

TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
OCTOBER 26, 2006

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting on October 26, 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 SEPTEMBER 28, 2006 MINUTES:

Roy Maxfield made a motion to approve the minutes as written. George Saunderson seconded the motion. There was no discussion. All were in favor.

II. PUBLIC HEARINGS:

Case # 06-15, Alvin R Davis III – Special Exception for Reduced Setbacks – Map 39, Lots 11-001 through 11-015, Lovejoy Road. Roy Merrill recused himself from the Board. Howard Pearl was named as a voting member in Mr. Merrill's absence.

Chairman Powelson explained that this application was tabled at the September meeting and the Board had requested that Mr. Davis return to the Planning Board for review of the application for compliance with the 2006 Zoning Ordinance. Mr. Powelson informed the Board that town counsel has advised that the ZBA may have gone a little further than they should have on this matter and his advice is to stick specifically to the application as presented with no further action. The chairman stated that he would like a motion to reconsider the actions of the September meeting with regard to sending Mr. Davis back to the Planning Board.

Roy Maxfield said since the Board has an opinion from the town attorney to stick with the setback issue and that the ZBA is not authorized to direct the Planning Board **he would move to rescind the motion, re-open the hearing for additional testimony, and then make a decision on the application for reduced setbacks.** Ned Lizotte stated that he had tabled his first motion at the last meeting with the option to be able to bring it back and that was about the reduced setbacks. **Mr. Lizotte seconded Mr. Maxfield's motion.** Chairman Powelson asked if there was discussion from the Board. Howard Pearl asked to clarify that they are to consider the application as originally submitted. The chairman said that was correct, to consider the application for reduced setbacks. Hearing no further discussion, **the chairman asked for a roll vote. Howard Pearl - Yes; George Saunderson – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous; hearing re-opened.**

Chairman Powelson stated that they had rescinded the motion and the Board would go back to the application for a reduced side yard setback, which is really a front yard setback, reducing it to 30'. Ned Lizotte corrected Mr. Powelson, saying the application is for reduced side setbacks for all lots in addition to the two front corner lots. Friedrich Moeckel of Tarbell Professional Association introduced himself as Mr. Davis's representative. Mr. Moeckel said he feels the Board accurately described the request before the ZBA. He said he would like

to clarify what "front yard" is and what "frontage" is. Mr. Moeckel stated that in Loudon Zoning Ordinance the frontage is not necessarily the front yard. He stated there are three roads for Mr. Davis to choose from with regard to front yard therefore it is not necessary to have relief from setback regulations. Mr. Moeckel stated that a front yard is anything that is on a street. He stated that Mr. Davis is not asking to put houses on lot lines but simply putting driveways where permitted, just a little closer to the setbacks. He stated that the neighborhood is not going to be affected because it is a new neighborhood and all will be new and similar. In addressing Lot 15 across from the Butterfields, Mr. Moeckel said when the applicant designs the house he will move it back from Lovejoy Road a little, stressing that he does not have to do this for any reason other than to accommodate the neighbors.

