

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF MARCH 22, 2012**

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

ROLL CALL

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

ACCEPTANCE OF MINUTES

Regular Hearing – **Ned Lizotte made a motion to approve the minutes of February 23, 2012 as presented; seconded by Howard Pearl. All were in favor.**

Site Visit – **Howard Pearl made a motion to approve the minutes of the Broider site visit on February 29, 2012; seconded by Earl Tuson. All were in favor.**

DISCUSSION

Jim McClarin – Mr. McClarin explained that he was at this evening's meeting at the request of the Board of Permit. He said he has a 20' shipping container on his sister's property on Lower Ridge Road. He is packing the container with materials for when he relocates to Ecuador. Mr. McClarin said there is no business being run out of the container as was reported to the code enforcement office. He said he had planned to go into business years back but never did and still had materials for four garden carts. He said he assembled the carts and put them out front to sell but when they didn't sell right away he pulled them back, one of which he has for sale at Karl Moore's shop. The rest of the carts are on the property but are not for sale. His sister stated that the carts were assembled in her backyard.

Mr. McClarin said the cord that runs between the house and the container normally has no juice to it. He said he initially was going to run heaters in the container to prevent some of his materials from freezing but due to the cost has moved those to the basement of the home. He explained that he has a 3000 watt converter and a bank of batteries that he has to charge from time to time. They have also used those to power the house once during a power outage. Mr. McClarin said the container will be loaded on a truck to be taken to port to be shipped to Ecuador. He said he is not yet ready to leave but figures he could be in the next two to three months. Roy Merrill suggested that it would be good to have a set date for the removal of the container. Mr. McClarin said that he felt he could be ready to ship in September.

Mr. McClarin said that his van is the only vehicle that is beside the road from time to time if he is loading something into the container. He stated that he has had to shuffle things around in order to compact the load and fit everything in that he will need once in Ecuador. Chairman Powelson said there was some concern at the Board of

Permit meeting about another driveway permit being needed. He suggested that Mr. McClarin contact the road agent when leaving as there was concern about the road possibly being damaged. There was discussion of the container being in the setback. Mr. McClarin said the container was delivered by a tilt bed wrecker and they did not want to back in any further for fear of getting stuck. The Board had no further questions and agreed that they were comfortable with having a sunset date for the removal of the container.

NHMS – tent camping – Gil Rogers and John Zudell were present from NHMS. Mr. Rogers explained that they currently have people who put up tents in parking lots and along the five lane road. They are trying to control and contain this situation by putting a tent camping area in one of their lots. He said they would have porta-potties, showers, and replacement parking for any area that is lost to tenting. Mr. Rogers noted that Section 503.3 does not seem to address this situation but he wondered if it might be considered as temporary camping at the jurisdiction of the Board of Selectmen. Chairman Powelson noted that the boards approved an employee campground.

Mr. Rogers said it is unfair to paying campers to have these tents pop up here and there so they would like to provide a tent camping lot. He said they generally have 50-75 illegal tenters for the major events. He said that security tries to remove them only to have them pop up elsewhere. They are proposing 146 12' x 30' sites, all in one area, resolving the problem. George Saunderson asked if this area would be for specific races only. Mr. Rogers said it would not be used at any other time. John Zudell said they have fought this issue for four years, noting that it is announced at every event, and that management has agreed to try to get a handle on it with this solution. Jim Venne asked if pop-up campers are allowed in the camping areas now. Mr. Rogers said they are as long as they are self-contained. Roy Merrill said they are here to see if they need a special exception or if they should go to the Board of Selectmen. Jim Venne asked if the Dover track allows tent camping. Mr. Rogers said it is not on the listing that he has, noting that it is an older list. He stated that Daytona allows for 20' x 35' spaces and Atlanta allows for 10' x 30' spaces. Mr. Venne asked if this would be for just two race weekends. Mr. Rogers said it would be for the two major events. He noted that RV camping opens the previous Saturday but this would be the race weekend only. Earl Tuson asked about the number of spaces at the other tracks. Mr. Rogers said the listing does not provide that information. Donna reported that John Reese had called the office to say that Chief Wright preferred to go with the State's size requirements which would be no less than 600 sf per site.

