

APPROVED

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF AUGUST 27, 2009**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of August 27, 2009 to order at 7:00 p.m. at the Loudon Community Building.

ROLL CALL:

The following members were present: Chairman Dave Powelson, Roy Merrill, Howard Pearl, and Alternates Jim Venne and Jon Huntington.
Jim Venne was appointed to sit as a voting member in the absence of George Saunderson and Jon Huntington was appointed to sit as a voting member in the absence of Ned Lizotte.

ACCEPTANCE OF MINUTES:

Regular Hearing – Jon Huntington made a motion to approve the minutes of June 25, 2009; seconded by Roy Merrill. All were in favor.

PUBLIC HEARINGS:

#09-16, David & Sigrid Little – Special Exception for Reduced Setback, Map 49, Lot 20. Abutter Steven Warren was present. Mr. Little explained the work that has been done on the property since they purchased it, noting that the last of the demo has been done and that the foundation of the old building will be removed in the spring. He informed the Board that they are applying for a reduced front setback in order to build a barn for miniature donkeys. Mr. Little said that the proposed placement of the barn is to keep it as distant as possible from the neighbors.

Roy Merrill noted that this is a small lot and he asked how close the old building was to the setbacks. Mr. Little said it was quite close to the 30' setback being requested. He said the barn location would be at one of the four areas used to access the lot in the past, noting that the pavement has been removed from that area.

Chairman Powelson and Mr. Little went through the points of the application. Mr. Little explained that a secondary reason for moving the barn forward on the lot is to avoid the septic system area. When reviewing the section of the application on groundwater/drainage, Mr. Little stated that the barn and lot will be arranged so that any stormwater runoff will go down the road ditch to a culvert rather than an abutter's property.

Mr. Little said he would like the application acted on at this meeting so he could move forward. Mr. Powelson asked the Board members if they felt a site review was needed. Roy Merrill said he did not see the need for a site review as he is familiar with the lot and the work being done. Abutter Steven Warren said that he is all for the request as the Littles have done a great job improving the area. Dave Powelson did not feel there

was a need for a site review. Howard Pearl said this is pretty straightforward. Mr. Merrill said it is pretty simple and he was not sure a site visit was necessary, noting that all that has been done on the property has been a great improvement. He said they are improving the side setback and he does not see the front setback as a problem. Chairman Powelson gave an overview of the request and, hearing no further comment, closed the hearing to the public and opened it to the Board for a decision.

Jim Venne made a motion to approve the application for a reduced front setback from 50' to 30'; seconded by Jon Huntington. Howard Pearl stated that this application was well done. Mr. Huntington said that the owners are cleaning up the lot. Mr. Pearl said that he had heard no objections from abutters which weighs a lot with him. **A roll vote was taken: Jon Huntington – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes; Jim Venne - Yes. Unanimous – PASSED**

#09-17, Joanne Sanborn – Equitable Waiver of Dimensional Requirements, Map 44, Lot 8. Attorney Peter McGrath represented Mrs. Sanborn. Tracy Sweeney was present for Richard D Bartlett and Associates. Mr. McGrath stated that the Sanborns bought the property thinking they had 50' of frontage but it has recently been discovered that it is only 47.7'. He explained that RSA 674:33-a allows for an equitable waiver of dimensional requirements and gave an overview of the criteria for this waiver. Mr. McGrath went over the history of the lots and previous meetings with the ZBA and Planning Board. He noted that abutters (Mr. Locke was present) have no objection to the request and that Mr. Epp submitted a letter to the town stating that he had no objection.

Steve Jackson as a real estate agent is listing Mrs. Sanborn's house for sale. He presented the Board with a detailed, chronological history of the Sanborn properties. Tracy Sweeney handed out a section of the ZBA handbook that covers the RSA criteria. Mr. Sweeney stated that survey records show inconsistencies on this property and they are here to seek relief. Chairman Powelson had Mr. Sweeney go through the points of the application.

