

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF JANUARY 23, 2014**

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

ROLL CALL

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

Jim Venne was appointed as a voting member in the absence of Howard Pearl.

Bob Butler represented the Conservation Commission.

ACCEPTANCE OF MINUTES

Regular Hearing – **Ned Lizotte moved to accept the minutes of November 25, 2013 as proposed; seconded by George Saunderson.** Earl Tuson stated that he was not at that meeting but, when reading the minutes, he noticed that there seemed to be two statements by Ned Lizotte on page three that seemed contradictory. Mr. Lizotte reviewed the minutes and explained the discussion that was being held at that time. He said he felt the minutes were accurate. **All were in favor.**

PUBLIC HEARING

Application #Z14-01, Paul & Mary Nichols – Variance, AFP District, Map 65, Lot 6 on Loudon Ridge Road. Abutter Michelle Doyon was present. Web Stout of FWS Land Surveying represented the applicants.

Mr. Stout stated that the ZBA granted a special exception for a driveway in the side setback in July, and then the applicants did a lot line adjustment with the Planning Board in September. He said the applicants called him to do a septic design for their new house, noting that the applicants had staked out the house location. Mr. Stout said that most lay people would see the edge of the pond as the edge of the wetland; he explained that the pond is permitted, the area is mowed and well maintained, and the pond was dredged in 2000. He showed pictures of the lot. Mr. Stout stated that he called Peter Schauer to delineate the wetland, which is where the buffer would be measured from. He showed the 25' and 50' lines of the 75' natural wetland buffer. Mr. Stout stated that the applicants' building location would be in the buffer. He said they met with the Conservation Commission on January 6th to discuss the matter.

Board members reviewed pictures of the area. Mr. Stout showed a diagram with three layers/proposed locations for the house: where the applicants want the house, where the Conservation Commission would be in agreement, and a compromise of the two. He pointed out that the proposed house location allows access to the back of the lot where it is mowed and where the applicants maintain a tree farm. Mr. Stout said he staked the two other locations with the applicants so they could visualize the change. He has done a preliminary septic design. Mr. Stout said the proposed location is the perfect spot for a one story dwelling with a walk-out basement because of the grades. He explained that the state allows septic systems to be within 50' of poorly drained soils so the preliminary design meets the state requirements.

Roy Merrill asked to confirm that the applicants' original proposed location is not within the first 25' of the buffer. Mr. Stout said that was correct. He pointed out that the porch would have a foundation and the deck would be on posts. Ned Lizotte asked if the pond was there originally. Mr. Stout stated that it was a swamp. Mr. Lizotte said he understood that it was dug out to make the area manicured; he reviewed the photos of the pond area and asked the difference between the Conservation Commission's proposed spot and the compromise location. Mr. Stout said it would be a difference of 6 ½'.

Bob Butler said the Conservation Commission would like the house as far away from the wetland as possible but the compromise spot would be acceptable. Roy Merrill asked Mr. Butler why the Commission is not alright with the original spot. Mr. Butler said they would like to see it further out of the 75' buffer. Web Stout explained that when ponds are dug the soil is often cast along the edge. He said it is sometimes hard to tell what is original soil if it has been tilled, etc. Mr. Stout pointed out a swale for runoff, noting there is very little because of the type of soil in that area. He spoke about the state's regulations on septic system locations and gave examples of other situations where the system is not as far removed from the wetland.

Chairman Powelson clarified that the application is asking for the 'proposed house location'. He said it would seem that the Conservation Commission and the applicants are reasonably happy with that location. Mr. Stout stated that the grades work the best there. The chairman stated that the leachfield is included in the request. It was found on page 29, Section 208.5 of the Zoning Ordinance, that the leachfield can be located in the front setback. Earl Tuson asked if the Conservation Commission's proposal would not work with the walk-out plan. Mr. Nichols stated that the elevations would not work.

Chairman Powelson asked if there were any abutters wishing to speak in favor of the application. Michelle Doyon stated that she is in favor. A letter in support of the request was received from abutters Rhonda Davignon and Charles Benson. The chairman asked if there were any abutters wishing to speak against the application. There were none. Mr. Nichols explained that he and his wife visited all of the abutters and none had objections to the plan.

