

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
MARCH 23, 2006**

REGULAR HEARING

Chairman Roy Maxfield called the Loudon Zoning Board of Adjustment meeting on March 23, 2006 to order at 7:30 PM at the Loudon Community Building.

I. ROLL CALL:

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

II. ACCEPTANCE OF THE FEBRUARY 23, 2006 MINUTES:

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

III. PUBLIC HEARINGS:

Roy Merrill stepped down from the Board. George Saunderson will be a voting member.

1. Case #06-01 – Volunteers of America – Variances & Special Exception. South Village Road, Map 20, Lots 9. Abutters have been notified. Roy Maxfield stated the VOA sent a volunteer last month and she did not have the information the board needed. Mr. Maxfield stated they needed resolution on the well, which they have, withdrawal of the application on the previous lot, which they have, and a letter from the property owner indicating an agreement on the purchase. Mr. Maxfield stated they do not need to know anything about price but that they have reached an agreement on purchase between the VOA, HUD, and the property owner. Julia Wilcock from Volunteers of America Northern New England stated they have and the landowner Barbara Brown is here. Mr. Maxfield asked Mrs. Brown if she agrees she has reached a tentative agreement on the sale of the property. Mrs. Brown stated yes. Mr. Maxfield stated the VOA has submitted a variance and special exception for Map 20, Lot 9 to construct 33 units of affordable senior housing under one roof using the overlay Elderly Housing District regulations. Mr. Maxfield stated the variance is required because they are changing the required 10 acre lot to 8.1 acres. Mr. Maxfield stated the special exception is to allow the lot to be considered elderly housing. Mr. Maxfield stated they will discuss these two items and start with the area variance. Ms. Wilcock stated the VOA is requesting a variance to develop and construct a 33 unit affordable senior housing building on 8.1 acres on lot 9. Ms. Wilcock stated the reasons for pursuing an area variance as follows:

“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. The funding source for this affordable senior housing is the US Department of Housing and Urban Development. They do not allow land to be purchased at above fair market value. The 8.1 acres that we have under control is enough land to build the project and sustain all the elements associated with it. Any acreage available adjacent to the Map 20, lot 9 property has not been available at fair market value.

b. The approval of this variance does not go against the intent of the ordinance in that developing affordable senior housing on 8.1 acres will promote health and welfare for

Loudon citizens in their senior years that may not be able to afford to keep their homes and remain in the community in which they call home.

c. The Loudon Community will benefit from the development of these affordable senior housing units as there are Loudon residents interested in living at this complex which would free up some housing stock in town that younger families may purchase and fix up which increases the value of the home.

d. If this variance is not obtained the HUD funds will be returned and the project will not be developed. Taking this project away from Loudon residents would be an injustice. This project has to go to closing by August 2006 or the federal funds will be returned.

e. The approval of this variance will not result in any decrease in property values for the surrounding homes.”

