

**APPROVED**

**TOWN OF LOUDON  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF  
NOVEMBER 24, 2008**

**REGULAR HEARING**

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of November 24, 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 Alternate Jon Huntington.

**ACCEPTANCE OF MINUTES:**

Regular Hearing – **Jon Huntington made a motion to approve the minutes of October 23, 2008; seconded by George Saunderson. All were in favor.**

Site Walk – **George Saunderson made a motion to approve the minutes of the October 30, 2008 site walk; seconded by Jon Huntington. All were in favor.**

Jon Huntington was appointed as a voting member in the absence of Howard Pearl.

**DISCUSSION:**

Wayne Thistle – Building Permit Extension. Mr. Thistle submitted a request to extend the building permit for Map 12, Lot 55 for one year, noting that this is the first extension for this parcel. He explained that he asked for two extensions last year, one lot has since sold and he will apply for a new permit on the other lot rather than ask for a second extension. **George Saunderson made a motion to extend the building permit through December 31, 2009; seconded by Roy Merrill. All were in favor.**

Charles & DeAnna Rice – Building Permit Extension. Mr. Rice submitted a request to extend the building permit for Map 38, Lot 8-2 for one year. It was confirmed that this is the first extension request for this parcel. **George Saunderson made a motion to grant the building permit extension through December 31, 2009; seconded by Ned Lizotte. All were in favor.**

Shawn Lavoie – Building Permit Extension. Mr. Lavoie submitted a request to extend the building permit for Map 25, Lot 19 for one year. This is the first request for an

extension on this parcel. **Jon Huntington made a motion to grant the building permit extension through December 31, 2009; seconded by Ned Lizotte. All were in favor.** Patrick Labbe – Building Permit Extension. Mr. Labbe submitted a request to extend the building permit for Map 33, Lot 7 for one year. This is the first request for an extension on this parcel. **Ned Lizotte made a motion to grant the building permit extension through December 31, 2009; seconded by Jon Huntington. All were in favor.**

Cecile Merrill – Building Permit Extension. Roy Merrill recused himself from this matter. Mrs. Merrill submitted a request to extend the building permit for Map 49, Lot 34 for one year. This is the first request for an extension on this parcel. **George Saunderson made a motion to grant the building permit extension through December 31, 2009; seconded by Ned Lizotte. All were in favor.**

Roy Merrill returned to the table.

#### **PUBLIC HEARINGS:**

Case # 08-27 & # 08-28, Del Gilbert & Son Block Co. – Special Exception for Gas Filling Station and Special Exception for Subsurface Storage Tanks, Map 49, Lot 124. Ned Lizotte recused himself from this case. Chairman Powelson informed the applicant that there would only be four members of the Board to hear this case because of absences and Mr. Lizotte's recusal. He gave the applicant the option of a four-member board or continuing the case to the December meeting. Steve Smith, of Steve Smith and Associates, spoke with his client and they agreed to be heard by the four-member board.

Mr. Smith said that they did not have any new information to present. He reviewed the two points of access to the parcel. Mr. Smith said that they have received a driveway permit from NH DOT for the Shaker Road access. He said that the Ordinance calls for the use of the lesser traveled way and that he showed the Board at the site walk that a loop driveway could be done if preferred. Mr. Smith said that the Board seemed happy with the original plan and the state approved the access. He showed a conceptual plan of a loop access, said that he is asking the Board for direction, noting that the Board has the right to put conditions and grant the initial plan.

Abutter Teresa Dymant said that she likes the loop access better as she is concerned about buses and traffic because of the blind hill. She said that Shaker Brook Park Road is enough of a distance from the hill that it would be less of a concern. Mr. Smith said that DOT did a field inspection for sight distance, speed, and other criteria before granting the permit. Ms. Dymant said that she asked that it be looked at again. Mr. Smith said that the permit was reaffirmed earlier today, as they have met the state requirements that are based on speed limits and sight distance. Dave Powelson said that the Board could not approve a driveway on Shaker Road without an application for a variance. Mr. Smith said if they had to go for a variance they would rather go with the loop access. George Saunderson asked if they could use the two accesses, with the Shaker Road one being exit only. Mr. Smith said that they would rather have the traffic going in both directions so that the trucks can access whichever side of the island is best suited for their truck and to help with the traffic impact.