Howard Pearl said that it would appear that they would need both a special exception for the use and a variance for the size reductions. George Saunderson asked if there would be an issue with septic needs. Mr. Zudell stated that they would provide temporary showers and porta-potties. Gil Rogers said they got advice from their supplier and were told that they would need 15 units for 500 people. Ned Lizotte said they should see the fire chief and then submit applications for a special exception and a variance.

PUBLIC HEARING

Application #Z12-03, New England Flower Farms – Variance for Coverage Area, RR District, Map 6, Lot 3, Pleasant Street. Applicant Henry Huntington was present. Tim Bernier of T F Bernier, Inc. represented the applicants. Mr. Bernier reviewed the amended application and proposal that was submitted at the February meeting. He said they have since had feedback from town counsel as well as his applicant's attorney. Mr. Bernier said there would be 40 acres left with the present greenhouse facility after the proposed lot line adjustment. This would leave the lot shy on acreage for lot coverage, being at 18% when only 10% is permitted. He said they would end up with a total of 20.5% of impervious coverage. He said they are not asking for relief of coverage, just not ownership in fee. They have created a covenant which would be on the plan and recorded. Mr. Bernier said they would essentially comply with the requirement as an easement instead of in fee.

Howard Pearl asked if the area of the easement would be defined. Mr. Bernier said he did not do that initially but town counsel did suggest it. He explained that they wanted to leave it as an undefined 36 acres as the wetlands have not yet been delineated. He said he would hate to tie up an area of the lot that might be usable by the lot. Mr. Pearl said he feels he would be more comfortable if the acreage was defined. Henry Huntington said there is no area currently defined as the open space. Mr. Pearl noted that it is currently all one lot with one owner. Ned Lizotte read from a memo from town counsel with regard to defining the area. Roy Merrill said it was suggested that the applicant try to get the zone changed if they did not agree with the requirements and now they are not willing to define the area. Mr. Huntington said they are complying by using another lot, clearly stating that the acreage is never to be used, it would be on the plan and recorded, creating permanency. Mr. Lizotte spoke more about town counsel's concern of ambiguity and how this could create confusion with the parcels in the future. Mr. Pearl said it would be easier to defend if defined with an encroachment. Mr. Bernier stated that he spoke with Mr. Huntington's attorney who felt this would not be an issue. He said it is being recorded and would show up on any future plans.

Roy Merrill asked where the hardship is in this case. Howard Pearl pointed out that the land with the proposed easement would be owned by a different person. Tim Bernier stated that the criteria of the application explains this and meets the requirements of the Zoning Ordinance. Mr. Merrill read from town counsel's memo with regard to estate planning not being a hardship, noting that it must be related to the land, not the owner. Mr. Bernier said this property is unique with the greenhouses and large buildings. He said the district has strict coverage limits whereas there would be no restrictions if it was in the AFP district. He said they thought it was reasonable with the easement, meeting the coverage with the acreage being preserved.

Mr. Bernier went through the points of the application. Roy Merrill asked how they would deal with expansion. Henry Huntington stated that they would come in and get the Ordinance changed. There was no real response when Mr. Huntington asked if the Board would support such a change. Mr. Bernier pointed out that the land is not conducive to expanding so they would be replacing existing structures if anything. He spoke about the wetlands and steep slopes on the property.

Chairman Powelson asked if there were any abutters who wished to speak for or against the application. There were none present and there were no comments from the

public. Mr. Powelson said there seemed to be some disagreement regarding defining the acres and defining hardship.

Point #1: Jim Venne said he was alright with the response. Howard Pearl said that he was also if the space stays open and that it does not matter who owns the parcel. Point #2: Howard Pearl said he has a little issue to allow someone else to cover the requirements. Earl Tuson said the spirit of the Ordinance is not to create non-conforming lots. Mr. Pearl said there would be no visible change and that nobody would know the difference if driving by. George Saunderson asked the length of the 50' strip. Mr. Bernier stated that it is about 750'. Mr. Saunderson asked if that would be in the spirit of the Ordinance. There was discussion of the strip and the lot size and shape.

Point #3: Howard Pearl said that in today's legal world it is very necessary to have more than one entity and he understands the family's need for estate planning, business decisions, and the need to protect their business. He said he would hate to stand in the way of that. Point #4: Jim Venne said there would be no change other than paperwork. Earl Tuson stated this would not be an issue.

