

APPROVED

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
SEPTEMBER 25, 2008**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of September 25, 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 August 28, 2008; seconded by Jim Venne. All were in favor.**

Site Visit – **Howard Pearl made a motion to approve the minutes of the site visit of September 8, 2008; seconded by Ned Lizotte. All were in favor.**

DISCUSSION:

New Hampshire Motor Speedway – Jerry Gappens, Executive Vice President/General Manager of NHMS, spoke on behalf of the track. He spoke of the publicity that has been generated through letters to the editor in the Concord Monitor, noting that there are no records of the writer Terry Lessard and that it is unfortunate that someone with concerns has not directed them to the track. Mr. Gappens said that he is disappointed with the Monitor for not verifying the source of the letters and for the attack directed at local officials.

Mr. Gappens stated that the sign/message center at the track has a permit despite anything that that has been said in the letters and articles. He said that the sign company representatives had gone to Canterbury for the sign at the north end of the track but there had apparently been a breakdown in communications for the Loudon sign and he accepts responsibility for that. Mr. Gappens pointed out that the Zoning Ordinance does not take into account the newer technology that has been designed since the inception of the ordinance. He said that they replaced the outdated sign/billboard with one that has multiple capabilities, many of which they are not using. He said that they have tried to be responsive to concerns that have been addressed to him about the sign and that they have toned down the brightness and the speed of the changing message. Mr. Gappens said that the sign can benefit the community and that he wants to develop a positive bond with the

town's boards and residents. He spoke of the economic impact that the track has on the town and state. Mr. Gappens handed out packets to each Board member, reviewing the history of the track and stressing that he wants open communications with the Town.

Chairman Powelson stated that the ZBA Vice Chairman and one selectman have heard concerns about the sign. He explained that the Board wanted to discuss the Zoning Ordinance relative to the sign and that it is the Board's understanding that there is a permit for the sign through Bob Fiske. Mr. Powelson spoke about the section on signs in the Ordinance, noting that it is a 'permissive' ordinance which only allows what is stated in the Ordinance. He said there is no particular question about the sign size. Bob Fiske said that the sign is less square footage than the previous sign. Mr. Powelson pointed out Section 501.4 with reference to moving parts/flashing signs being prohibited, stating that he is not sure how the current sign fits into moving parts or flashing signs. Ned Lizotte said that he has been reviewing the Zoning Ordinance, noting that the technology was not where it is today when the Ordinance was written. He said it has to be brought forward to today's technology. He spoke of how the term 'flashing' is not compatible to where technology is now. Mr. Lizotte said what the state works with is not pulsating but an ongoing message and he feels that this new sign is pretty reasonable and would be permissible. Jerry Gappens said that they received a call from Bob Fiske the first day that the sign was on and they shut it down for a couple of days until it could be reprogrammed. He again stated that they are not using all of the options that the sign provides and have toned down the brightness.

George Saunderson asked if the sign goes off and on. Mr. Gappens said that it is a continuous message. Mr. Saunderson clarified that it is not flashing. Bob Fiske said that was correct. Ned Lizotte stated that it is similar to DOT signs, pointing out again that technology has surpassed the Ordinance and its interpretations. He said what NHMS has been working at seems to be reasonable signage for the facility. Mr. Saunderson asked if the sign is on all day and night. Mr. Gappens said it is off from 11 p.m. to 6 a.m., seven days a week. Mr. Saunderson asked about the point of having it on during the week. Mr. Gappens said they are promoting events and the facility and selling tickets. Mr. Saunderson asked why the sign has to be on until 11 p.m. He asked if they would consider turning it off at 7 or 8 p.m. Monday through Thursday. Mr. Gappens said that he wants to open communications and will work with the Boards to minimize concerns.

Chairman Powelson pointed out that the Ordinance does permit changeable copy signs, reading the definition from page 97 of the Ordinance. Jim Venne stated that it changes the message, not the sign. He said that changing the message is far different from moving or flashing. Mr. Venne said that he feels it is a very attractive sign and is an asset, not a detriment, and applauds NHMS for the improvement. There was discussion about the capabilities of the sign. Mr. Gappens said what options they are using seem to be effective, noting that the capacity is there to use the sign for the benefit of the community.