Roy Merrill asked about the building for the foam. Mr. Smith pointed it out as well as the fire hydrant by the road. Jon Huntington asked if the State had looked at the access again. Mr. Smith said that DOT had been there today, looked at the site, and reaffirmed their approval. Mr. Huntington asked if there are any school bus stops near that area. Ms. Dymont said that there are stops down the road but not right there at this point.

There was discussion about the hours of operation for this facility. Mr. Gilbert said that he could work with 6 am to 6 pm. Ms. Dymont said that was too many hours and not acceptable as this is in a residential area. Jon Huntington stated that this is a commercial/industrial zone. George Saunderson said that 6 am to 6 pm seemed reasonable and asked Mr. Gilbert to have his drivers be sensitive to the neighborhood and avoid the earlier part of the day if possible. Ned Lizotte encouraged the Board to look at what other enterprises in town have for guidelines. He said if something is already going on in town it would be hard to hold this facility to stricter limits.

Ms. Dymont said that her concern is that the stipulations be solid so that future owners are regulated. There was discussion about the number of trucks that would be using the facility. Roy Merrill asked the applicant what would be a reasonable number of trucks that would work. Mr. Gilbert and Mr. Creley said that 50 per day would allow for future company fleet growth. Ms. Dymont said that was too many. Mr. Merrill asked the applicant if 30 per day would be acceptable. The applicant felt that 30 per day would work. Discussion continued between Ms. Dymont and the applicant with regard to the hours and number of trucks. Mr. Creley stated that Mr. Gilbert is making some compromises by agreeing to 6 am to 6 pm, no Sundays, trying to avoid early morning use of the fuel farm, the number of vehicles, and there is no prediction of what the future will bring. He said that Mr. Gilbert has to be able to operate a business and feels that the compromises are more than reasonable.

Dave Moody asked if they would be mixing ethanol onsite. Dave Powelson explained the three fuels that are to be used according to the plan. Mr. Moody asked if that would be considered to be processing. Roy Merrill said that he was not sure it was processing as it would be one product being pumped. Wayne Thistle said that the fuels at a filling station are being mixed at the pump, not processing. Mr. Powelson agreed.

There was an overview of the conditions of 6 am to 6 pm, six days a week, no Sundays. George Saunderson reinforced that Mr. Gilbert will do his best to be considerate of the neighbors in the early morning. Mr. Gilbert stated that the only person that would be at the facility on Sunday would be him for inspections. He said that the only vehicle left at the site might be a delivery truck. He explained that the truck would be filled at this facility and taken to his Laconia facility to fuel his trucks that have to leave at 2 am for New York. Roy Merrill asked how often they would be filling the truck for Laconia. Mr. Gilbert said it would be twice a week.

Chairman Powelson said that the Board could not make a decision on the driveway based on the applications presented. Mr. Gilbert informed the Board and abutter that he will be installing a 30,000 gallon cistern at the site. He said that will be a large expense to him but it is also for the benefit of the neighborhood.

**George Saunderson made a motion to approve application # 08-27, for a filling station, with the following conditions: hours to be 6 am to 6 pm, six days a week, no Sundays, with a limit of 30 trucks per day; seconded by Jon Huntington.**

**A roll vote was taken: Roy Merrill – Yes; Dave Powelson – Yes; George Saunderson – Yes; Jon Huntington – Yes. Unanimous – APPROVED**

**Jon Huntington made a motion to approve application # 08-28, subsurface storage tanks, with the same conditions as #08-27; seconded by Roy Merrill. A roll vote was taken: Roy Merrill – Yes; Dave Powelson – Yes; George Saunderson – Yes; Jon Huntington – Yes. Unanimous - APPROVED**

Ned Lizotte remained recused as an abutter to the next case.

Case # 08-30, MDP Development – Variance for Age Restriction, Map 20, Lot 7. Roy Merrill recused himself as an abutter. Chairman Powelson informed the applicant that there would only be three members of the Board to hear this case because of absences and Mr. Lizotte's and Mr. Merrill's recusals. He gave the applicant the option of a three-member board or continuing the case to the December meeting. MDP representative Tony Marcotte spoke with the Villages residents about proceeding and it was agreed to go with the three-member board.