Chairman Powelson said this would seem a large leap from having frontage on three streets to not requiring any front setbacks. Mr. Moeckel said the definition of frontage does not distinguish between front yard, side yard, or rear yard and only refers to the area on the street. He then read the definition of frontage from the Zoning Ordinance. He went on to read the definition of front yard until stopped by Ned Lizotte. Mr. Lizotte referred to page 26 of the Zoning Ordinance, Requirements Applicable to All Use Districts, section 208.3 Corner Lots (B). Attorney Moeckel stated that driveways are on the lesser traveled road but the applicant can choose which road the front yard will be on. Ned Lizotte stated that the Board has seen the proposal before them as "Kristian Way" (not yet an accepted name) off Lovejoy Road. He said it has been accepted by most of the Board that the front of these lots would be Lovejoy Road or Kristian Way with the first lot being the one in question. Mr. Lizotte stated that Mr. Davis had told the Board at the September meeting that he got mixed up on the frontage of Lot 001 between Lovejoy and Kristian Way, saying Mr. Davis was not even talking about Batchelder Road. Mr. Moeckel said it does not matter if you pick Batchelder Road or Kristian Way as the lesser traveled road, the frontage is there. He said Lovejoy Road and Kristian Way have the front yard setbacks and Mr. Davis is able to choose Kristian Way as his front yard and meet the setback requirements. Roy Maxfield said that was about as crazy an idea as he's heard proposed. The attorney asked Mr. Maxfield why he felt that way. Mr. Maxfield referred to page 27, Section 208.3 Corner Lots (B), saying because it is a corner lot the frontage requirement shall apply to the heaviest traveled street. Attorney Moeckel stated that a front yard is different from frontage, saying a corner lot is a classic example. He said that is his position, based on the Zoning Ordinance. Mr. Maxfield said they understand Mr. Moeckel's position. Howard Pearl referred to page 93 of the Zoning Ordinance, the definition of front setback. Roy Maxfield said this turns the Zoning Ordinance upside down and they would be happy to challenge that if that is Mr. Moeckel's position. Mr. Moeckel said he did not come to this meeting to overturn the Zoning Ordinance but to articulate the interpretation of the Zoning Ordinance. Mr. Maxfield told Mr. Moeckel that he has made his position very clear.

There was discussion about driveways. Attorney Moeckel said they are simply asking for relief to allow driveways and in one situation move the house back by 15' to appease abutters. He said the only people affected by these properties being closer together will be the people who buy houses in this subdivision, no one else in town will be affected. Roy Maxfield asked how the reduction is going to appease an abutter. Mr. Moeckel said abutters are the future property owners who will make an economic decision that it will appease them because when they go in there they will see where their driveway has to be. Mr. Maxfield said Mr. Moeckel had a great argument for future owners but the folks across the road (Lovejoy) feel they have some frontage here and Mr. Davis shares some frontage here. He stressed that the ZBA defines frontage as the heaviest traveled road and that is what has to be complied with the 50' being on or ask for a reduction. Chip Davis said he could do something different on Lot 015 to appease the neighbor and wouldn't need the side setback relief. He said a different design could be used, still be attractive, and not be offensive to the neighbor. Mr. Davis said the house on Lot 001 is where it is and they need the relief of a

reduced setback. George Saunderson said this is a brand new subdivision and asked Mr. Davis why he could not design something to fit the lots rather than ask for special exceptions. Mr. Davis said the lots were designed based on the regulations. Mr. Saunderson asked if what Mr. Davis was saying is that according to regulations every lot is going to need reduced setbacks. Attorney Moeckel stated that when it comes to approving or denying the special exception, that issue is neither here nor there. Ned Lizotte asked Mr. Moeckel what he had just said. The attorney stated that Mr. Saunderson's question was irrelevant. Mr. Lizotte stated that the application is for reduced setbacks for the front lot and side setbacks for the entire subdivision. Mr. Moeckel said that was not altogether accurate. Mr. Lizotte pointed out that that is what the request is on the application that came before the Board. Attorney Moeckel stated that the application is for special exceptions for the driveways. Several members questioned what Mr. Moeckel was reading from as it was different from the applications before them. Mr. Saunderson referred to the application, asking Mr. Moeckel where it states that. Mr. Moeckel said the Board does not need to grant special exception on Lot 001. He was asked if Mr. Davis is asking for reduced setbacks for all of the other lots. Mr. Moeckel said that was correct, reduced setbacks for the driveways. Review and discussion of the application continued.

Attorney Moeckel then apologized to the Board, saying there is no mention of driveways on the application as he had earlier understood there to be. Chairman Powelson stated the Board will deal with the application as presented, saying the Board has heard from Mr. Davis and his attorney. Mr. Powelson asked if there was anyone wishing to speak in favor of the application. Hearing none, he asked if there was anyone wishing to speak against the application. Huntley Halvorsen, an abutter, stated that this house on Lot 001 does profoundly affect his house. Mr. Halvorsen said there is no buffer and the house is approximately 30' from Lovejoy Road. He said by asking for special exception Mr. Davis seems to admit the house is in the wrong place. Mark Seltzer, an abutter, stated that he submitted a letter in September and wanted to add that the new zoning ordinances require a 150' setback on open space subdivision yet this one was approved at 50' and Mr. Davis is asking for even more of a reduction. Mr. Seltzer said it is disappointing that it has come to this point.

