

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
June 22, 2006**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting on June 22, 2006 to order at 7:30 PM at the Loudon Community Building.

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.

Chairman Powelson welcomed Howard Pearl to the Board.

II. ACCEPTANCE OF THE MAY 25, 2006 MINUTES:

Ned Lizotte made a motion to accept the minutes as written. Seconded by Roy Maxfield. All were in favor of accepting the May 25, 2006 minutes as written.

III. PUBLIC HEARINGS:

1. Case #06-09 Lynn Labontee, Michelle L. Bartlett, George Page, David J. Pelissier, Pauline J. Touzin, Kristi M. LaBontee, and Jean B. Weld – Appeal From an Administrative Decision – Map 58, Lot 19 & 20 - Spokesperson was not present when called; will return to this case later in the meeting.
2. Case # 06-10 William Taranovich - Special Exception - Map 21, Lot 23. David Dolan, surveyor, represented Mr. Taranovich. Mr. Dolan explained the purpose of the special exception. Mr. Taranovich has a minor subdivision application before the Planning Board, with the access to lot #2 being a common driveway that goes through lot #1. The special exception has been requested because the driveway crosses the side setbacks in each lot. Mr. Dolan explained that the driveway enters from Bee Hole Road approximately 106' from the lot line. Roy Maxfield asked if this driveway is in the wetland area of these lots. Mr. Dolan said it is not, the closest point that the driveway is to the wetland area is approximately 40'. Julie Robinson of the Conservation Commission expressed the Commission's concerns about the proximity of the driveway to the wetland area. She explained the Commission's work to create the 75' buffer, the first 25' being 'no touch' zone and the next 50' being 50% basal area cut per the Shoreland Protection Act (SPA). Ms. Robinson stated there is concern about the removal of stumps in the buffer area allowing soils to filter down to the wetland area. She said the Commission also had concerns about the slope of the property. Mr. Maxfield asked if this driveway is in the 75' buffer. Ms. Robinson explained the buffer and stated that the Commission would not want stumps or stumps removed. Dave Powelson asked if the buffer prohibits pulling stumps. Ms. Robinson stated that was the 'intent' of the Commission, explaining that an error had been made when the article was submitted referring to the SPA. Mr. Dolan stated that the SPA allows the removal of trees for the construction of a building or driveway. He explained that one area has already been cleared for a driveway a year or two ago. Best management practices would be followed.

Roy Merrill asked how long and how wide the driveway would be. Mr. Dolan stated it would be 460' to the property line and 12' wide. Mr. Merrill talked of the Planning Board's discussion of the slope. Mr. Dolan said it has been determined that a driveway is not a structure, therefore would not be affected by the 20% slope rule. Roy Maxfield asked if anyone from the Planning Board had input. Bob Ordway agreed that driveways were removed from the definition of structures. Dave Powelson asked if the Planning Board feels some sort of driveway could be built on this property. Mr. Ordway reported that the Planning Board had viewed the area, had found there to be more brush than trees, some stumps, and felt clearing the piece would be of minimal impact. Roy Maxfield asked what the liability to the town would be if the 100 year flood returned and wiped this driveway out. Mr. Ordway said it would be nothing on driveways. Roy Merrill noted section 302.2 of the Zoning Ordinance and asked Mr. Powelson to read that section. Mr. Powelson read from 302.2 (Description of Steep Slopes District) and then 302.3 which states 'no buildings, structures or roads shall be permitted in the Steep Slopes District'. George Saunderson asked if a common driveway was looking more like a road. Dave Powelson referred to section 301.5 (Special Exception) A. Streets, roads, driveways and utility easements....if essential to the productive use of land located outside the Wetlands Conservation District and if constructed to minimize any detrimental impact upon the wetlands. Mr. Maxfield suggested the Board hear from the public and Board members and make a decision. He doesn't feel a site visit is needed since the Planning Board has already done one and reported their findings. Mr. Maxfield went on to clarify the two issues at hand, one being the slope and the other being the wetland buffer, asking Mr. Dolan if that is correct and if his position is that the Zoning Ordinance does not apply in this case. Mr. Dolan confirmed that he does not feel the plan goes against the Ordinance. Dave Powelson read the definition of Street as 'a public right-of-way dedicated or intended to be dedicated for public travel or an approved private way offering the principal means of access to abutting properties'. Mr. Powelson said this definition does make the common driveway appear to be a street.

Roy Merrill asked Mr. Dolan to explain why the property cannot be accessed from Wiggins Road. Mr. Dolan said Wiggins Road is a Class VI road which would require upgrading plus the access would have to cross wetlands, both factors creating a negative affect on the wetlands. Julie Robinson reported that when this was discussed at a Conservation Commission meeting it was felt that there are some places in town because of steep slopes or wetlands that should not be developed and this is one of those. Roy Merrill asked if this is a leftover lot from a previous subdivision down the road. Mr. Dolan said it is not. He went on to say the fire chief did not like all the turns in the driveway, wanted it straighter. Ned Lizotte asked what the fire chief said about the width of the driveway. Mr. Dolan didn't recall any discussion about the width. Mr. Powelson asked if there were any comments from abutters. Kendall Gay said heavy rains are of concern because they bring the wetland area up to street level. He said the width of the driveway, snow & ice, are concerns for emergency access and since this is close to his house he doesn't want to see it happen. George Saunderson said he feels a site walk would help. Ned Lizotte agreed. **Roy Maxfield made a motion to continue the hearing until next month's meeting and conduct a site walk on July 8th at 9am. Seconded by Ned Lizotte. All in favor.** Mr. Powelson asked Ms. Robinson to ponder the situation, have the Commission offer anything that could be helpful. Ms. Robinson said she would look at the property again and have someone from the Commission at the site walk on July 8th.

