

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF MARCH 28, 2013**

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, and Earl Tuson

Dan Geiger was present to represent the Conservation Commission.

ACCEPTANCE OF MINUTES

Regular Hearing – **Roy Merrill made a motion to accept the minutes of February 28, 2013 as written; seconded by Dave Powelson. All were in favor.**

Site Visit – **Howard Pearl made a motion to approve the minutes of the March 14, 2013 site visit with the Planning Board and Conservation Commission; seconded by Dave Powelson. All were in favor.**

APPOINTMENT OF ALTERNATES

Chairman Powelson informed the group that a former member of the board is now on the Planning Board but is also interested in being an alternate on this board.

Howard Pearl made a motion to appoint George Saunderson as an Alternate to the Zoning Board; seconded by Roy Merrill. This appointment will be for a three year term to expire March 2016. **All were in favor.**

Howard Pearl made a motion to appoint Jim Venne as an Alternate to the Zoning Board; seconded by Earl Tuson. This appointment will be for a two year term to expire March 2015. **All were in favor.**

PUBLIC HEARING

Application #Z13-02, Claudette Burke – Special Exception for Wetland Buffer Crossing, RR District, Map 59, Lot 48 on Greenview Drive. There were no abutters present. Jeff Green of J L Green Enterprises represented the applicant. Chairman Powelson reviewed the purpose of the application being the use of an existing woods road to cross through the wetland buffer. Mr. Green explained his attorney's thoughts on this being a pre-existing use.

Howard Pearl asked if the reason they are not proposing to build at the front of this lot is because there is not enough buildable area without the 50' width to make it contiguous with the area at the back. Mr. Green explained the Planning Board approval that was granted on March 21, 2013. That approval was to build a house at the front but they still need access for the accessory use of the back part of the lot. Ned Lizotte asked

why they would not use overhead wires to the back of the lot for any accessory use. Mr. Green explained that underground utilities are required in subdivisions on dead-end roads.

Mr. Pearl asked if the Conservation Commission is happier with this plan. Dan Geiger said the Commission wants to clarify that an application was made for the replacement of a culvert. He said they contend that any type of crossing, resurfacing, or adding of material will impact the wetlands. Mr. Geiger said this type of work requires a standard dredge and fill permit. He said he feels the DES application was not answered correctly on question #2 and spoke about the Blanding's turtle and this being a marsh area. Mr. Geiger spoke about the need to maintain the ponds and how they do not feel this situation meets the requirements for replacement of the culvert. He said Julie Robinson has written to DES since the Planning Board meeting, asking for further review and consideration of the situation. Mr. Green asked if they have any proof of any endangered species in this area. He stated that maintenance of a culvert allows in-kind replacement. He said a heritage search was done when the DES application was completed and they now have a permit. Discussion continued about the beaver dams holding water back, the possibility of the dams rotting, the history of the area, vegetation growth, and the Commission's concerns about alteration of the eco-system. Dan Geiger stated that the Commission did not see the application prior to the Planning Board hearing last week. Mr. Green said it was delivered to the town office at the same time as the one for the selectmen.

There was discussion about lowering the water level and wildlife moving with the water, actions of beavers, and the placement of a new culvert. Dan Geiger said that would take excavation and would require a standard dredge and fill. Jeff Green said if they have to touch the wetland then they would have to get a dredge and fill. Howard Pearl noted that Mr. Green has the applicable permit at this time. Mr. Green said he made contact with Fish & Game to lower the dam. It was discovered that the culvert is plugged. He explained that there is an RSA that allows the removal of a beaver dam if there is any submersion of the property, flooding, or saturating. Mr. Green stated that the existing galvanized culvert has been in place for 40+ years and the bottom has rotted out. He said replacing it keeps the flow as it should be; if they ever wanted to widen the road they would need the standard dredge and fill. Howard Pearl stated that what Mr. Green is asking from the ZBA has nothing to do with a permit. Mr. Green said that was correct.