Mr. Moeckel said he would like to address George Saunderson's question about the intent of the application, saying it is asking for relief of side setbacks. He said it was his understanding that Mr. Davis was asking for blanket relief to allow driveways in side setbacks. He stated that Mr. Davis had agreed to accommodate the abutter of Lot 15. Mr. Moeckel said he gave the Board an analysis of the Zoning Ordinance to point out that the Board does not need to grant a special exception on Lot 001. Chairman Powelson said it was his recollection, and believes the minutes indicate this as well, that Mr. Davis is seeking reduced front yard setback from 50' to 30' from Lovejoy Road and the rest of the lots could be addressed at a future time as permits came up. He asked the Board if that was an accurate recollection. There was brief discussion and the attorney repeated his former statements about the Zoning Ordinance, definitions, and relief sought.

George Saunderson stated that the Board had asked Mr. Davis to bring a plot plan in showing the house locations and setbacks, asking Mr. Davis if he had done that. Mr. Davis said he did not. Ned Lizotte stated that the regulations call for both conventional and open space plans to be submitted yet Mr. Davis had submitted only open space plans and those were without setbacks listed. Attorney Moeckel asked to clarify that the applicant was asked for a subdivision plat depicting all setbacks. Mr. Lizotte said that is required by the Planning Board as in the ordinances. Mr. Moeckel stated that this plan was approved by the Planning Board and he felt that the ZBA was crossing that line again. Howard Pearl stated that the Board had simply asked for the plans so they could visualize the lots. He asked Mr. Davis if he can fit houses on these lots. He also asked how special exceptions for driveways would affect the lots. There was discussion about the original request, the need for reduced side

setbacks to accommodate the driveway locations as designed and approved by the engineer and Planning Board, and the matter of the reduced front setback on Lot 001. Mr. Davis showed the driveways on a set of plans and explained the need for special exceptions due to drainage layout.

Referring to the chairman's previous recollection and reference to the minutes, Roy Maxfield said he has reviewed the minutes of the September 28, 2006 ZBA hearing where he had said "that the Board typically listens to abutters and their opinions so he is not in the mood of giving Mr. Davis 15 setbacks on vacant lots. Mr. Davis said that was fine, he thought he'd ask, and would build houses that fit the lots". Mr. Maxfield said there was some confusion there about the fact that when they wanted to zero in on this one lot and make a decision on this one lot it didn't get captured in the minutes. He said Mr. Davis's agreeing to only talk about this one was not captured in the minutes so they are back to dealing with his request for everything. Mr. Moeckel reviewed the points that the ZBA is required to consider. Martha Butterfield, an abutter, stated that it is unacceptable that this house on Lot 001 is so close to the road and, although she likes the house design, she wishes it had been better planned. Attorney Moeckel said he would like to state one last thing and that would be that it is inappropriate for the Board to deny the application because they do not like the plan or the fact that it was approved by the Planning Board. Mark Seltzer said it has been stated that there will be relief to the neighbors and asked where there is relief to Huntley Halvorsen. Mr. Davis said before he went to the Planning Board he specifically moved the roadway to accommodate Mr. Halvorsen. He said by doing so, that caused the problem with Lot 001, making it long and narrow. Mr. Davis said he felt where he put the house was not a bad spot and that he had designed an appealing house that would be viewed from three sides.

Chairman Powelson clarified that Mr. Davis is asking for approval as submitted. Attorney Moeckel said as clarified for driveways. He asked the Board to look at the Zoning Ordinance, front yard versus frontage. Mr. Moeckel stated that granting the special exception does not turn the Ordinance upside down.

The chairman closed the hearing; the application to be considered under Unfinished Business. Roy Merrill re-joined the Board.