3. Return to Case #06-09 Lynn Labontee, Michelle L. Bartlett, George Page, David J. Pelissier, Pauline J. Touzin, Kristi M. LaBontee, and Jean B. Weld – Appeal From an Administrative Decision – Map 58, Lot 19 & 20. Jean Weld was present to speak for the group of applicants. Dave Powelson said he would like to determine if this appeal has any real standing and is timely. Mr. Powelson stated that Ms. Weld had pointed out at last month's

meeting that the Loudon Ordinance does not specify a timeframe for appealing an administrative decision and he said this was an oversight by the Board and something that will be corrected. He went on to cite an RSA that refers to a 'reasonable time' which would be determined by the rules of the Board. In a case history listed with that RSA it was pointed out by Superior Court that the Town of Lyme did not have a specified timeframe in their ordinance; however, the Court ruled that an appeal filed 55 days after a decision was too long and not a 'reasonable time'. Mr. Powelson said he would like to ask the Board to consider what a reasonable time might be and asked Ms. Weld for her thoughts on that. Ms. Weld said she recalled reading something that stated the reasonable time would begin when the appeal applicant became aware of the decision, not necessarily when the decision was made. She said the applicants became aware of the building permit extension in late March. *Roy Maxfield made a motion to deny the appeal and would talk to the motion if he got a second. George Saunderson seconded the motion.*

Mr. Maxfield said the building permit is secondary to what is being discussed. The Board corrected a 'sin of the past' by taking over from the Selectmen the right to extend building permits a couple of months ago. Mr. Maxfield pointed out that if the Board took away the extension Ms. Maratea would have the right to apply for a new building permit. He said his second point is the history of the case, since 1984 have told Ms. Maratea she has the right to construct on those two lots and to take those rights away would be totally out of character for the town and would probably lead to bigger problems than already involved. He told Ms. Weld he appreciates her time but thinks he will recommend to deny on both counts, and if she feels she has a case she has the right to disagree and pursue it further. Mr. Maxfield pointed out the history of the case and noted that other exceptions have been granted on the property with no one every challenging them. Ms. Weld stated she appreciates the time the Board put into researching this matter, however does take exception to the ruling. She said the applicants don't think having made a mistake in the past is a reason for issuing a permit. Ms. Weld said she appreciates the issues Mr. Powelson pointed out about the appeal having standing and timeliness, knowing when they appealed that those would be hurdles. Mr. Maxfield said he wanted to clarify that he was not admitting to making mistakes in the past, he was saying they are following town policy. Ms. Weld said she was not accusing Mr. Maxfield personally of making a mistake but that it was an erroneous practice of the town. She went on to say with regard to the building permit extension that one of the grounds of the appeal was there has been no foundation put in and what is there is not a foundation that could be used to build a house on. Ms. Weld said she appreciates the conclusion of the Board but would ask to address the other issue of the foundation. Dave Powelson stated the Board would have to check the Ordinance for clarification. Roy Maxfield said they were lead to believe there is a foundation. Mr. Powelson said he doesn't think that has anything to do with the Selectmen's extension. Ms. Weld said she understands there needed to be an application for the extension and it could only be extended if work had been done.

Diane Maratea, owner of this property, said she has spoken with the code enforcement officer and was told she can put in a proper foundation by the end of this year and can build on the property next year. Ned Lizotte asked Ms. Maratea to define the end of this year. Ms. Maratea responded December 31st. Mr. Lizotte then asked what happens if there is no foundation in at that time. Ms. Maratea explained financial constraints she has been under due to not being able to get a Certificate of Occupancy (CO) on another property, the driveway matter and drainage plan, will pave the driveway. Mr. Lizotte asked Ms. Maratea what her level of confidence was to have the foundation by the end of the year. Ms. Maratea said she is really not sure but has had to borrow extra funds to carry the mortgage while waiting for the CO on the other property. Jean Weld stated for the record that the group of applicants disagreed with the Code Enforcement Officer's interpretation regarding the permit; she had a year to get the foundation in which was last year and this year to build.

Ms. Maratea discussed the history of the foundation and stated she was granted the extension just as other applicants have been, putting the foundation in this year and building next year. Ned Lizotte stated his concern of Ms. Maratea's expression of financial constraints and hardships and pointed out it is not necessarily the Zoning Board's role; the Board has some guidelines to go by. He said there seem to be a lot of things for Ms. Maratea to overcome to have this happen and possibly could not happen by December 31st. Mr. Lizotte asked what Ms. Maratea is expecting from the Board. Roy Maxfield said he thinks the answer is 'nothing'. He sees this permit expiring because of the process before her and it will not be extended further. Ms. Maratea would have to apply for a new building permit. Mr. Lizotte stated his concern that the permit might be extended.

Mr. Maxfield reviewed the date of the original permit, the timeframe and actions that have ensued, and said the Board is not in the position to revoke what was granted in good faith. In denying the appeal on that basis whatever happens to the lot is not in the Board's realm. George Saunderson said he feels it has been too long and the very real question is if we get to January 1st and nothing has happened, what then? There was discussion amongst the Board. Roy Maxfield said it is the understanding of the Board that the appeal is not timely. Chairman Powelson said Mr. Huntington and Mr. Pearl would not be voting on the matter as alternates but asked if they had any opinions to offer. Mr. Pearl asked to clarify the case history and if the Board could reverse a Board of Selectmen decision. Chairman Powelson explained that before arguing the merits of the case, the Board was trying to determine the timeliness of the appeal. Discussion followed. Ms. Weld asked if the Board, in its deliberation of this case, prior to adopting a rule of timeframe, would be setting a timeframe on this particular appeal. Mr. Powelson said probably not on this particular appeal but they would be looking at the Superior Court ruling of 55 days being too long, noting that most Boards typically use 14-30 days for an appeal to be filed. Ms. Weld said if the Board was going to use the 55 days she feels this appeal would meet that timeframe since she found out about the extension in March. Mr. Maxfield said the date of the action being appealed goes back to the Selectmen's meeting so too much time has passed. Ms. Maratea asked to address the matter of timeliness and noted that delays of this project have been caused by this same group that is appealing the extension. Ms. Weld stated she appreciates Ms. Maratea's point and the work of the Board and would like to suggest, should Ms. Maratea's permit extension expire, she only build one home on the two lots. *Chairman Powelson asked for a roll vote on the motion to deny the appeal. **George Saunderson – yes; Roy Merrill – yes; Ned Lizotte – yes; Roy Maxfield – yes; Dave Powelson – yes. All in favor; appeal denied.***

