

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF OCTOBER 22, 2015**

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

ROLL CALL

The following members were present: Roy Merrill, Dave Powelson, Ned Lizotte, Earl Tuson, and alternate Charlie Aznive. Charlie Aznive was appointed as a voting member in the absence of Howard Pearl.

Deputy Chief Bill Lake represented the Fire Department.

ACCEPTANCE OF MINUTES

Regular Hearing – **Ned Lizotte made a motion to accept the minutes of September 24, 2015 as presented; seconded by Charlie Aznive. All were in favor.**

DISCUSSIONS

Ben Carter/Ed Rollins – Not present; were to meet with the ZBA at the request of Code Enforcement.

PUBLIC HEARINGS

Application #Z15-19, American Legion Post #88 – Variance to allow meeting hall, Map 20, Lot 39, Village District. Stanley Prescott represented the Legion. He explained that the Legion purchased the property at 45 S. Village Road. The building was once the police station/court house/meeting hall before being used as a real estate office and then a home. After the purchase, it was discovered that meeting halls are not a permitted use in the Village District according to the Zoning Ordinance, thus the need for this variance.

Mr. Prescott went through the points of the application. Earl Tuson asked about parking. Mr. Prescott pointed out the parking on a plan provided with the application. Dave Powelson asked how the number of spaces was calculated. Mr. Prescott said it was based on the square footage of the building. The chairman asked if there was anyone wishing to speak in favor of the application. Roger Maxfield pointed out that the Legion met just down the road for thirty-five years. He said the average attendance is ten to twelve members monthly, and they are a quiet organization. Dave Copson stated that he is in favor of the variance. Shawn Jones, post commander for the last five years, said the group works very hard to serve the veterans of the community. He said this location is easily accessed by the post's members. Larry Hemphill, post chaplain, said the group is community-minded, as well as working for the town's veterans. He noted a couple of projects they have done for the school. Chairman Powelson asked if there was anyone wishing to speak against the application. Abutter Nancy Marchillo said she heard there would be a bar at the hall. Stan Prescott said that was incorrect, there will be no bar.

Ned Lizotte asked if they see future growth for the post. Stan Prescott explained that they have approximately sixty-eight members but a very small, active group. Dave Powelson asked if they would be using the hall for other events, such as party rentals. Mr. Prescott said the maximum occupancy is thirty-eight due to the size of the building and septic system. Shawn Jones said the Boy Scouts and/or 4-H might meet there. Charlie Aznive stated that 4-H used to meet there years ago

with twenty to twenty-five in attendance at the most. He said he feels this is a great thing to have in the Village. Roy Merrill said it only seems logical to have a meeting hall in the Village.

Ned Lizotte made a motion to approve the variance as presented; seconded by Earl Tuson. Larry Hemphill asked if this is a permanent approval or if they have to go through the process from time to time. Dave Powelson explained that the approval goes with the land and is permanent. **A roll vote was taken: Charlie Aznive – yes; Earl Tuson – yes; Ned Lizotte – yes; Dave Powelson – yes; Roy Merrill – yes. Unanimous - PASSED**

Application #Z15-20, Jerry & Jo-Ellen Magalnick – Variance for waiver of age and number of occupants, Map 29, Lot 7-28, Village District. Abutter John George was present. Many residents of the Villages at Loudon were present. Roy Merrill and Ned Lizotte recused themselves from this case as they are abutters to the Villages. The chairman explained to the applicants that this would leave only three members to hear the case. He explained the process needed to approve or deny an application (three votes, not just a majority). Mr. Magalnick said they would like to begin the process.

Mr. Magalnick explained their request to have their 27 year old daughter live with them due to disabilities that prevent her from living on her own. He said the variance is to waive the age limit restriction and to allow a third occupant in their home. Dave Powelson said he does not read Section 303.2 as limiting occupancy to two people. Earl Tuson initially disagreed but then said he understands Mr. Powelson's interpretation more clearly and agrees that it does not limit the number of occupants. Roy Merrill said the age limit is definite with one occupant having to be at least 55 years of age and allows a second to be 52 years of age or older. He agreed that there is no cap on the number of occupants in the definition. Mr. Magalnick said the number of occupants was not brought up when he and his wife have been talking with the developer about buying a home in the Villages. Bill Lake was asked if there is a problem with the fire department with more than two occupants in the homes. Mr. Lake said the department does not limit residential occupancy, only public. Dave Powelson said the number of occupants does not need to be addressed by the ZBA. He said there may be an Association rule that addresses the number but the ZBA does not have jurisdiction over that. He said this application will be to address the age variance.