Dave Powelson stated that Dan Geiger feels part of the road is in the wetland. Ned Lizotte said the culvert has to be replaced so not making the situation worse. Earl Tuson said this is not a ZBA issue as DES has issued a permit. Dave Powelson asked Mr. Geiger what the water level should be at the upper pond. Mr. Geiger explained that the area is supporting a number of species and lowering the level will change the functions and values of the area. He said it would be best to maintain the existing hydrology or lower, noting that the culvert is a connection between wetlands. Mr. Geiger said he does not see how anyone could get trucks and equipment across without impact to both ponds. He said he would like to see a complete review before the ZBA considers this application. Roy Merrill said that the applicant could legally take out the dams and replace the culvert. Mr. Geiger said that was correct but it would change the complexity of the wetland system that has been there for many, many years. Mr. Merrill said he would like to see the Commission work with the applicant. Mr. Geiger said they are

trying to. Ned Lizotte said the issue is with DES, not Mr. Green as he has a permit. He asked why the Board is discussing this if the applicant is meeting the criteria here.

Jeff Green said the wetlands were delineated in 2006 and again in December 2012. At that time they realized the wetlands were changing. He said Fish & Game said to get rid of the dams and beavers to lower the levels that were creating saturation of the property. When that didn't allow the level to lower they went to DES regarding the culvert. He said he was asked not to replace the culvert before the Planning Board meeting so he didn't. Howard Pearl said it would seem like Mr. Geiger is alright with the levels. Mr. Geiger said it would dewater the upper pond. He spoke about the contiguous buildable area and how they still need a crossing. To lessen the impact they would want to lower the level a bit. He said they are giving a driveway to the back part of the lot and that will impact the area. He went back to the improper application/permit.

Chairman Powelson went through the points of the application.

#2: Dan Geiger – only if results in negative impact to wetlands

#4: Jeff Green – will not be used to access residential building; accessory use only

#5: with the change of the house at the front of the lot, less impact; accessory use only

#6: Dave Powelson – assumes will be finishing the surface of the road. Jeff Green said it would depend on if anyone does anything out there. He said right now it is a trail/woods road. Ned Lizotte asked what would kick in the need for DES review. Mr. Green said the DES rules are simple, you know them, you follow them; you don't know them, you don't follow them. He said if putting in a driveway and think you are impacting a wetland then it is up to the owner to get the proper permits. If the construction is done without permit and you get caught then you will have to remediate the impact. There was discussion of delineating the wetlands again at the time of construction. The chairman asked Mr. Geiger for his thoughts on this point of the application. Mr. Geiger said there is really no comment if there is no change. He said a future date would probably require a standard driveway and permit as it will have an impact. He said he thinks crossing there would certainly be an impact. Howard Pearl said there would be no impact if they stay in the current footprint. Dan Geiger said there would be no impact if they stay out of wetlands.

Chairman Powelson proceeded to go through the points of Section 301.5 A of the Zoning Ordinance, relative to special exceptions in the Wetland Conservation District.

#1: not allowed to access the 1 ½ acres of buildable area without it

#2: no proposal for construction at this time. Dan Geiger spoke about wetlands jurisdiction, noting that the Commission has never denied access to upland/buildable area. He said an owner has the right to use their property as long as it is done responsibly. He said, looking at the whole picture, he does not feel that the Commission would deny that crossing, pointing out that it is an island upland and there is no other way to get there. Mr. Geiger said the Commission would be willing to work with the applicant to help determine the best crossing. He pointed out that they would be crossing 54' of the buffer when leaving the existing road. Mr. Geiger said if they were to resurface the existing road there would be an impact.

#3: Jeff Green – there is no alternative

#4: Jeff Green – does not need wetlands bureau permit; has a permit to change the culvert

