

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF NOVEMBER 25, 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 alternates Jim Venne and George Saunderson. Jim Venne was appointed as a voting member in the absence of Earl Tuson.

ACCEPTANCE OF MINUTES

Regular Hearing – **Howard Pearl moved to accept the minutes of October 24, 2013; seconded by George Saunderson. All were in favor.**

Site Visit – **George Saunderson made a motion to accept the minutes of the site walk on Lesmerises Road on November 4, 2013; seconded by Roy Merrill. All were in favor.**

PUBLIC HEARING

Application #Z13-20, Bert Cox – Variance for Reduced Frontage, RR District, Map 48, Lot 9 on Lesmerises Road. Attorney Brandon Giuda represented the applicant. Abutters Bruce Drew, Joan Cross, and Andrew Perrella were present. Applicant Bert Cox and prospective buyers Mark and Anne Seltzer were also present.

Chairman Powelson explained that the points of the application were covered at the last meeting and the Board has seen the site. He asked if there were any questions from the Board. Howard Pearl said he was curious if there has been any movement on determining the lot line. Bruce Drew said it has been discovered that the garage addition is 24’ off the property line and the driveway addition is 18” to 24” past the property line. He said he knows they cannot undo those things that were done by the previous owner but would prefer not to have an apartment and extra traffic next door.

Attorney Giuda said he has researched duplexes and multi-family properties in Loudon. He presented paperwork showing 36 properties listed as multi-family, with 14 of those 36 having less than 250’ of frontage. He said they also looked at MLS listings and found many Loudon properties that are non-conforming. Mr. Giuda also referred to question #21 of the 2012 Master Plan survey, saying the majority were favorable about duplexes and accessory dwelling units/in-law apartments. He said he does not see any negative effects of having an apartment on this property. He asked the Board to look at this property as having the same number of bedrooms as a single family residence, not necessarily more traffic. Mr. Giuda spoke about a property on Sheep Rock Road, not sure if they came for a variance.

Bruce Drew asked for the definition of ‘in-law’. The chairman explained the purpose of an in-law unit and that they had been in the Zoning Ordinance until 2002. It was recommended that they be removed from the Ordinance because they led to other rentals when no longer used by family. Roy Merrill and Mr. Giuda discussed the MP survey, Mr. Merrill noting how few participated in the survey. Andrew Perrella spoke about the survey, noting that he did not see additional frontage on it and that is the question before the board. Mr. Giuda handed out survey results, MLS listings, and a list of multi-

family properties. Mr. Drew said the area was not used as an apartment when the previous owners were there. He gave some history of the property and said there were no renters.

Jim Venne said there are a lot of places in the building where inspections were never done, noting hanging insulation in the garage and no sheetrock. He said if Bob Fiske had checked it out he probably would not have given his approval. Roy Merrill stated that Mr. Fiske came to the site walk but everyone was out back looking at the property line at the time.

Howard Pearl said he thought the Board should go through the application. The chairman explained that they did at the last meeting but they could review the five points. He asked the Board if they felt the request is contrary to public interest. Roy Merrill said he felt it is because it does not have enough frontage and would not meet today's regulations. He said the vote in 2002 pretty much stands today and Bob Fiske has done no inspections at the property. Ned Lizotte asked why Mr. Fiske was not at this meeting. It was noted that Mr. Fiske receives the same packet of information as Board members and knows what is on the agenda.

