

APPROVED

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF JUNE 25, 2009**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting of June 25, 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, Vice Chairman Ned Lizotte, George Saunderson, and Alternates Jim Venne and Jon Huntington.

Jim Venne was appointed to sit as a voting member in the absence of Howard Pearl.

ACCEPTANCE OF MINUTES:

Regular Hearing – **Ned Lizotte made a motion to approve the minutes of May 28, 2009; seconded by Jim Venne. All were in favor.**

PUBLIC HEARINGS:

#09-13, Dana & Deborah Locke – Variance, Map 44, Lot 14. This application was filed by Peter McGrath, counsel for Joanne Sanborn.

Attorney Roy Weddleton spoke on behalf of Mr. & Mrs. Locke. He said that there has been a longstanding boundary dispute involving the Locke, Thibodeau, and Sanborn parcels. Mr. Weddleton explained that the parties had come to an agreement, subject to a survey that was to be paid for by all parties. He said that Attorney McGrath took the lead with getting the survey done and none of the other parties had seen it. Mr. Weddleton stated that he got a voicemail that the frontage (Map 44, Lot 8) was 23” short, a variance was needed, and Mr. McGrath was submitting the application. Attorney Weddleton said that he and the Lockes were unaware of the application being submitted in their name. He said that the Lockes agreed to give Mrs. Sanborn 50’ but they never agreed to make their lot substandard. Mr. Weddleton said that Mr. McGrath wants a variance to get the additional 23”, making the Locke lot substandard. He said he has never heard of a zoning board making a lot non-conforming to give another lot a 50’ right-of-way. He asked if this should come from Mrs. Sanborn. Attorney Weddleton said that it is not the intent of the Lockes to file the application, noting that all parties agree on the agreement except for this part.

Chairman Powelson said that the application is in the terms of the Lockes so the Board needed to hear them first. He said that he did not think that the Board can do anything to make everyone agree.

Peter McGrath said that they need the Board’s guidance on how they prefer to see the agreement implemented so that it can go to court. He explained that this is a fee simple absolute strip of land, not a right-of-way. He explained the layout of the lots,

pointing out the strip of land next to the Lockes that was owned by the Sanborns for years. Mr. McGrath stated that there has been a dispute about the length and width of that strip so they went to court and it was worked out in a settlement agreement. Attorney McGrath explained that everybody got money from the title companies and the Lockes gave the Sanborns 50' of frontage. The presumption was that it would be enough to put two house lots in the back of the parcel. He said the surveyors learned that the frontage was short by 2.81', noting that he erroneously stated 23" in the application and presentation. Mr. McGrath said that the surveyor received the settlement agreement and prepared the variance request under the Lockes name because the agreement was that they would give 50' to the Sanborns. He said that Mrs. Sanborn got a 50' fee simple absolute strip as part of the agreement. He explained that 4/10 of an acre was given to the Lockes to make up for part of the road that was in the 50' strip. This would keep the Lockes lot at the existing 2.02 acres. Attorney McGrath asked if the preference would be a variance granted for 198' of frontage for the Lockes or a variance granted for a 48' fee simple absolute road back to the Sanborn property.

Tracy Sweeney of Richard Bartlett & Associates said that they prepared the plan per the agreement. He said that they need to go to the Planning Board for a lot line adjustment. Mr. Sweeney stated that there is not enough frontage to satisfy both lots. He said that the difference could be split or go one way or the other. Roy Merrill asked if they would be building a road to create frontage for two lots. Mr. Sweeney said they would use a common driveway. Mr. Merrill said that they have to have 200' of frontage for each lot so they would have to build a road to create that frontage. Chairman Powelson said that two lots was not the question for this board to resolve but they could give the 50'. Mr. Merrill said that there is no hardship as they do not need 50' to have the house that is already there (Map 53, Lot 2). He said that 50' does not give them two lots. It was clarified that the existing house is on another lot that is landlocked. There was discussion of town standards, subdividing, and roads. It was stated that the existing house is accessed by way of a deeded easement over the Epp property. Roy Merrill said he still did not see how they could get another lot. Mr. McGrath said that they still need 50'. Dave Powelson said that the Planning Board would be in an awkward position to approve a lot line adjustment that would make one lot or the other substandard. He said that 50' is required for a road and is needed to make it a buildable lot. Mr. Merrill said that they were given a building permit because they owned both lots and the frontage of the larger lot (Map 44, Lot 8) was used when building the existing house.

