

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF OCTOBER 24, 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, Earl Tuson, and alternates Jim Venne and George Saunderson.

ACCEPTANCE OF MINUTES

Regular Hearing – **Earl Tuson made a motion to approve the minutes of September 26, 2013 as written; seconded by Ned Lizotte. All were in favor.**

DISCUSSION

ESMI – ESMI representative Mark Aubrey stated that he has been asked by the main office to look at increasing the plant’s hours of operation to include Sunday. He spoke about the cost of natural gas and its availability during colder months. Mr. Aubrey explained that the plant is sometimes told by the gas company that they can’t supply the plant so this affects operations. He said this would not be year-round and probably only be two or three Sundays a year, most likely in the winter. He spoke about an agreement that ESMI has with the gas company during the winter months that involves running only one burner; he said they can still be called and told they are down. There was discussion about the current hours of operation. Donna will investigate further for an exact accounting of the 2001 legal case. It was agreed that ESMI could apply for a special exception; the Board would review the request at that time.

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 Terry Hammond, Nancy Carta-Drew, Joan Cross, Andrew Perrella, and Dustin Bowles were present.

Mr. Giuda explained that the application was submitted for a variance to two sections of the Zoning Ordinance but it was later discovered that the variance for Section 504.1 is not needed. That section refers to multi-family dwellings and this application addresses a two-family dwelling. The request is for a variance of the frontage requirement. Mr. Giuda stated that the applicant purchased the property as a four bedroom with an in-law apartment this past Spring. He explained that the applicant has rehabbed the home as it was in need of a lot of work. Mr. Giuda said the question about the in-law apartment being used for non-family came up when the applicant went to sell. He said the former owner apparently put the apartment in with no permits. He spoke

about the assessing record having notes about the addition of the garage and checking back on the completion of the finished area. Mr. Giuda said people had been living there and the applicant bought the property under the auspices of an in-law apartment. He submitted pictures of the house and garage, as well as an approval for a new five bedroom septic system in the event the current system fails. He said there are no problems with the existing system. Mr. Giuda stated that the variance is being requested because the property is lacking 50' of frontage for a two-family dwelling.

Mr. Giuda went over the location of the property. He said there is a hardship involved because the applicant bought the property and rehabbed it as a two-family dwelling. Howard Pearl asked if the apartment is on the tax records. Mr. Giuda said the record reads that it is unfinished and to check back. He said it does not appear that it has been checked as of the time the record was requested. Roy Merrill stated that they had a similar situation on Beck Road and that apartment was shut down. Mr. Giuda referred to the Zoning Ordinance, stating that this property is very close to the criteria of a multi-family dwelling and its proximity to Route 106. He said the lot is large enough for a two-family, the apartment has one bedroom, and there would be no kids to impact the school system. Roy Merrill asked if the applicant got permits for the rehab work. Mr. Giuda stated that there was no need for a permit to do the floors, paint, etc. It was asked when the garage was added. Mr. Giuda said it was 2005 according to the tax card and sometime after that the apartment was put in. He said his client took the word of the prior owner when purchasing the property.

Chairman Powelson went through the points of the application with Mr. Giuda. In addition to the answers submitted with the application, Mr. Giuda offered the following: 1) approving the variance would not alter the community or cause overcrowding as the lot is larger than required; two-family dwellings are allowed in the RR District. 2) referred to court cases; response is similar to that of public interest in #1. 3) The Supreme Court looks at the harm to the public versus the loss to an owner. Mr. Giuda stated that the apartment is up to code with two exits, sufficient parking, operating septic system, etc. He said financial loss counts in such cases and there is no loss to the public. 5) The structure was built and used as a two-family dwelling and his client purchased it as a two-family dwelling.

Chairman Powelson asked if there were any questions from the Board. Howard Pearl said he would like to hear from the abutters. Chairman Powelson asked if there were any abutters wishing to speak in favor of the application. There were none. The chairman asked if there were any abutters wishing to speak against the application. Nancy Carta-Drew said she believes the garage is on her property and the former owner cut down some of her trees. Brandon Giuda said the septic designer checked the pins and said it is not close. Mrs. Carta-Drew's uncle, George Griffin, asked to speak on her behalf. He reviewed the pictures submitted by Attorney Giuda and discussed a deed for the Carta-Drew property with Board members. Chairman Powelson informed Mr. Griffin that he was not sure the information provided was anything the Board can give credit but it does confuse the situation. He said it would be best to establish property lines. Ned Lizotte said the matter of the property line is out of the Board's hands. Roy Merrill recommended that someone get a surveyor and clear up any questions. Mr. Giuda said there is a survey on file and there are pins. Mr. Griffin explained that he walked the lines

with a compass per the references in the deed and it would appear that the garage is partially on his niece's property.