Ms. Wilcock stated she has a letter from HUD verifying the time line and added HUD is willing to go through an amendment of time to get the VOA through September 30 as long as all approvals are in place. Mr. Maxfield stated he recalled the other property was for 5 acres. Ms. Wilcock stated she had an option for a little over 10 acres but there was only 5 buildable acres. Ms. Wilcock stated the VOA needed at least 6 buildable acres and because of this they looked at the Brown property. Ms. Wilcox stated about 95% of the Brown property is buildable acreage. Mr. Maxfield stated the special exception conditions for elderly housing (Section 303.4) looking at the proposed location; these include the proximity to support services necessary to meet the needs of the elderly, the proposed site will not have a detrimental impact upon the district in which it is located, adequate and appropriate support facilities, and the parcel area is sufficient, appropriate, and adequate for the proposed use and the reasonable anticipated operation. Mr. Maxfield stated the VOA has septic and water approval from DES. Mr. Maxfield stated the general requirements (section 303.5) state the minimum lot area shall be 10 acres and not more than 10 dwelling units per acre or 50 units for 10 acres. Mr. Maxfield stated the density seems to fit with 33 units on 8 acres. Mr. Maxfield asked the board if they had any questions on the discussions from the last few meetings or the variance to decrease the acreage from 10 to 8.1. Mr. Maxfield stated they are working on two variances because of the minimum lot size. Mr. Maxfield stated the minimum lot size can be argued as being arbitrary and the impact of this unit is consistent with what the board is trying to accomplish within the spirit of the ordinance. George Saunderson asked if the VOA would object if this variance goes away within six months time if nothing happens with the project in that time frame. Mr. Saunderson stated since it is a land deal if something goes awry it would go away in six months time. Ms. Wilcock stated if she meets HUD's guideline and closes September 30 the contractor might take a couple of weeks to actually break ground. Mr. Saunderson stated he understands that but would like to get a definite guideline. Dave Powelson asked the property owner if she objects. Barbara Brown stated no. Dustin Bowles stated the board could stipulate that if the VOA does not follow through the variance would be retracted instead of putting a time frame on it. Mr. Saunderson stated the statute states they can put a time limit on it. Ray Cummings stated the 6 month limit is cutting it very close, a year might be reasonable and asked if it is possible to withdraw a variance once it has been given. Mr. Maxfield stated according to the advise from the attorney an applicant can ask for a withdrawal and the board can rule on that withdrawal. Mr. Maxfield stated in the opinion of the attorney, the board granted a variance for a specific structure with specific reasons and it was so noted in the approval process; if the organization withdraws the variance the attorney states it is permissible. Mr. Maxfield stated the land could be reapplied for and it would be unusual for the board not to approve a similar variance for that land for a similar project. Mr. Cummings stated then the Board will not have a six month limit and leave the variance open. Mr. Maxfield stated they can indicate that if financing or the land falls through the applicant, VOA, will withdraw their application. Mr. Cummings stated he would like to speak in favor of the variance; the applicant is well within the requirements of Section 303.5. Roy Merrill

stated he objects to the fact that the VOA thinks they can pull his variance out from his property and apply it to the next property. Mr. Merrill stated his attorney has submitted a letter that states there are several case laws that say a variance goes with the property and he does not think the town attorney, according to Mr. Merrill's attorney, is aware of all the stuff that has gone on with the board. Mr. Merrill stated the 20 acre piece was granted a variance that the board wants to take away and give two variance's to a piece that does not meet zoning; this does not sit well with him. Mr. Merrill stated the VOA has not had an option on his property after July of last year and now nine months later they want to withdraw a variance he could have sold to anybody but held open to the VOA to help them out. Mr. Merrill stated the VOA was going to negotiate with Mrs. Brown to change the lot line around so the board would not need to grant another variance but the VOA choose to go the route of putting it on the smaller piece. Mr. Merrill stated his letter also says he is disturbed about the fact the board got into contract negotiations in January as to the price of the property and put the liability on to the town. Mr. Merrill stated a planning board member stated the VOA should ask for a variance because he did not feel the property was fair market value, when the applicant 20 minutes earlier signed a purchase and sales with him, is out of order for any board. Mr. Maxfield stated he is not going to respond and the attorneys will address it. Mr. Maxfield stated the town attorney's opinion is a specific variance to a specific organization was granted and has the right to withdraw it. Mr. Merrill stated the variance was granted to the applicant/land owner not the VOA. Mr. Cummings stated he does not see why the VOA would not agree to leave the variance with the land; they have made up their mind to go somewhere else and the variance can stay with Roy's land and he knows there are other people ready to buy that land with the variance on it. Mr. Maxfield stated it will be a hard time fulfilling the purpose of the variance the way it was granted; they could do exactly what the VOA was doing but anything other than that would be a violation of the variance. Clem Lyon stated he is the Vice-Chairman of the committee to study and carry out a plan to have housing for seniors in Loudon. Mr. Lyon stated the need for housing for our seniors, who are on a limited income and have to face rising costs, seemed a lifesaver to come into our community and give people the opportunity to retain their dignity and live their remaining years in a little bit of luxury. Mr. Lyon stated the need for this was pointed out in the Master Plan. Mr. Lyon stated the committee formed two years ago this April and they had to show there was support for this project before they got any acceptance from HUD. Mr. Lyon stated they had picked out various sites and the land on South Village Road seemed appropriate; they did not anticipate flood plains and wetlands. Mr. Lyon stated he hopes the ZBA sees this as a needed and worthy project and several people are here tonight who will be hopefully moving in and members from the committee. Mr. Lyon stated they will be good neighbors. Mr. Maxfield asked if there was anyone that would like to speak for or against the applicant. Dustin Bowles stated he does not think there is a soul against this project; his only thought is to get the variance right, so down the road they don't set a precedent. Mr. Maxfield stated that is the reason he sent Bart's letter out to the Board of Selectmen as well. Mr. Maxfield stated he will hold the withdrawal issue until later on and see how the board feels about it. Ronald Moore stated there is enough land for 80 units and is this something that can be added on later. Mr. Maxfield stated not on the application and not what the board would approve; that would be a condition for this. Mr. Merrill stated he questions a selectman voting on this since it is going to legal council. Mr. Maxfield stated they have spoken to the attorney and Mr. Ives cannot run for office but he can serve out his term. Mr. Maxfield stated the selectmen can also appoint an ex-officio to a now elected board. Mr. Maxfield closed this hearing and it will be taken up under unfinished business.