Case # 06-17, Geraldine Gowlis – Variance, Map 12, Lot 33, Bee Hole Road. Chairman Powelson stated that this application would be continued to the next meeting because Ms. Gowlis or her representative was not present. Ned Lizotte stated that he felt the application should be terminated rather than continued. He stated that Ms. Gowlis has not been to talk with Code Enforcement as directed by the Board at the September meeting. There was brief discussion about the matter. Mr. Lizotte said, due to Ms. Gowlis's lack of dealing with the situation and her inaction, the application should be terminated. Roy Merrill said he agreed 100%. Roy Maxfield said this could be done as long as the hearing was re-opened.

Chairman Powelson opened the hearing. He asked if there was anyone who would like to speak for or against the application. Kendra Hebert stated that she had submitted a letter but would also like to address the Board, saying that she has been an abutter to this property for three years and has seen more than routine traffic in and out of the house. There was brief discussion about the type of traffic and activity seen at the house, making it appear to be a multi-family house. ***The chairman closed the hearing; the application to be considered under Unfinished Business.***

Case # 06-20, Michael Martel – Special Exception for Reduced Setback, Map 28, Lot 15, Oak Hill Road. Mr. Martel told the Board that he would like to construct a 32' x 50' barn on his property and is asking for a 10' reduction in the front setback. There was discussion about the property and Mr. Martel stated that he is doing some improvements. He explained the existing buildings and showed the location of the proposed building for which he has a

building permit. Mr. Martel stated that there is a slope on the back side of the building area, thus his request to move the proposed building forward by the 10'. Roy Maxfield asked how this would make things better. Mr. Martel said it would square things off, putting the new building into alignment with an existing structure. Chairman Powelson asked Mr. Martel to go through each point of the application. It was confirmed that abutters were notified. The chairman asked if there were any questions from the Board. There were none. He asked if there was anyone who would like to speak in favor of or against the application. Hearing none, ***the chairman closed the hearing; the application to be considered under Unfinished Business.***

III. UNFINISHED BUSINESS

Case # 06-15, Alvin R Davis III – Roy Merrill stepped down from the Board; Howard Pearl was named a voting member. ***Ned Lizotte made a motion to deny the application for reduced setbacks as presented. George Saunderson seconded the motion.*** Mr. Lizotte referred to page 2 of the September minutes, reading “Mr. Davis said that was fine, he thought he’d ask, and would build houses that fit the lots. Mr. Pearl pointed out that Mr. Davis had shown building setbacks on his plans for Ilona Lane and asked why the setbacks weren’t shown on this subdivision. Mr. Davis said it was an omission, nothing deliberate, and that Web Stout did it and he is not someone you can bully around to do something. Mr. Davis said he knew this question would come up and that he had looked at it too and honestly thought they were on there”. Mr. Lizotte stated that he spoke with Web Stout earlier today and had asked Mr. Stout if he had done conventional subdivision plans for this parcel. Mr. Lizotte said Mr. Stout told him he was not asked to do a conventional plan. He reported that Mr. Stout also told him that he was directed not to put the setbacks on the plans. He said that Mr. Stout told him in his business all the plans that he does and registers have side setbacks shown with the exception of Mr. Davis’s. Mr. Lizotte said there appear to be a lot of inconsistencies.

Roy Maxfield said he would take this one step further and referred to the existing house on Lot 001. Mr. Maxfield said the Board should clarify their position that it would require a 50’ setback from Lovejoy or a setback reduction so they don’t get confused with someone else thinking front setback on a piece of property as they deem appropriate. He said it is very clear in the Ordinance that front means front, facing a major road, and that is the way it has been interpreted since the Ordinance has been in existence. Mr. Maxfield said he would agree that each lot should be acted on individually. He said the property owner or developer of each lot should come before the ZBA if the need of special exception is there. Howard Pearl stated that he clearly has concerns on granting relief on every lot in the subdivision, saying he understands the drainage concerns with the driveways but would like to see houses designed for the lots rather than having to grant special exceptions for all of them. Dave Powelson asked if it is the Board’s finding that their interpretation of front setback would be to the road with the frontage, the major traveled road. Mr. Pearl said yes, he thinks it is very clearly spelled out. There was discussion about frontage, corner lots, and was stated that it is clearly addressed in the Ordinance. Mr. Powelson verified that the Board finds that this is where the front setback should be measured from. The Board agreed that the front setback is from the road of the frontage.

