

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
AUGUST 24, 2006**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting on August 24, 2006 to order at 7:35 PM at the Loudon Community Building. Due to a malfunction of the recording equipment there will be no audio tape of this meeting.

I. ROLL CALL:

The following members were present: Dave Powelson, Chairman; Roy Maxfield, Vice Chairman; Ned Lizotte, Roy Merrill, George Saunderson, and alternates Jon Huntington and Howard Pearl.

II. ACCEPTANCE OF THE JULY 27, 2006 MINUTES:

Roy Maxfield made a motion to accept the minutes as written. Ned Lizotte seconded the motion. There was no discussion. All were in favor.

III. PUBLIC HEARINGS:

Case # 06-12 Beverly & Michael Rafferty - Special Exception for Reduced Setback - Map 21, Lot 6. Mrs. Rafferty explained the location of the property at 244 Route 129 and gave an overview of the proposed project. She explained that there is currently a porch that extends approximately $\frac{3}{4}$ of the way across the front of the house and she would like to add an open deck to square off the front of the house. This deck would be 8' x 9'. Chairman Powelson reviewed each point of the application. Roy Maxfield asked Mrs. Rafferty where she measured the front setback from. She said they measured from the white line at the edge of the road to what would be the front corner of the proposed deck. Mr. Maxfield explained that they should measure 8' in from the white line because of the state's right of way. This would make the front dimension 21' 4" rather than the 29' 4" designated on the drawing submitted. Mr. Maxfield asked if there were any problems with the side setbacks. The Raffertys explained that they have approximately 100' on one side and approximately 40' on the other side. The chairman asked if there were any questions from the Board. There were none. He asked if all abutters had been notified. The secretary confirmed that they had been. The chairman asked if there was anyone who would like to speak in favor of the application. Steve Ives sent a note with a comment from abutter Mike Souther saying that he was in favor of the application. The chairman then asked if there was anyone who would like to speak against the application. Hearing none, Chairman Powelson closed the hearing; case to be brought back up under Unfinished Business.

Case # 06-13 Eastern Propane & Oil – Special Exception to allow for a 2000 gallon aboveground diesel storage tank – Map 49, Lot 127. Bill Massey, District Manager for Eastern, addressed the Board. Mr. Massey stated that an abutter had come by the property to see what they were proposing to do. He said he clarified to that abutter and wants to let the Board know as well that it is for Eastern's trucks only, not for resale. Mr. Massey said this tank is for cost savings and convenience and explained the tank's specifications. He said it will be a 2000 gallon, double-walled tank with an automatic shut-off and alarm system. They chose to go with the double-walled tank to avoid having to install a dike.

George Saunderson asked Mr. Massey how many gallons a week they use. Mr. Massey said it would average 500-700 per week. Mr. Saunderson asked if there was more of a price break when going with the 2000 gallons. Mr. Massey stated the 2000 gallon tank is for efficiency and it will be filled from Eastern's 5000 gallon truck out of their Hudson depot approximately once every three weeks. Roy Maxfield stated that he recalls a conversation when Eastern first came to town to the effect that they run a first class operation. Mr. Maxfield said he has not seen anything but first class from them. Bill Massey said they cannot afford not to do things right since everything is up for inspection. Ned Lizotte asked about the location of the tank on the property. Mr. Massey showed the location on the drawings presented, saying it is out of the way of traffic and plowing. Chairman Powelson reviewed each point of the application. It was asked if there is an alarm between the two walls of the tank in case of leakage. Review of the specs showed that there is a 2" monitoring pipe for this purpose. The chairman asked if abutters had been notified. The secretary confirmed that they had been notified. Mr. Powelson asked if there was anyone who would like to speak in favor of the application. Hearing none, he asked if there was anyone who would like to speak against the application. Hearing none, he closed the hearing; case to be brought back up under Unfinished Business.