Mr. Marcotte explained that letters were sent to the six residences at the Villages and five of the six have commented through letters or are present at the hearing. He said that this request is a result of responses received from interest parties who have not been able to purchase homes at the Villages because both members of household are not 55 or older. Mr. Marcotte presented facts supporting the application request and then went through the five points of the application. Agatha Gagne, realtor for MDP, read a letter from broker Carol Schoch. All information read is on file with the application.

Ned Lizotte asked about couples who might be 45 and 55 years of age and have teen-age children. Mr. Marcotte said that is not allowed by the condominium rules. He explained that the rules currently require that both parties be 55 or older, and they are asking to allow one party to be 45 or older and the second party has to be 55 or older. Mr. Marcotte explained that the State allows this one discrimination to meet the elderly housing guidelines. He said they looked at who came in with interest, citing an example of a couple who is 54 and 62 years of age not being able to live there with the current rules. Mr. Marcotte spoke of state and federal rules, affordable housing, that children cannot live at the Villages, and the intention being for empty-nesters.

When asked how the developer would ensure that the age limit was adhered to and there would be no children, Mr. Marcotte said that the condominium documents are approved by the Attorney General and the town's code enforcement officer would be responsible for enforcing the restrictions. He said that the developer has built the clubhouse, roads, and community wells. Mr. Marcotte said that the residents could speak up if there were any problems with the rules not being followed, noting that it is a self-policing community.

Chairman Powelson asked if anyone wished to speak in favor of the application. Michael Horan, a Villages resident, said that he feels the change would be beneficial as there are many parties interested in purchasing homes at the Villages. He said that changing it to the age of 45 and over for one person is not going to cost the town anything and that the condo limits will be followed. Jan Morton, a Villages resident, said that the Villages is a great place to live and that the developer has done everything that was promised and that the property has been well taken care of. She said that the change

would not result in any cost to the town but would provide more income to the town. Ms. Morton said that the change would be helpful to the residents and the town. Pat Horan, a Villages resident, said that the change would be beneficial to the current residents. She said the age limitation and low sales would make it even harder to sell their property should they ever need to move. Ken Krzewick, a Villages resident, said that he supports all that has been said by the other residents. He said that he is single and has a friend under the age of 55 but cannot bring that person into his home per the regulations. Mr. Krzewick said that he would like to see the age dropped.

Chairman Powelson asked if anyone wished to speak in opposition to the application. Ora George said that the change goes against the zoning law. He pointed out that the Villages got 100 building permits because it was to be a 55+ community whereas other contractors only get so many permits per year. Mr. George said that the law cannot be changed as they go along. John George said that 45 years of age is too young. He said that 55+ meant 55+ and it is not the town's fault that the economy is not good.

Tony Marcotte reiterated that they are only asking that one resident be 45 or older, noting that the other resident has to be 55 or older per the laws. Carol Schoch stated that she is 45 and her husband is 55 so would not qualify to live there. She asked John George why he would not want her there. Mr. George said it was because she is not 55 or older and it would be changing the rules.

Jon Huntington asked how many units have sold this year. Mr. Marcotte said that two have sold this year, with a total of six occupied at this time. He reaffirmed what the residents said about there being a lot of interest in the community from couples of mixed ages. He said the age restriction seems to be the only hold up. Mr. Marcotte stated that the change would still exceed the state requirements, noting that the state does not have a requirement for the second person. He said it would be beneficial to the town to accelerate the project.

Roy Merrill asked if 50 would cover most of the sales and interest. Ms. Gagne said that she has a list of twenty-two couples. She said that she did not have the age breakdown with her but felt that 45 would be more realistic. John George said that he would go with 50. Paul Johnson asked what would happen in the event of the older resident passing away if one was 55 and the other was 47. Tony Marcotte said that the state law would allow the exception; however, the surviving resident could not move in a younger person. Ned Lizotte said that he feels that it could get very messy. Mr. Marcotte said that it is not breaking the spirit of the intent. He said that there would be a big advantage to lowering the age restriction for the second person. Mr. Marcotte said that they need to follow the state law, they are protecting the town, and it would get the association fees and plowing costs down and accommodate the current owners. Ned Lizotte asked what the state says about one being 55 or older, one under 55, and children. Mr. Marcotte said that they have to have some type of services, i.e. the clubhouse, and no children are permitted. He said that the intent of the state law is for empty-nesters, geared toward retirement.