Point #5: Dave Powelson asked if the fact that this is the only greenhouse on Pleasant Street would be considered a special condition. Howard Pearl said this is a very intense use of a piece of property, noting that there are only a couple of others that are similar in town. Roy Merrill asked if that wouldn't defeat the response of special conditions. Jim Venne said this is the only one in this particular neighborhood. Earl Tuson asked how it would be considered a hardship if they kept it in the existing condition. Mr. Pearl said that the applicant had mentioned that they felt it necessary to do this to achieve estate planning goals. Mr. Venne said they would not be here if it was not important to continuing their business for a long time. George Saunderson stated that he felt the best course of action would be to change the zoning. He asked if waiting a year to do that would make a big difference to the applicant. Ned Lizotte said that he would concur with Mr. Saunderson. He said there are too many holes in the plan and it would be better if it could be handled by a zoning change. He noted that no amendments have been defeated in the past. Mr. Pearl said he would rather see that but he understands the applicant's situation. Mr. Lizotte said that Mr. Huntington could author something that meets this type of situation. Roy Merrill said he is not against zoning changes but one problem is the crowding of everything on the property in one small area, using the rest as open space. He said the boards have seen this property as commercial when the applicants wanted ESMI soils. Mr. Merrill said he feels the Board should listen to town counsel. Chairman Powelson asked the members if they felt there is a hardship. Earl Tuson – no; George Saunderson – no; Ned Lizotte – no; Roy Merrill – no; Howard Pearl – can see the issue but is not sure a hardship – no; Jim Venne – feels it would be.

Henry Huntington said that his attorney was not able to have a conversation with town counsel. He said he would like to table the application so that his attorney can speak with Mr. Mayer in hopes of him getting a better understanding of the proposal. Mr. Huntington said he would decide what to do from there. Mr. Bernier said that Attorney Sokul spoke with Attorney Mayer once but Attorney Mayer has been in court recently so no further discussion had been possible. Chairman Powelson reviewed Attorney Mayer's concerns. **George Saunderson made a motion to table the application to April 26, 2012, 7:00 p.m. at the Community Building; seconded by Ned Lizotte. All were in favor.** There will be no further notification.

Application #Z12-04, Richard Broider – Special Exception for Home Occupation, AFP District, Map 54, Lot 12, Lower Ridge Road. Abutters MaryAnn & David Steele were present. Mr. Broider was not present. Mrs. Steele submitted restrictions that she would like the Board to consider in their decision. Chairman Powelson went through the points of the application. Earl Tuson said that the Zoning Ordinance does not allow auto repairs, used car lot, or outside storage. Howard Pearl said a car for sale beside the road is one thing but quite different from a used car lot. **Ned Lizotte made a motion to deny the application based on the fact that the applicant did not meet the criteria of points #1, 2, and 3; 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 – DENIED**

Application #Z12-05, Steve & Carol Roy – Special Exception for Home Occupation/Non-conforming Use to Another Non-conforming Use, RR District, Map 59, Lot 37, Country Hill Road. Abutter Bruce Bouley and his attorney, Jed Callen, were present. Mrs. Roy stated that they would like to continue what they have been doing for the last eighteen years. She noted that Mr. Roy had submitted a list of neighbors who signed that they are alright with what the Roys do. Mrs. Roy said they feel they are in compliance. She said that the compliance officer has been to their property multiple times and there have never been any complaints.

Chairman Powelson reviewed the purpose of the application. Mrs. Roy said the property was used for a commercial business before they owned it. She explained that Al Brock had his concrete form business there. She said that Mr. Bouley lived in the neighborhood at that time. Mrs. Roy stated that they do not have daily truck traffic like Mr. Brock's business. She explained that they own three lots and they bought this lot a year after buying the house. The chairman went over the layout of the lots. Mrs. Roy said that this lot was open when they bought it and they have not done anything to the land.

