shape of the parcel and the limitations because of that. Donna reported that the abutters that would be most affected by the encroachment were in the office to inquire about the application and that they had

concerns about the property lines presented by the applicant. Mr. Drotar said that he has talked with Mr. and Mrs. Murphy and that there are no longer any concerns with the location of property lines. There was discussion about the property location, the limited options, and the size of the addition. Chairman Powelson went through the points of the application. He asked if there were any questions from the Board. There were none. Mr. Drotar stated that he has talked with three abutters and none had any questions or concerns.

A site visit was scheduled for June 4, 2008 at 6:45 p.m. **Howard Pearl made a motion to continue this application to June 26, 2008 at 7:00 p.m. at the Community Building; seconded by Ned Lizotte. All were in favor.** There will be no further notice.

Cases # 08-09, # 08-10, # 08-11, Concord Ventures Area Development (CVAD) – Special Exception for Reduced Setback, Variance for Steep Slopes, Variance for Parking Space Requirements, Map 1, Lot 49. Tony Marcotte spoke on behalf of CVAD. Abutters have been notified; none were present. Mr. Marcotte explained the location of the site and the proposed project. He stated that Staniels Road was going to be discontinued about four years ago but was not because the owner of the parcel at the time held a driveway permit at the lower section of the parcel. Mr. Marcotte stated that they are proposing to build a two story building with twenty-six units, noting that the 100' units would be deeper than most retail units. He said that they were asked by the Planning Board to look at the 106 corridor study when designing the plan, which they have done. Mr. Marcotte gave an overview of the project noting that the lower level units would be used by contractors that needed warehouse space for their materials and possibly a small office. He explained that those contractors do not need the visibility of other types of business therefore would be listed on a directory sign at the front of the property. He noted that those types of businesses would not need daylong parking. Mr. Marcotte stated that they plan to use porous pavement for the parking areas and that there would be some underground stormwater storage at the rear of the property. He said there is very sandy soil, bio-retention areas and terraced levels planned, and would be minimal runoff. Mr. Marcotte read from the Summary Findings and Design Guidelines prepared for the town in 2004 by g2+1 about grades/parking; arrangement/layout; front, side, and rear yard placement; and the general observations/recommendations of the study with regard to re-examining the Zoning Ordinance where it applies to parking space requirements relative to land use. He said they are trying to take advantage of the slope to hide parking. Mr. Marcotte handed out a plan that showed the natural slope area and the slopes created by fill that was brought in by previous owners. He explained that the areas with slopes greater than allowed in the Zoning Ordinance are minimal and how some slopes will be lessened through the construction process.

Ned Lizotte asked what type of flexibility Mr. Marcotte was looking for with regard to the parking space requirements. Mr. Marcotte said he would like the Board to allow them to figure on each user as they come in and allow code enforcement to work with them in determining the number of spaces available as tenants fill the building. He said they are looking for 118 spaces. Howard Pearl stated that the Board could give the variance for 118 spaces but the applicants could only have uses that would require up to that number. There was discussion of the number of spaces, the variables of potential

users, the parking requirements of the Zoning Ordinance, and how best to calculate with unknowns.

Dave Powelson asked what the applicants would be allowing or expecting in the lower level units. Mr. Marcotte said they would anticipate contractors needing warehouse space. He explained that each unit on the lower level would be 16' high with an overhead door and an entry door. He said they would not be suitable for a full office. Mr. Powelson asked if they would consider them for tractor trailer parking. Mr. Marcotte said that they have had one request for the end unit where there would be sufficient access but otherwise they were not designed for tractor trailers because they could not meet the necessary turning radius. He said that the site is designed for truck access and delivery and fire truck accessibility. He stated that there would be no outdoor storage. Mr. Powelson asked if they were considering light manufacturing. Mr. Marcotte said that they have considered cabinetry and contractors but no light manufacturing. He explained that the septic was designed for high intensive use based on full retail and office use.

George Saunderson asked what would work for the applicants if the Board was to put conditions of things that could not go in the building, such as light manufacturing. Jim Venne asked what would be wrong with light manufacturing. Tony Marcotte said that the concern would be the number of employees generally associated with manufacturing. There was discussion of different uses, number of employees, and limits.

Jon Huntington said that this project has the precedence for a very nice looking building on Route 106 and that it would be the first nice building in a long time. Mr. Marcotte explained that they are using the New England style with clapboard-look siding. He said it will be a focal point, not a large parking lot, close to Route 393, and not the typical retail site. Mr. Marcotte said this is a deeper building that allows for unique users and best use of the site.

#08-09, Reduced Setback – Howard Pearl suggested that each member read over the application and ask any questions they may have rather than the chairman read each point. Chairman Powelson said that they have to be sure that each point is covered. Jon Huntington asked what the highest retaining wall would be. Mr. Marcotte said that they would be stepped with a 10' high wall, a platform of 10', and then another 10' wall. Page 4, #6 – Ned Lizotte said that other developed adjacent properties would be Z1 and the campground. He said he feels that this project would be comparable. Page 5, #8 – Dave Powelson said if approved by DOT this would be all set.