Jon Huntington asked if the flashing is the only concern when considering movement, the square footage, and other points. Chairman Powelson said that there may be other concerns. Mr. Huntington stated that he is not sure that the signs on the grandstands are permitted either. Ned Lizotte said that they are temporary signs of sponsors and could be the same for multiple events. Mr. Gappens noted that they recently had a temporary sign put up and shortly after its installation it was brought to

their attention that it was in violation and it was moved within an hour. He said that they try to be responsive whenever a concern is brought to their attention. Mr. Powelson pointed out that there are provisions for temporary special events signs but it is loosely defined. Selectman Steve Ives asked if the special events signs on the side of the grandstands are considered to be inside the track. There was discussion of the difference between those signs as compared to signs in store windows. Dave Powelson said that there are temporary signs for special events such as sponsor signs that welcome race fans. He said signs in windows and on the side of buildings are intended for someone outside the building to see. Mr. Powelson said there are things at the track that are clearly inside the grandstands, are not at all visible from the road and probably are not any part of the Board's jurisdiction.

Bob Fiske stated that the temporary sign ordinance was put in there specifically surrounding the track itself. He said signs similar to those seen at Fox Pond Plaza are under the Board of Selectmen direction and are permitted one week before and after an event. He explained that the temporary signs cannot simply promote sponsor but must be specific to special events. Jon Huntington asked Selectman Ives if there were any other concerns heard by the Selectmen. Selectman Ives said that they had heard that the sign was real bright at first but have not heard anything recently. He said that the Board of Selectmen wrote letters to the Planning Board and Zoning Board encouraging these discussions. He noted that everyone knew Bob Bahre and his way of conducting business but now there is a new corporation that has come in and it is important to get discussions going as a means of relieving some anxieties. Jerry Gappens said that they have reassured the staff that all are staying and have had to reassure the media that NHMS is not losing a date. He said he realizes that they have to earn the community's respect and he is working toward that.

Chairman Powelson said that the Board should come to some decision about the sign counting as a changeable copy sign. Howard Pearl asked Bob Fiske if he needed some direction from the Board. Mr. Fiske said that according to his job description he is the one to interpret it and, in his opinion, it was flashing at first, he talked with them, it was corrected, and he feels that the sign meets the Ordinance and is compliant. Mr. Pearl asked if there was any action required by the Board in that case. Dave Powelson said if the Board could come to the consensus that the sign falls under changeable copy definition it would reinforce Mr. Fiske's interpretation and would give the Board of Selectmen something to show that the matter has been discussed and agreed upon. George Saunderson said that the minutes would reflect the discussion. Howard Pearl said there would then be a record that the question was raised, it has been looked at, and it has been recommended to the Board that it is compliant in its present state. Ned Lizotte said that the Board has discussed that the sign meets the criteria of a changeable copy sign, temporary event signage, they do not find any violation, and it is felt that the ordinance is working fine. Mr. Pearl said that the chairman could ask the Board if he felt it was necessary but there is no application before them to act on. Chairman Powelson said that it would appear to be the consensus of the Board that the sign is permitted, noting that they will be watching to see what comes up next. He said that there are state and federal laws that deal with advertising on a national highway system. Mr. Powelson said that there is nothing wrong now but if they start advertising offsite events they would not be compliant per DOT standards. He said it is probably not insurmountable but did advise

Mr. Gappens to check with the traffic bureau of NH DOT. Jon Huntington stated that they will see more businesses on Route 106 and asked if the Board would allow them all to have blinking/flashing signs. Chairman Powelson said that the sign changes but the message is left long enough to read it so it is not really flashing like a motel sign. He said that the Board will have to look at each one that comes before them.