There was discussion of the type of application that would be best suited for this situation. It was pointed out that cordwood falls under the State's agriculture/forestry laws. Earl Tuson asked if it is a non-conforming use if considered forestry/agriculture. He referred to RSA 21:34-a. Mr. Tuson read the definition of forestry from RSA 227-G. He said he would consider cordwood to be a forest product and, in his opinion, processing cordwood is not a non-conforming use. Roy Merrill said that he would agree. It was pointed out that Section 204.2 (K) of the Zoning Ordinance lists forestry and wildlife preservation activities. Howard Pearl said the current use would appear to be a permitted use. He said there is no reason for the applicants to be here if it is a permitted use. Earl Tuson said there is no need to ask permission to do a permitted use. Mrs. Roy said they were told in the past that they were compliant. She said they limit the hours on the lot and try to be respectful of the neighbor. Mr. Roy said that 85% of the work is done when no neighbors are around. Roy Merrill noted that the town has no operating hours.

Chairman Powelson stated that the Board has an application and the Town has received a complaint. Howard Pearl said they should decide if an application is needed. Mr. Powelson asked if there were any abutters wishing to speak in favor of the

application. The Board was reminded of the list of neighbors who signed that they do not have a problem with the operation. The chairman asked if there were any abutters wishing to speak against the application. Attorney Callen stated that he was there to represent Mr. Bouley who is against the application. He said he stands by his objections that were filed with the Board. He said this is clearly not a permitted use, pointing out that the Zoning Ordinance does not define the use. Mr. Callen referred to RSA 672:1-III-c for the definition of forestry. He said that has to do with the growing, maintaining, and managing of forests including cutting and thinning. He said that is not what is being proposed here. Mr. Callen said the applicant is not cutting from a wood lot. He said they could do this same activity elsewhere. He said this is not considered agriculture, referring to RSA 674:32-c. Attorney Callen said there is no support in State statutes or logic or the Zoning Ordinance. He said this is not a special exception as it does not meet the Zoning Ordinance. He spoke about options and about discontinued or abandoned uses.

Mr. Callen said that Mr. Brock lived at the property and had his concrete form business there which included storing two trucks and forms. He said that Mr. Brock moved in 1992, renting the house out until selling to the Roys in 1994. He said the Roys bought Lot 37 a year later. Mr. Callen said that Mr. Brock's use ceased and the time lapse was more than discussed in the Zoning Ordinance. He said the Board cannot grant a special exception as this cannot be a home occupation since it is on an empty lot. He said it is not a permitted agriculture or forestry use and it is not a permitted change to a more appropriate use as the previous use was abandoned. Attorney Callen stated that non-enforcement does not mean it is alright just because it has been done for a long time.

Howard Pearl asked Mr. Callen if he was saying that this use would not be considered forestry because they are not harvesting on that lot. Mr. Callen said that was absolutely what he was saying. Mr. Pearl said that he would completely disagree. Mr. Callen said they have a staging area and are processing. Earl Tuson asked Mr. Callen if he was saying it would not be alright if he had a logger cutting and bringing the logs to his second lot. Mr. Callen said it would depend on if it was management. He said the applicant has hauled in large amounts of wood for processing and selling for eighteen years and that would not be forestry management.

Discussion continued about whether Mr. Brock actually closed down his business, farmers growing crops on other peoples' land, and if the use is forestry. Ned Lizotte asked what the real issue is and why it has now become a problem after all this time. Bruce Bouley said it is getting out of hand with mountains of logs and them being out there every day working on the wood. He said diesel smoke permeates everything. Mr. Lizotte summarized that Mr. Bouley was saying it is a matter of aesthetics, visual, smell, and sound, that were manageable up until now. Mr. Bouley said he complained to Chief Fiske in 2001, 2002, 2003. He said it is ok to cut a reasonable amount for home use but eleven trucks times ten cords each is ridiculous. He said the smell and buzz cut noise are problems. Mr. Bouley said that Mr. Brock would leave, be gone for two or three days, and there was no noise involved.

Earl Tuson referred to RSA 674:32-a with regard to the right to farm. Mr. Bouley presented a picture of an area filled with smoke. Mr. Roy's son explained that this was after their skidder got flooded and was started. He said they do not use the skidder on this property. Mr. Roy said they are doing selective cutting on peoples' property. Mrs.

