

APPROVED

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
OCTOBER 23, 2008**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of October 23, 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 – Ned Lizotte made a motion to approve the minutes of September 25, 2008; seconded by Jim Venne. All were in favor.

Chairman Powelson announced to the public that MDP Realty submitted a request to continue their application #08-30 to the November 24, 2008 meeting in case any were present specifically for that matter. **Jon Huntington made a motion to continue application #08-30, MDP Realty, to the meeting of November 24, 2008 at 7:00 pm in the Community Building; seconded by Ned Lizotte. All were in favor.** There will be no further notice.

DISCUSSION:

Anthony Greska – Building Permit Extension. Mr. Greska stated that the litigation following his auto accident of four years ago is ongoing, and he presented the Board with a copy of the case schedule. He explained the situation of loss of income and the financial position that was created as a result of the accident. He presented pictures of his property, noting that he has done clearing and excavation work to the extent that he is financially able at this time.

Chairman Powelson said that this request leads to complications as to how to handle an extension of a building permit that has previously been extended. Roy Merrill said that he personally did not see how it would hurt the town at all. He said that Mr. Greska has had some difficult times and it would not hurt to work with him. Ned Lizotte said that the litigation schedule is out of Mr. Greska's control, noting that this request is a separate case in itself. Chairman Powelson said that he had Donna inquire of the building department about the current status of building permit availability. He stated that there

are two permits available for 2008 and fourteen available for 2009. Howard Pearl asked if Mr. Powelson's thought was to have Mr. Greska apply for a new permit. Mr. Powelson explained the fees to re-apply. Mr. Pearl said that he could not see why they would want to put Mr. Greska through extra expense when he's been through enough already.

George Saunderson said that there are so many extenuating circumstances they would not have a hard time defending another extension of this permit. Ned Lizotte said, based on the schedule presented, that something will happen within the next year. Mr. Greska confirmed that the statement was accurate. Jim Venne said that he would have no problem at all with extending the permit. Jon Huntington said that he would have no problem with the extension, especially if there are still permits available. **Howard Pearl made a motion to extend the building permit through December 31, 2009; seconded by Ned Lizotte. All were in favor.**

Jerry Laurent & Susan Gonthier – Building Permit Extension. Mr. Laurent and Ms. Gonthier submitted a request for a second extension to their building permit, citing financial constraints as the reason. Mr. Laurent explained that they are waiting to get the land paid down and have been preparing the site as finances have permitted. He said that they should have the land paid off and be ready to build in the spring. Howard Pearl asked if they were fairly confident that they will be ready next year. Mr. Laurent said that they were. Dave Powelson said that the alternative would be to send them back for a new permit and more fees. Mr. Pearl said that he would not want to stress an already stressed system, seeing no benefit to having them re-apply. Jim Venne said that they are not increasing the number of permits by granting this request, although it could mean a larger of new homes in one given year once things get caught up. Dave Powelson noted that the Zoning Ordinance does have provisions for unused permits to expire, as well as carry-over provisions for a certain percentage of the unused permits. Mr. Venne said that it will take many years to get things straightened out due to the current economic situation. Howard Pearl said that he has a feeling that all of the 2009 permits will not be used. **Howard Pearl made a motion to grant the building permit extension through December 31, 2009; seconded by George Saunderson. All were in favor.**

Dan & Paulette Rouse – Building Permit Extension. Mr. and Mrs. Rouse submitted a request for a second extension of their building permit, citing the decline of the real estate market as the reason. They have continued to market their current home, as well as the building lot, but have yet to secure a buyer for either. **Roy Merrill made a motion to grant the building permit extension through December 31, 2009; seconded by Ned Lizotte. All were in favor.**

PUBLIC HEARINGS:

Case #08-29, Public Service Co of New Hampshire – Special Exception for the construction of new power lines with wetlands impact. David Still represented PSNH. Roy Merrill recused himself as a noticed abutter. Jon Huntington was appointed as a voting member for this case.

Mr. Still explained the project, saying that they will be constructing a new line with slightly larger wire alongside the existing line. He said that they do not have the

opportunity to take the existing line out of service until the completion of the new line, therefore there will be a brief period where both lines will be in place. Mr. Still said that the plan is to set the new line to the north side of the existing line. He said that 50' will be cleared and maintained every five years through mowing, noting that they will be able to keep the poles out of the wetlands with some in the buffer. Mr. Still stated that they have made application for DES Wetlands permits for temporary impacts, noting that work will be done under frozen conditions or with swamp mats. He said that there will be no changes to the substations.