Roy Maxfield stated the second variance is for 32 one bedroom and one two bedroom apartment, affordable senior housing under one roof. Mr. Maxfield read the variance application (on file at the Zoning Board office). Mr. Maxfield stated if he would vote it would

be for the reasons they determined the application acceptable before. Mr. Maxfield asked if there was anyone that would like to speak for or against the application for one 33 unit building. David Powelson added there needs to be a special exception for elderly housing as well. Mr. Maxfield stated if the board grants the variance for a smaller lot size the VOA still needs a special exception to include the lot in the overlay. Mr. Maxfield stated if the board grants the first variance, then the special exception and second variance applies, but if the board does not grant the first variance, then all of this is moot. Mr. Maxfield closed this hearing and it will be taken up under unfinished business.

Roy Merrill rejoined the board.

2. Case #06-02 – Paul & Darlene Johnson – Special Exception for a major home occupation. 109 Flagg Road, Map 48, Lot 8. Abutters have been notified. Roy Maxfield stated the home occupation is for the purposes of storing business equipment on the property. Mr. Johnson stated trucks. Mr. Maxfield read the application. Mr. Maxfield stated situations like this are so the board can control the area the business is using, to make sure it does not develop into a full scale business operation and the board has some say in reviewing the footprint later on. Mr. Maxfield stated there are three family employees, one full time, and one part time employee. Mr. Maxfield asked what the hours of operation are. Mr. Johnson stated 7am-5pm unless there is an emergency situation. Mr. Maxfield stated the board generally puts hours of operation in and can say operation during daylight hours and occasional emergency service. Ms. Johnson stated as long as there are provisions for emergency services since that is what their business is based on. Mr. Maxfield asked if there were any questions from the board. Mr. Maxfield asked if there was anyone that would like to speak for or against the application. Abutter Dustin Bowles stated he surrounds the Johnsons on three sides and has no problem with them. Mr. Bowles stated he would like the business revisited or restricted if it leaves the Johnson name and is sold. Mr. Bowles stated Mr. Johnson does a good job but would not want another contractor coming in and think because he allowed Mr. Johnson to crowd the boundary line there is a pre-arrangement. Mr. Bowles stated he is talking to the Johnsons about purchasing his land around the Johnsons. Mr. Maxfield asked if Mr. Johnson was on Mr. Bowles property. Mr. Bowles stated no, he would allow Mr. Johnson to use his land in an emergency situation but if Mr. Johnson sells tomorrow, he doesn't want somebody thinking they could do that. Mr. Maxfield stated he could do something subject to abutter approval so if at anytime Mr. Bowles decides it is not acceptable, the owner could come back to the board. George Saunderson stated the board could put a revisiting time frame on this. Mr. Maxfield stated the board cannot sunset; if a new owner expands or alters the business they would have to come back for a change. Dave Powelson stated major home occupations have a provision for a yearly review by the compliance officer. Mr. Bowles stated he does not want to put restrictions on Mr. Johnson. Steve Ives stated it would have to be specific to a septic business not to have to be reviewed by the board again. Mr. Maxfield closed this hearing and it will be taken up under unfinished business.