4. Case #06-08 - Roy Merrill Rehearing/Appeal Map 20, Lot 9. Roy Merrill stepped down from the Board; Jon Huntington was appointed as a voting member for this case. Mr. Merrill disagreed with Mr. Powelson about this being his appeal as he did not send notification of this hearing; Volunteers of America did the notification. Mr. Powelson stated they would not be here had it not been for Mr. Merrill's appeal. Mr. Merrill referred to the Board of Selectmen's minutes of 4/11/06 when concerns were raised about the ZBA meeting of March 23rd. (see Selectmen's minutes of 4/11/06 for full text) Mr. Merrill handed copies of these minutes to Board members. Mr. Powelson said that is the point of Mr. Merrill's appeal and why they're here. Roy Maxfield said he would like to say this is Mr. Merrill's appeal and that it would go from any decision rendered this evening to Superior Court. He went on to say that he knows Mr. Merrill is on record as publicly saying he is doing whatever is necessary to delay this process through September. Mr. Maxfield said it would not be in Mr. Merrill's best interest to deny that. He then said Mr. Merrill had misled the Board last month by saying he had not been legally notified of the March hearing. Mr. Merrill denied having said that. Mr. Maxfield stated that Mr. Merrill had told the Board last month that the landowner across the river had not been notified. Mr. Merrill agreed, saying they had not

been. Mr. Maxfield pointed out that Mr. Merrill's credibility as a Board member caused the Board pause, feeling Mr. Merrill had correct information. He went on to say that Mr. Merrill did not have correct information therefore Mr. Merrill's statement of delaying the process is undeniable. Mr. Merrill asked Mr. Maxfield where he is saying Mr. Merrill had incorrect information and asked if he was saying the real estate company across the river was notified. Mr. Maxfield said they were notified; Mr. Merrill said they were not; Mr. Maxfield referred to the abutter notification receipt in the file. Mr. Merrill said they had been notified for this meeting but not the March meeting and asked to see proof of notification. Mr. Powelson stated there was an error apparently on the part of the clerical staff. Mr. Merrill pointed out that he did not deceive the Board as being stated by Mr. Maxfield. Mr. Maxfield said the abutter had been notified. Mr. Merrill said they were not. Mr. Powelson stated that the Board had been told by Mr. Merrill that nobody had been notified and there was a letter that had not been sent out, when the facts of the matter were that the notice had been sent out to everyone with the possible exception of the owners of what was Heffron's property but had been misfiled and were not available when Mr. Merrill had inquired. That is why the case was continued. Mr. Merrill again stated that it should not be said that he deceived the Board since this notice was discovered after the fact and at the time he inquired no notification could be verified. He again stated that he told the Board they definitely had not notified the abutter across the river. Mr. Merrill said the secretary had found where notices had been sent to abutters but the one across the river had still not been on that list. The secretary presented Mr. Powelson with a receipt signed by the realty company for the March meeting.

Mr. Merrill then asked that when the Board prints their minutes the entire minutes be printed because the January meeting included a voice vote that directly hinges on this case that was not in the minutes but was on the tape. He also asked that the tape of this meeting be saved. Mr. Merrill asked that Mr. Maxfield recuse himself from tonight's hearing as it is a new hearing and members are to come in without bias. He handed out copies of a newspaper article where Mr. Maxfield had stated he is not going to change his opinion, noting that Mr. Maxfield had also stated this at a Planning Board meeting. Mr. Merrill also played a section of the January ZBA meeting tape where Mr. 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'. Mr. Merrill said it would appear that Mr. Maxfield was going to determine the value of the Merrill property prior to an appraisal being done. For those reasons, Mr. Merrill again asked that Mr. Maxfield recuse himself from voting. Mr. Maxfield said he had no intention of recusing himself from voting, saying this has been a contest going back and forth between what Mr. Merrill perceives as his right to charge anything he wants for a piece of property and he believes it will be demonstrated later in the meeting that the property does not have the value that Mr. Merrill has placed on it. Mr. Maxfield does not feel his public comment to that regard should recuse him from any decision on hearing a case that has tremendous impact on the town. Mr. Merrill stated that he expected that Mr. Maxfield would not recuse himself but wanted it on record so that the judge could hear that Mr. Maxfield would not recuse himself from the vote. Mr. Maxfield stated that he feels the Board also has a lot to show the judge to hear and will look forward to seeing Mr. Merrill in Superior Court in the next month or two. Mr. Merrill said he didn't feel that Mr. Maxfield should be stating that prior to this hearing as that is another violation.

Mr. Maxfield stated that he thinks Mr. Merrill is on record publicly stating he intends to delay this case at least through September. Mr. Merrill said he did not publicly state that. He said he intends to have a fair appraisal done on his property before this continues and that is his objection. Mr. Maxfield asked what rights Mr. Merrill feels he has to argue that his property is still in the mix. Mr. Merrill stated that VOA is coming in tonight for a variance due to economic hardship and he wants them to prove they cannot come up with the funds to

have the 10 acres required by the town Ordinance. He passed out ZBA forms that state no variances are granted based on economic hardship (#3). Mr. Maxfield said the only economic hardship they have heard is from Mr. Merrill, asking if the applicant had ever indicated an economic hardship. Mr. Merrill stated that VOA had asked for one at the January meeting and again at the February meeting. Mr. Maxfield asked if Mr. Merrill had that on tape. Mr. Merrill said he does but did not bring that tape tonight and that they are in the written minutes so Mr. Maxfield could read those. He said VOA noted economic hardship when saying two acres were not available at fair market price and he doesn't say that taking his land and making it conservation land is a fair market value. He continued by saying that VOA had never shown the Board that the Brown property (inaudible) we have a price of what the Brown property was. If the Brown property sold for more than that price then they obviously can pay more than it was appraised for.

Roy Maxfield said he felt they should get on to the hearing. Dave Powelson said Mr. Merrill had some interesting arguments, some being the same arguments that Mr. Merrill would use when VOA was looking for a variance at his property. Mr. Merrill said no, no one has ever gone over the price of the Brown property; they went over his property's price. He said the next month when VOA came in the Board handed them a variance on economical hardship. Mr. Maxfield said those were Mr. Merrill's words. Mr. Merrill said they were not his words; they are in the ZBA minutes. Mr. Maxfield said Mr. Merrill would have to show him because he knew of no economic hardship mentioned by either party. Mr. Merrill said they would get into that later.

Attorney Donald Sienkiewicz of Rath, Young, and Pignatelli asked to speak, representing VOA. Mr. Sienkiewicz noted that there are able-bodied alternates available, saying he and his client would like to have the cleanest possible procedural hearing and would not be opposed to Mr. Maxfield recusing himself and using the alternates. Mr. Maxfield said he would decide before they go to vote. Mr. Merrill presented a copy of the 3/23/06 minutes to the chairman, asking him to read the underlined section. Mr. Powelson read 'Section 701.2 area variance 2ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue. They do not allow land to be purchased at above fair market value.' Mr. Powelson said he assumed that was referring to the US Department of Housing and Urban Development. He continued to read, asking Mr. Merrill if he wanted more read. Mr. Merrill said he did not; he wanted the fair market value noted since Mr. Maxfield had just stated that nothing was ever granted on that yet it is clearly stated in ZBA minutes that VOA was asking for that. Mr. Maxfield stated the ZBA did not grant the variance on hardship.

