

**APPROVED**

**TOWN OF LOUDON  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF DECEMBER 28, 2009**

Chairman Dave Powelson called the meeting to order at 7:00 p.m.

**ROLL CALL**

The following members were present: Chairman Dave Powelson, Vice Chairman Ned Lizotte, Roy Merrill, Howard Pearl, George Saunderson, and Alternates Jim Venne and Jonathan Huntington

John Reese was present to represent the fire department.

**ACCEPTANCE OF MINUTES**

**Regular Hearing – George Saunderson made a motion to approve the minutes of November 30, 2009; seconded by Jim Venne. All were in favor.**

**Site Visits – Howard Pearl made a motion to approve the minutes of site visits done on December 5, 2009; seconded by George Saunderson. All were in favor.**

**DISCUSSIONS**

Roy Merrill recused himself from the discussions involving building permit extensions.

**Roy Merrill, building permit extension** – Mr. Merrill submitted a letter asking for an extension of building permits numbered 06-018 and 06-019. Chairman Powelson asked if these are the first extensions requested on these permits. Mr. Merrill said it is the second request. Howard Pearl asked what year the permits were issued. Mr. Merrill said they are 2006 permits that were issued in 2008 due to the permit waiting list. There was some confusion on the permit numbers and lot numbers to which they correspond. There was discussion about properties with a building permit having an additional \$30,000 added to their assessment. It was suggested that property owners should receive a refund of the additional taxes paid because of the building permit if extensions are not going to be given. George Saunderson stated that the Board has been fairly agreeable to granting extensions for one year and sometimes a second year. Howard Pearl asked who is notified of these requests. Chairman Powelson explained that it is an administrative process and does not require notification or public hearing. Mr. Pearl asked what the pros and cons would be of multiple extensions. Dave Powelson explained that the basic premise when there was a waiting list was that it would be unfair to keep one on the books when others could use it. He stated that due to economic changes there is no longer a waiting list for building permits. George Saunderson said that he could see the con of three or four extensions being that there would be a large number of houses being built in one year. He said he has no problem with extensions of a year or two. Mr. Pearl

said that he does not see why there is a fairness issue with no waiting list if they pay extra taxes, noting that it is the permit holder's choice. He said if they can turn the permit in and get a reduction in their taxes then that is also their choice. Chairman Powelson asked Mr. Merrill if one year is enough of an extension and if he still plans to build. Mr. Merrill said a year would be sufficient and he plans to build if he can sell the lot.

**Howard Pearl made a motion to extend building permits #06-018 and #06-019 for twelve months; seconded by Jim Venne. All were in favor.**

**(Administrative Assistant note: Research after the meeting determined that the permit numbers should be #09-001 (instead of 06-019) and #09-014 (instead of 06-018). Records have been changed to reflect the correct permit numbers)**

Cecile Merrill, building permit extension – A letter was submitted by Mrs. Merrill requesting an extension of building permit #08-023. This is the second extension of this permit. **Howard Pearl made a motion to extend building permit #08-023 for twelve months; seconded by George Saunderson. All were in favor.**

Ned Lizotte arrived at this point of the meeting.

Wayne Thistle, building permit extension – A letter was received from Mr. Thistle requesting an extension of building permit #09-026. Mr. Thistle was present and stated that this is the first request on this permit. **Howard Pearl made a motion to extend building permit #09-026 for twelve months; seconded by Ned Lizotte. All were in favor.**

Roy Merrill returned to the table.

Jeff Sydow & Ann Norman-Burke – Mr. Sydow explained that he currently operates an auto repair shop on Route 106 in Gilmanton. He said he is interested in buying a lot on Route 106 in Loudon (Map 66, Lot 2). Mr. Sydow noted that there is an existing house on the lot and asked if that could be used as a caretaker house or mixed use with an auto repair shop. Chairman Powelson referred to Section 206.3 B of the Zoning Ordinance where the auto repair shop use is permitted by special exception. Howard Pearl pointed out the requirement of a minimum of two acres in the C/I District for such uses. It was noted that the lot has the required frontage but not the full two acres. Ms. Norman-Burke asked if a variance would be required. George Saunderson asked if they would be looking for setback reductions. There was brief discussion about the required setbacks. Chairman Powelson pointed out that the right-of-way for Route 106 is a lot wider than the pavement. Mr. Sydow stated that they measured from the centerline, noting that there is a metal fence that appears to be the edge of the right-of-way, and there is room for a building without encroaching on the required setbacks. Ms. Norman-Burke asked if the Board would be receptive to auto repair and sales in that area. The chairman stated that a special exception is the applicant's right and is not as difficult to get as a variance. He noted that there will be changes to the variance language effective January 1, 2010. Ms. Norman-Burke asked if a survey is necessary should they decide to apply or if a hand-drawn sketch at that point would be sufficient. Roy Merrill said that they would not need

a survey for this portion of the process. He explained that they would need more detailed plans when they go to the Planning Board for the site development review once they receive ZBA approval. George Saunderson said that they should count on two meetings with the ZBA, noting that the Board would want to do a site walk.

