

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
DECEMBER 22, 2005**

REGULAR HEARING

Chairman Roy Maxfield called the Loudon Zoning Board of Adjustment meeting on December 22, 2005 to order at 7:30 PM at the Loudon Community Building.

The following members were present: Roy Maxfield, Chairman; Steve Ives, Dave Powelson, Roy Merrill and alternates Jon Huntington and George Saunderson. Ned Lizotte, Vice Chairman was not present.

Jon Huntington will be a voting member to replace Ned Lizotte.

A. ACCEPTANCE OF THE NOVEMBER 23, 2005 MINUTES:

Steve Ives made a motion to accept the minutes as written. Seconded by George Saunderson. All were in favor.

B. PUBLIC HEARINGS:

1. Case #05-24 - Wildwood Sanctuary Association, Inc. - Special exception for wetland crossings. Young's Hill Road, Map 34, Lot 2. Abutters have been notified. Raymond Shea from Sanford Surveying represented the applicant. Chairman Maxfield stated the Board has received letters from the Compliance Office, Planning Board and Conservation Commission. Mr. Shea stated this is a special exception to impact wetlands for a subdivision on the North-East side of Young's Hill Road. Mr. Shea stated the property is 65 acres with a new road to nine new five plus acre house lots. Mr. Shea stated the road has just under a 3,000sq.ft. impact to wetlands. Mr. Shea stated the last time he presented before the ZBA he was asked to get letters from the Planning Board, Conservation Commission and Compliance Officer and he has. Chairman Maxfield stated it seems the Conservation Commission has a problem with the back lot and asked how it will be addressed other than taking the lot out of the subdivision. Developer Len Lapadula stated it will be up to the Planning Board to decide because there are economic factors for them to consider. Mr. Lapadula stated no matter what happens to that lot the wetland crossings will still be the same. Chairman Maxfield stated at the site walk there were issues with mapping. Mr. Shea stated at last Tuesday's conservation meeting Schauer Environmental presented new findings and the commission was satisfied these areas were not wetlands. Chairman Maxfield asked if there were questions from the Board. Roy Merrill asked what has been done to access the neighboring Town lot. Mr. Lapadula stated a new path to the lot has been identified. Chairman Maxfield stated the Board should look at lot #5 as not being part of the picture. Chairman Maxfield stated the building lots are in the wetlands too. Mr. Shea stated there are wetlands on the building lots but there is no direct impact to these wetlands.

Chairman Maxfield asked if there was anyone that would like to speak for or against the applicant. Chairman Maxfield stated he would vote against the last lot unless the developer can convince him otherwise. Mr. Lapadula stated the last lot does not have a significant wetland issue; the Conservation Commission is concerned with continuity of conservation land behind the lot. Mr. Lapadula stated the Conservation Commission felt if you built on that lot you would break up that continuity. Mr. Lapadula stated for him the issue is economics if he keeps the lot or not. Chairman Maxfield asked how much area are uplands. Mr. Shea stated the whole lot is 11 acres and there is at least 1½ acres buildable area as per land regulations. Chairman Maxfield closed this hearing and it will be taken up under unfinished business.