Chairman Powelson and Mr. Stout went through the points of the application. The chairman stated that the Planning Board is alright with the application; George Saunderson confirmed that the PB had reviewed the plan at their recent meeting and had no concerns. Mr. Powelson stated that the Conservation Commission is alright with the compromise. He asked if a site review was needed. Mr. Saunderson said he has been to the location and is comfortable with the request. Mr. Powelson said he was comfortable with making a decision; others agreed. The hearing was closed to the public and opened to the Board only.

Ned Lizotte proposed a motion to approve the application. Roy Merrill asked that he be allowed to make a motion first. **Mr. Merrill made a motion to give the applicants the 75' from the pond since the house location does not come into the first 25' of the buffer.** He said Paul and Mary have done a great job with the property and the Conservation Commission should be appreciative of that fact. Mr. Merrill said the applicants created the pond and should have the right to put their house where they want. Chairman Powelson stated that they still have Ned Lizotte's motion to consider. Mr. Lizotte said his motion was truncated by Mr. Merrill's. Mr. Merrill said his motion is to allow the house where the applicants originally wanted it. Mr. Powelson stated that the compromise location puts the corner of the porch right at the 75' line. Mr. Stout said their original location would be 8 ½' closer to the pond. Roy Merrill said he feels they should have the original proposed location as 8' does not make a difference.

Earl Tuson noted that there is a natural wetland there. Mr. Nichols stated that the stream dries up during the summer. Mr. Merrill said that is why they dug the pond there. He said they far exceed conservation's practices up there and they more than deserve their original location, saying again that 8'

does not make a difference. Chairman Powelson stated that there are two conflicting motions on the table. Mr. Lizotte said his motion evaporated; he withdrew his motion. The chairman asked if there is a second to Mr. Merrill's motion. Mr. Lizotte asked if the motion was going to improve anything. Mr. Merrill said the applicants deserve to have the house where they want it. Mr. Lizotte said they seem to have reached a compromise. Chairman Powelson said that he is not hearing a second. He asked to clarify the motion. Roy Merrill said the original location would be at 67', noting that the state has zero setback. He said the applicants have taken good care of the property and he sees no reason not to be able to put the house there. He said it would be what any other town in the state would allow. Bob Butler said it is not the Conservation Commission's or the Town's position. He said the Commission met with the owners and came up with a compromise that both agree on.

Chairman Powelson stated that the town's opinion is the Zoning Ordinance. He said, as a Board, he does not believe they can state that the Zoning Ordinance is wrong. Ned Lizotte said there is a compromise that is acceptable and fits the town's ordinance. Mr. Powelson said it would fit with a variance. He explained how a variance could grant relief because of the particular lot's conditions. Earl Tuson asked for the dimension from the 50' natural buffer line to the rear of the compromise location. Mr. Stout stated it would be 37'.

Jim Venne said the parties have come to a compromise and he felt the Board should stick with that. **Earl Tuson made a motion to grant the variance as written with the addition that the dimension be 37' from the 50' natural buffer line; reducing the buffer for the purpose of the house and septic, the compromise shown as the 'proposed house location'; seconded by Ned Lizotte.** Chairman Powelson asked if members agreed with all points of the application. The majority said they did. Mr. Powelson noted that the 50' natural wetland should read 75' to match the Zoning Ordinance. This will be noted on the application and Mr. Stout will make the change on the plan. It was confirmed that this would be for a 37' reduction. Earl Tuson asked if that dimension would cover the septic as well. Mr. Stout said it would. Mr. Tuson asked if the compromise location is shown on the septic design. Mr. Stout said it is. **A roll vote was taken: Earl Tuson – yes; Ned Lizotte – yes; Dave Powelson – yes; Roy Merrill – no; Jim Venne – yes. 4 – Yes; 1 – No - APPROVED**

ADJOURNMENT

Ned Lizotte made a motion to adjourn the meeting at 7:53 p.m.; seconded by Earl Tuson. All were in favor.

Submitted by,

Donna White
Administrative Assistant