At this time Tony Marcotte of Bedford Design handed out overview plans to the Board members. Chairman Powelson said now that they have heard all of the highlights of Mr. Merrill's appeal they would allow VOA to go on with their re-hearing.

5. Case # 06-01, # 06-03, # 06-04 Volunteers of America – Special Exception, 2 Variances – Map 20, Lot 9. Julie Wilcock of VOA handed out copies of her special exception presentation. Ms. Wilcock stated this is a new application for a special exception for Lot 9, the site plan has been approved by the Planning Board, and there have been no changes to the site plan. In addition to answering the questions on the applications, Ms. Wilcock has addressed each section of the Ordinance that is applicable and written her responses to those as well. Ms. Wilcock read each section of the Ordinance that is applicable and the corresponding VOA response. (full text is available at the Zoning Office) Throughout the presentation Ms. Wilcock pointed out referenced areas on the site plan. Tony Marcotte explained there will be no work in the 150' buffer to the river and stated they have preliminary approvals on the well from NH DES Water Supply and septic system from NH DES Subsurface.

Chairman Powelson asked if there were any questions from the Board on the special exception. George Saunderson asked if there is a purchase & sales agreement. Ms. Wilcock said an agreement was signed on March 13, 2006 and presented a copy to the Board. Howard Pearl asked if children are allowed to live in this building. Ms. Wilcock said there are no rules saying they cannot and she cannot deny them but she has never had any children at her other facilities, all being one bedroom units. Jon Huntington asked if there would be sidewalks. Mr. Marcotte stated that the Planning Board has asked for sidewalks to come out from the property and turn in either direction, allowing for future construction of town sidewalks. Mr. Huntington asked if there would be a transportation bus. Ms. Wilcock said residents would be able to utilize the town van just like all other seniors in town. Chairman Powelson asked if there were any members of the public who would like to speak in favor of the application. Ray Cummings said he is in favor of the project. Bob Ordway said he is in favor of it. Dee Dee Maratea said she is in favor of it and the town needs it. Craig Maxfield noted that state law requires a certain distance between the well and septic and this was the purpose of having ten acres. He asked why this can now be squeezed on 8.1 acres. Chairman Powelson said this would come up later in the hearing when addressing the request for a variance for lot size reduction. Mr. Maxfield asked for an answer at this time. Tony Marcotte explained that when this process was originally started on Mr. Merrill's land DES required two wells. He explained the well radius needed for each well and the distance of the wells from the septic, thus needing the 10 acres. During the process and passing of time DES has changed the requirements and now only one well is needed. The proposed well location has been approved and there is a 150' well radius required which is undisturbed area. All work goes on outside this well radius. One requirement of permitting a well is that the well head has to be outside of the 100 year flood plain. Mr. Marcotte stated that the septic plan is also approved. Mr. Marcotte pointed out the differences between usable areas of Lot 9 and Lot 10. On Mr. Merrill's property, Lot 10, of 10 acres there are 3.12 acres of wetlands, usable area being 6.8 acres with the majority below the flood plain. On the Brown property, Lot 9, of 8.1 acres there are .3 acres of wetland, usable area being 7.62 acres, thus, even though smaller in acreage it is larger in usable space.

Chairman Powelson asked if there were any members of the public who would like to speak in opposition of the application. There were none. George Saunderson stated that there was a stipulation the last time (3/23/06) that the project would be getting started within 9 months. He said he would like to add another stipulation that this property be limited to 33 units on 8 acres with no future enlargement on this piece of property. Roy Maxfield said the applicant would automatically have to come back to the Board to address expansion. Mr. Saunderson agreed but would like it stipulated to make it stronger for future boards. He asked Ms. Wilcock is she was in agreement with that stipulation. Ms. Wilcock said she was, noting she is not in the habit of going around and expanding her facilities.

Attorney Sienkiewicz stated that the purchase option was submitted to the extent that the Board needs to see it to know that the applicant has rights standing and to apply for the special exception and variances. He said he would ask the Board not to consider any details, ie purchase price, in their decisions. Roy Maxfield asked the attorney to explain what he had just said. Mr. Sienkiewicz said it is clear what the criteria for the special exception and variances are but he is not aware of any relevance to the special exception/variance process of the option other than to show that VOA has a legal interest in this property and the right to seek the exception and variances. Ned Lizotte stated that he disagrees, saying they have been waiting for some sort of tangible evidence of a deal on the table since this has been going on for almost two years. Mr. Lizotte stated the Board is not in the real estate business. Attorney Sienkiewicz agreed.

Roy Merrill stated that Mr. Maxfield has changed his whole opinion since this all started when Bob Ordway called Mr. Maxfield prior to a meeting and said Mr. Merrill is asking too

much money for his two acres. He said he and Ms. Wilcock signed a purchase & sales agreement. Mr. Merrill went on to say that at the January meeting the first question out of Mr. Maxfield's mouth was 'how much for that two acres' and then, as heard on the tape, Mr. Maxfield said 'we're going to see if that is a fair price or not'. Mr. Merrill said now all of a sudden nobody wants to talk about the price and he finds that very interesting because that is the whole issue. He said VOA could have bought an additional two acres, but as far as the special exception goes, he has no problem with them having a 33 unit variance but what he does have a problem with is this business of telling him his property is overpriced and not have a fair appraisal done on it. Mr. Merrill said by the Board granting them a variance by voice vote, which he would show the Board, they totally screwed the whole deal up and put the liability on the town. Roy Maxfield told Mr. Merrill this is getting to be a pretty old tune and he hasn't refined it much. Mr. Merrill said he will refine it when we get to that part, saying there are facts that the Board hasn't looked at.

