

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF NOVEMBER 29, 2012**

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, Howard Pearl, Roy Merrill, George Saunderson, and Alternates Jim Venne and Earl Tuson

ACCEPTANCE OF MINUTES

Regular Hearing – **George Saunderson made a motion to accept the minutes of October 25, 2012; seconded by Roy Merrill. All were in favor.**

DISCUSSION

Michael Harris – Map 53, Lot 29, 474 Lower Ridge Road. Mr. Harris explained that this is a 2.29 acre house lot and he is proposing an irregular situation. He said he is aware of the AFP regulations but knows that the ZBA has the ability to make adjustments. Mr. Harris spoke about the condition of the house that is on this property and the history of ownership. He said there is a provision in the deed that the lot is bifurcated so that one part is for the house and the other part is never to have anything built upon it. He explained that he had an agreement with the federal government for an easement so that section is protected for wildlife. He said that section has to be managed in a certain way to meet the program’s guidelines. Mr. Harris said there is a small stipend for the management, enough to maybe cover property taxes on that portion. He said he is asking to waive the condition of normal size lots in the AFP District on the condition that nothing will ever be built on the divided property. He said it would not be posted and is already locked in the deed but would do further documentation if the Board needed it. He would sell the residential property. There was discussion on how the conservation piece got in the deed originally. Mr. Harris said he specified it in the deed when he was selling it. He has since reacquired the property. Roy Merrill asked how subdividing the property would help Mr. Harris’s situation. Mr. Harris said the house was not taken care of by the people who were buying it and he feels he could better sell the house with a smaller acreage. Discussion ensued about options available to Mr. Harris. It was agreed that he has the right to apply for a variance and a hearing would be held but there was nothing the Board could do at this meeting.

Marc Aubrey/ESMI – Map 50, Lot 1-1, Industrial Drive. Mr. Aubrey explained that ESMI recently purchased a piece of property from Fillmore Industries. This piece is adjacent to the ESMI property and 11.5 acres was added with a lot line adjustment. He said they are looking at using ESMI material to keep stockpiling and leveling the lot. Mr. Aubrey said he was wondering if they can continue from their original approval on this

lot or if a new approval is needed. There was brief discussion about the expanded lot and how to address the situation. It was agreed that ESMI should go through the process with a special exception and Planning Board site review.

PUBLIC HEARING

Application #Z12-17, Ruth Krochmal – Variance, RR District, Map 29, Lot 7-93 on Azalea Court. Abutters Gary & Kathy Garland, Ned Lizotte, and Roy Merrill were present. The applicant was present. Ned Lizotte and Roy Merrill stepped down from the Board. Jim Venne and Earl Tuson were appointed as voting members for this case.

Tony Marcotte spoke on behalf of Ruth Krochmal. Chairman Powelson stated that the applicant submitted a revised statement of facts to match the outline of the variance application. He said the last Board meeting ended with questions for the town attorney, mainly if a variance could apply to a person or only to a lot. Mr. Powelson noted that the Ordinance addresses special conditions of a property. He reported that Bart Mayer was fairly clear about the special conditions of the property and that the hardship has to apply to the land. Mr. Marcotte asked if the attorney addressed the question that the property could be owned by someone under 55 but they cannot live there. Mr. Powelson explained that this was addressed and that someone under 55 could purchase a home for someone else to live in.

Mrs. Krochmal explained that there will only be seven Pioneer style homes built; two have been sold and one is in the process. She said this is what she can afford and wants to get before they are all sold; she asked if that might be part of the hardship. The chairman explained that the hardship has to be specific to the property, noting that this variance is for one lot out of one hundred. Mr. Marcotte stated that the land and lot will not change. He said there would only be a limited number of these small, lowest-prices homes and that is the uniqueness of the Pioneers. He said they are looking at the uniqueness of 55+ developments, the Villages being the only one in the area. Mr. Marcotte explained that if Mrs. Krochmal had to wait a couple of years she would not be able to get the smaller home because they would be gone. He spoke about the two-year old model home that she is trying to buy.

Howard Pearl stated that zoning applies to land, not people. Earl Tuson said those lots will be there, maybe just not for sale. Mrs. Krochmal asked for clarification on a variance and how to get into the Villages. Mr. Pearl said she would need to take it to the voters to change zoning. Mr. Marcotte spoke about the State's RSA regarding 62/55 age limits for senior housing. Mr. Pearl stated that the Town is more stringent than the State. He explained to the applicant that she has the hardship, not the lot. He added that the Board has the right to grant a variance for the lot only. Mr. Marcotte spoke about the Board's authority to grant a variance. He pointed out that the age restriction is a condition of the Zoning Ordinance on the lot. There was discussion about petition articles and zoning changes. Abutters Gary and Kathy Garland submitted a petition from residents against the granting of this variance. Mrs. Krochmal submitted a list of signatures of all but two residents of the Villages; the two are in Florida.

A woman from the audience asked for an example of lot hardship. Chairman Powelson explained that it could be that a lot was substandard, for a sign, or a variety of uses. Mr. Marcotte pointed out that age restriction is for people and it would seem that

the hardship is the age restriction. He said the applicant is a widow who does not meet the age but her cousin who would live with her is over 55. He said the variance would run with this lot and the only hurdle is the age of a person. Roy Merrill said he felt the Board would stand the risk of lawsuit and probably would not see any support of the court if they approved this application. Chairman Powelson closed the public hearing to take up the application as a Board for a decision.

He went through the application point by point. 1) Earl Tuson said the Town approved 55+. Howard Pearl said it would not be contrary to public interest. Dave Powelson said he would agree with Mr. Pearl. 2) Howard Pearl said no. All other Board members agreed. 3) Howard Pearl said he cannot see any difference between this lot and the other ninety-nine. Dave Powelson said he would agree. 4) Dave Powelson said he does not see anything that would damage other properties if this was approved. All others agreed. 5) Howard Pearl said no. Jim Venne said the whole area is 55+. Earl Tuson said he feels there is a fair and substantial relationship. Dave Powelson said it is not distinguished as a special property. Jim Venne said he feels the proposed use is reasonable but feels so many other points do not meet the criteria. George Saunderson said there are reservations on the other points so it almost does not matter. Howard Pearl said it is not an unreasonable use but there are other concerns. Earl Tuson spoke about it being a reasonable use but not meeting other sections of the criteria. Tony Marcotte spoke about enforcement. He said it is in the condo documents that the Town has enforcement rights.

Howard Pearl made a motion to deny the application based on the Board's findings that it does not meet points 2, 3, and 5; seconded by George Saunderson. A roll vote was taken: Jim Venne – reluctantly Yes; Howard Pearl – reluctantly Yes; Dave Powelson – Yes; George Saunderson – Yes; Earl Tuson – Yes. Unanimous - DENIED

ADJOURNMENT

Ned Lizotte made a motion to adjourn the meeting at 8:30 p.m.; seconded by Howard Pearl. All were in favor.

Submitted by,

Donna White
Administrative Assistant