Ned Lizotte asked to confirm that this work would be done in the same corridor and footprint as it currently used. Mr. Still said that was correct as the easements are in place and the line established. George Saunderson asked why they would take out the old line in case it was ever needed. Mr. Still said that they are pretty comfortable with the new line providing what is needed. Dave Powelson stated that this would result in one line, with a slightly different clearing and wetland impact. Mr. Still said that was correct. Ned Lizotte asked how long the project would take. Mr. Still said that the major part of it would be completed by June 1, 2009, with miscellaneous clean-up to follow.

Chairman Powelson read a letter from the Conservation Commission which stated that they have no objection to the plan as presented to them by Mr. Still at their meeting of October 8, 2008. Jon Huntington asked if the old poles are in the wetland areas. Mr. Still said that some are but not many. He said the old poles will be cut off at ground level rather than pulled out. Mr. Powelson read from Section 301.5 of the Zoning Ordinance. He said that the application could be approved contingent upon receiving the Army Corps of Engineers and Wetlands Bureau permits. Mr. Still stated that Nobis Engineering did the wetland application to DES. He said that DES would come out during construction to inspect and review the work as it progressed, with additional measures to be taken if necessary. He said that the plan was figured for the absolute most impacts, using Best Management Practices established with DES on similar projects.

The chairman had Mr. Still go through the points of the application. Jon Huntington asked when the existing line was constructed. Mr. Still said it was the early to mid 1930s based on the easements that they have found. Mr. Huntington asked if it is a 100' easement. Mr. Still said that the surveyor is doing some research and that the original line had a 100' easement. He said that the second time it was built (current line) a second set of 100' easements were acquired but the first were not released. Mr. Still said that it is possible that there is a 125' width but they only need 100'.

Jim Venne asked what happens to the wood that is cut. Mr. Still said that it is the property of the landowner with the easement. He said that they leave it in usable lengths. Jon Huntington asked if that was true on any easement. Mr. Still said that the easement language varies but it is fairly consistent.

Chairman Powelson asked if there were any abutters wishing to speak in favor of or against the application. Dean Wilber of Hot Hole Pond stated that he has owned his property since 1992 and has a power line easement. He said that it has been surveyed as a 100' right-of-way and he would like to have that clarified as he heard this evening that it may possibly be 125'. Mr. Wilber said that PSNH should take into consideration that the landowners could be losing shade and screen trees if it is cut to the fullest width. He said that he would like to know that there would be no cutting beyond the right-of-way, noting that it cannot always be straight from the current poles due to ledge and wet areas.

Mr. Wilber said that he knows that this has to go through but he also wants consideration of the taxpayers.

Mr. Still said that they would be clearing the full width on the north side only and that they are trying to coordinate with everyone to avoid any over-clearing. He said that notices were sent to each landowner by PSNH, noting that they do not have a lot of flexibility of the location. Mr. Still said where possible they can take a look and slide one way or another. Jon Huntington asked if they have any idea where the right-of-way lines are. Mr. Still said that he is committed to determining that. He said that they are sometimes offset to the north, sometimes to the south. Howard Pearl said that it sounds like a 100' right-of-way easement is what is needed. Mr. Still said that they are working to clarify exact widths, noting that it depends on the accuracy of bearings and distances and the easement age. Ned Lizotte asked to confirm that they will be clarifying the 100' right-of-way, cutting off the poles that are currently markers of the center line, and will be staying within that right-of-way. Mr. Still said that was correct.

Jon Huntington asked Mr. Wilber if he knows the location of his lot lines. Mr. Wilber said that the right-of-way would encroach on his property if it was found to be 125'. He said that PSNH has never used the maximum width which would mean that he will lose a significant amount of trees. Mr. Wilber said that the wood and brush should be chipped so as not to be a fire hazard. Mr. Still said that the mowing will chip the underbrush. He said that they will limb and drop the trees, leaving them in certain lengths as they are the property of the landowners. Mr. Still said that they leave stacks of limbs along the edge of the right-of-way, noting that they will talk with the owners and accommodate them the best they can. He said there is no intention to take down more than necessary.