Attorney Sienkiewicz again stated that it is the applicant's position that the purchase option is relevant only to show they have an agreement and can enter into the special exception/variance process. Bob Ordway pointed out to the Board that they are a land use board not real estate. He said the attorney is correct in saying there is no reason to consider the price, this is only an agreement for the land deal. Roy Merrill said he agrees with Mr. Ordway but with the original plan the price was an issue. Mr. Ordway said in the end it is HUD that holds the purse strings and will determine what is going to be paid for this property. He said he doesn't feel the Board needs to be sitting here debating prices and values when the government does that and protects their agencies from falling into the trap of paying too much for a piece of property. Ms. Wilcock said they have had an appraisal done on the 2 acres that was under option with Roy Merrill and on the 8.1 acres owned by Barbara Brown. She said they are currently in a contract with Mrs. Brown for the appraisal value of her land. Ms. Wilcock said the asking price for Mr. Merrill's 2 acres was far higher than the appraisal price. Chairman Powelson said he isn't sure that the appraisal price has anything to do with the special exception for elderly housing.

Jon Huntington asked if the Board could make a motion to accept the special exception. The chairman said they could close the hearing and take it up later under unfinished business. Mr. Powelson closed the hearing on the special exception.

Julia Wilcock began her presentation on the area variance for 33 units under one roof. She read from section 701.2, listing each criteria and explanation. (full text is available at the Zoning Office) Tony Marcotte stated that Mr. Merrill had previously referred to MDP as not being notified of this project. Mr. Marcotte said he would like to clarify that Mr. Plant, owner of MDP, was aware of this project prior to purchasing the land across the river and had walked this particular property with Mr. Marcotte and was in favor of the project.

Chairman Powelson asked if the Board had any questions. Not hearing any, he asked the public if there were any questions. Ray Cummings stated he is in favor of the variance. He asked if all abutters had been notified of this hearing, including MDP. Mr. Powelson said yes, all had been notified. Bob Ordway said he believed that the original notice went to MDP despite what Mr. Merrill contends and he had seen the receipt. He asked the secretary if that was correct. The secretary stated that there is a receipt in the file that MDP signed. Mr. Merrill said it was for this hearing, not March. The secretary verified that it was for the March meeting. Mr. Ordway said this was the same notice that Mr. Merrill said he had not received yet it was sent and Mr. Merrill had refused to pick it up. Mr. Merrill said he had not complained of not being notified, he was saying MDP had not been notified and had not been shown any proof otherwise. Mr. Marcotte said he made the point only because that land across the river was purchased even knowing this project was going in so there was no opposition from that abutter. Mr. Merrill asked to clarify if they are talking about the 33 unit variance or the lot size variance because it sounded like they were entwined. Chairman Powelson said it is the 33 unit variance. There were no further questions or

comments so the chairman closed the hearing, saying it will be taken up later under unfinished business.

The chairman opened the hearing for the area variance for lot size. Ms. Wilcock presented the ordinance criteria and corresponding responses. (full text available at the Zoning Office) Chairman Powelson asked if there were any questions from the Board. Howard Pearl referred to Section B, asking how the Board knows the statement is accurate and there is no other land available at fair market value. Mr. Merrill said that is what he wanted to show them tonight. Attorney Sienkiewicz said that Mr. Marcotte had pointed out the differences between the two parcels showing that the 8.1 acres was the superior site. He doesn't feel the value is necessary criteria to consider. Mr. Pearl said it clearly states there is no other land available at fair market value. Tony Marcotte stated that previous testimony showed the 8.1 acres to be more usable than the other lot. Roy Maxfield said he thinks they would have to get an appraisal; could ask Mr. Merrill if he wants to answer, saying that is why they're being chastised tonight for how much he was in negotiations for in that piece of property. Mr. Pearl said he understands that. Mr. Maxfield stated that the appraisal would indicate it was not at fair market value, if he is questioning the appraisal....Several Board members said they have not seen the appraisal. Roy Merrill said they haven't asked for it, that they just approved it in March without ever seeing it and he is going to show it to them tonight when we get to that point. Mr. Maxfield said he thinks we are there. Mr. Merrill handed out portions of the appraisal done by Crafts Appraisal Associates, Ltd. with sections underlined.

The chairman asked for questions from the Board. Hearing none, he asked if there were questions from the public. Attorney Sienkiewicz referred to Ms. Wilcock's explanation of Section 701.2 A 2 b, saying it is clear that the area variance is needed since the lot is not 10 acres however he does not feel that the balance of the statement is relevant. He said the applicant would like to strike the part relative to fair market value since it is not relevant to the variance. Chairman Powelson asked if that satisfied Mr. Pearl's question. Mr. Pearl asked if they can change the application in the middle of the process. The chairman explained this is the VOA's justification as to why they should be granted the variance, their chance to speak and explain the plan as they go through the hearing. Ray Cummings said he would like to answer Mr. Pearl's question about no other land being available. Mr. Cummings explained that the land would have to be in the Village District. Mr. Powelson asked if he was referring specifically to the Village District or Elderly Housing Overlay. Mr. Cummings said there is other land in town but not in this District where elderly housing can be located.

Roy Merrill said it seems all of a sudden that the financial issue has nothing to do with the matter even though this is how it came to be this mess. He said Mr. Maxfield stated in January that \$160,000 was too much money and Mr. Merrill was holding VOA hostage and Mr. Maxfield was going to have a vote that night and decide what the value of Mr. Merrill's land should be. Mr. Maxfield couldn't do that because he couldn't get the well radius that night but he did have a voice vote that said the Board would grant this variance if VOA couldn't get an appraisal done that was fair market value. Mr. Merrill said VOA came to the Board in March and got their approval without the Board ever asking about an appraisal. He then referred to page 2 of the appraisal he had handed out, 'Special Assumptions: However, reportedly the Volunteers of America have received a variance by voice vote from the Town of Loudon to develop the site on the 8.1+ acres. As a result the acquisition of Economic Unit 2 will not be necessary.' Mr. Merrill said he doesn't think we need the attorney here tonight to tell us what 'will not be necessary' means.

Roy Maxfield asked Mr. Merrill to explain what 'Economic Unit 2 Sales Comparison Approach \$24,000' on page 3 means. Mr. Merrill said he would have to go on further to show them. Referring to page 3, Mr. Merrill explained that Economic Unit 1 (Brown) is \$105,000 which is the maximum they could pay because they stated tonight that that land

couldn't be used for anything else. Mr. Merrill said it could be used for a house and that is what it is deemed to be unless it has 10 acres to be Elderly. Mr. Merrill said if the contract that came in tonight is over \$105,000 VOA has shown they can pay more than market value. Roy Maxfield asked if it is a fair comparison of 8 acres to 2 acres. Mr. Merrill said if 2 are needed to complete a piece. He stated for the benefit of the attorney and Mr. Pearl, being new to the Board, that the town has never given variances, other than for this project, in the last 18 years. Chairman Powelson reminded Mr. Merrill that the Board granted him a variance last year. Mr. Merrill said that is what he had said, for this project, but it has never been done in town except for these people. Mr. Powelson said they have granted variances, not done all that often, don't have specifics.