Chairman Powelson stated there are 16 questions that Mr. Davis has answered and in order for the Board to grant the special exception they have to find if he has met all 16 criteria for a special exception. Ned Lizotte said he made his motion to deny based on the application. Mr. Powelson said if the Board finds that Mr. Davis has not met all 16 criteria then they have to deny. The chairman said he feels it would be good to go through the

criteria to determine where Mr. Davis appears to meet and where he appears not to meet the criteria.

Roy Maxfield stated it appears that the applicant is asking for a blank check and there's nowhere in the Zoning Ordinance that allows that. Mr. Maxfield said the Board is not seeing the lot designs and when looking at the section about its impact on adjacent setbacks in the neighborhood he noted that the older houses on the road are all well back from the road so it would appear that Mr. Davis is not meeting the criteria. He stated that this house (Lot 001) is the only house within 75' of the road all the way up through Lovejoy, and he said there is no reason to grant a special exception when there are plenty of available opportunities for Mr. Davis to provide adequate frontage. George Saunderson stated that he would agree, citing section 204.5 (6, 7, and probably 9). Mr. Saunderson noted that not only are there aggrieved and complaining neighbors, there also is not a plot plan with setbacks on it and he does not see how the Board can do anything but deny the application. Chairman Powelson read from page 2, Section 1 of the application, #1 "Special Exception is specifically authorized in Article II or III of the Loudon Zoning Ordinance", asking if it is or is not allowed by the ordinance. Roy Maxfield said no, they are looking at 15 lots with no opportunity to make sure this is consistent, to make sure abutters are not affected, and to make sure that this is not going to diminish conditions...it is a blank check with no understanding of what impact that is going to cause. He said this needs to be looked at on a case by case basis. The chairman asked if the Board agreed. All said yes.

Chairman Powelson asked the Board to consider item #2. Howard Pearl said there are abutters that feel it would be detrimental. Ned Lizotte said he agreed. Chairman Powelson read each item. #3 Dave Powelson said he does not think so specific to the special exception. Roy Maxfield said he is not sure they know the answers as this is a blanket request. #4 Dave Powelson said apparently it does not appear to be. #5 Ned Lizotte said he is not sure they would know that at this point. Dave Powelson said he does not think the special exception would affect the amount of traffic. #6 Roy Maxfield said they don't know because it is a blanket request and are not looking at individual pieces of property. #7 The Board feels this is unknown. The chairman continued on to Section 2 of the application. #1 Ned Lizotte said he thinks the closeness of the lots would diminish light, air and space. #2 This is unknown. #3 It was felt that it will most likely increase storm runoff or drainage as the drainage has to go somewhere. #4 George Saunderson said they have some neighbors who think this would adversely affect abutting property values. #5 Chairman Powelson stated that Mr. Davis indicated on the application that this would actually increase the versatility of design for future homes in the subdivision. #6 Dave Powelson said everything in the area seems to have fairly substantial setbacks. #7 Roy Maxfield said no, this is not consistent with other setbacks in the neighborhood. #8 Roy Maxfield said if looking at the back lots, they don't know. #9 George Saunderson asked how far into the future the Board is supposed to look.

Chairman Powelson said he had tallied the responses on the application for special exception and has several 'don't know', a sure NO on #6, a sure NO on #7, and a NO for blanket for every lot in the subdivision. The Board agreed that they were ready to vote. It was asked that the motion be read again. The secretary repeated the motion. ***The chairman asked for a roll vote. Howard Pearl – Yes; George Saunderson – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous, application denied.*** Roy Merrill re-joined the Board.