Mike Milligan – Mr. Milligan stated that he was inquiring about doing auto reconditioning and used auto sales at the corner of Village Road and Route 106 (Map 20, Lot 58). Chairman Powelson noted that this is a two acre lot and appears suitable for commercial use. Roy Merrill asked if the access would be off Wales Bridge Road. Mr. Milligan said that it would be but he was also going to approach the State about access off Route 106. Mr. Powelson noted that this is an odd shaped lot and that the setbacks could be an issue. Ned Lizotte referred to another proposal that Mr. Milligan had talked about doing on this lot. He said that proposed use would have required more parking spaces so this use may fit better. Mr. Powelson noted that this lot could be in an aquifer region and there might be a concern of the use's affect on groundwater. Jon Huntington asked if there would be one, two, or three bays and a car wash. Mr. Milligan said he was thinking two bays for reconditioning of used cars. Mr. Huntington asked if they would be selling cars on this lot. George Saunderson asked to clarify if Mr. Milligan was proposing to take in cars to detail for customers. Mr. Milligan said that they might do some detailing for customers but it would mainly be reconditioning cars that they pick up and then sell on the lot. There was discussion of other similar businesses in the area. Chairman Powelson suggested that Mr. Milligan look closely at the required setbacks and apply for a special exception for the use. It was noted that this is a corner lot so would have to meet setbacks on multiple sides. There was discussion about the proposal and it was agreed that the use is permitted by special exception and the applicant would have to prove to the Board that they can meet all of the requirements.

## **PUBLIC HEARINGS**

#09-20, Pleasant View Gardens/New England Flower Farm – ESMI Soil Application, Map 6, Lot 3. Abutters were notified; none were present. Jonathan Huntington stepped down from the table. Henry Huntington represented Pleasant View Gardens. This application was continued from the November meeting. Howard Pearl stated that the tour given to Board members on December 5<sup>th</sup> was very informative. He said he believes what was asked for at the site walk has been covered in a letter recently received from ESMI. Ned Lizotte discussed some of the questions that were asked at the site visit. He said guidelines have been given in the letter from ESMI. Mr. Lizotte said that the letter gives documentation of the actual plan should there be any questions. He noted that there are two RSAs mentioned in the letter that also appear in the town's Zoning Ordinance. The reference numbers have been updated and should be addressed with a zoning amendment as a housekeeping measure so that the Zoning Ordinance reflects the correct references. Howard Pearl said that he feels that the applicant and the letter from ESMI have satisfied the Board's questions. **George Saunderson moved to approve the application; seconded by Ned Lizotte.** Howard Pearl asked if any restrictions from the letter should be incorporated into the motion. Mr. Saunderson said they could include some of the guidelines but he felt it is fairly clearly outlined as long as the letter is part of

the file. Jim Venne said that he had no concerns with the application. It was agreed to leave the motion as stated. **A roll vote was taken: George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes Unanimous – APPROVED**

#09-22, Brenda Clark – Special Exception for Reduced Setback, Map 22, Lot 48.

Abutters were notified; none were present. Abutter Stacy Lane viewed the application and plan prior to the meeting and had no concerns. Abutter Joshua Sheehy viewed the application and plan at the Zoning Office and then submitted a letter stating that he and his wife Lara have no objections to this application.

Ms. Clark explained that she is trying to sell this two acre lot. She said there is a noticeable wetland and she hired a wetland scientist to delineate the wetland. The purpose of this request is to place the driveway in a location that avoids going through the wetland. She explained that she wants to make the lot more sellable by having an approval for the driveway in the setback already in place. Chairman Powelson asked if she specified a specific distance on the application. Mr. Clark said that she did not specify a distance for the reduction. She said she talked with the road agent about the required driveway width. Howard Pearl asked if this would be near the neighbor's house. Ms. Clark stated that it is ten to fifteen feet to the neighbor's driveway from the boundary line and their house is beyond the driveway. She said the road agent told her that 30' would be needed at the road for turning purposes but then the driveway could be narrower from there into the property. Roy Merrill asked if this should go through the wetlands board because it is in the wetlands setback. Dave Powelson referred to the requirements of the wetlands overlay district. There was a review of the wetland map and the buffer requirements. Ms. Clark said that a house would not be a problem with the buffer; the driveway is the main concern. Jim Venne asked if there is standing water. Ms. Clark said it is more like wet soil than a pond. Jon Huntington stated that the wetland specialist's report pretty much tells that it would be a permitted use and not impact the wetlands in any way. He said it is almost a man-made wetland due to runoff from Piper Hill Road. Ms. Clark talked of water runoff from other lots and the road. She said a diversion was built prior to her owning this and the abutting lot in the mid 1980s. She explained that water from this lot feeds through a hole in a stonewall between this and the abutting lot. The water goes through a culvert on the other lot and into a pond on that lot. Howard Pearl suggested that the Board ask the Conservation Commission for an opinion. Chairman Powelson referred to buffer requirements in the Zoning Ordinance, noting that the Board has to give the Planning Board and Conservation Commission thirty days notice before making a decision. Ms. Clark said that Dan Geiger walked the property with her and offered some advice. She said the town has considered this to be a buildable lot and potential buyers want to know that for sure. Ned Lizotte and George Saunderson suggested doing a site visit. Mr. Saunderson said that it would be ideal to have the Conservation Commission there at the same time.

