

DRAFT

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
NOVEMBER 30, 2006**

REGULAR HEARING

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

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.

I. ACCEPTANCE OF THE OCTOBER 26, 2006 MINUTES:

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

II. MOTION FOR REHEARING/APPEAL:

Case # 06-15A, Alvin R Davis III – Mr. Davis submitted an application for a rehearing of Case # 06-15, originally heard by the Board on October 26, 2006. Mr. Davis was not present. Roy Merrill recused himself from the Board on this matter. Howard Pearl was appointed as a voting member on this case. George Saunderson asked if there needed to be a motion before discussing the application. Chairman Powelson said there did not; the Board can discuss and make a motion as seen fit. Mr. Saunderson asked if anyone sees anything new on this application. The chairman said he does not. Mr. Saunderson referred to #3 on the support paperwork submitted with Mr. Davis's application. He stated that Mr. Davis did say he was asking for driveway setbacks but his original application asked for setbacks of all of the subdivision. Chairman Powelson stated that the initial application asked for reduction of side setbacks for driveways for each lot, reduction in side setback on Lot 015, and reduced front setback for Lot 001. Howard Pearl said that as he recalls there was no mention of driveways in the first application, it was simply side setback reductions. Roy Maxfield said the Board typically would go through the application point by point. Chairman Powelson said they would do that. Points 1 and 2 are introductory, define the lots, and the Board would agree with those. Mr. Maxfield referred to point #3, stating that he would say the Board has interpreted the Ordinance this way for 20 years. Howard Pearl stated that the Ordinance is pretty clearly stated and he does not feel that the Board misinterpreted anything. The chairman said he would agree with point #4, the Board did deny Mr. Davis's request for a special exception. In point #5, 1-4 are realleged. Chairman Powelson stated there are 16 points on an application that Mr. Davis had to persuade the Board that he had met and the Board was unable to be persuaded on most of these points. Roy Maxfield addressed point #6, saying that the evidence presented by the applicant was not sufficient to justify all lots having reduced setbacks. He noted that there were several points with no information upon which to base decisions. In point # 7, 1-6 are realleged. Chairman Powelson said the Board is charged with interpreting the Zoning Ordinance and he stated that the front yard setback is to Lovejoy Road. Roy Maxfield said this is, was, and always has been the interpretation. In point #9, 1-8 are realleged. The chairman stated that #10 challenges Ned Lizotte's ability to stand on the Board. Mr. Powelson said he does not

believe that there was anything that Mr. Lizotte did other than research the application and subdivision approval process. Roy Maxfield said he feels that Ned did a thorough job and took to heart some of the complaints of the abutters. He said that Mr. Lizotte took it upon himself to do extensive research and commended him for that, saying he acted appropriately. The chairman asked if there were any other comments. Roy Maxfield stated that the Board has determined that the front setback is determined off Lovejoy Road. He said the house in question is certainly infringing on the rights of the street and abutting properties and feels the Board denied the request based on that, saying that he has not changed his mind. **Roy Maxfield made a motion to deny the rehearing request. Howard Pearl seconded the motion. Roll vote: Howard Pearl – Yes; George Saunderson – Yes; Dave Powelson – Yes; Roy Maxfield – Yes; Ned Lizotte – Yes. MOTION FOR REHEARING/APPEAL DENIED.**

III. PUBLIC HEARINGS:

Case # 06-21, Zetland Homes, LLC – Special Exception for Reduced Front Setback, Map 39, Lot 85. Owner Steven Reddy was present. Roy Merrill recused himself from this case. Howard Pearl will continue as a voting member. Mr. Reddy said he would like to make a full disclosure that the farmer's porch has already been built. He stated that they did not know they were in the setback until an as-built plan was done for the septic system. He explained that the foundation is turned toward Goshen Drive and the porch extends into the front setback by about one foot. Mr. Reddy explained that he is asking for five feet because he was not sure if the measurement should be taken from the porch or the overhang. Chairman Powelson had Mr. Reddy go through the points of the Special Exception application. Roy Maxfield asked how far the porch is from the edge of the tar. Mr. Reddy said it is 49' to the edge of the right-of-way and 17' more to the edge of the tar. The chairman asked if there were any other questions. It was verified that abutters have been notified. Mr. Powelson asked if there was anyone wishing to speak in favor of or against the application. Hearing none, **the chairman closed the hearing; the application to be considered under Unfinished Business.** Roy Merrill re-joined the Board.