Abutter Joan Cross of 105 Lesmerises Road read a letter addressed to the Board, encouraging them to deny the application, listing her reasons. Abutter Terry Hammond of 104 Lesmerises Road agreed with Ms. Cross, saying he had asked her to represent him as well in her statement. Brandon Giuda said he understands that the prior owners did not care for the property. He stated that his client has a buyer who currently resides in Loudon. Mr. Giuda pointed out that the letter is about not wanting a two-family dwelling but the matter at hand is the frontage. The applicant stated that it is not the intention to pack the house with renters. He said the prospective buyer would like to live there with his family and would have control over a renter of the apartment. Terry Hammond said his concern is that renters are not taxpayers, and they don't want this to be a rental property.

Mark Seltzer explained that he and his wife currently reside in Loudon and would like to move their family into the four bedroom house, with the apartment as a rental to help offset costs. He stated that he currently owns three multi-family properties so is very familiar with the screening process of finding a good tenant. He said he would definitely be screening because this renter would be living next to his family. Mr. Seltzer said his family has lived at 213 Lovejoy Road for thirteen years. Chairman Powelson said the Board heard an assertion of no children and asked how that would be controlled. Mr. Seltzer said he could not guarantee that. He said it could be a single parent with a child but it would usually be a single person in a one-bedroom apartment. Ned Lizotte asked if this property is of interest because it offers more land. Mr. Seltzer stated that the house is smaller so they would be down-sizing as their kids are in high school and college. Ms. Cross said if the variance is granted and these people sell then the future could be an issue.

Roy Merrill said it could open the town up to everyone wanting a variance if short on frontage. Brandon Giuda asked the Board to keep in mind that two-family dwellings are allowed in this district, it would not be over-crowding the streets or lot which is larger than normal, the lot has room for a five bedroom septic that is already approved, and has a stone system that is currently operational. He pointed out that the objection has been to the two-family dwelling, not the variance for 50'. Howard Pearl pointed out that all lots on the road would not meet two-family dwelling criteria so this could be opening things up to problems. Mr. Giuda said it would be based upon current conditions and that is what makes this property different. Roy Merrill said someone using it illegally does not make it right. Mr. Giuda asked the Board to look at the reasons for the 250' requirement. He said he feels this application meets the intent and others are not in the same situation with an existing apartment. Abutter Dustin Bowles said he does not see that a hardship has been proven. He said he feels the apartment has been improved upon since the former occupants. Mr. Bowles said it was a large family or group there and someone stayed over the garage but he does not feel it was necessarily a formal apartment. He said 250' is 250'.

Chairman Powelson said there are two issues, one being if the garage is on the property line. He asked the Board if it felt that was a non-issue in this hearing. Roy Merrill said it is a concern that should be addressed. The chairman asked if the Board should wait a month and see if it can be clarified. Mr. Merrill suggested doing a site

walk. Howard Pearl said there are enough questions that he feels a site walk is warranted. Mr. Merrill said he would recommend that the abutter get a surveyor to do a boundary survey. The applicant stated that the kitchen and bathroom were in place when he looked at the property before he purchased it.

A site walk was scheduled for November 4th at 4:00 p.m. The next meeting was set for Monday, November 25th due to Thanksgiving being on the usual meeting date. George Griffin asked if it was advisable to have the survey done prior to the site walk. Roy Merrill said it would be good if the abutter had something to show at that time. Mark Seltzer stated that he has a purchase and sale agreement on the property so has to consider the dates. **Howard Pearl made a motion to continue the hearing to the site walk on November 4th at 4:00 p.m. and then to the meeting of November 25th at 7:00 p.m. in the Community Building; seconded by Ned Lizotte. All were in favor.** There will be no further notification.

BOARD DISCUSSION

Zoning Amendments – The Board was reminded that proposed amendments should be submitted in writing by November 15th.

ADJOURNMENT

Howard Pearl made a motion to adjourn the meeting at 8:20 p.m.; seconded by Ned Lizotte. All were in favor.

Submitted by,

Donna White, Administrative Assistant