IV. UNFINISHED BUSINESS:

1. Case #06-02 – Paul & Darlene Johnson – Special Exception for a major home occupation. 109 Flagg Road, Map 48, Lot 8. Dave Powelson made a motion to approve the application as presented. Roy Maxfield stated with a stipulation if the business changes hands the abutters be notified and have an option to review the operation. Mr. Maxfield stated the intent was to make these operations legal providing the abutters were okay with them. Mr. Maxfield stated the board will review the legal terms for this but the just is, if it is sold they will have to come back to the board along with the abutters. Seconded by Roy Maxfield. Roll

call vote: Roy Merrill – yes, Dave Powelson – yes, Steve Ives – yes, Ned Lizotte – yes, Roy Maxfield - yes. All in favor, application approved.

Roy Merrill stepped down from the Board. George Saunderson will be a voting member.

2. Case #06-01 – Volunteers of America – Variances & Special Exception. South Village Road, Map 20, Lots 9. Roy Maxfield stated the first issue is the area variance to reduce the lot size requirement from 10 acres to 8.1 acres. Mr. Maxfield stated the applicant in this case is the current land owner, Barbara Brown. Steve Ives made a motion to approve the application for a variance to reduce the lot size requirement from 10 acres to 8.1 acres. Seconded by Ned Lizotte. Mr. Maxfield stated this is the same scenario as originally discussed, which is looking at a specific use for the granting of the variance and the fact there are 20 acres across the river and 10 acres adjacent that are already senior housing. Mr. Maxfield stated it is not a stretch to extend senior housing out another 8 acres in the overlay district. Mr. Maxfield stated it could be said the 10 acre requirement is arbitrary, it was a guide for 50 units per ten acres. Mr. Maxfield stated there is a good case for granting the variance and the lot is surrounded by elderly housing overlay. Steve Ives amended the motion to specify one 33 unit building as proposed. Seconded by Ned Lizotte. George Saunderson asked if they need to make a provision for a time frame or attaching a name to it. Mr. Saunderson stated regulation 701.4 states the board can specify a length of time but he does not see a provision for specifying a name. Mr. Maxfield stated he does not think they need a name but if the property is not developed within a year the variance should be null and void. George Saunderson added an amendment that the project begins within nine months otherwise the variance disappears. Seconded by Steve Ives. Mr. Maxfield stated the area variance criteria are the same as had been previously discussed and this structure will have less impact than a 10 acre lot could have. Roll call vote: George Saunderson – yes, Dave Powelson – yes, Steve Ives – yes, Ned Lizotte – yes, Roy Maxfield - yes. All in favor, area variance approved with conditions.

Roy Maxfield stated the VOA needs a special exception for the elderly housing overlay. Dave Powelson made a motion to approve the special exception. Seconded by Steve Ives. Mr. Maxfield made a motion that the nine month criteria would apply to this as well. Seconded by George Saunderson. Mr. Maxfield stated a special exception would be granted for the elderly overlay provided the construction begins within nine months, if not the special exception is null and void. Roll call vote: George Saunderson – yes, Dave Powelson – yes, Steve Ives – yes, Ned Lizotte – yes, Roy Maxfield - yes. All in favor, special exception approved with conditions.