The chairman asked the Board if the request fits the spirit of the Ordinance. Howard Pearl stated that it does not meet the frontage requirement and is too close to the lot line. There was discussion of how that happened. It was stated that the original plan showed the garage 37' off the lot line and perhaps they were not sure where the line was located. It was said that beyond the frontage matter, it meets the spirit. George Saunderson asked if anyone remembers giving a variance for frontage in any other situation. Nobody was aware of other variances for similar requests. Mr. Saunderson said his concern is if the Board does for one, they will have to do it when others ask. Ned Lizotte stated that the apartment did not go through the permitting process, meeting code, etc. He said it is being presented based on frontage but there are other issues and the Board has no clarification from the building code. It was noted that the building code is not part of the Zoning Ordinance. Mr. Lizotte asked where it stops if the Board gives 50' on this property. Mr. Giuda stated that the building code is addressed by Mr. Fiske and, if more is needed, then his client will address that with Mr. Fiske; the code has nothing to do with the variance. He explained to the Board that they have to look at each property individually; this one meets the acreage by over an acre and that offsets the lesser frontage. Mr. Giuda said the hardship comes in that his client purchased the property as two units, there are many other properties in town with extra units, and he does not hear complaints on any impact. He explained that when reviewing such cases he looks at the Master Plan, preamble, septic, well, and lot size. Howard Pearl said, in looking at the list presented by Mr. Giuda, most of the structures are more than twenty years old, some fifty years old. He said someone blatantly went in and put in an apartment, and he is not sure a variance applies to an illegal use. Mr. Giuda said the owner bought the property as such, repaired it as such, and has been open with Bob Fiske. Roy Merrill said you can list anything but that does not mean it is accurate or legal. He pointed out that the abutting property has already been encroached upon with the side setback. Mr. Giuda said this is an approved use for the district. Mr. Merrill said he did not think the Planning Board would allow the lot today because of its shape. Mr. Giuda said his client is not changing anything, everything is in place. He said the hardship is in how a single family would be able to use the property as built.

The chairman skipped to the point about hardship. Ned Lizotte stated that it was just a house and then a garage was added. He asked for clarification on the applicant's response about it being an underdeveloped area. Howard Pearl asked what the specific conditions are that makes it different from others. The chairman said the response was that the lot is larger than abutting lots. Mr. Pearl said it appears to be fairly consistent with others in the area and he is struggling to see why this lot is any different.

Bruce Drew asked how the driveway being over the lot line is addressed by zoning. Mr. Giuda said the hardship is the current condition, looking at how it was built, and that it was purchased as two units with separate living quarters. Howard Pearl asked the applicant where the access to the apartment was before he changed a window into a door. Mr. Cox said the access was off the deck at the back. He said there is a 3' to 4' difference between the floor levels of the house and apartment. Joan Cross stated that the front door was the only access to the house used in the past.

Ned Lizotte made a motion to close the hearing to the public; seconded by Roy Merrill. All were in favor.

Roy Merrill made a motion to deny the application based on seeing no reason the property is different from any others on the street that are not multi-family and the representation that the structure is in the side setback; seconded by Jim Venne. Howard Pearl had some concern with the wording, suggesting that the Board discuss the hardship and maybe reword the motion somewhat.

Chairman Powelson read the section of the Zoning Ordinance relative to point #5 dealing with hardship. He reviewed that the applicant claims the hardship is that the unit was already built. He asked if the Board thinks being built wrong is a hardship to justify it to continue to be used wrong. Ned Lizotte said no. He said the lot seems to be the average size for that area. Roy Merrill pointed out that the other lots in the area are 3+ acres with 200' of frontage. Mr. Lizotte said when the house was built as a single family home it was fine; then the garage was added and it pushed the setbacks and the apartment over the garage was misrepresented. He said the current owner could have looked at this closer before buying the property. Mr. Lizotte said the previous owners were in the wrong but it should not be up to the Board to fix it. He said the hardship is created by changing the use to two-family.

The chairman read from the application that the apartment was there with no negative impact. Howard Pearl said the Board has heard from several neighbors of problems there. George Saunderson said those problems could be related to those specific residents but there were problems. It was again noted that there is a lot every 200' in this area; this lot is somewhat bigger but narrower than some. Ned Lizotte stated that he does not see a hardship.