Case # 06-22, DJP Realty Trust – Special Exception for Reduced Setback & Variance for steep slopes, Map 12, Lot 4. Friedrich Moeckel of Tarbell Professional Association presented the application on behalf of Mr. Bohi. Mr. Moeckel explained that they are requesting the special exception to allow for the construction of a driveway in the side setback of a proposed lot. He stated there is otherwise no way to get to the buildable portion of Lot 2. Mr. Moeckel stated that the variance relates to a driveway in the steep slopes and outlined the area on the plan. Roy Merrill asked if the cul de sac is in the steep slope. Mr. Moeckel stated that it is but he does not believe there is pavement. Web Stout of FWS Land Surveying presented the plan. He confirmed that there would be pavement in that area. Mr. Stout stated they have had an engineer look at the area and said there will be a cut into the slope at the back of the cul de sac. The location of the property was clarified for the Board. Mr. Stout explained that this proposal is for three lots with a new road to be built. He informed the Board that this proposal was before the Planning Board a couple of weeks before for a lot line adjustment, allowing the road to be swung to the left. Mr. Stout explained that the design has been worked to meet the 200' frontage requirements and the 1.5 acres contiguous area with no steep slopes or wetlands. He reviewed the lots on the plan, pointing out the steep slope and flood zone areas. Mr. Stout stated that he has to look at the whole picture to make all of the criteria fit and the final design as to how it would work. He pointed out a portion of the road where it appears a cut is required, saying this would eliminate any further creation of steep slopes. Mr. Stout stated there is a section about 85' long that will run with the contour of steep slopes to reach the buildable area.

Roy Maxfield asked what the Planning Board has seen so far. Mr. Stout said they have seen the concept layout and have done a lot line adjustment with an abutter to swing the road out. He explained that the project has been through step one and it does meet all other criteria for a subdivision. The lots will be 3.2, 6.6, and 3.9 acres. The lot line follows Bee Hole Brook. Roy Merrill asked if the area is staked out. Mr. Stout said it is and the Planning Board has done a site walk. Mr. Moeckel stated this originally was a seven lot cluster subdivision, then five, and now three. He stated that Shane Stewart is working with Mr. Bohi and what the Board is seeing is the last attempt to make the project economically feasible. He explained that if it can not be done with three lots it will not work.

Roy Merrill asked Mr. Stout to remind them why it would not work with five lots. Mr. Stout said the configuration did not work well, explaining that the road came in and hooked, creating some odd looking lot lines. Shane Stewart explained that they had come in two years ago with an open space plan and have now decided that three lots really work best. Roy Maxfield stated that the concept looks doable and he would like the Conservation Commission to look at it to weigh in on the wetlands. George Saunderson said he feels a site walk would be valuable and would like to have the Conservation Commission attend if possible. Chairman Powelson suggested doing a site walk on Saturday morning.

Shane Stewart emphasized that this is a nice road and lots. Web Stout said the road is about 1000' in length, 730' to the cul de sac. Mr. Moeckel addressed Section 302.4 which says that there are no special exceptions to permitted uses in the steep slopes district. He outlined the difference between special exceptions and variances. Chairman Powelson asked if there were any questions. Roy Maxfield said he thinks the Board understands. The chairman asked if the Planning Board members in the audience had any questions. Stan Prescott said Mr. Stout and the others had represented it well. He asked if there is no special exception to steep slopes could the applicant get a variance. The chairman said they can apply for a variance. Mr. Prescott said the Planning Board question had been about going through the 20% slopes, feeling it is not allowable, and that this was not allowed on another Bee Hole project. Mr. Prescott said he did want to clarify that this is conceptual only as the Planning Board has not heard an application because it is not fully prepared.