Kitty Rodgers said that their property has been in the family since 1939. She asked what part the deed has in determining the easement, which clearly reads 100'. Mr. Still said that it should be referenced in the deed and carried down with each subsequent deed. He said this is generally a separate document and that he could get it for her.

The chairman read from a letter that abutters Ed and Julie Robinson submitted to the Board. He stated that the Robinsons are requesting that the line at their location be moved 25' to the south rather than the north. Mr. Still said that PSNH does not have the flexibility to cross back and forth. He said that the intent is to put it on the north side as that is the most appropriate way to do the work, noting that staying on the north side keeps them out of wetland areas.

Dave Powelson asked about the size of the impact. Mr. Still handed out sets of engineered plans that have been submitted to DES. He said there would be 9,321 sf of temporary impact as the worst case scenario. Howard Pearl asked if it would most likely be less than that. Mr. Still said it would be less if they could use driveways and other accesses. Mr. Pearl said that the impact was temporary, with zero permanent impact. The chairman asked if the Board felt there was a need for a site review or if the members were clear on the proposal. It was noted that the Conservation Commission, Planning Board, and health officer were notified of the application, with the Conservation Commission having submitted their letter of approval. The chairman said that the Board recognizes that PSNH owns the easement and how this project is done will largely depend on how PSNH works with the landowners. He said the real issue would be if the Board concurs with the Conservation Commission.

Chairman Powelson closed the hearing to the public and opened it to the Board only. **Ned Lizotte made a motion to grant the special exception as presented; seconded by George Saunderson.** Howard Pearl said that it seems to be a necessary project and he would encourage PSNH to work with the landowners as much as possible. He asked that they do their best to appease and work with them, keeping the impact low. Jon Huntington agreed with Mr. Pearl's comments. George Saunderson also agreed, adding that they are counting on PSNH to do the best they can. Ned Lizotte agreed. **A roll vote was taken: Jon Huntington – Yes; George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Howard Pearl – Yes. Unanimous – PASSED**

Roy Merrill returned to the table.

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. Steve Smith of Steve Smith and Associates represented the applicant. Mr. Smith stated that changes were made to the plan after discussing the project with the fire department and the fire marshal. He handed out revised plans. Roy Creley of Lakes Region Environmental was also present to speak on behalf of the applicant.

Mr. Smith stated that they have a designer working on the tank farm for DES. He explained the site location, noting that it is 500' west of the intersection of Route 106 and Shaker Road, in an industrial park that was subdivided in the mid 1980s. Mr. Smith said the parcel is in the C/I District. He stated if these applications are approved, the applicant would then need to go to the Planning Board. He explained that they would do a lot line adjustment as part of the project in order to get the corner of Mr. Gilbert's adjacent lot adjusted to this lot, simply because it currently serves no purpose to the abutting piece. Mr. Smith pointed out that there is 247' of frontage on Shaker Brook Park Road.

Mr. Smith explained that the proposal is to install a fuel dispensing facility to be used by Del Gilbert Block Company. He said that bio-fuel vehicles could also use the facility with a card from Del Gilbert. Mr. Smith said that there are a minimal number of ethanol vehicles out there, and not many locally, to use the facility. He said that they have been to the Planning Board for discussion and how the proposed use fits the zoning. Mr. Smith said that they have met with the fire chief and the state fire marshal and have incorporated their comments into the plan. He said that there are two access points, one from Shaker Brook Park Road and one from Shaker Road for which NHDOT has recently issued a driveway permit. Mr. Smith explained that this would make things easier for the trucks coming in to fuel up. He said they are proposing a pump island with a concrete pad and a canopy with a flat roof. The roof water would go to a drywell.

Mr. Smith explained that there would be three tanks, with the original plan showing four. There would be a 5,000 gallon tank for E-10, a 12,000 gallon tank for E-85, and a 12,000 gallon tank for diesel. All of the tanks would have to meet current design standards of New Hampshire. They are proposing a chain link fence for security purposes, with a lock box for the fire department. There would also be a pull station at the gate, an alarm system monitored by a security company, and a full spill kit onsite. The canopy would be equipped with a suppression system as required by the state fire marshal and the local fire department. There would be low-level, down-cast lighting.