#5: addressed in the points of the application

#6: Jeff Green – not affecting wetlands; not mitigating anything, crossing a buffer. Howard Pearl said it would be good to see a plan as this is in the buffer. Earl Tuson agreed, saying if they knew what was going in that area they would know if proper mitigation is done. Mr. Pearl said they do not have any idea of the width of the crossing. Roy Merrill stated that the red, outlined area would be the plan. Jeff Green said he wants to do full use between the wetland lines with no impact to the wetlands. Earl Tuson said Mr. Green needs to define the amount of impact and that he is asking for dimensions. Howard Pearl noted that the area marked is 15' x 54' once leaving the trail. Mr. Tuson again said he would want to know the impact, with minimum and maximum widths given. Mr. Green said it would be no less than 8' and no more than 18', adding that it would be delineated at the time of construction and could be different. Discussion continued about the use, the crossing, the impact on the wetlands, and what the special exception covers. Mr. Green said they are not changing anything so there is no need for mitigation. Dan Geiger said it will have impacts and if there is a permanent type of driveway crossing then it would require a standard dredge and fill permit. He said this is a very borderline lot and the wetland issues are serious so would like to find a happy medium. Roy Merrill asked if the Commission does not look at the fact that the house will be up front and the Planning Board approval is for accessory use only so there would be rare crossings; he asked if that wouldn't be a happy medium. Mr. Geiger said it would and they would like to see the proper permit if the owner was to change the crossing. Dave Powelson asked Mr. Green what he would expect the water level to be. Mr. Green said it would be at the level of the culvert as the culvert is being replaced by the same size and at the same level, about 3' below the surface of the road. Howard Pearl noted that the water level is now about 16" below the road.

Ned Lizotte made a motion to approve the application as submitted; seconded by Roy Merrill. Dave Powelson said he is still curious as to what will be built in the red-hatched area, noting that the culvert may change the elevation of the wetland. Roy Merrill said the Board cannot determine that. Jeff Green said the permit is for maintenance only. Earl Tuson said there are other measures that the Board does not have. Howard Pearl called for the vote. Earl Tuson asked if the applicant would be resurfacing the driveway. There was discussion of what resurfacing would entail, silty sand, wooden bridge, etc. Dave Powelson referred to Section 301.5 A #2, saying the Board has not been given design, construction, and maintenance methods. He said he would like some definition of material, depth, width, etc. Earl Tuson agreed. Mr. Green asked what portion of the road he would do that on. Mr. Powelson said he would like to see the whole road. Howard Pearl said if they are resurfacing then it could be detrimental, but if the road is used as it exists then it would be alright. Mr. Green stated that his client is asking to access their property using an existing road, noting that the Planning Board approved as is. Roy Merrill said it could be handled by saying that the owner would come back to the Board with design plans if the access is changed.

Ned Lizotte amended his motion to the following: to approve the application as written if in the future the afore-mentioned access point, hatched in red, is altered for future use the owner would come back to the ZBA with detailed design plans. Roy Merrill was in agreement with the amended motion. A roll vote was taken:

Earl Tuson – NO; Ned Lizotte – YES; Dave Powelson – NO; Roy Merrill – YES; Howard Pearl – YES. YES – 3; NO – 2. APPROVED by majority vote

Application #Z13-03, Ernest Roberts – Special Exception for Reduced Setback, RR District, Map 23, Lot 3 on Minery Road. There were no abutters present. Mr. Roberts explained that he is asking for a reduced side setback to allow for the placement of a pole barn to provide shade for a water holding tank used for irrigating peaches and apples. He said the barn would be 20' x 40' and would hold a 2200 gallon water tank for on-site use.

Chairman Powelson went through the points of the application with the applicant. It was noted that a letter in favor of the application was received from the only abutter. Howard Pearl said he understands the complexity of locating such a structure; Earl Tuson and Ned Lizotte agreed. **Howard Pearl made a motion to approve the application as submitted; seconded by Ned Lizotte. A roll vote was taken: Earl Tuson – YES; Ned Lizotte – YES; Dave Powelson – YES; Roy Merrill – YES; Howard Pearl – YES. Unanimous - APPROVED**

ELECTION OF OFFICERS

Howard Pearl made a motion to elect Dave Powelson as Chairman and Ned Lizotte as Vice Chairman; seconded by Roy Merrill. Both accepted the positions. All were in favor.

ADJOURNMENT

Roy Merrill made a motion to adjourn the meeting at 9:07 p.m.; seconded by Ned Lizotte. All were in favor.

Submitted by,

Donna White
Administrative Assistant