2. Case #05-29 – Eric DeCato & Darlene Trudeau - Special exception for a reduced setback. Chichester Road, Map 11, Lot 12. Abutters have been notified. Chairman Maxfield stated this is for a 25' driveway off of Chichester Road. Chairman Maxfield stated the Code Enforcement officer has researched this as an established lot. Mr. DeCato stated the access way is 25' wide at Chichester Road and goes into the lot 300', widening to 120' between the next set of pins. Chairman Maxfield asked how wide of a driveway is proposed. Mr. DeCato stated as wide as the Fire Department requires. Chairman Maxfield stated Mr. Blake is on one side of the driveway, can the driveway be moved closer to one lot line than the other. Mr. DeCato stated if he angled the driveway down one side he would need to cut down more trees and it would end up creating a larger looking driveway. Chairman Maxfield asked what is there for drainage. Mr. DeCato stated it is all downhill to a culvert underneath the existing road. Chairman Maxfield stated this is for a single family residence with no businesses. Mr. DeCato stated he has one 1-ton pickup for his established business but is not running trucks out of the lot and the gravel pit is separated from this lot completely. Chairman Maxfield asked if there were any questions from the Board. Dave Powelson asked if this was subdivided to be a residential lot. Roy Merrill stated yes. Chairman Maxfield stated the frontage is on Route 106 but they cannot get a curb cut on 106. Chairman Maxfield asked if there was anyone that would like to speak for or against the applicant. Evangia DeCato stated when she submitted the subdivision she gave a survey map with the driveway included, this subdivision was approved and she assumed the driveway was permitted. Robert Blake stated he abuts the property for 300' and would like to present details on the topography of the area. Mr. Blake stated Chichester Road on the Southerly side is below grade and his property is the lowest of the group; he receives all the runoff from Chichester Road and this property. Mr. Blake stated the Northerly side of Chichester Road is ditched and water sits in this ditch and leaches across the road onto his property. Mr. Blake stated if the driveway ground is hardened it will increase runoff if it is not ditched and properly drained. Mr. Blake stated the air quality is so that if someone burns their woodstove it sets off his attic smoke detector, smoke and dust collect and stay in the area. Mr. Blake stated an unpaved road within feet of his sideline will create a dust bowl that sits over his property and reduces the value of his home. Mr. Blake stated he has provided an outline of the requirements for a special exception and the impact to his property. Mr. Blake stated there will have to be a means devised

and agreed to by all parties for snow removal. Mr. Blake stated there should be construction restrictions on the location of the driveway and snow removal, and a dust and noise barrier constructed. Mr. Blake stated he brought this up to the Planning Board and was told this was a ZBA issue. Chairman Maxfield asked if there are trees separating the properties. Mr. Blake stated the trees are on his property. Mr. Blake stated it seems to him a considerable number of ordinances have been violated. Roy Merrill asked how close Mr. Blake's driveway is to the property line. Mr. Blake stated 15 feet. Mr. Merrill asked why Mr. Blake feels his driveway can be inside the setback line but Mr. DeCato's cannot. Mr. Blake stated his driveway was preexisting but he feels he has 150' of frontage to put his snow that is not in anybody else's vision or property. Mr. Merrill stated one of the complaints was three driveways within 50' when Mr. Blake could move his driveway and not be infringing upon that 50'. Mr. Blake stated he is not infringing upon anybody. Chairman Maxfield stated Mr. Blake is correct this is a ZBA issue and the ZBA requires side setbacks. Chairman Maxfield stated this right-of-way has been here a long time; Mr. Blake does bring up a good point and I would require the drainage from this driveway does not inflict upon either abutter and Mr. DeCato be required to pave a certain distance in. Mr. DeCato stated he felt paving was unreasonable but he could take care of the snow issue. Chairman Maxfield asked if there was anyone else that would like to speak for or against the applicant. Ken Green asked if this was a residential driveway and this was the only right-of-way to the lot. Mr. DeCato stated it is residential and this is the only access to the lot. Chairman Maxfield stated there are snow, dust and water issues with the driveway. Mr. DeCato stated he was under the impression this was a pre-existing driveway before Mr. Blake had a house here and he is willing to work with Mr. Blake within reason. Richard Landry stated the applicant is not going to increase the water, the rain is already there. Chairman Maxfield closed this hearing and it will be taken up under unfinished business.

3. Case #05-30 – Blaisdell Realty Trust - Special exception. 61 Route 129, Map 30, Lot 23. Abutters have been notified. Justin Belair presented the application. Chairman Maxfield stated this is to allow a grandfathered, non-conforming 1.5 acre lot currently used for residential purposes and located within the C/I District to be grandfathered as a conforming commercial/industrial lot able to be developed for commercial purposes without the need to seek further special exceptions or a zoning variance because it does not comply with the minimum lot dimensions as set forth in the Zoning Ordinance. Chairman Maxfield stated the special exception is authorized in Article II, Section 206.4. Chairman Maxfield stated we are looking at a non-conforming use converting into a more conforming use. Mr. Belair read the special exception application. Chairman Maxfield asked Mr. Belair to explain #4. Mr. Belair stated the drafters of the ordinance anticipated a specific amount of municipal use to be expected from the property. Mr. Belair stated they are not increasing traffic because they are not proposing anything on the property yet. Chairman Maxfield stated the Board is looking at section 602 of the Zoning Ordinance and if this is applied to the land we are switching from residential use on a non-conforming lot to commercial use covered under the grandfathered clause. Chairman Maxfield stated they generally look favorable on changing something to a more conforming use. Chairman Maxfield asked if there