Roy said that Mr. Brock's equipment remained on the lot until after they bought it. Attorney Callen said if this is a non-conforming use the Board cannot say it is changing from the concrete form business to cordwood as the first only entailed the storage of trucks. Roy Merrill stated that Mr. Brock was running a business from there. Mr. Callen asked if what was done there was non-conforming and if this use is more or less conforming. He said the storage of two trucks is what Mr. Brock did there.

George Saunderson asked Mr. Roy about the hours that they work on the lot. Mr. Roy explained that he is at work from 4 a.m. to 1 p.m. and then might work on the lot until 3:30 or 4:00 p.m. He said that Fridays could be 9 a.m. to 3:30 or 4:00 p.m. Mr. Roy said they are seldom out there on Sundays unless someone needs wood. He said they cannot log in mud season so the work is weather dependent. Mr. Bouley asked if they use lights to cut wood. Roy Merrill asked if they are out there after 7:00 p.m. Mr. Bouley said no but they are loading wood in the dark and the constant thumping of wood into the truck gets annoying. Mr. Merrill asked if 5:00 p.m. is too late. Mr. Bouley said yes and that he does not want it there at all.

Howard Pearl said it would appear that Mr. Bouley is asking the Board to determine that this is a non-permitted use yet forestry is a very much accepted use in the Town of Loudon. Attorney Callen said it would be different if done seasonally and they were cutting for forest management. He said this is only a 6.7 acre lot which would not sustain the amount of wood processed. Mr. Pearl asked how it would be seen if they owned 500 acres and cut it up on their 6.7 acre lot. Mr. Callen said they cannot do that as he sees it.

Roy Merrill said it would appear that no hours could be set that would satisfy Mr. Bouley as he would just like it to go away. Attorney Callen stated that it is not a permitted use. Howard Pearl said it seems that this comes down to all or nothing. Dave Powelson asked if a site visit should be done. George Saunderson and Jim Venne each stated that they have been there at some point. Others were familiar with the property.

Steve Roy clarified that they initially had logs brought down beside their barn before the starting date of 2004/05 that Mr. Callen mentioned. He said they had to wait until Mr. Brock cleaned up this lot. Mr. Roy said it is his land and it is at the end of the road so they felt it would not be a problem.

Chairman Powelson reviewed possible options. 1) declare use permitted as forestry per the State law and Zoning Ordinance; 2) meet the requirements for special exception for home occupation; 3) non-conforming use that has been going on since before zoning. Roy Merrill said it would seem that the consensus is that it is agriculture and does not need ZBA approval. He said if the applicant decides he wants to come in for non-conforming use that would be his choice to do so. Howard Pearl said he would agree that the application could not be changed from a special exception to a non-conforming use as that change would have to be noticed. It was stated that the application could be continued or it could be withdrawn.

Chairman Powelson said that it would appear that at least two voting members believe this is a permitted use in any district. Howard Pearl said he would see it as forestry. George Saunderson said he would as well. It was agreed that a declaration would be needed for clarity. **Howard Pearl stated that it is the Board's opinion that the activity of processing cordwood that Mr. Roy is engaged in is considered a forestry practice allowed under Section 204.2 of the Zoning Ordinance; seconded by**

George Saunderson. The chairman asked for a role vote on the statement: Howard Pearl – yes; Roy Merrill – yes; Dave Powelson – no; Ned Lizotte – yes; George Saunderson – yes. Yes- 4; No- 1, majority rules.

The applicants submitted a letter asking to withdraw their application. **Howard Pearl made a motion to withdraw application #Z12-05; seconded by George Saunderson. All were in favor.**

BOARD DISCUSSION

Matt Moulton – Donna received a call from Mr. Moulton asking what would be needed for him to park a truck that he would use for trash pick-up at his house. The Board discussed the matter briefly, seeing no real problem with the request, and agreeing that it would be good for Mr. Moulton to come in for discussion at a future meeting.

ELECTION OF OFFICERS

George Saunderson made a motion to nominate Dave Powelson to be Chairman; seconded by Howard Pearl. Mr. Powelson accepted the nomination. All were in favor.

Roy Merrill nominated Ned Lizotte as Vice Chairman; seconded by George Saunderson. All were in favor.

ADJOURNMENT

Howard Pearl made a motion to adjourn the meeting at 10:11 p.m.; seconded by George Saunderson. All were in favor.

Submitted by,

Donna White
Administrative Assistant