Roy Maxfield stated the next issue is a use variance for a 33 unit building; 32 one bedroom, one two bedroom apartments for affordable senior housing under one roof. Mr. Maxfield stated the current ordinance does not allow this and the board similarly found before that the requirement for such a facility could not feasibly be created without the requested variance, which is not merely inconvenient, but rather an undue financial burden. Mr. Maxfield stated the benefits sought by the applicant, creating an affordable assisted living care facility, cannot be achieved by some other method reasonably feasible without securing the requested variance; the board will determined that all density and setback requirements will be met, that granting the variance for a much needed elderly facility close to the village is keeping with the spirit of our ordinance and in the public interest. Mr. Maxfield stated that the board also has a letter from the VOA to withdraw their similar variance on lot 10. Mr. Maxfield stated the board can act on that and should. Mr. Maxfield stated the board can grant the landowner on lot 10 a variance of a similar nature. Mr. Maxfield stated the board

granted a variance for a specific reason to a specific organization for all the reasons that were indicated; if the board grants the same variance here it makes sense to honor the request to withdraw the variance for lot 10. Mr. Maxfield stated the board may not have to act on this tonight. Ned Lizotte stated there is a time frame of 24 months; if a project comes up that meets the criteria of the variance the board does not have to do anything, but if the 24 months lapses it goes away. Mr. Lizotte stated the board was under the idea there was a property arrangement and the board has learned things have to be more specific. Mr. Lizotte stated in fairness to Mr. Merrill, he still has something viable according to our regulations and the board should let it run its course. Dave Powelson stated his opinion of section 701.4 says the board can attach some conditions but they did not do that. Steve Ives stated those conditions are automatically attached. Mr. Saunderson asked if Mr. Merrill agrees that section 701.4.8 stated the variance must be used within 24 months or it needs renewal. Mr. Merrill stated he has not read anything on it and is not going to make any decision on it tonight. Mr. Saunderson stated it may be a good idea to table this for a month. Mr. Maxfield stated the board will get back to the withdrawal after they make a decision on the new variance. Mr. Maxfield stated he is willing to go with the new variance for the same reasons they granted the original variance. Mr. Maxfield stated based on the argument made before the board could make the same argument that this elderly housing complex could not be created without making the allowance. Roy Maxfield made a motion to approve the variance for 33 units under one roof on the condition the construction begin within nine months or the variance becomes null and void. Seconded by Ned Lizotte. Roll call vote: George Saunderson – yes, Dave Powelson – yes, Steve Ives – yes, Ned Lizotte – yes, Roy Maxfield - yes. All in favor, variance approved with conditions.

Roy Maxfield stated on the withdrawal of the variance (application #05-07) Mr. Powelson is probably correct in the stipulation the variance could go on in perpetuity. Mr. Maxfield stated the variance was granted for a specific purpose for a specific building, low income elderly housing; the board has a very tight variance pertaining to that land and based on the advise from the attorney the board should at least accept the letter from VOA that their application be withdrawn. Mr. Maxfield stated if something else transpires and the attorneys agree that variance stays with the land then the variance becomes Mr. Merrill's and not the VOA's. Ned Lizotte made a motion to accept the Volunteers of America's letter for retraction of the application. Seconded by Roy Maxfield. Mr. Maxfield stated the attorney's can now talk and the board is saying that the VOA is withdrawing their interest. Roll call vote: George Saunderson – yes, Dave Powelson – yes, Steve Ives – yes, Ned Lizotte – yes, Roy Maxfield - yes. All in favor.

Roy Merrill requested the tapes of the meeting be held in perpetuity. Roy Merrill rejoined the board.

V. DISCUSSIONS:

1. Jeremy Minery – Mr. Minery stated he would like to put an addition on the back of his house and the lot is non-conforming. Mr. Minery stated the setbacks on the East side are 10 feet to the existing house and the addition will be 5½ feet from the property line. Mr. Minery stated the house is on Route 129. Roy Maxfield asked how the abutter feels about the setback. Mr. Minery stated the abutter has no problem as long as it is not on his property and is planning to come next month. Mr. Maxfield stated the board only needs a letter from him. Mr. Minery stated the garage sits on the West side of the house so he cannot build on that side. Dave Powelson stated Mr. Minery should include his roofline into the setback measurements.