Marcia Flynn, local realtor, stated that she was contacted by Mrs. Sanborn four years ago regarding subdividing her land. Ms. Flynn said that Stan Prescott and Roger Maxfield visited the property and determined that Mrs. Sanborn could not subdivide. She presented a copy of a building permit that was issued in 1990 for the existing house, noting that a condition of the permit was that the two lots were to be combined. Chairman Powelson said that minutes of the Selectmen's meeting of that time reflect the same intent. Roy Merrill said that he believes they used this 50' access to build the house on the other lot as there was no other frontage. Dave Powelson said that it was his recollection that the Ordinance allowed building on any lot and it was later that they required 50' of frontage. Mr. Merrill said that they had to have some frontage to build.

Attorney McGrath read from ZBA minutes of April 2006 when there was discussion about getting a building permit for Mrs. Sanborn's larger lot. He said that is

how the litigation developed. Mr. McGrath stated that he was not aware of the 1990 building permit or conditions. Attorney Weddleton said that Attorney McGrath's statements are correct, they can agree but the Board has to decide how this has to be done. He said the Lockes never agreed to give what they do not have. He also noted that there was no court ruling as it was a civil agreement. Roy Merrill said they are asking for a variance for frontage for a lot when they have a house now using that frontage. He said there is no hardship at this point. Roy Weddleton said they are trying to accomplish what was agreed to, adding that he and his clients are not concerned about future development. Roy Merrill asked what Mr. Locke wants.

Abutter Trudy Mott-Smith asked how one party to a disposition could file a variance without the knowledge of the owner. She asked if that is legal. Ms. Mott-Smith said that it would seem that the Board could not even hear the application. Chairman Powelson asked Mr. Locke if this variance is something that he wants done. Mr. Locke said that he is not looking to have his lot compromised. He said they should be looking for a variance in their (Sanborn) name. The chairman said that would clear up what they should do with the application. Attorney Weddleton asked if the Board would entertain an application for a variance from Mrs. Sanborn. Chairman Powelson said that the Board would consider any application that is filed. If it meets the requirement for a variance, it is approved, if not, it is denied. He said it has to be determined if a hardship exists for the approval of a variance. Mr. Powelson said the Board cannot decide who should apply. Mr. Weddleton said that the court would not overrule the ZBA rules. Mr. McGrath said they need more from the ZBA.

Discussion continued about the agreement that allows for two single family homes on the larger lot, access to the existing house, what frontage is used for the existing house, the condition of the building permit to combine the two lots, the condition of the agreement that this 50' strip is not to go through to the existing house, and other matters discussed earlier in the meeting. It was agreed that the Board could not act on this application. The process of applying to the Planning Board for a lot line adjustment was explained, with the understanding that the Planning Board may refer the applicant to the Zoning Board for a variance on the frontage requirement.

#09-14, Sanborn Mills, Inc – Special Exception for Reduced Front Setback, Map 17, Lot 3. There were no abutters present. Scott Carbonneau represented Colin Cabot. Mr. Carbonneau explained that the purpose of the reduction is to allow moving the grist mill forward as part of its restoration project. He said the mill is currently 7'1" from the guardrail and the request is to move it 2'4" closer. This would get the mill off concrete that was done years ago and allow for complete restoration. The Board reviewed photos that were submitted to show the proximity of the mill to the guardrail.

Chairman Powelson went through the points of the application. George Saunderson asked about the width of the road. It was stated that the current bridge is 14' wide. Roy Merrill asked if a site walk should be done. Board members agreed that they were familiar with the property and did not need to do a site visit. There was discussion about possible future widening of the road and bridge. It was felt that there would be ample room on the opposite side of the road for widening. Dave Rice was contacted with regard to the reduction interfering with the town's maintenance of the bridge and road. Mr. Rice stated that the setback reduction would not affect road maintenance.