were any questions from the Board. Chairman Maxfield asked if there was anyone that would like to speak for or against the applicant. Chairman Maxfield closed this hearing and it will be taken up under unfinished business.

C. UNFINISHED BUSINESS:

1. Case #05-24 - Wildwood Sanctuary Association, Inc. - Special exception for wetland crossings. Young's Hill Road, Map 34, Lot 2. Jon Huntington made a motion to open this for discussion. Seconded by Dave Powelson. Roy Maxfield made a motion to approve the special exception with conditions. Seconded by Steve Ives. Chairman Maxfield stated he does not necessarily agree it is a Planning Board decision to decide if lot 5 is buildable or not, he feels it is this Boards decision weather to withdraw this lot or not. Mr. Ives stated if the ZBA takes lot #5 out, the Planning Board cannot upgrade Young's Hill Road and we are taking the decision out of the Planning Boards hand. Roy Merrill stated the ZBA needs to keep in mind they are not impacting wetlands on lot #5 and the Conservation Commission did not want a house there because it abuts their land. Chairman Maxfield stated that is not the Conservation Commissions call. Chairman Maxfield stated the condition is the Planning Board can review and decide if lot #5 can be developed without infringing on existing wetlands and with minimal impact on adjoining conservation easement. Roll call vote: George Saunderson – yes, Jon Huntington – yes, Roy Merrill – yes, Dave Powelson – yes, Steve Ives – yes, Roy Maxfield – yes. All in favor, application approved.
2. Case #05-29 – Eric DeCato & Darlene Trudeau - Special exception for a reduced setback. Chichester Road, Map 11, Lot 12. Steve Ives made a motion to reduce the side setbacks from 30' on both sides to 4' on both sides with consideration given to snow removal and drainage. Seconded by Dave Powelson. Chairman Maxfield stated the new driveway ordinance is going to require the first 12' to be paved. Mr. Ives stated ledgepack will mitigate the dust. Roy Merrill stated he can ditch both sides for storm runoff. The conditions are: 1) setbacks of four (4) feet must be maintained to each abutting property. 2) Drive to be paved 12 feet in from Chichester Road. 3) Suitable material (ledgepack) be placed on the driveway to the back abutting property lines. 4) Drive to be sloped for water and snow runoff to insure minimal impact on abutters. Roll call vote: George Saunderson – yes, Jon Huntington – yes, Roy Merrill – yes, Dave Powelson – yes, Steve Ives – yes, Roy Maxfield – yes. All in favor, application approved.
3. Case #05-30 – Blaisdell Realty Trust - Special exception. 61 Route 129, Map 30, Lot 23. Dave Powelson made a motion to approve the special exception as presented. Seconded by Steve Ives. Roll call vote: George Saunderson – yes, Jon Huntington – yes, Roy Merrill – yes, Dave Powelson – yes, Steve Ives – yes, Roy Maxfield – yes. All in favor, application approved.

D. DISCUSSIONS:

1. Volunteers of America – Julia Wilcox stated the Volunteers of America came to the ZBA in May 2005 and received a variance and special exception for a senior