Jon Huntington said that he feels the last paragraph about the cost of correction outweighing any public benefit is true. He said it is not worth doing anything to get the 50' instead of the 47.7'. Howard Pearl asked how the building permit was granted. Steve Jackson said that the lot that the house is on was a separate lot of record and at the time zoning allowed a house without frontage or the acreage requirement. Mr. Pearl asked if a merger was required. A woman from the audience stated that it was a requirement of the building permit issued to Mr. Hibbard in 1990. Chairman Powelson explained zoning at that time, noting that sometime after 1990 the requirements changed to read that 50' of frontage is needed to have a buildable lot. Steve Jackson read from the 1993 Zoning Ordinance with regard to non-conforming lots of record. Roy Merrill said that it was required that the two lots be merged to get the building permit. He said the 50' of frontage on this lot was used to get the house (Map 53, Lot 2) originally. Mr. Merrill said if Mr. Epp never gave the Sanborns the right-of-way they would still be using this access. He said it was brought up at a Planning Board meeting that there are buildings on both lots. Attorney McGrath said that does not affect the equitable waiver and can be dealt with by doing a lot line adjustment. Mr. Merrill said the property is in current use and should not be if there is a barn there. He said these two lots were to be merged and he feels that the buildings were intentionally put on both lots because the lots

were considered to be merged. Mr. McGrath said that current use means nothing as it allows the owner to combine the lots for tax purposes but does not govern the ability to build on a lot. He said the suggestion that a 10-15 year old building permit application governs the ability to build on two lots is legally incorrect. Attorney McGrath stated that Mr. Hibbard did the building permit and his client bought the parcels after that. He said no deeds were prepared to merge the lots. He said the text on the building permit does not govern the ability to build today. Mr. McGrath stated that the building permit is only applicable if a subdivision is put into place before the transferring of the lot and his client bought these parcels as raw land. He referred to RSA 674:33-a, II. Mr. McGrath said, based on that section of the RSA, that the building permit does not bar the applicant from the equitable waiver if a ten year old provision of the town was not enforced.

Discussion continued about the granting of the original building permit, which zoning was being used since the second access was not granted until 2004, the location of the buildings and setbacks. Roy Merrill said he thought a site visit should be done. Attorney McGrath stated that it would appear that Mr. Merrill and the applicant have a personal history as Mr. Merrill continues to raise points that are irrelevant to this request. He said he has seen that each time this has been brought before the ZBA. Mr. McGrath stated that this is not the Planning Board and they are here for an equitable waiver which has nothing to do with the location of buildings. Discussion continued about the criteria of RSA 674:33-a, as well as the reason for this request. It was noted that the property tax file shows two separate lots, the barn on the house lot, and a note from 1990 that Mr. Hibbard was to draft a new deed before the two lots would be merged.

Chairman Powelson asked if there were any abutters wishing to speak in favor of the application. Attorney Roy Weddleton spoke on behalf of Dana Locke. He said they had hoped to do 50' but it is not there and it did not make sense to make the Locke lot non-conforming. Mr. Weddleton stated that this finalizes the settlement agreement between the parties. There were no abutters speaking against the application.

Chairman Powelson asked the Board if they believed there was trouble with the two lots. Peter McGrath said that he understands the barn is on the 66 acre piece (44/8) and they would sell the barn or do a lot line adjustment before selling 53/2. Discussion continued about the location of the buildings and setbacks. Howard Pearl said that the purpose of this application is to restore the privilege to access the property that should have been available to the owner since purchasing the property, noting that any problems with the buildings would be dealt with when the owner went to the building department or Planning Board.