Hearing no further discussion Chairman Powelson closed the hearing to the public. **George Saunderson made a motion to approve the application as presented for the purpose of moving the grist mill 2'4" closer to the road; seconded by Jim Venne.** Roy Merrill said in his opinion the only reason this is being granted so close to the road is due to its historical factor. He pointed out that most of the land beyond the mill is in conservation so there is a lack of future development and road traffic. He said these are extenuating circumstances specific to this property. **A roll vote was taken: Jim Venne – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous – PASSED**

#09-15 Kenneth & Wendy Walsh – Special Exception for Reduced Setback, Map 58, Lot 144. Tony Merullo was present as the developer of the subdivision and to represent abutter Denyse Merullo. Mr. Walsh explained the location of the home that they purchased in November 2008. He said the house has a two car attached garage and he would like to build a detached garage. Mr. Walsh explained that there is a 50' right-of-way to the left of this parcel for future access to the remaining acreage of the subdivision. He said that right-of-way makes this a corner lot which requires a 50' setback on that side rather than the typical 30' setback.

Mr. Walsh went through the points of the application. He noted on Section 1, #6, that he would like to move the garage forward from where it is shown on the plan in order to maintain existing trees. He said there would still be plenty of front setback and there would be less impact. George Saunderson asked how close the garage would be to the house. Mr. Walsh said it would be approximately 15'. There was discussion of the proposed location of the garage and fire access. It was noted that there would be even better access when the new road goes in. Mr. Walsh pointed out that the fire cistern is across the street from their house.

Tony Merullo spoke on behalf of Denyse Merullo. He said there was no objection to the application, noting that it would increase the value of the property. Mr. Merullo said after reviewing the plan that the well may be a little closer to the house than depicted, therefore there would be no other way to move the garage to a 50' setback.

Chairman Powelson closed the hearing to the public. He stated that the application is for a reduction of a front setback on the side of the lot from 50' to 35'. **Ned Lizotte made a motion to approve the application as submitted; seconded by Jim Venne.** Mr. Lizotte said that this seems to be a reasonable compromise. He said the owner would not have known there would be a road going in so the setback would have been 30'. He said 35' is better. Dave Powelson said that he disagreed to a point in that the owners should have known when they bought the lot that it was a corner lot. He said they have been a little reluctant as a board to grant reduced setbacks in new subdivisions so they have to be sure there is something different about this case. Donna reported that a call was received from Bob Fiske with concerns relative to another situation where a corner lot setback reduction was denied. Roy Merrill said that he was not sure it was denied, pointing out that they were not asked for that lot specifically. Chairman Powelson stated that the matter referred to was a blanket request that drew considerable opposition from abutters. He said he feels this reduction request is reasonable. **A roll vote was taken: Jim Venne – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes; George Saunderson – Yes. Unanimous - PASSED**

BOARD DISCUSSION:

Map 60/Lot 31 – Donna received a call from the owner of the parcel asking if the lot would be considered buildable and, if so, if a two-family home would be permitted. The lot is partially in the Rural Residential district and partially in the Commercial/Industrial District. The Board reviewed the tax map and agreed that it could be buildable as long as it would support a well and septic system. It was also agreed that a single family home could be put on the lot but it does not meet the frontage requirement for a two-family home. A hardship would have to be proven in order to be granted a variance.

Map 11/Lot 47 – Donna received a call from Bob Fiske with questions about access to the lot, the existing auto repair business on the lot, and issuing a building permit for a house to be added to the lot. The Board reviewed the recent lot line adjustment that was done to create 50’ of frontage on the lot and to add acreage bringing the lot to a conforming size. It was agreed that the existing business was grandfathered but would not be permitted as a home occupation should a house be added to the lot. Chairman Powelson stated that a building permit could be issued for a single family home provided that the non-conforming use of the garage went away.

ADJOURNMENT:

Jon Huntington made a motion to adjourn the meeting at 9:45 p.m.; seconded by Jim Venne. All were in favor.

Respectfully submitted,

Donna White
Administrative Assistant