2. David Drake – Tony Merullo stated he is representing Mr. Drake. Mr. Merullo stated he has a state approved septic design; the lot is 100 feet wide and 150 feet deep. Mr. Merullo stated they are looking to reduce the 30 foot side setback to 25 feet on each side, to facilitate a 42 foot house. Mr. Merullo stated the original footprint of the cottage, which is to be demolished, is 20x35. Roy Maxfield stated the lots on Clough Pond are tiny and as long as the abutters have no objections, this is a small reduction than most requests. Mr. Maxfield stated the board will be looking at the abutter behind and on both sides. Roy Merrill stated he recommends the board take a site walk with all the issues the town is having with these lots. Mr. Merrill stated there are drainage issues with the lot across from Tony's subdivision. Mr. Drake stated there are two empty lots beside him; he has spoken to the neighbor he can reach and he requested as many trees as can be left. Mr. Drake stated he will build a two bedroom house; the existing camp is too close to the road. Mr. Merullo stated after Monday there will be stakes in the ground indicating the four corners of the house and the four corners of the septic system; four big blue stakes for the house and four small orange or green stakes for the septic system. Mr. Merullo stated the driveway turnaround area may encroach upon the setback. Mr. Maxfield stated the board members may visit the site on their own. Mr. Merrill stated they will have to look at the drainage issues; these houses that take up the whole lot cause runoff onto the neighbors land. Mr. Merullo stated they are building upon the shelf and he does expect the drainage to remain as is; there is an increase in runoff from the increased roof size however it will be graded to maintain all the water on site. Mr. Maxfield stated the board can look at the site and if there are any problems we will let the secretary know and she can relay them to you.

VI. ELECTION OF OFFICERS:

Roy Maxfield stated tonight is March election of officers. Roy Maxfield made a motion to nominate Dave Powelson for Chairman. Seconded by George Saunderson. Mr. Maxfield stated he is not planning on running for zoning board again and Dave is the next longest serving member; he is pleased Dave has accepted the nomination. Mr. Maxfield closed the nominations for Chairman and opened the nominations for Vice-Chairman. Roy Maxfield made a motion to nominate Ned Lizotte for Vice-Chairman. Mr. Maxfield stated he would be willing to serve as Vice-Chairman for a transitional period and then turn it back over to Ned in six months. Mr. Maxfield stated he is offering this for legal purposes; a Vice-Chairman has some legal standing where as a member does not have quite as much. Seconded by Roy Merrill. Steve Ives made a motion to nominate Roy Maxfield as Vice-Chairman. Mr. Maxfield stated he will serve as Vice-Chairman until Dave is comfortable and then he will step down. Seconded by Ned Lizotte. Mr. Maxfield closed the nominations for Vice-Chairman and re-opened the vote for Chairman. Mr. Maxfield asked for a vote for Dave Powelson for Chairman. All were in favor. Mr. Maxfield opened the vote for Vice-Chairman and stated there are two nominations. Discussion ensued regarding Mr. Maxfield's nomination. Mr. Maxfield asked for a vote for himself for Vice-Chairman. All were in favor.

Dave Powelson read Ned Lizotte's election papers. Mr. Lizotte stated his term should expire in 2009 not 2008. Mr. Maxfield stated the paper should be signed by Dave not him. Mr. Maxfield stated the secretary can make those changes and get a new copy for their signatures.

Dave Powelson stated he has received a resignation letter from Steve Ives. Mr. Powelson read the letter. Mr. Maxfield stated the board accepts with regret and wished him luck with his Selectman's position. Mr. Maxfield stated the board looks forward to seeing Mr. Ives in an ex-officio capacity. Dustin Bowles asked if they have to wait until the board is fully elected or can they intervene. Mr. Maxfield stated they can appoint an ex-officio at any time.

VII.ADJOURNMENT:

George Saunderson made a motion to adjourn this meeting at 9:07 p.m., seconded by Roy Maxfield. All were in favor.

Respectfully submitted,

Tammy Davis
Secretary