Chairman Powelson closed the hearing to the public and opened it to the Board for a decision. **Howard Pearl made a motion to grant the equitable waiver of dimensional requirements at 47.7' of frontage; seconded by Jim Venne.** Mr. Pearl said that they have demonstrated that there was supposed to be 50' of frontage. He said the presentation was very well done and he felt this is the only way to correct what Mrs. Sanborn was supposed to have at 50'. **A roll vote was taken: Jon Huntington – Yes; Dave Powelson – Yes; Roy Merrill – No; Howard Pearl – Yes; Jim Venne – Yes. 4 – Yes; 1 – No – PASSED**

#09-18, Eric & Michelle Woodman – Variance, Map 11, Lot 47. Jeff Green of J L Green Enterprises, LLC represented the applicant. Jim Venne recused himself from this case as

his business was listed as an example on the applicant's application. Chairman Powelson explained that this would leave four voting members to consider the application and what the applicant's options were. Howard Pearl and Roy Merrill said they would like a site walk. Mr. Green said they would like to move forward with the application.

Mr. Green explained that they did a lot line adjustment three months ago in order to put a residence on an existing lot with an existing auto repair shop. He explained that there was no frontage on the lot originally and that the applicant bought land from abutters, including a 50' strip to create frontage. The additional land made the lot over two acres and met all setbacks. Mr. Green stated that Mr. Woodman received a call that he could not be given a building permit because of the existing garage, which is not permitted as a home occupation. He said they are asking for a home occupation and allow a residence. Mr. Green pointed out that the ZBA stated at an earlier meeting that a building permit could be issued but the existing business had to go away. There was discussion about the plan that was submitted, outlining the property, existing business and proposed house locations.

Mr. Green discussed the list of other businesses similar to this request within town. He said all of the listed businesses have a residence and a business, noting that this property is the only one with just a business in a residential zone. Chairman Powelson had Mr. Green go through the points of the application. Jon Huntington asked about the size of the lots of the other businesses. Mr. Green gave examples that ranged from one acre to forty-two acres. Roy Merrill asked Mr. Woodman if he owned both properties at one point. Mr. Woodman stated that he did not but the previous owner did own both lots. Dave Powelson noted that the other businesses pre-dated zoning and that there may not necessarily be a hardship with this lot. Jeff Green said that this would not be contrary to the spirit of the ordinance as it is already an existing business and a house is allowed in this district. He said the applicant was told he can get a building permit if he closed the business. Mr. Green said they cannot appeal as they do not have a denial for a building permit. He stated that they have a grandfathered use and want to keep the grandfathered use and add an allowed use.

Chairman Powelson read Section 602.2 of the Zoning Ordinance. Howard Pearl said they are not changing the use as it is a residential property anyway. Mr. Powelson said the use would be changing from a commercial garage to a residence and commercial garage. Mr. Pearl said it is not uncharacteristic in town to have both. Jeff Green asked, when looking at non-conforming uses of a residential lot, if a building was permitted without a residence. He said they are asking to make things conforming. Mr. Green stated that the front lot is 1.38 acres, and this lot was the same before the lot line adjustment and is now 2.175 acres.

Chairman Powelson asked if there were any abutters wishing to speak in favor of the application. Joseph Bonollo owns the front lot. He said he feels that nobody has a problem with adding a house on the lot. Ken Green stated that he was in favor of the application. The chairman stated that a variance can be hard to get as there has to be unnecessary hardship proven. He read about a use variance from page 77 of the Zoning Ordinance. Howard Pearl said that he does not see this as an area variance as the applicant has already done a lot line adjustment to make conforming acreage and frontage. He said a use variance would apply as a grandfathered use exists and this would be allowing a permitted use. Jon Huntington asked what a site review would prove.

Howard Pearl said that the neighbors were his concern but having them in attendance helps. Roy Merrill asked Mr. Bonollo if he was alright with the existing right-of-way access through his property to this property. Mr. Bonollo said that he had no problem with the existing right-of-way. Jeff Green noted that abutter Linda Minery had voiced concerns at a previous meeting about using the 50' strip as the access. He said Ms. Minery stated that she would prefer the access to stay as it is. Mr. Green said that Mr. Bonollo is the most affected and since the property is already used as a business there would be no problem with the addition of a home.