The chairman asked if there were any further questions or discussion. Hearing none, he stated that the request is to reduce the side setback from 30' to 19'. Howard Pearl stated that the driveway is well placed for maximum development of the site. Ned Lizotte noted that the back access would cut down the traffic flow. Mr. Pearl said that he thinks in time there will be a traffic light by Z1 which would make Staniels Road easier for truck access. Tony Marcotte stated that DOT does a traffic study of Staniels Road any time there is a new commercial development in the area of Z1.

Chairman Powelson closed the hearing to the public and opened it to the Board only. **Ned Lizotte made a motion to approve the side setback reduction from 30' to 15'; seconded by Roy Merrill. A roll vote was taken: George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes. Unanimous – PASSED**

#08-10, Steep Slopes – Dave Powelson asked about the slopes that are being made at the bottom of the site. Mr. Marcotte stated that they are 3:1 and are not part of the steep slope district as described in the Zoning Ordinance. Ned Lizotte said that he feels the slopes are a moot point as this is what he has been trying to get passed with zoning amendments back to 25% slopes. He said that the applicants should not need to make this request. Jon Huntington asked how much material is being brought in. Mr. Marcotte said they would bring in 30,000 yards. He explained that they will bring it in from Staniels Road where they have a temporary driveway permit from the town and rip rap has been put down. He said that they will spread and compact from the bottom up, noting that the slopes will be eliminated.

Chairman Powelson went through the points of the application. Page 2, #1 – Ned Lizotte said this project would not diminish surrounding property values. Howard Pearl said that it enhances the area and promotes business if anything. Mr. Lizotte said it is a good application for this site. #2 – Ned Lizotte said this project is creating a useful purpose for this lot which currently has none. Howard Pearl pointed out that the 106 Corridor study recommendation was to create this type of business. #3 – Ned Lizotte said it was true that denial would result in unnecessary hardship. Dave Powelson said this would be an area hardship and read from page 14 of the Zoning Board of Adjustment Handbook. #4 – Ned Lizotte agreed that the variance would do substantial justice. #5 – Ned Lizotte agreed that this project would not be contrary to the spirit of the ordinance. Dave Powelson stated that the applicant has taken several mitigating measures to avoid erosion.

Chairman Powelson asked if there were further questions. Hearing none, he closed the hearing to the public and opened it to the Board only. **Howard Pearl made a motion to approve the variance as the applicant has done a good job proving the points; seconded by Ned Lizotte.** Mr. Pearl stated that this is a perfect example of why the variance clause was put in the Zoning Ordinance. **A roll vote was taken: Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous – PASSED**

#08-11, Parking Spaces – There was extensive discussion about potential uses, calculations, percentages of retail space, having code enforcement oversee the uses/space requirements, procedure for changes of use, and the relief being requested by the applicant. Howard Pearl stated that the Ordinance is specific about variances and he is not sure that they can give the relief being sought. Ned Lizotte said that the town does not have anything on Route 106 and in order to have direction, the Board has to formulate something in between the guidelines to be clear. He said what the applicant is looking for makes sense. Roy Merrill suggested that it be stipulated that they have 52,000 SF with a variance for 118 parking spaces and they make it work. Ned Lizotte said that the Board could give the variance to structure the site for what works in those spaces and any changes of use would have to go to the Planning Board. Mr. Merrill said that the Board has to put trust in the applicants to fill the building right the first time. Howard Pearl asked if that would be granting any relief. Mr. Merrill said it would be based on the highest use possible for that size building. Mr. Marcotte asked if that meant the first floor would be considered retail. Mr. Merrill said that it was 118 spaces, no matter what the uses would be. Discussion continued. Howard Pearl asked Mr. Marcotte if he would have an issue if it was stipulated that they would be allowed up to 50% of the

square footage in retail space. Mr. Marcotte said that there would be no issue with that. Roy Merrill said that it should be stipulated that it would not exceed 50% of the building, no matter which level. Mr. Marcotte stated that it would be acceptable.

Chairman Powelson went through the points of the application. #1 – Howard Pearl said that he does not see that it would diminish property values. He said it gives others the hope that they can work with the Board and put in feasible plans. #2 – Howard Pearl said that is the intent of the zoning. #3 – Ned Lizotte said that denial of the variance would result in an unnecessary hardship. Dave Powelson read case history from page 14 of the Zoning Board of Adjustment handbook. #4 – Ned Lizotte said that he agrees with the applicant's response. #5 – Ned Lizotte said this would allow flexibility to allow maximum use of the property.

Steve Jackson said that he would encourage the Zoning Board to look at the standards for parking. He gave several examples of calculations and the required spaces based on them. Mr. Jackson said that it would appear that the town is fairly aggressive on their requirements compared to surrounding areas. There was brief discussion about the requirements and addressing changes.

Chairman Powelson closed the hearing to the public and opened it to the Board only. **Howard Pearl made a motion to grant a variance to allow 118 parking spaces with the retail space not to exceed 50% of the 52,000 SF total; seconded by Ned Lizotte. A roll vote was taken: George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes. Unanimous - PASSED**

BOARD DISCUSSION:

Chairman Powelson stated that a decision has been received from the court on the SDS matter. Copies of the decision were handed out to each member.

ADJOURNMENT:

Jon Huntington made a motion to adjourn the meeting at 10:35 p.m.; seconded by Howard Pearl. All were in favor.

Respectfully submitted,

Donna White
Administrative Assistant