

**TOWN OF LOUDON  
ZONING BOARD OF ADJUSTMENT  
MINUTES OF  
JANUARY 26, 2006**

**REGULAR HEARING**

Chairman Roy Maxfield called the Loudon Zoning Board of Adjustment meeting on January 26, 2006 to order at 7:30 PM at the Loudon Community Building.

The following members were present: Roy Maxfield, Chairman; Ned Lizotte, Vice Chairman; Steve Ives, Dave Powelson and alternate George Saunderson. Alternate Jon Huntington was not present. George Saunderson will be a voting member.

Roy Merrill stepped down from the Board.

**A. ACCEPTANCE OF THE DECEMBER 22, 2005 MINUTES:**

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

**B. PUBLIC HEARINGS:**

1. Case #06-01 – Volunteers of America – Amended special exception for elderly housing. South Village Road, Map 20, Lots 10 & 9. Abutters have been notified. Roy Maxfield stated the applicant had previously received a variance for the number of units under one roof and a special exception for the use of the land on Lot 10. Julia Wilcox from the Volunteers of America stated they are requesting a special exception for elderly housing on Lot 9. Ms. Wilcox presented a plan of the revised site. Ms. Wilcox stated they had originally planned to use the back half of Lot 10, but it turned out there was not enough buildable land. Ms. Wilcox stated when a building has 25 or more people, it is required to have 6 buildable acres; there was only 5 buildable acres in the original 10 acre lot. Ms. Wilcox stated they looked at options around them and approached Lot 9 in hopes they would sell. Ms. Wilcox stated they have now secured Lot 9 under option and it is 8 acres. Ms. Wilcox stated according to the elderly housing zoning they are required to have a minimum 10 acres. Ms. Wilcox stated they have renegotiated for a piece of the original parcel to make the 10 acre requirement; the road, well, septic, and building will be on Lot 9 except for the peak of the well radius on Lot 10. Ned Lizotte asked if the additional 2 acres from Lot 10 have been secured. Ms. Wilcox stated she has the 8 acres from Lot 9, but needs an appraisal done on Lot 10 before she can finalize the deal. Roy Maxfield asked what the price for the 2 acres is. Ms. Wilcox stated \$160,000. Ms. Wilcox stated it is a financial issue and she is only allowed to pay fair market value; she has to prove what the appraised value of the land is. Roy Maxfield stated it looks like the issue is a special exception for Lot 9 with a variance to reduce the lot size or a determination of fair market value for the 2 acres on Lot 10. Roy Maxfield asked Mr. Merrill if his quote is fair market value. Roy Merrill stated the original plan