Mr. Smith said that there would be special foam solvent/retardant onsite. The foam has a shelf life so if it reached its expiration date the owner would give it to the fire department for use in training. Mr. Gilbert would replace the foam at his expense. There would be a hydrant at the onsite cistern. A small bathroom would be in the maintenance building, with an onsite leach field installed to DES standards. Mr. Smith stated that they would pave 75'-100' of the entryway and crushed concrete would be used for the access drive. He said that the state fire marshal feels that the crushed concrete would be good for absorbency.

Mr. Smith went through the points of the application. Dave Powelson asked if there would be a full time attendant. Mr. Smith said that a special card would be used to access the facility rather than have an onsite attendant, noting that the vehicles will be off the road to gain access. Mr. Powelson asked if the system would shut itself off at a certain time so that they knew nobody would be using the facility after 8:00 pm, the end of the operating hours listed on the application. Mr. Smith said that there would probably be security cameras and the facility would be policed by the owner.

Jon Huntington asked if there would be pure ethanol. Mr. Creley explained that E-10 is 10% ethanol which is what is seen at gas stations now and E-85 which is where they are starting to head with fuel. Mr. Huntington asked if this facility is primarily for Gilbert vehicles. Mr. Creley said that was correct but he has to take a full load of ethanol to make the plant feasible. He said some vehicles are being converted. Mr. Creley said that there would be straight diesel, no tanks of pure ethanol, and that they had ruled out blending onsite. Dave Powelson asked where the applicant's trucks are kept. Mr. Creley said they are mostly in Gilford but Mr. Gilbert has several locations.

Howard Pearl asked if this would be one pump station. Mr. Creley explained that there would be a couple of pumps, with diesel accessible from either side of the island. He said it would look like a State fueling facility. Jon Huntington asked what type of collection would be used if there is a spill. Mr. Creley said that the State is very involved with that part of the design. He said that there would be grooves around the edge to contain a spill and they are going beyond that. He said the recycled crushed concrete will contain it, it will be mitigated and then cleaned up. Mr. Creley stated that they have things planned beyond the standards. He noted that E-85 is less of a pollutant than gasoline.

Ned Lizotte asked if the recycled cement could be taken to ESMI if there was a spill. Mr. Creley said that they would have to be sure that ESMI is permitted to handle it. He explained the different fuels. Jon Huntington asked if monitoring wells are required. Mr. Creley said that they are not required, explaining that the tanks and piping are double walled and monitored. He said that they are required to be 250' from private wells and 500' from community wells. It is 337' to the nearest private well and 1244' to the Scotch Pines community well.

Chairman Powelson asked if there were any abutters wishing to speak in favor of the application. Hearing none, he asked if there were any abutters wishing to speak against the application. Keith Dymant spoke on behalf of his mother, Teresa Dymant, who could not be present. Mr. Dymant presented a petition signed by residents within a one-third mile radius of this property who do not wish to have this facility in the neighborhood. He said that his mother has spoken with different realtors and learned that her property value will decrease because of this facility. Mr. Dymant read through a list

of his mother's concerns, also submitted for the record. Curt Wageling asked if the pumps would be quiet. Mr. Creley said that the pumps are submersed in the tanks so would not be heard. Mr. Wageling stated that he agrees with Ms. Dymment's list of concerns and feels that it is a dangerous spot for this facility. He said that there would be a definite impact on property values.

Lorraine Wageling asked what guarantee that this facility was not going to change their quality of life would be provided. Steve Smith addressed several of the concerns. He stated that it is an industrial subdivision that already has vehicles entering and exiting. He addressed Ms. Dymment's concern of lighting, saying that the lighting is in the canopy and not like parking lot lights. Mr. Smith said that Shaker Road is a state highway and DOT issued the permit based on this proposed use. He said that he believed that the facility would be used Monday through Saturday and that the hours proposed are normal operating hours for most any type of business. Mr. Smith said that the brook is quite a distance away, and they would do plantings for buffers if the existing screening isn't sufficient. He said that C N Brown is down the street, with thousands using it. Mr. Smith said this proposal is in the same zone. He said the facility is not open to the general public. Mr. Smith said that people with the type of vehicle that could use this fuel would have to have an account with Del Gilbert in order to use the facility.