Roy Maxfield asked Mr. Merrill if he was aware that the Supreme Court recently ruled on area variances and in the last 2 years the Board has granted 2. Mr. Merrill said he was aware of that and went on, referring to page 9 of the appraisal. "Originally it was the buyer's intent to purchase 2 acres (Economic Unit 2) from the adjacent property owner in order to assemble it with Economic Unit 1 to meet the minimum size requirements. However, reportedly the Volunteers of America have received a variance by voice vote from the Town of Loudon to develop the site on the 8.1± acres. As a result the acquisition of Economic Unit 2 will not be necessary'. Mr. Merrill said by doing that the Board totally nullified his purchase & sales agreement. He said this is where the Town of Loudon got themselves into the liability for damages done to him by interfering with that contract and giving them their voice votes. Mr. Merrill said it is very clear and he didn't feel there was anyone there who could look him in the eye and say they didn't damage the contract. Roy Maxfield said it is his opinion that Mr. Merrill damaged the contract with property that was of little or no use to the applicant and with a price that was exorbitant to make it useful. He said that is the other side of Mr. Merrill's argument, that the Board has taken something away from him yet he (Mr. Maxfield) doesn't think Mr. Merrill had anything to give. Mr. Merrill said he had a contract. Mr. Maxfield said Mr. Merrill had a sales agreement providing it met certain criteria. Mr. Merrill said he would prove that they (VOA) made no effort to meet that. Mr. Maxfield asked about Mr. Merrill's effort.

Attorney Sienkiewicz said it is the applicant's position that none of this is relevant to the application for a variance except for what Mr. Merrill stated about the history of granting variances. Mr. Maxfield agreed, saying that could be argued further down the road. Mr. Merrill said the whole thing started because Mr. Maxfield didn't like the price of his land. He referred to page 19 of the appraisal 'it could be utilized in the development of the larger lot once the sand excavation was completed. Were this 2± acre parcel to be subdivided from the larger parcel its only use would be as conservation land'. Mr. Merrill said VOA decided the 2 acres could be purchased as conservation land and expected him to accept \$12,000 or the contract would be null & void. He said VOA requested the contract back one week before the granting of an area variance because they knew they were going to get it. Chairman Powelson asked Mr. Merrill if he was saying the 2 acres was good for something more than conservation land. Mr. Merrill stated that in the report it says if the land is looked at another way it would be more valuable. He said the 2 acres is needed to make the 10 acres required.

Mr. Powelson said that Mr. Merrill's real beef was with the appraisal company. Mr. Merrill said it was not, his real beef is with the Board for giving them (VOA) a voice vote, telling them they don't need the 2 acres before the appraisal was ever done; therefore they got an appraisal they knew he wouldn't accept. Mr. Merrill said that brings him back to Mr. Maxfield's statement about comparisons and referred to page 25 of the appraisal where Mr. Merrill had written 'not one elderly comp'. Attorney Sienkiewicz interrupted, asking the Board to consider the merits of the applicant's current application for a special exception and 2 variances, saying this has nothing to do with them. Mr. Maxfield said that was reasonable and that Mr. Merrill has issues he would like to raise but they have nothing to do

with the decision granted by the Board this evening and those issues can be vented in another forum. Mr. Merrill said they have everything to do with this. He said Ms. Wilcock just said there was no property available to meet the 10 acres and there was. They had the 2 acres option.

Mr. Merrill said he would show also that in the option they reserve the right to pay more than fair market value which he expects they have done on Mrs. Brown's land. He said the Board has had this in their possession and never chose to read it. He again noted there was not one comparison for elderly housing. Mr. Merrill referred back to Ms. Wilcock and the contract, noting that the parcel directly abutting his sold for elderly housing, the only elderly housing in the Town of Loudon. He said Ms. Wilcock chose not to use that \$2.2 million in the comparisons and that is also the abutter that did not get notified. Mr. Maxfield suggested that the chair close the hearing as this has nothing to do with whether the Board grants or doesn't grant, saying these arguments are better served in another forum. Mr. Merrill said all he asks for is a fair market value appraisal for elderly not conservation. He said all of Mr. Maxfield's statements are going to leave the Board liable because they chose to give VOA a voice vote saying they didn't need to purchase the additional 2 acres. Mr. Merrill said the Board took the negotiations out of his hands and damaged him. He said now VOA has put the Board out in the wind because they just changed their application, all of a sudden it doesn't sound good to them because they don't want to request a variance based on financial hardship because it doesn't fit and perhaps Mr. Merrill has a point. Mr. Maxfield said Mr. Merrill still has his property to sell. Mr. Merrill said he would still have a contract. Mr. Maxfield said Mr. Merrill would not have the original contract because the land is not suitable to develop. Mr. Merrill said he has held this land for 2 years for these people and has bent over backward for them and then it comes around to them wanting to buy 2 acres and the Board says they don't need to buy the 2 acres because they don't like the price.

Mr. Merrill suggested that the Board listen to the tape again to hear Mr. Maxfield's remark about it being too much money. He said it was not Mr. Maxfield's decision and then the attorney has said not to talk about the financial issue because it isn't relevant yet it was discussed in previous hearings. Chairman Powelson said that is why the Board is re-hearing the case. Mr. Merrill asked the Board to give the 33 unit variance but deny the area variance and let them come up with a fair market appraisal and let them buy the 2 acres. He said that is the solution to the Board getting themselves out of the mess they got themselves into in January. Chairman Powelson asked Mr. Merrill if he had arranged for an independent appraisal on his piece of property. Mr. Merrill said he had checked with other people and had been told that the fair market value for a complex like this should be \$10-12,000 per unit and unless VOA was paying \$330-400,000 for this land they are not paying fair market value. He said unless they are doing that there is no reason they can't make the 10 acre requirement. Mr. Merrill said if he had a fair appraisal, not as conservation land, which he had the right to have but the Board took it away, he would not have an objection and be here tonight. He said he was denied that right by this Board. Mr. Maxfield said Mr. Merrill still has his land and can sell it.