It was decided to do a site walk of this property on Saturday, December 2nd at 8:00am. The secretary will notify the Conservation Commission of the site walk. **Chairman Powelson stated that both of these applications will be continued to the next meeting, December 28, 2006, 7:30pm at this location. This is the only notice.**

IV. UNFINISHED BUSINESS

Case # 06-21, Zetland Homes, LLC – **Roy Maxfield made a motion to approve the request for front setback reduction from 50' to 45'. Ned Lizotte seconded the motion.** Roy Merrill stepped down from the Board. Howard Pearl will be a voting member. Mr. Maxfield stated this is actually over 60' from the road and the Board can not hold the applicant accountable for not coming in before the porch was built. He said it is important to clarify that the protruding overhang, whichever is closer, is actually the line. He explained that this would be the absolute extreme corner of the structure. Chairman Powelson asked if there were any questions. Hearing none, he called for a roll vote. **Howard Pearl – Yes; George Saunderson – Yes; Dave Powelson – Yes; Roy Maxfield – Yes; Ned Lizotte – Yes. MOTION FOR SPECIAL ACCEPTION FOR REDUCED SETBACKS APPROVED.**

V. DISCUSSION:

Roy Merrill – request for building permit extension – Mr. Merrill stepped down from the Board; Howard Pearl will be a voting member for this matter. Mr. Merrill submitted a letter to the Board asking for an extension of building permit # 06-018. Chairman Powelson asked Mr. Merrill to explain the request to the Board. Roy Maxfield said he would excuse himself

from voting; Jon Huntington will be a voting member for this matter. He said he did not want the Board to get into contractor deals and allowing permits to be pushed out. He asked Mr. Merrill if this is a matter of having three or four permits out. Roy Merrill stated other contractors' permits have been extended, citing a couple of examples. Roy Maxfield asked how many permits Mr. Merrill currently has. Mr. Merrill said he probably only has this one currently and has two lots in the process of sales. He noted that Tony Merullo retained five permits and Mr. Merullo's sister retained five also even though they had ten last year. Mr. Merrill said Mr. Merullo's have been extended so he does not see a problem with this request. Chairman Powelson asked Mr. Merrill if he has other permits waiting for approval. Mr. Merrill stated that he has a 2008. Ned Lizotte asked if what Mr. Stout is working on for Mr. Merrill is due to back log. Mr. Merrill stated that Mr. Stout had said he would get these plans done and had managed to get one subdivision done in October but it may be another two or three months for this plan. Roy Maxfield asked if six months would be enough of an extension. Mr. Merrill said he would prefer seven. Mr. Maxfield said Mr. Merrill could be forced to put the foundation in but agrees it is not a good idea. Ned Lizotte said he would like to clarify that this is something in the process, not of Mr. Merrill's doing. **Ned Lizotte made a motion to extend building permit # 06-018 by seven months. George Saunderson seconded the motion.** Chairman Powelson said he thinks he is in favor of the extension but wants to be sure the Board is not setting up to extend every request that comes before the Board. Howard Pearl asked if this has been an issue in the past. Ned Lizotte said Tony Merullo had been before the Board last year. Roy Maxfield said the selectmen would issue extensions but it has since been determined to be under the ZBA's jurisdiction. There was discussion about others done, how many, and when. It was felt that this request is not contrary to the intent of the growth ordinance. The chairman asked for a voice vote. **All were in favor of extending the building permit by seven months.**

Rule adoption – Chairman Powelson referred back to the meeting of August 24, 2006 when the Board discussed adopting a rule to limit the timeframe for appeal of an administrative decision. This should have been put on public notice for another meeting so that it could be adopted. It will be put on the agenda for the December meeting. There was discussion about the procedure to adopt new policies and where to put the rule in the Zoning Ordinance. It was thought that it should be published in the Zoning Ordinance as part of the procedures. Roy Maxfield stated that S705 should be amended to include this rule. The chairman referred to a handbook for the Board of Adjustment, RSA 676:1 Method of Adopting Rules of Procedure. Discussion ensued about the rules of procedure being part of the Ordinance or a separate chapter of rules. Chairman Powelson said this is a topic to work on and clarify. He stated that the motion was to adopt a rule to allow an appeal of an administrative decision within 45 days of the decision. This will be addressed at the December meeting and will be put on Public Notice as such.

Notice of decision forms – The chairman reported that the office is currently using a four part, two page form for notice of decisions. He said he feels it would be appropriate to go to a computer generated form and is working on a draft of the same.

VII. ADJOURNMENT:

Ned Lizotte made a motion to adjourn the meeting at 9:00pm, seconded by Dave Powelson; all were in favor.

Respectfully submitted,

Donna White, Secretary