The chairman asked if the variance would affect the values of surrounding properties (point #4). Howard Pearl said he does not see that as an issue. The chairman asked if substantial justice would be done by granting the variance (point #3). Howard Pearl said from the evidence presented, while being sensitive to the price that he paid with the representation of what was there, it appears the changes that he has made to the property make it more amendable now as an apartment than when he bought it. Ned Lizotte said it made it more specific for an apartment. Mr. Pearl said adding the egress makes it much more amenable as an apartment; he is not sure of changes inside, it appears updated, not sure that changed the floor plan in any way. He felt it would be stretching it to give it a yes on substantial justice. Ned Lizotte said if the owner making improvements makes the property more non-conforming he does not see substantial justice. The chairman asked if the spirit of the ordinance would be observed (point #2). Mr. Pearl said he could give them that one. The chairman asked if the variance would be contrary to public interest (point #1). Howard Pearl said he cannot give them that one as he feels it is contrary to what the public voted for certain size lots. He said the Board would have to entertain other requests if this was granted.

Chairman Powelson stated that points 1, 3, and 5 did not get positive responses. Roy Merrill retracted his motion. **Howard Pearl made a motion to deny the application based on not meeting the criteria of points 1, 3, and 5; seconded by Roy Merrill. A roll vote was taken: Jim Venne – Yes; Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes. Unanimous - DENIED**

Application #Z13-21, Carole Soule and Bruce Dawson – Special exception for tourist home, RR District, Map 59, Lot 7 on Whitehouse Road. There were no abutters present. Ms. Soule explained that the house was built in 1850 and she had a school there in the 1970s. The house has two sections, one being their private residence and one being the area proposed to rent out as a unit on a nightly basis. Ms. Soule said the unit has its own kitchen and large living area on the first floor and two bedrooms on the second floor. She presented diagrams of the layout, pictures of the house, and parking areas. She said the use would have no impact on the school as it would not be a long-term rental, and it would allow guests to be part of the farm experience.

Chairman Powelson went through the points of the application with Ms. Soule. He asked if there were any questions from the Board. Jim Venne stated that it seems straightforward. Howard Pearl asked if this would be considered agri-tourism. Ms. Soule said it would be, saying that people like to see the animals and this would allow for the whole experience. It was agreed that there was no need for a site visit. There was some discussion about the need to talk with the fire department and code enforcement office. Roy Merrill suggested that the approval be made conditional upon meeting the fire department and code requirements.

Roy Merrill made a motion to close the hearing to the public; seconded by Howard Pearl. All were in favor.

Roy Merrill made a motion to approve the special exception with the condition that they meet the fire department and code enforcement requirements; seconded by Howard Pearl. A roll vote was taken: Jim Venne – Yes; Howard Pearl – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes. Unanimous - APPROVED

BOARD DISCUSSION

December meeting – The chairman explained that the next meeting is scheduled for December 26th and asked if this would be a problem for Board members. It was agreed that it would not be a problem and the meeting date would remain December 26th.

Jim McNeil – Mr. McNeil explained that he went to the Planning Board meeting last week for a subdivision of property he purchased on Lovejoy Road. He showed Board members an aerial shot of the property with the proposed subdivision outlined. He said the lot is almost eight acres with a little over 700' of road frontage. Mr. McNeil said two lots (one 2.5 acres and one 2+ acres) meet the 1.5 acres of buildable area, and the mother lot would have a total of 3.3 acres remaining. He explained that the Planning Board does not like the 'dog leg' at the back. Mr. McNeil said he would like to convert the large house into a two-family and meets the frontage and lot size with the dog leg. He said he came to tonight's meeting to see how the Lesmerises variance went and Ms. Soule's special exception. George Saunderson informed the Board that the Planning Board has a site visit of Mr. McNeil's property scheduled for this coming Saturday at 8:00 a.m. There was brief discussion of what relief might be available.

ADJOURNMENT

Roy Merrill made a motion to adjourn the meeting at 8:50 p.m.; seconded by Howard Pearl. All were in favor.

Submitted by,
Donna White, Administrative Assistant