Roy Merrill asked what Mr. Ordway's relationship was to VOA. Mr. Ordway said he thought he'd let VOA answer that. Mr. Merrill asked why he couldn't answer it himself. Mr. Ordway stated he is the Chairman of the Citizens Advisory Commission, a group of 12 people that is helping VOA with this project. Mr. Merrill asked Mr. Ordway if he saw no problem sitting on the Planning Board and making the motion to approve this plan. Mr. Ordway said he did not as he has nothing to gain.

Mr. Ordway asked Mr. Marcotte to show where Mr. Merrill's 2 acres are on the map. Mr. Marcotte said he would do his best to show the area and asked Mr. Merrill to correct him if he was mistaken. Mr. Marcotte explained that during the process of getting the project approved most discussions were between Ms. Wilcock and Mr. Merrill. He said the

objective was to create a triangular piece of 2 acres that could be joined with the abutting property. Mr. Marcotte said that 2 acre piece would be in the flood plain. Mr. Maxfield asked Mr. Marcotte if the property he is involved with on the other side of the river is in the flood plain. Mr. Marcotte explained that of the 80 acres there are 10± acres in the flood plain. They need to do a flood study. He said there are to be 100 units and there are currently permits for 60. The remainder of the units depends on the flood plain study. Ned Lizotte addressed Mr. Marcotte, referring to the original plan having 2 wells so needed 10 acres, now with DES change only 1 well is required and everything fits nicely on 8.1 acres. He said he understands adding the 2 acres does not affect the layout and asked Mr. Marcotte if it would be detrimental to the project. Mr. Marcotte said it would not. Mr. Merrill said the original issue on his property was the well radius easement from the Browns. He said the Browns were not willing to negotiate anything with them on that. Then when Ms. Wilcock had to do the flood study he told her to go see Mrs. Brown about purchasing a piece of their property so the line could be reconfigured and not have to jam the whole layout up against one side of the property. Instead of doing that, he said they chose to purchase the 8.1 acres from Mrs. Brown and then came to him for the 2 acres. He said they wanted a piece that made a loop that went right through a building and then they wanted a strip toward the front and all sorts of different things. Mr. Merrill said they came up with this option, and as much as the Board wants to say that back piece has no value, he believes it does have value and there is no reason these people couldn't make the effort to acquire these 2 acres.

Mr. Merrill stated that he feels it is low and underhanded of VOA to take the 2 acres and say it is conservation land and then come in tonight because they had asked for a financial hardship and suddenly their attorney said to strike a clause because that doesn't look good. Mr. Maxfield stated VOA never claimed financial hardship. Mr. Merrill said they did by saying there was no property available at fair market value and they have never demonstrated that they appraised any property for fair market value; they did not go out and do an elderly comparison.

Mr. Maxfield said Mr. Merrill was arguing like a Board member and thinks it is probably appropriate to close the hearing because, unless the Board had questions for Mr. Merrill, he thinks they understand his position. He stated that Mr. Merrill is working on an appeal because an improper Board member served and according to a letter written by Mr. Merrill's attorney there are other 3 or 4 additional items that he is appealing that the Board can consider if they wish. Mr. Maxfield recommended that the chairman close the hearing and said he would recuse himself from deliberation for the three applications.

Lois Choroszy stated that no matter what the Board recommended or didn't recommend at the last meeting they are allowed to make recommendations. She said she has been aware of several other projects in town and does not feel this has anything to do with the Board but feels this is a personal issue between Mr. Merrill and the applicant. Ms. Choroszy said the Board did not vote at the last meeting to approve this before it was presented to them tonight and the suggestions as Board members are what the town wants to hear. She said she would see this as a civil suit between Mr. Merrill and the applicant. Roy Merrill stated this will end up as a civil suit between him and the Board because they made the decision in January to give these people a voice vote that they didn't need to acquire his 2 acres. He also said the contract that they have to put forth good faith and he doesn't see that as good faith by coming in saying the land is conservation land. Mr. Merrill said he takes exception with them saying the land is conservation land and devaluing it. He said these people should be made to come up with a fair appraisal or not get the hardship.

Mr. Merrill asked why the Board now is handing out hardship variances when they never have and what precedent are they setting. He said if the members voted on this tonight none of them should go home with a clear conscience since these people had not shown that they had done a fair appraisal. Mr. Maxfield said it is his opinion, and he is not voting

tonight, that VOA does not need to show a fair appraisal for that property. He again stated that Mr. Merrill still has his land to sell at a value he feels is fair and the Board has taken nothing away from him. Mr. Merrill said the Board cannot deny they took the contract away from him by saying it was too much money and that damaged him. Mr. Maxfield said the contract was taken away because the land wasn't suitable. Mr. Merrill said the contract for the 2 acres to make the 10 acres, which he and Ms. Wilcock signed the night of the Board meeting, and which Mr. Maxfield had picked apart saying it was too much money, has been destroyed because of this Board. Mr. Maxfield suggested the land could be sold to the town for town offices. Mr. Merrill said that is not the issue and the town will still have to answer to the fact that they damaged this contract. Chairman Powelson closed the hearing for the lot size variance, to be taken up under unfinished business.

IV. UNFINISHED BUSINESS

1. Case # 06-01, # 06-03, # 06-04 Volunteers of America – Special Exception, 2 Variances – Map 20, Lot 9. Chairman Powelson said they would begin with the Special Exception. *Ned Lizotte made a motion to accept the presentation for the Special Exception and approve as presented. Seconded by George Saunderson.* The chairman asked Mr. Maxfield if he was voting on these applications. Mr. Maxfield said he would recuse himself from all three but would sit and advise on procedural issues as Vice Chairman. Chairman Powelson appointed Howard Pearl as a voting member for these cases. Mr. Powelson stated there are seven points that the Board has to make findings on in order to approve the Special Exception. He noted that Ms. Wilcock had gone through them quite thoroughly and asked if the Board had questions on them. Ned Lizotte said he thought they were clearly explained. Mr. Maxfield suggested determining the appropriateness of allowing this to occur, the proximity of things, and extending the District and if those were covered to the Board's satisfaction. Chairman Powelson reviewed Ms. Wilcock's answers to the seven questions and asked if Board members were satisfied with the information given. ***He then asked for a roll call vote to approve the Special Exception. Howard Pearl – yes; Jon Huntington – yes; George Saunderson – yes; Ned Lizotte – yes; Dave Powelson – yes. All in favor; Special Exception granted.***