could have fit on Lot 10 with the purchase of some additional acreage if they wanted to pay the price for this lot. Mr. Merrill stated he has a determination that is a non-negotiable price at this point; as far as the special exception, he does not see why the negotiations are an issue for the Town. Roy Maxfield stated it is not an issue, he was asking if this was fair market value for two acres. Mr. Merrill stated yes. Ms. Wilcox stated she is concerned if she has an appraisal and the selling price does not come back as fair market value, her whole deal goes out the window. Roy Maxfield stated he understands the government requires it must be fair market value. Ms. Wilcox stated yes. Bob Ordway stated what he is hearing gives him concern because this project has hung in limbo because of land issues. Mr. Ordway stated since he chairs the Citizens Advisory Committee most of the questions and concerns end up with him. Mr. Ordway stated this is an important project for the Town of Loudon and it is hung up on issues of securing enough property. Mr. Ordway stated the 32 units have a waiting list of people who want to move in and the whole project may be in jeopardy over this land issue. Mr. Ordway recommended the Board consider a variance to reduce the acreage requirement from 10 to 8 acres. Mr. Ordway stated the ordinance was written not thinking of this situation and next year it may need to be revised for this sort of project. Roy Maxfield stated he has a couple of issues brought to his attention; if the building is not filled with elderly residents does HUD require the building to be filled with section 8 residents. Ms. Wilcox stated no this will never be a section 8 project. Ms. Wilcox added if the building was not filled with people 62 or older that meet the income guidelines they would lower the age to 58 or possibly increase the income limit a little. Craig Maxfield asked if only one person has to be 62 and can children live there. Ms. Wilcox stated yes only one person has to be 62 and the spouse or significant other does not. Ms. Wilcox stated a child could care for a parent or a grandparent could care for a child but they are only one bedroom apartments and you have to take into consideration everybody's income. Roy Maxfield stated Lot 10 will retain the elderly housing use for the land because it was previously approved; now we are looking at the special exception for this lot and he is leaning towards a variance. Roy Maxfield asked if there were any questions or concerns from the public. Edward Dumais stated he lives on Lot 7 and is concerned with the parking lot. Ms. Wilcox stated the original plan had everything on Lot 10. Craig Maxfield stated he lives on Lot 8 and is concerned with how the parking lot will be lit and how far back it will be from his property line; where are the cars going to enter the lot. Ms. Wilcox asked if Craig Maxfield had a suggestion. Roy Maxfield stated the driveway has to be 30' from each side property line. Craig Maxfield stated that puts the driveway right on the corner. Ms. Wilcox stated they will work with Craig on the lighting issue so it is not shining in his windows. Dave Walker from Bedford Design Consultants stated the parking lot is about 25' from the property line. Mr. Ordway stated these discussions are a better subject for site plan review before the Planning Board; these issues of detail are taken up there. Mr. Ordway stated those decisions are made by the Planning Board and abutters will be notified when the Planning Board meeting is scheduled. Mr. Lizotte asked why the parking lot and building are pushed to the front of the lot and asked if the wells have to be where they are shown. Ms. Wilcox stated there is a 100 year flood plain through the back of the property and you cannot build in it. Mr. Walker

stated this is a conceptual site plan to see if the building, parking, septic system and wells will fit on the site; additional engineering details still have to be considered. Mr. Dumais stated he knows things are going to go the way the Town wants them to go, but he would like to plead to the Board; he has been here for 34 years and he wants the Board to think about the impact on his property value. Mr. Dumais stated he is shocked he will have a parking lot in his backyard. Mr. Merrill stated the project will not go through with a variance anyway because the well radius goes into his land. Mr. Merrill stated he understands the appraisal will be on the whole property. Mr. Merrill stated one way or the other, whichever property the building is located on, the well radiuses extend into the abutting property. Mr. Merrill stated originally the Browns would not negotiate anything and now that has changed; so now we have the current agreement that if it is appraised up as a whole parcel should work. Mr. Lizotte asked for an explanation of the appraisal. Mr. Merrill stated he understands the appraisal will be on a ten acre parcel with a 33 unit building on it. Ms. Wilcox stated because it is two lots now the appraiser will look at it as two lots with a value for each lot. Ms. Wilcox stated her concern is the price of the two additional acres. Roy Maxfield asked if the well radius can go on an abutting property. Mr. Merrill stated since the well serves more than 24 people you cannot build on or use that well radius; he might as well sell them the land since it is useless. Steve Ives stated if the Board grants a variance the project still will not fly because of the well radius. Ms. Wilcox stated she would then try to negotiate an easement. Mr. Lizotte stated if the Board grants a variance for a project that might not necessarily fly, the ramifications are that the property will always have the variance with it. Mr. Lizotte stated this plan encroaches upon the abutters where as Lot 10 was almost isolated; this plan is contingent upon working out an arrangement after the fact which should be arranged before. Roy Maxfield asked what the options are for getting a well easement. Ms. Wilcox stated they have discussed both exchanging a well radius easement. Tony Merullo asked if a parking lot can be built in the flood zone. Ms. Wilcox stated nothing can be built there. Roy Maxfield stated he does not have an issue with the 8 acre variance but he does need the well circumference issue resolved. Ms. Wilcox stated she does have a hand written agreement between Roy Merrill and the Volunteers of America to give each other a well radius easement, but the attorneys still need time to describe the meets and bounds for the easements. Mr. Merrill stated he is not giving up access to the back of the property for a well easement. Mr. Merrill stated a flood study has not been done yet to determine if the back of the property is buildable or not; currently the flood plain line is an imaginary line because a survey has not been done yet. Ms. Wilcox stated the survey costs between \$20,000-\$30,000. Roger Maxfield asked how far the well radius goes into Mr. Merrill's property. Ms. Wilcox stated the deepest part is 25'. Roy Maxfield asked if 1/8 of an acre would cause hardship in getting to the back of the property. Mr. Merrill stated originally the radius was  $\frac{3}{4}$  of an acre and cut the property off; we negotiated on this settlement and it is news to him they are not in agreement. Roy Maxfield stated the Board could wait a month and see if the parties make an agreement. Mr. Ives stated he could not in good conscience give a variance if the project was not set in stone. Dave Powelson asked if one month was enough time to determine fair market value. MS. Wilcox stated she is