IV. UNFINISHED BUSINESS

Case # 06-12 Beverly & Michael Rafferty - Special Exception for Reduced Setback - Map 21, Lot 6. George Saunderson made a motion to approve the application. Seconded by Ned Lizotte. Roy Maxfield said the record should indicate the existing length since some would say they are making a marginal situation worse but he feels it is actually an improvement and is in favor of the application. Ned Lizotte stated that the deck finishes the house. Chairman Powelson asked for a roll vote. ***George Saunderson – Yes; Roy Merrill – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous- Application for special exception for reduced setback granted.***

Case # 06-13 Eastern Propane & Oil – Special Exception to allow for a 2000 gallon aboveground diesel storage tank – Map 49, Lot 127. Ned Lizotte made a motion to approve the proposal as presented. Seconded by Roy Merrill. Mr. Lizotte stated this makes sense for a commercial business. Roy Maxfield said he is favor of the plan as long as state and federal inspections and guidelines are in place. Chairman Powelson asked for a roll vote. ***George Saunderson – Yes; Roy Merrill – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous- Application for special exception granted.*** Mr. Massey asked if they need to go before the Planning Board. He was advised that they must go before the Planning Board since this is an addition to their original site plan. Mr. Massey was advised by the secretary that Eastern Propane will be placed on the September 21, 2006 agenda.

V. DISCUSSION:

Dee Dee Maratea asked to address the Board about an extension of a building permit. Ms. Maratea stated that she has to sell the house on Lot 18 in order to have the funds to build on the lot beside it (Lot 21). She explained that she has an interested buyer and has a deposit of \$16,250 but the buyer is unable to buy the house until 2007. In the meantime, she has a lease agreement with the buyer and \$200 per month of that lease money will go toward the purchase price of the house. Ms. Maratea submitted a copy of the purchase and sales agreement for the file and stated that this shows a commitment by the buyer. She explained the current status of Lot 21. She said the foundation is in, the well has been drilled, and the septic will be installed next week. Ms. Maratea explained that she cannot do the house on Lot 21 until she sells the

one on Lot 18. She stated that the one on the water (Lot 20) has to go up next year based on that lot's building permit. The building permit for Lot 21 expires in December of 2006 and Ms. Maratea is asking for a one year extension to 12/31/07. There was discussion of which lot has the building permit and a prior extension granted by the Selectmen. It was determined that extension was granted by the Selectmen on Lot 20. The secretary reported that Chief Fiske had not issued a denial for extension on Lot 21. Ms. Maratea said that the Code Enforcement secretary told her that Chief Fiske could issue a letter of denial or she could go directly to the ZBA for an extension. Roy Maxfield said he has no problem with the extension when it has been done for another building under all different names. He said with the agreement in hand it seems to be a firm commitment and all should fall into place with that sale. Ned Lizotte said he recalled that the last time Ms. Maratea was in the Board was told she had been given an extension to the end of 2006. Roy Merrill asked where the law says an extension has to be given if the foundation is already in place. Ms. Maratea said she was told by Code Enforcement that it is a two year permit, one year to get the septic and foundation installed and one year to get the house up. Dave Powelson referred to Sections 801.7 (expiration of building permit) and 801.8 (renewal of building permit) of the Zoning Ordinance. Roy Merrill stated that there are houses around town that are not complete and he does not see that this is being enforced. **Roy Maxfield made a motion to extend the building permit by one year to the end of 2007.** George Saunderson asked Ms. Maratea if she feels comfortable that they can get the house done once the sale of the completed house is done. Ms. Maratea said she is very comfortable with the plan. Mr. Saunderson asked if they would put the house back on the market if the sale does not go through and if it should not sell even then, if she would be back for another extension. Ms. Maratea's husband stated that they would not ask for another extension based on the Ordinance. They would have to forfeit the permit and apply for another one. **Mr. Saunderson seconded Mr. Maxfield's motion. There was discussion specific to the motion. All were in favor of granting the extension.**