Debra Rattee – Building permit extension request. Steve Jackson spoke on behalf of Ms. Rattee. He explained that this building permit is for Map 38, Lot 7-1 which has recently been conveyed to new owners. He stated that the original building permit was applied for in October of 2005, was granted in January of 2007, and an extension was granted by the ZBA in January of 2008. Mr. Jackson said that the new owners plan to start building in the spring of 2009 as they are currently working on their financing. There was discussion of how many permits are available for 2009 and clarification that this is a request for an extension of an already issued permit not a request to swap for one from next year's count. Chairman Powelson said he is not sure that the Board has done extensions twice on the same permit in the past. The new owner, Kristen Anderson, said that they just closed on the land and are waiting for financing to be finalized, along with the sale of her condo. Howard Pearl said that he could not see a big issue with the request. Ned Lizotte noted that they have just bought the land and it is late in the season to be pulling things together to build this year. Howard Pearl and George Saunderson each said that they were not opposed. Jim Venne said that he would feel differently if the land had not sold but was not opposed under the circumstances. **Roy Merrill made a motion to grant an extension of one year through the end of 2009 for building permit #07-028; seconded by Ned Lizotte.** Howard Pearl said that he feels that the circumstances warrant the extension. George Saunderson suggested that they could do six months. Roy Merrill said that things might not go as planned with the market and financing so he would recommend the year extension. **All were in favor.**

PUBLIC HEARINGS:

Case #08-25, Ernest & Lisa Mills – Special Exception for Driveway into Wetland District, Map 47, Lot 12 (12-2).

Case #08-26, Ernest & Lisa Mills – Special Exception for Reduced Setback and Wetland Buffer, Map 47, Lot 20.

Web Stout of FWS Land Surveying represented the applicants. He explained that the applicants have owned Lot 20 (no frontage) for about ten years and have purchased Lot 12 within the last couple of years. Mr. Stout said these are two separate parcels and the proposal is to subdivide them and get one additional lot. He said they walked the property with the Conservation Commission a couple of months ago and other Commission members have walked it since then. Mr. Stout stated that he met with the Commission on September 10th and they had some real issues with one of the original proposed lots which resulted in the withdrawal of a third application to the ZBA and revision of the plan.

Mr. Stout said that the Commission is very inclined to work with the applicants on the five acre lot (12-2) on the crossing. He explained that the other application is for the driveway to Lot 20 which would go through the wetland buffer and the side setback.

He said it would be 4-5' off the 25' buffer and about halfway into the side setback. Donna reported that Julie Robinson called the Zoning office earlier in the day and said that she was having trouble getting coverage for the meeting. Mrs. Robinson said that the Commission has walked the property, have met and discussed the proposal with no concerns other than the one lower lot that was withdrawn. Mr. Stout explained that there will be a lot line adjustment and subdivision to create 122' of frontage for Lot 20, making a non-conforming lot more conforming. He stated that the area does not require shoreland protection permitting. There was discussion on the frontage and access to the back lot.

Chairman Powelson stated that they have to wait thirty days for the Conservation Commission feedback. He said that the Board should go through the application and hear any abutters. He said that he was not sure there was need to review the site since the Conservation Commission has already done that. Roy Merrill asked what would happen if the Planning Board did not approve or made changes to the proposal. He said it could be possible that the crossing would change or the Planning Board might not like the lot line adjustment. Mr. Stout said that he did not think that would happen, explaining that the configuration of Lot 12-3 might change minimally if anything. Mr. Merrill asked if they are going to the Planning Board in October. Mr. Stout explained that they have to have the ZBA approvals before going to the Planning Board. Dave Powelson said that the ZBA would be first and the approval would be contingent on the Planning Board completing the process. He spoke about the notification of other Boards and parties required by the Ordinance and how the timing of application deadlines and meetings makes it difficult to get a 30 day notice out without delaying a case. Donna stated that the Conservation Commission and Health Officer receive the same packets as the Board so that would be their notification. Howard Pearl asked Mr. Stout if this was presented to the Conservation Commission. Mr. Stout said that it was and then was revised and one application for another lot was withdrawn as a result of that presentation. There was discussion of Section 301.5 with regard to notification of the Planning Board, Conservation Commission, and Health Officer. Discussion also ensued with regard to the comments received from Julie Robinson and the fact that the Commission did not send anyone with objections to the applications. Lisa Mills stated that the Commission met with them in July and again in August, the Board received their comments through Donna, and she feels that is more than sufficient notification and response. Board members agreed that the applications could be heard.