Roy Creley stated that Mr. Gilbert does not want to be intrusive or step on anyone's toes. He said that Mr. Gilbert can control the trucks with regard to hours and not using engine brakes. Mr. Creley said it is a good, low-impact proposal for the property. George Page noted that there had been mention of a watershed in the area, which this may not be in, but they had not addressed the brook that runs near this parcel. Mr. Smith said that he went to the town's watershed maps to check the aquifer. Mr. Page mentioned that Shake Road is posted for weight limits each spring, asking how they would handle that with the trucks. Mr. Smith said it would have to be addressed.

Alicia Dymment, speaking on behalf of Teressa Dymment, asked about the comment of the fire department not having the foam needed in case of an incident. Mr. Smith said that Mr. Gilbert has agreed to buy, store and replace the foam. Mr. Creley stated that the foam will be available to the fire department for any incident in town, not just at this facility. Russell Beldin asked which way vehicles would be accessing the facility. Mr. Smith said that they could go either way. Mr. Beldin stated several concerns: buses, walkers in the summer, elderly walking, bicycle clubs, tourists, congestion, race weekends, and groundwater.

Steve Dale asked for the height of the canopy. Mr. Creley said that it would be 16' high. Mr. Dale said that he also has concerns about property values. Lorraine Wageling asked how many trucks the facility could handle at one time. Mr. Smith said that four trucks could be there at the same time. There was discussion of Mr. Gilbert's character and desire to be a good neighbor. Jon Huntington asked how many trucks Mr. Gilbert owns. Mr. Creley said that he believed there are 26 vehicles.

There was discussion about permitted uses that could potentially be put on the parcel. Mr. Creley said that there could be far worse uses that would be more of an impact on the area. Chairman Powelson asked if there would be times that the abutters would think more appropriate. Several felt that 8 pm was too late, some felt that 6 am was too early. Lorraine Wageling voiced her concerns about well contamination and fire. Mr. Creley explained how the system operates and the federal and state regulations that

apply to this type of facility. He said that the State is scrutinizing the plan very closely. Mr. Creley said that the tanks are double-walled with sensors between the layers. They are alarmed so that the pumps go off automatically if the alarms go off. He said that the pipes are double-walled with sensors as well. Keith Dymont asked how long it would take for someone to get to the site if a sensor goes off. Roy Creley said that it would be monitored and there could be a red flashing light and/or computer transmission. He said that they are working with the State to determine the preferred monitoring method. Steve Smith said that there would be a private company monitoring the system 24/7. Mr. Creley said that the pumps go off if any liquid is detected by the sensors.

Ned Lizotte spoke of a similar facility in town where the general public can purchase fuel as long as they have an access card. He said that this proposal appears to be superior in design and safety features. Laurie Dale asked if the Conservation Commission has weighed in on this proposal. Steve Smith said that he has not met with the Conservation Commission as there had been no indication by the Planning Board that there was any need. He said that there is no wetland impact or work in the flood zone. Donna explained that the Conservation Commission receives the same packet of information as the Zoning Board and there had been no comments received from the Commission. Alicia Dymont asked if Mr. Gilbert would respond to complaints. Roy Creley said he absolutely would respond. He explained that Mr. Gilbert is of the 'old school' and believes in being a good neighbor and addressing problems if they should arise. Rose Lord spoke about previous well problems at Scotch Pines. Mr. Creley stated that NH has some of the strictest tank laws in the country.

Chairman Powelson pointed out that Section 208.4 B of the Zoning Ordinance states that a driveway should access the lesser traveled road. He said that the plan does make sense as laid out. George Saunderson said that he felt a site visit was in order. Howard Pearl agreed, wanting to make sure they are in tune with everything. Mr. Saunderson asked if there was a particular reason that the vehicles could not enter and exit on Shaker Brook Park Road. Steve Smith said that it would be more difficult to maneuver, having to back up (back up alarms on vehicles creating noise) and turn around. Roy Merrill said that he feels this is an excellent design, noting the ease of access, particularly since trucks may have tanks on different sides.

A site visit was scheduled for Thursday, October 30, 2008 at 4:30 pm. **Howard Pearl made a motion to continue the application to the meeting of November 24, 2008 at 7:00 pm in the Community Building; seconded by Jon Huntington. All were in favor.** There will be no further notice.

Ned Lizotte returned to the table.

ADJOURNMENT:

Jon Huntington made a motion to adjourn the meeting at 9:40 p.m.; seconded by Howard Pearl. All were in favor.

Respectfully submitted,

Donna White
Administrative Assistant