Chairman Powelson asked if a second application would be necessary or if the wetlands impact could be added to this one. Roy Merrill said that he did not see why the Board would need a second application as long as they got a letter from the Conservation Commission. Howard Pearl said that it seems to be part of this application and the reason for the special exception. Mr. Powelson said that they will need a number for the amount

of the setback reduction. Mr. Merrill said that the Conservation Commission would help determine that. Ms. Clark stated that she could have the wetland specialist attend the site visit as well. A site visit was scheduled for January 9, 2010 at 9:00 a.m. Per Section 301.5 of the Zoning Ordinance, the Conservation Commission, Planning Board, and Health Officer will be notified of the application and site visit. **Howard Pearl made a motion to continue this application to the date of the site visit and then to January 29, 2010 for further deliberation; seconded by Ned Lizotte. All were in favor.** There will be no further notification.

#09-21, Red Hat Realty – Special Exception for Underground Storage Tank, Map 20, Lot 24. Abutters were notified; none were present. Dan Plourde was unable to be present as he is out of state. This application was continued from the November meeting.

Firefighter Reese spoke about the fire codes (NFPA 30A and NFPA 17, chapter 9.8) that would have to be met for this project. He said that the project will have to be designed and installed to those codes. Mr. Reese said that the applicant would also have to meet NFPA 101 Life Safety because of the mixed use of the building and its location. Engineered, stamped drawings will be required. There was discussion of the requirements for the fire department and what the applicant's plan is for the property. The applicant will be asked to contact Firefighter Reese with the proposed tank location and size so that he can further research the codes.

George Saunderson asked if it would be a problem if the Board granted the special exception and then the applicant decided not to do the project based on all that is involved and required. He wondered if they should wait on granting the special exception. Roy Merrill said that has never been done. He explained that the approval stays with the property and it would be up to the applicant, Planning Board, and State to decide if the project can meet all of the related requirements. Dave Powelson said that the applicant has to meet the current NFPA codes. He noted that the applicant has not asked for relief of setbacks. Mr. Merrill stated that the pumps currently exist and do not need setback relief. He said the setbacks mentioned by Mr. Reese are NFPA requirements, not the town's setbacks. It was noted that a gas station is not a permitted use in the Village District. There was discussion about the amount of time that has passed since the property was last used as a gas station. Jim Venne said he felt if the pumps had been pulled out this would be considered an abandoned use but since the pumps are there he feels nothing has been discontinued. Roy Merrill said that he does not see that it is the job of the ZBA to close down an existing business or use. It was noted that the business was in operation, the current owner is in the process of renovation, it would not be a discontinued use, and it is a store and gas station together. Mr. Merrill said that the applicant still has a State permit to sell gas, making it fairly clear that the use was not discontinued. Ned Lizotte said this would be a grandfathered use that was part of the transition of the sale of the property.

**Roy Merrill made a motion to approve the special exception for tanks up to 20,000 gallons, noting that the project will have to meet NFPA code when the time comes to replace the tanks; seconded by Ned Lizotte.** Chairman Powelson went through the points of the application. Howard Pearl stated that the applicant is not changing the use of the site. He said that the applicant is responding to today's economy and wants to be able to bring in more fuel at one time. Mr. Merrill said he feels the

upgrade in tanks would be an improvement. Jim Venne said that he has no problem with the application, noting that it is a moot point if the applicant does not meet the NFPA codes. Jon Huntington spoke about having to have an environmental specialist involved when they pulled tanks at Pleasant View.

**A roll vote was taken: George Saunderson – Yes; Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; Howard Pearl – Yes Unanimous - APPROVED**

### **BOARD DISCUSSION**

Chairman Powelson noted that the terms of Roy Merrill and George Saunderson run through town meeting in March. Donna will notify members of the dates for filing for candidacy.

Jon Huntington spoke about his concerns of the proposed used auto sales lot that was discussed earlier in the meeting.

### **ADJOURNMENT**

Jon Huntington made a motion to adjourn the meeting at 8:45 p.m.; seconded by George Saunderson. All were in favor.

Respectfully submitted,

Donna White  
Administrative Assistant