#08-25 Mr. Stout went through the points of the application. Chairman Powelson pointed out that an impact area is not really shown on the conceptual plan. Mr. Stout explained that he has not done the grading on that yet, noting that the State likes to see it at the narrower spot which is close to a big wet area. He said the crossing is wider but away from that area. He said he cannot be sure of the area until he knows what the Conservation Commission and DES would require for pipe. He explained that the area would be approximately 30' x 20' and he figured it to be between 600 to 1000 sf. Mr. Stout stated that an expedited minimal impact is considered to be anything under 3000 sf. Howard Pearl asked if this will impact steep slopes. Mr. Stout said it is way under the 2500 sf that are allowed, noting that it is approximately 20' x 35'.

Chairman Powelson asked if there was anyone wishing to speak in favor of or against the application. Hearing none, he closed the hearing to the public and opened it

to the Board only. **Roy Merrill made a motion to approve Case #08-25 as presented; seconded by Ned Lizotte.** Howard Pearl said that it appears to be pretty straightforward, there is no opposition from the Conservation Commission, and it is a well designed plan. **A roll vote was taken: George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes. Unanimous – PASSED**

#08-26 Mr. Stout went through the points of the application. Howard Pearl asked how much of a reduction of the side setback they are requesting. Mr. Stout said they are asking for a reduction of 15' to 15'. Chairman Powelson asked Mr. Stout about the responses to questions 6 and 7 on part two of the application. Mr. Stout said that he did not do any measurements of driveways on other lots in the area so cannot say one way or another about the comparability of neighboring lots. Howard Pearl clarified that the area of relief is 400' off Old Shaker Road. Mr. Stout said that was correct. There was discussion of the area of the reduced setback and buffer encroachment. It was determined that the area does not affect the buildable area of the abutting property, is well off the road, and is the preferable plan as compared to going through the wetland buffer to a greater extent. Dave Powelson asked if there were concerns about the devaluation of other lots. Howard Pearl said that would not be an issue as this is making these lots more usable. Ned Lizotte said the plan is adding value to the lot. Chairman Powelson asked if there were any abutters who wished to speak in favor of or against the application. There were no abutters present. Donna reported that several abutters had come to the office to see the plan or called for more information. All were alright with the proposal other than one abutter noting that there is already a problem with a culvert in that area and they would not want to see any construction add to that. Mr. Stout pointed out the culvert and abutter's driveway which are approximately 225' from this proposed driveway.

Chairman Powelson closed the hearing to the public and opened it to the Board only. **Ned Lizotte made a motion to approve Case #08-26 as presented with a reduced side setback to 15' and allow the construction through the wetland buffer; seconded by Howard Pearl. A roll vote was taken: Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous - PASSED**

Case #08-22, Jake Bronnenberg – Special Exception for an Accessory Structure, Map 7, Lot 4. Mr. Bronnenberg could not be present at the meeting. A letter to extend his building permit was received from Mr. Bronnenberg. Jon Huntington stepped down from the Board as an abutter to this property.

Chairman Powelson stated that the points of the application were covered at the August meeting. He explained that a field review was done earlier this month and that the applicant wants to build a pole barn this year which is permissible by special exception if on the building permit list. He said that the Board has seen a copy of the conservation easement deed for the property and turned in a copy for the record. Howard Pearl said that it appeared from the site visit that this is pretty straightforward and well within the Board's jurisdiction. Mr. Powelson stated that abutter Tom Bardwell has a disagreement on the property line but it would appear that neither the applicant or Mr. Bardwell will gain or lose much once they determine the lines. He said that the barn would not be close to either line that might be used.

Ned Lizotte made a motion to extend building permit # 08-060 for one year through the end of 2009; seconded by Roy Merrill. All were in favor.

Howard Pearl made a motion to approve the application as presented; seconded by George Saunderson. A roll vote was taken: George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes. Unanimous - PASSED

Jon Huntington returned to the Board.

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. A request was received from the applicant’s representative to table the applications to the October 23, 2008 meeting. **A motion to table the two applications to October 23, 2008 at 7:00 pm in the Community Building was made by Roy Merrill; seconded by Ned Lizotte. All were in favor. There will be no further notification.** Ned Lizotte said that it would be important to have the fire department present at that meeting as there are concerns that will need to be addressed.

ADJOURNMENT:

Jon Huntington made a motion to adjourn the meeting at 9:00 p.m.; seconded by Ned Lizotte. All were in favor.

Respectfully submitted,

Donna White
Administrative Assistant