Jon Huntington asked about the size of the existing garage and the proposed house and where the house would be located. Mr. Green showed the proposed location of the house and how the driveway would go around the back of the garage so as not to bother the front abutter. Mr. Huntington asked how many cars are outside the garage at any given time. Mr. Woodman stated that there are ten cars at the most. Howard Pearl said that he cannot see that a site walk would change his opinion as long as the abutters are alright with the proposal. Jon Huntington said if the neighbors have no problem with the plan he feels the same.

Chairman Powelson went over the situation when there are four voting members. He asked the Board if they were alright with the application and if they felt that the applicant met all five of the criteria for a variance. Howard Pearl said he felt they did between the written and verbal responses. Jon Huntington said he agreed. Roy Merrill agreed. Chairman Powelson asked Jim Venne if he wished to add anything to the discussion. Mr. Venne said that he feels that a business and residence can co-exist quite peacefully. Howard Pearl said this is a unique situation. Chairman Powelson stated that they are asking permission to add a home to a non-conforming use. He said if the non-conforming use becomes abandoned or discontinued then it goes away whereas if it is made conforming then it is always there. Howard Pearl stated that he appreciates the efforts of the applicant to make the lot conforming by doing the lot line adjustment.

Chairman Powelson closed the hearing to the public and opened it to the Board for a decision. It was agreed that this would be a use variance. **Howard Pearl made a motion to grant a use variance to allow the addition of a single family detached dwelling to the lot and allow the continuance of the existing non-conforming use; seconded by Jon Huntington.** The chairman reviewed the five points with the board members. 1) Members agreed the point was met. 2) Members agreed the point was met. 3) Howard Pearl stated that this is a unique situation as the business is already there and it would be a financial hardship if the applicant had to move the business. Jon Huntington asked the applicant where he currently lives and why he needed another house. Mr. Woodman explained where he lives. Jeff Green said that the applicant would be able to sell his current house and be in a better position financially by putting one on this lot. The chairman read from Section 701.2 of the Zoning Ordinance. Howard Pearl said that the grandfathered use of a repair shop would prevent the owner from using the lot for the permitted use of a residence so that could be considered as an unnecessary hardship. 4) Dave Powelson asked if it was felt that substantial justice would be done as there are other shops and houses in town on one property. Howard Pearl said this is a unique situation as there is a grandfathered non-conforming use and to allow a conforming use is the hard part. 3) Howard Pearl said that a distinguishing characteristic is that the business already exists. Jon Huntington and Roy Merrill agreed that the point was met. 4)

Howard Pearl said it is very characteristic of the town to have home businesses and this would allow the applicant to do what the rest are doing. Jon Huntington was in agreement. 5) Jon Huntington said he would agree that the point was met. **A roll vote was taken: Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Jon Huntington – Yes. Unanimous - PASSED**

BOARD DISCUSSION:

Wetlands violations – Copies of memos from Bob Fiske to two property owners were reviewed, along with a letter from Dan Geiger to Bob Fiske about those violations on Memory Lane. Dave Powelson said that he has talked with Bob Fiske about what is allowed in wetlands. There was discussion about associating penalties with violations of the wetlands ordinance.

Capital Improvements Program (CIP) – The Board was informed of the first CIP meeting which is scheduled for October 7, 2009 at 9:00 am.

Workforce Housing Presentation – The Board was reminded of the upcoming seminar scheduled for September 10, 2009 at 7:00 pm at the Chichester Town Hall.

Conference and Law Lecture Series – The Board was reminded of the dates of the upcoming training sessions.

ADJOURNMENT:

Jon Huntington made a motion to adjourn the meeting at 9:30 p.m.; seconded by Howard Pearl. All were in favor.

Respectfully submitted,

Donna White
Administrative Assistant