Chairman Powelson stated the next item would be a Variance to allow 33 units of affordable senior housing under one roof. *Ned Lizotte made a motion to deny the area variance for 33 units as presented.* Mr. Pearl asked if a second could be made for the purpose of discussion. Mr. Powelson explained that it could and if there was no second then there may be a motion to approve the application. *Mr. Pearl seconded the motion for discussion purposes.* Chairman Powelson asked Mr. Lizotte if there was a reason he wanted to deny 33 units under one roof. Mr. Lizotte said he has no desire to deny 33 units under one roof but does see that there is a need to right a wrong. He said the wrong has been admitted by the attorney by trying to retract the part b of the area variance criteria in that it would be Lot 9 not meeting the 10 acre minimum. Chairman Powelson suggested this be taken up later. Mr. Lizotte asked for more time, saying one of the things that has been bothering him for months is the issue why this came to an agreement and then dropped. He pointed out a piece in the option agreement that says 'if the appraised value as determined by HUD is less than the purchase price stated above, the Seller and Purchaser may renegotiate the purchase price. In the event an agreement for a reduced purchase price cannot be reached, Purchaser may purchase the property under the terms and conditions herein described'. Mr. Lizotte said part of what was stated was that there were no options available and there are options available. He said the 8 acres are fine and he realizes that is the better piece of property but there is still the obligation to fill the requirement of 10 acres. Chairman Powelson

said that really isn't relevant to the 33 unit matter. Mr. Lizotte said that is why he felt this should be denied because there is the option of fulfilling the 10 acres and not needing the variance. Mr. Powelson clarified that they were currently considering the variance to allow 33 units under one roof and would get to the 8 acre variance later. Mr. Lizotte thought that is what was being discussed now. *Mr. Lizotte withdrew his motion to deny this variance. George Saunderson made a motion to approve 33 units under one roof with the stipulation that the footprint not be enlarged in future years. Seconded by Ned Lizotte.* Bob Ordway cautioned the Board on taking any action that would put limits on future Boards, saying the town has a set of regulations and this Board but those both may change. Roy Merrill stated that Bob may be right on that but the Board also has to look at the fact that they are asking for a variance which is up to the Board but he doesn't feel Mr. Saunderson was out of line with the stipulation request. Mr. Saunderson explained his reasoning, saying future Boards may do what they want but this gives them a stronger leg to stand on. Chairman Powelson confirmed that Mr. Saunderson understands that future Boards can overturn this stipulation. Mr. Saunderson said he does and feels it is important to let future Boards know what this Board had in mind. Mr. Powelson clarified that the motion is to approve the variance to allow 33 units under one roof with the understanding that it not be enlarged. Ray Cummings stated this is a very dangerous precedent and that Mr. Ordway is absolutely right in saying that this Board has no right to limit future Boards. Mr. Cummings urged the Board to remove the stipulation. Roy Maxfield said he agrees with Mr. Ordway and Mr. Cummings about setting precedence but also understands Mr. Saunderson's reasoning, saying it does not hurt anything by having the stipulation in the motion. Mr. Saunderson said he feels it would give future Boards an idea of the direction this Board was headed. **Chairman Powelson asked for a roll call vote on the variance for 33 units under one roof. Howard Pearl – yes; Jon Huntington – yes; George Saunderson – yes; Ned Lizotte – yes; Dave Powelson – yes. All in favor; Use Variance granted.**

Chairman Powelson stated that the next item would be a Variance to reduce the total acreage required from 10 acres to 8.1 acres. *Ned Lizotte made a motion to deny the Area Variance to reduce the acreage from 10 to 8.1 acres. Seconded by Howard Pearl.* Mr. Lizotte said he would argue this based on what he had prematurely stated earlier of the lawyer's comment about retracting the financial hardship aspect and also in light of the statement on the previous purchase & sale agreement that the seller/purchaser may renegotiate a purchase price and part 2 that the additional 2 acres is not going to affect the proposal in any way, won't deter or devalue. The additional 2 acres would make it fall in line with the land use regulations and there would be no need for a variance. Mr. Pearl said his second was based on 701.2 A 2 b, saying he does not feel they met the criteria. Attorney Sienkiewicz pointed out that those are the two sentences that were stricken earlier. Mr. Pearl said he did not feel the application should be changed after it was presented and did not feel they had met the criteria when saying there was no land available yet they had a signed p & s. Chairman Powelson stated that the Board has to prove that the applicant has met all points of criteria and, if not, the Board would have to deny them. Mr. Powelson asked Mr. Huntington if he had any opinions to share. Mr. Huntington said he feels this is a very important project for the town and time is of the essence. He said he understands Mr. Merrill's point but if he was buying something and found he could buy it a little cheaper he would go with the way this has happened. George Saunderson concurs with Mr. Huntington and it is time to get on with it. Roy Maxfield asked if a timeline should be given if approved. Mr. Saunderson said he thought they should probably put a stipulation of construction beginning within 9 months. **Chairman Powelson asked for a roll call vote on the motion to deny the Area Variance. Howard Pearl – yes; Jon Huntington – no; George Saunderson – no; Ned Lizotte – yes; Dave Powelson – no. Yes - 3; No - 2; Motion defeated.**

*Mr. Saunderson made a motion to approve the Area Variance with construction beginning by December 1, 2006. Seconded by Jon Huntington. Mr. Pearl said he is in support of the project but is concerned by granting a variance that the Board is setting precedent. He does not feel they have really shown hardship in not being able to have the 10 acres. Mr. Saunderson stated that this is something special, not simply someone's house or business but something that will serve citizens of the town. He gave an example of someone wanting to build a senior center where services were going to be given away but the lacked half an acre, saying the Board would probably give a variance. He emphasized that this is not something that the Board does often or lightly. Mr. Huntington stated that Mr. Merrill still has his land and has the opportunity to develop a senior housing complex himself. **Chairman Powelson asked for a roll call vote to approve an Area Variance to reduce the lot size requirement from 10 acres to 8.1 acres to expire on December 1, 2006. Howard Pearl – no; Jon Huntington – yes; George Saunderson – yes; Ned Lizotte – no; Dave Powelson – yes. Yes – 3; No – 2; Area Variance granted.** Chairman Powelson addressed Mr. Merrill on his appeal. Mr. Merrill disagreed that this was his appeal saying he may appeal tonight's decision but would talk with his lawyer. Tony Marcotte thanked the Board for their time. Julia Wilcock also said thank you to the Board.*

VI. ADJOURNMENT

Howard Pearl made a motion to adjourn this meeting at 10:30 p.m., seconded by George Saunderson. All were in favor.

Respectfully submitted,

Donna White, Secretary