Dan Aversa – An application for a re-hearing (#06-14) has been received from Mr. Aversa with regard to the special exception denied at the meeting of July 27, 2006. In the application Mr. Aversa states "We feel that the 30' side setback issue should be given a better look. The planning board feels we should revisit". **Ned Lizotte made a motion to deny the application. Roy Maxfield seconded the motion.** Mr. Maxfield said an appeal gives the opportunity to review which he feels the Board has already done. He said he feels the Planning Board has to accept the Conservation article which requires them to look at buffer zones and not encroach on them unless extenuating circumstances. Mr. Maxfield said he is happy with the original decision. Mr. Lizotte said there is the alternative of coming onto Wiggins Road from Route 129 to access this lot and it does not look like Mr. Aversa has done that. Jon Huntington reported how surprised he was at Mr. Aversa's comments at last week's Planning Board meeting that Mr. Huntington happened to be attending as an applicant. He told of Mr. Aversa saying the Zoning Board didn't ever address the side setback issue and other remarks about the Board. Roy Merrill told of Bob Ordway's remarks about the ZBA's decision. Howard Pearl said he sees no encroachment on the wetlands when coming off Wiggins Road and feels that is a very reasonable alternative. Dave Powelson said if Wiggins Road was to be brought to full town standards there might be some encroachment. Ned Lizotte said this would still be less of an impact. He reported having talked with Mr. Aversa's soil scientist, Peter Schauer. He said Mr. Schauer was not aware of another access onto Wiggins Road and that Mr. Schauer's parameters were very narrow, being asked to assess only certain aspects. Roy Maxfield said the Board has covered this to the point of being very repetitive. **All were in favor of denying the application for a re-hearing.**

Rule for Appeals of an Administrative Decision – Chairman Powelson suggested that the Board might want to consider adopting a rule that gives a timeframe for such appeals. He said

between 14 and 30 days have been suggested in case histories. Mr. Powelson said he does not want the Board to have to be determining timeliness of appeals on a case by case basis. George Saunderson made a motion to adopt a rule that such appeals must be made within 30 days of the decision being appealed. Roy Maxfield said he felt it should be up to 45 days based on the timeline of a matter being heard, notice of decision being given, and deadlines for making the next month's agenda. Discussion ensued about how to determine a suitable timeframe to be used in this rule. Chairman Powelson referred to RSA 676:1. Method of Adopting Rules of Procedure, saying that the proposed change will have to be put on a public notice before being adopted. **George Saunderson made a motion to consider the change. Seconded by Ned Lizotte. All were in favor.**

Alvin Davis Property – George Saunderson asked to address a house being built by Alvin Davis on Lovejoy Road. He stated that the house is extremely close to the road and questioned how this was approved. Discussion ensued with the secretary informing the Board that Mr. Davis will be submitting an application for a Special Exception for Reduced Setbacks according to Bob Fiske. It was asked if a cease & desist could be issued. George Saunderson asked if the Board should vote to request that of the Selectmen. There was discussion about the project being stopped before much more is done. Ned Lizotte said his concern would be that the other lots may end up being special exceptions as well if this first lot is allowed to be. Howard Pearl asked about the criteria of a corner lot. Roy Merrill stated that the lot has to maintain the 50' setback on the heaviest traveled road which would be Lovejoy Road. The Board discussed writing a letter to the Board of Selectmen. **Roy Maxfield made a motion to have the ZBA Chairman call Bob Fiske with the request to issue a cease & desist and if Mr. Fiske is reluctant then go to the Board of Selectmen. Seconded by Ned Lizotte. All were in favor.**

VOA Appraisal - Roy Merrill handed out copies of appraisals done by the Volunteers of America. He said he felt the applicant had been a little deceiving with the ZBA by saying they couldn't get the property appraised at fair market value. Mr. Merrill pointed out that the VOA had two appraisals done on the same day, one which the Board has already seen with the Brown and Merrill properties listed. He said, however, VOA failed to show the Board the second appraisal on the Brown property that raised the appraisal by 70% and had comparisons to elderly housing in other towns. Mr. Merrill said that at either the January or February meeting Mr. Maxfield had asked VOA if they would have the appraisal checked if the property was not appraised at fair market value, yet they had the second appraisal in their possession at the time. Roy Maxfield said VOA had five acres with Mr. Merrill and now have eight acres with the Brown property. Mr. Merrill stated that his contract with VOA was for eleven acres. He asked for the copies of the appraisals back from the Board members so they would not be found in the Monitor or elsewhere. Mr. Merrill said this clearly shows that VOA did not make every effort to meet zoning which is the first criteria of zoning.

VII. ADJOURNMENT:

Ned Lizotte made a motion to adjourn this meeting at 8:57pm., seconded by George Saunderson. All were in favor.

Respectfully submitted,

Donna White, Secretary