engaging an appraiser next week. Mr. Powelson asked if a month is enough time to determine flood zone boundaries. Ms. Wilcox stated she cannot get the funds to survey Mr. Merrill's property. Roy Maxfield stated he agrees with Mr. Ives on the variance and the Volunteers of America should go to the Planning Board with their site plan and let the neighbors come in to express their concerns. Roy Maxfield stated he would ask the engineer to be sure the well radiuses are accurate. Ms. Wilcox stated to abutters she can show some examples of other projects in neighborhoods that have abutting houses closer than these will be. Craig Maxfield asked if there will be a traffic light at the entrance to the building. Roy Maxfield stated the ZBA looks at land use and the Planning Board determines site details. Bob Ordway asked how many cars can be expected in the parking lot. Ms. Wilcox stated they have seven properties in Maine and less than half the residents have cars. Roy Maxfield stated the application will be continued to February 23, 2006, at 7:30 pm, at this facility. This is the only notice.

### **C. DISCUSSIONS:**

1. Denyse Merullo – Building permit extension. Tony Merullo represented his sister. Mr. Merullo stated this lot is located on Berry Road at Clough Pond, Map 58, Lot 45. Roy Maxfield stated last month or the month before the Board stated the Selectmen have been granting extension and only the Zoning Board may do that. Mr. Maxfield stated they also discussed the issue of estoppel and cleared up with the attorney the ZBA has the right to extend permits for extenuating circumstances; the ZBA also cautions they are not in the position to extend permits for builders. Mr. Maxfield stated they would look at a resident with hardship but someone speculating on a piece of property, looking to add to the value of the property, might have a more difficult time. Mr. Merullo thanked the Board for enlightening him to the new position of the Board. Mr. Merullo stated two years ago on another permit on another piece of land they were granted an unconditional extension as many people were. Mr. Merullo stated he can understand the new position of the Town because he did not understand why extensions had been granted so easily. Mr. Merullo stated knowing that extensions had been granted, and he had been granted one unconditional in the past, he did not start the project. Mr. Merullo stated precedent and estoppel lead him to believe an extension would be eminent. Mr. Merullo stated this is not a residential permit for him or his sister and this is only the second time he has asked for an extension. Mr. Merullo stated if he were granted the extension he would never ask again and understands the rules and regulations for extension. Mr. Merullo stated precedent had been set recently. Mr. Maxfield stated he cannot contradict most of what Mr. Merullo said and the Board argued about this and estoppel for two months. Mr. Maxfield stated according to the Town attorney these extensions stop when the Board says it stops and everything done in the past was in error. Mr. Maxfield asked when the building can begin on this. Mr. Merullo stated typically he shoots for a spring start; March 15 give or take a week. Mr. Maxfield stated based on everything said and on Mr. Merullo's reputation in Town he does not have a problem giving a little leeway on this as long as Mr. Merullo understands in 3-5 months a foundation must be in and intent to complete within a year. Mr. Maxfield stated this may have caught Mr. Merullo

off guard but it won't next time. Roy Merrill stated Berry Road may be posted at any given time in the spring and that is going to determine when he can start. Roy Maxfield made a motion to extend the building permit to June 1, 2006. Seconded by Dave Powelson. All were in favor.

**D. ADJOURNMENT:**

George Saunderson made a motion to adjourn this meeting at 8:34 p.m., seconded by Steve Ives. All were in favor.

Respectfully submitted,

Tammy Davis  
Secretary