The chairman went through the points of the application with Mr. Magalnick. Mr. Magalnick said they were not sure what information Question #5, Section A (i) was requesting. Mr. Powelson referred him to the Zoning Ordinance purpose and the Section 303 purpose. Mr. Magalnick read a statement further explaining their request.

Charlie Aznive said he is worried if the Board makes an exception then their job will become more difficult. Mr. Magalnick stated that he has heard there have been a couple of requests for age variances that were denied. There was discussion on what the Americans with Disabilities Act is about. Abutter Ned Lizotte asked to verify that occupants meeting the age requirements would be covered by ADA; they could not be excluded. Chairman Powelson said he believed that to be correct. Roy Merrill said if a person buys a condo and needs a wheelchair, etc. that is their business. Charlie Aznive said if the ZBA approves this application they will have more difficulty down the road. Mr. Magalnick said an owner would not need to use ADA if they met the age requirements. Mr. Lizotte said if he was in the applicant's position he is not sure he would put himself in the position of conflict. He said there are other alternatives, other places to buy. Mr. Magalnick stated that they have looked at every adult community in the area, and the Villages meet all they would be looking for.

The chairman asked if there was anyone wishing to speak in favor of the application. Hearing none, he asked if there was anyone wishing to speak against the application. Abutter John George read a statement. Bill Lake said it would be different if the applicants already owned the home, something happened to their daughter, and she had to move in with them. He said he is not sure if ADA applies since they do not already own. His concern is that an approval could open the flood gates to more exceptions.

Villages resident Carol Hall stated that she was the second resident at the Villages, and she moved there because it was a 55+ community. She said they have people there with disabilities now

and they meet the federal requirements. Ms. Hall noted that the applicant spoke about one doctor's note they have saying their daughter was unable to live by herself; she said most people would get a second opinion. She also said that the variance would decrease property values because she would not have bought there.

Villages resident Carol Boisvert noted that the applicant said his daughter is her own guardian, so she isn't sure why he has to be her guardian. Mr. Magalnick said he is not her guardian. Ms. Boisvert said the applicant stated that his daughter has the mentality of a thirteen year old but drives and is employed. She said there are other condo associations in the area without age restrictions. Ms. Boisvert said the infrastructure was designed to handle the elderly, not families. She said the age is the problem; she moved there because it is an elderly community.

Alice Tuson asked if people with minor children could make the argument that their children had to live with them and request variances.

Villages resident Joyce Lamy said the Villages was built to accommodate 200 people with regard to water, septic, the hall, parking, etc. She said the houses are meant for two people; anything more would be a burden to the Association.

Villages resident Walter Belanger said he has lived at the Villages for one year. He said he feels sorry for the applicant but an approval of this request would just open doors to more situations.

Villages resident Alan Robichaud said it was very clear that this was a 55+ community when he was purchasing. He said he and his wife have younger children who might, from time to time, need financial assistance or even move back home. He said they gave up that option when choosing to live at the Villages. Mr. Robichaud said their second bedroom is to accommodate them as guests, not to live there. He said the developer is in the business of selling homes, and it is unfortunate that things sometimes get left out during that process.

Villages resident Dave Copson said the specific reason he purchased here was because it was 55+, a new way of life. He said he feels there is an element of fraud between the town and the developer. Mr. Copson said these homes carry a \$40,000 to \$50,000 premium per house compared to other single family houses in the area. He said if the applicant moves in with his daughter that premium goes out the window, and he wonders if the applicant is going to cut everyone a check for \$50,000. He said this variance is not a good idea.

Villages resident Barbara Potter asked if it is right for someone who does not live in the park to change a variance for those who do live there. The chairman said it is right for him to apply; it is a right anybody would have. He said it is up to the Board to see if they are convinced one way or another.