housing complex. Ms. Wilcox stated since that time it has come to their attention the property is in the flood plain in the rear so the wells and septic could not be placed there anymore creating an acreage shortage. Ms. Wilcox stated abutter Mr. Brown passed away this summer and Mrs. Brown agreed to sell her land to the Volunteers of America; purchasing this land will increase the overall amount of buildable land. Ms. Wilcox stated the concept has not changed, only the location of the building has; they are required to have six buildable acres for the building, septic and well. Chairman Maxfield asked if the Brown property is in the elderly housing overlay district. Tony Marcotte from Bedford Design Consultants stated yes. Dave Powelson asked if the building will have to be moved onto the new lot. Mr. Marcotte stated the Brown property still needs to be surveyed and then the final determination for the building placement will be made. Chairman Maxfield stated if the layout is changed a special exception will have to be granted for the move. Steve Ives stated the location of the building had a lot to do with the variance and abutters will have to be re-notified if that changes. Chairman Maxfield stated the variance was for the building but the special exception was for the use of the lot and will have to be reheard when the property layout changes. Chairman Maxfield stated he feels the variance is for the compact size of the unit and should not have to be reheard. Ms. Wilcox asked if she would put in an application for special exception under both lots. Chairman Maxfield stated once the Volunteers of America determine what the properties are going to be, and lock into a purchase and sales, submit an application for a special exception on the expanded area. Bob Ordway stated he would like to have the public hearing at the Planning Board during site plan review, ultimately the lot lines are going to change and the ZBA has already approved the requirements for the special exception for the land use. Mr. Ordway stated he does not feel moving the building 200' will have any effect on the approval; the placement of the building is up to the Planning Board during site plan review. Chairman Maxfield agreed and stated the ZBA only has to approve a special exception for the new piece of property and then turn it over to the Planning Board for site plan review. Chairman Maxfield stated they will have a public hearing for the special exception next month.

2. Carleton Sawyer – Chairman Maxfield stated this next issue is a building permit extension; Roy Merrill raised the issue of once having granted extensions in the past we can no longer refuse one. Chairman Maxfield stated the Board all has a handout on estoppels and he has spoken with the Town Attorney and he feels the Board can rule on a case by case basis. Chairman Maxfield stated the Selectmen have incorrectly heard these in the past and from now on they will be referred to the ZBA. Chairman Maxfield asked the Board if they agreed they have a right to hear these cases and rule on a case by case basis. The Board all agreed. Carleton Sawyer stated he visited Bob Fiske and was told the rules had changed regarding extensions. Mr. Sawyer stated the property is at 978 Loudon Ridge Road, Map 65, Lot 8 and is a little over 7.5 acres. Mr. Sawyer stated there were several reasons for the delay including the weather and the assumption an extension would be granted. Roy Maxfield made a motion to extend the building permit for 6 months to June 15, 2006. Seconded by Steve Ives. Chairman Maxfield stated that would be for the cellar hole and Mr. Sawyer would have a

year from then to frame and close. Roy Merrill asked if Mr. Sawyer is going to live there himself. Mr. Sawyer replied maybe, maybe not his financial circumstances are changing. Chairman Maxfield stated they get into problems with speculators taking up building permits, if it is for personal use they don't have an issue. Mr. Merrill stated he wants Mr. Sawyer to know if he does not live there for a year he will be fined a \$10,000 penalty if he acquired a resident building permit. Mr. Sawyer stated he did not know this. Craig Thomas stated he is a personal friend of Mr. Sawyers and his wife has developed a medical condition so it may not be financially possible to keep the property for himself. Mr. Thomas also added if they had known if they could or couldn't get an extension two weeks ago they may have had time to get a foundation in. Mr. Sawyer stated when he applied for the permit in 2001 his wife was in good health. Chairman Maxfield stated there have been extenuating circumstances and a six month extension seems reasonable. All were in favor. Building permit extended.

3. Jim Bond – Chairman Maxfield stated the Board has a letter from Mr. Bond, he would like to put a barber pole on the Fox Pond Plaza sign. The Board reviewed the sign ordinance. Chairman Maxfield stated the sign is already lit so the pole can be lit as well. Chairman Maxfield stated the office will draft a letter to Mr. Bond stating the barber pole fits our Zoning Ordinance.
4. Denyse Merullo - Chairman Maxfield stated the Board received a letter requesting a building permit extension. Chairman Maxfield state the board needs more information from Ms. Merullo to issue a decision. Chairman Maxfield stated the office can send her a letter requesting her presence to answer questions the board may have.

E. ADJOURNMENT:

Jon Huntington made a motion to adjourn this meeting at 9:01 p.m., seconded by Roy Maxfield. All were in favor.

Respectfully submitted,

Tammy Davis
Secretary