Mr. Marcotte said that by state law only 80% of a community has to meet the age requirement, noting that this development is 100%. Ms. Gagne again explained the state laws with regard to age restriction and discrimination in housing. She said that 55+ communities are exempt from age discrimination for fair housing. She said that the

residents bought at the Villages knowing there would be no children and the law protects them. Ms. Gagne explained that MDP is the writer of the association rules and regulations and that they can stipulate that nobody below a certain age is allowed to live in the community. She said they are going over and above what the state requires. Mary George said that they should go with Loudon laws, not state laws. She said the town was told that it would be a retirement community, not for empty-nesters.

Chairman Powelson stated that the Board would have to find affirmative findings on each of the points of the application. He read the criteria of a use variance from the ZBA handbook. He said that he is not sure that he is convinced that the applicant has met that level of hardship. Tony Marcotte stated that the Villages is the only development in town of this nature and there are no comparisons. He said they are reclaiming a gravel pit and there is no diminishing of surrounding properties. Mr. Marcotte said that there are not many abutters present which would make him think that they do not feel that the change would diminish their values. He said that MDP is doing everything they can to stabilize the area, having gone above and beyond to get the site reclaimed. Mr. Marcotte said that he feels that opening the community to a wider group does meet the substantial justice criteria. He said that they are getting a gravel pit changed to a viable community.

Jon Huntington asked if there are other 55+ in the state. Mr. Marcotte said that there are communities in Concord, Londonderry, and Hudson that he knows of. He said that they all follow the state law of one resident having to be 55 or older. He read from the NH Commission for Human Rights. Mr. Marcotte said that this type of community gives active adults a place to go. He said that the hardship is that the Villages is the first to use the Zoning Ordinance.

Ned Lizotte asked if it would behoove the Board to air on the side of caution and if 50 may be more reasonable. Mr. Marcotte asked if they would consider 48, explaining that there is a lot to go through if they have to go back to the Attorney General to change the condominium documents. He would like to open it to a wider range before redoing the documents. Mr. Marcotte said that he would like to see this changed for the benefit of the residents at this point as it would make the community more appealing.

Chairman Powelson closed the public hearing. He stated that the Board has an application to change the age requirement from 55 or older to one person being 55 or older and all residents being 45 or older. **George Saunderson made a motion to deny the application; seconded by Jon Huntington.** Mr. Saunderson said that he is sympathetic to the owners but cannot see changing the restriction to 45 years or older. The chairman stated that there are five criteria to meet. #1) Will the variance diminish surrounding values? Mr. Powelson said that he does not think that it would. #2) Will the variance be a benefit to public interest? Jon Huntington said that when the project was proposed the discussion was that it would be 55+ and that is the way it is supposed to be. Dave Powelson said that it is intended for the elderly and adults in the community. He wondered if it would be a benefit to see this finished sooner. George Saunderson said it would. #3) Is there an unnecessary hardship if variance is denied? Dave Powelson said that he does not see the hardship. He said that the development got some considerable advantages to build more units in a more compact area because they were catering to the 55+ group. George Saunderson said that he would concur. Jon Huntington agreed. #4) Will the variance do substantial justice? Dave Powelson said that the developer was granted the opportunity to build more compactly than is allowed in

other places. #5) Is the use contrary to the spirit of the ordinance? Jon Huntington said that it is contrary to the spirit of the ordinance. **A roll vote was taken: Jon Huntington – Yes; George Saunderson – Yes; Dave Powelson – Yes Unanimous – DENIED based on points #3, #4, and #5**

Chairman Powelson said that the applicant can choose to appeal the decision if they wish or, if they feel that the town may have a more favorable response to the request, the applicant could do a petition warrant article.

Roy Merrill and Ned Lizotte returned to the table.

**ADJOURNMENT:**

Jon Huntington made a motion to adjourn the meeting at 9:17 p.m.; seconded by Ned Lizotte. All were in favor.

Respectfully submitted,

Donna White  
Administrative Assistant