Villages resident Nancy (last name unintelligible; said from 11 Violet) said she has a 47 year old daughter with Down Syndrome, and she placed her in a residential program. She said the Villages is not a place for handicapped younger people. She said she feels bad for the applicants but this is just not the right community.

Villages resident Steve Johnson asked if the Board will be trying to determine if this is about two people or more than two people as part of the deliberations or go with the earlier opinion. Dave Powelson stated that the Board has not made a specific finding, although he did express his opinion as to what the Ordinance is. He said he has not heard that strongly refuted by the other two voting members. Earl Tuson said he shares Dave's opinion. Charlie Aznive said it is a moot point; he still feels if this is passed it will create problems for the Board in the future. Mr. Johnson said it is an understanding at the Villages. He said operating costs would go up, homeowner association fees would go up, and property values would go down. He said he is very concerned how this turns out. Earl Tuson explained that the ZBA does not write the Zoning Ordinance; it is voted on by the voters of Loudon. He said the ZBA has to interpret the Ordinance, and they currently interpret that there is no specific limit as to the number of occupants above and beyond fire and safety codes. Bill Lake said the fire department doesn't have a limit; if the community sets a limit that is another thing. Roy Merrill said if they are concerned if it is three people it is up to them to change the condo rules as it is not something in the Zoning Ordinance.

Deborah Jutra said she thought she was very familiar with ADA 1990 but perhaps she's not. She asked if the law states that a person with disabilities cannot be discriminated against to live where they choose. She said sometimes it comes down to the law. She asked the applicant if he had ideas of suing the Association. She asked again what the law states. Dave Powelson explained the appeal process that is in place in the event someone is unhappy with the outcome. Earl Tuson said ZBA members, when elected, are asked to enforce the Zoning Ordinance. He said he has no knowledge of ADA and is not in the position to make judgments on that; he can only go by the Zoning Ordinance. Carol Boisvert said this has nothing to do with the disability; it is the age that is of concern. She said she would agree with Ned Lizotte in that it would be different if the applicant already owned in the Villages, but he doesn't have to live in a 55+ community.

Chairman Powelson noted that the Board has been presented with a petition with eighty-five signatures, approximately a dozen letters from Villages residents, and a letter from Orr & Reno representing the Homeowners Association. Charlie Aznive and Earl Tuson reviewed the letters.

Roland Lamy said the simple fact of the matter is that this will affect the total infrastructure and property values. He asked the applicant to give serious thought to what has been said here this evening.

The chairman closed the hearing to the public. Earl Tuson stated that the applicant should be given the option to have a vote taken now or wait for a full board. The applicants said they would like to wait until there are more members present. Because the next meeting date would be Thanksgiving, the meeting was scheduled for Monday, November 30th. Several had questions about the process from this point. It was explained that the hearing will continue; tonight's testimony will be part of the record and reviewed by missing members.

Robert Clinton asked about the intent of the Elderly District when it was written. He suggested that whoever wrote it be at the next meeting to explain their intent. The chairman said he thought it may have been as requested by the Villages association.

Earl Tuson made a motion to continue this hearing to November 30, 2015; seconded by Charlie Aznive. All were in favor. The hearing will be at 7:00 p.m. in the Community Building; there will be no further notification.

Roy Merrill and Ned Lizotte returned to the table.

BOARD DISCUSSION

Bill Lake spoke with the Board about a cease and desist order that has been issued to Adam Bousquet. Mr. Bousquet met with the Board a couple of months ago about a repair shop on Lower Ridge Road; he was given paperwork for a variance at that time. In the meantime, it has been discovered that he is operating the shop. Donna informed the Board that an application came in from Mr. Bousquet earlier in the week and is scheduled for the November meeting. Bill also spoke about a business being conducted at the Carter residence on Foster Road, thus the reason that Mr. Carter and Mr. Rollins were supposed to meet with the Board earlier this evening.

ADJOURNMENT

Ned Lizotte made a motion to adjourn the meeting at 8:42 p.m.; seconded by Earl Tuson. All were in favor.

Submitted by,

Donna White
Administrative Assistant