Case # 06-17, Geraldine Gowlis – Roy Maxfield made a motion to deny the application. Ned Lizotte seconded the motion. Mr. Maxfield stated that the Board told Ms. Gowlis that multi-family dwellings are not allowed and asked her to do some things such as discuss this matter with the Code Enforcement officer. He said the Board has heard other things that she had in mind such as a bed & breakfast but there has been no further action by Ms. Gowlis.

Mr. Maxfield said this is in a single family district and will be a single family house. Ned Lizotte stated that the applicant should be directed to dismantle the extra kitchens. Chairman Powelson stated that was not part of the initial motion and is not sure if it has to be. Mr. Lizotte said he thinks it is appropriate for the ZBA to give some direction yet deny the application for the variance as this does not fit the Zoning Ordinance. Roy Merrill suggested that the Board could make a motion to have it brought into compliance. Roy Maxfield said that could be done. Roy Merrill made a motion to bring the house into compliance with the Zoning Ordinance. Ned Lizotte seconded the motion. Roy Maxfield said they should amend the initial motion to deny the application to include that the house be brought into compliance. That was seconded by Ned Lizotte. The chairman clarified that the motion was to deny the application for a variance for three kitchens and bring the house into compliance with the town's Zoning Ordinance. There was discussion about the motion and that the directive may be going beyond the Board's duty. Dave Powelson said it would appear that it would be up to Ms. Gowlis to bring the house into compliance, the Code Enforcement officer to enforce it, and the Board to act on the application as presented. The secretary stated that the Code Enforcement officer is given a copy of the notice of decision rendered by the Board. The chairman asked the secretary to read the motion back. Once the motion was read, the chairman said that acting on the application is what the Board is expected to do more so than tell Mr. Fiske to bring it into compliance. Ned Lizotte stated they are acting on the application and also enforcing that with direction for the Code Enforcement officer so that it is clear and there is no gray area. Howard Pearl asked if Mr. Fiske wouldn't know to enforce the ordinance if this application is denied by the Board. There was further discussion about the best way to ensure compliance with the Ordinance. Chairman Powelson asked the secretary to read the motion once again. ***The motion is to deny the application for a variance for three kitchens and bring the house into compliance with the Zoning Ordinance. The chairman called for a roll vote. George Saunderson – Yes; Roy Merrill – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous, application denied.***

Case # 06-20, Michael Martel – ***George Saunderson made a motion to approve the application as submitted. Ned Lizotte seconded the motion.*** Chairman Powelson stated that Mr. Martel had gone through all 16 points of the application and all had been met. Howard Pearl stated that he knows Mr. Martel's property and what he is doing to the property is a definite improvement. Roy Maxfield said there is a steep slope in the back, this has been done for others in that area, and this would make sense as there are ample setbacks on the property. Dave Powelson said this would be consistent with other setbacks on the lot. ***He then called for a roll vote. George Saunderson – Yes; Roy Merrill – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous, application approved.***

IV. DISCUSSION:

Anthony Greska spoke about a letter he submitted to the Board requesting an extension on his building permit #06-009 issued January 3, 2006. Mr. Greska explained his circumstances as he had outlined in the letter, saying he has not been able to work due to accident-related injuries. Roy Maxfield asked what type of permit Mr. Greska was asking to extend. Mr. Greska said it is for a house and a garage to be built on Kenney Road. Roy Maxfield clarified that Mr. Greska is asking for the extension because he has not been able to get the foundation and septic completed. Mr. Maxfield stated six months is generally what has been granted for extensions. Mr. Greska said he is asking for a year because the permits begin in January and there isn't much that can be done about putting in a foundation and septic weather-wise. There was discussion about the request and what was thought to be a reasonable extension. ***Roy***

Maxfield made a motion to extend permit #06-009 issued January 3, 2006 by one year for the purpose of getting the cellar hole and septic in due to injuries to the applicant. Ned Lizotte seconded the motion. There was no further discussion. All were in favor.

Chairman Powelson said the only other business to address was the November meeting. The fourth Thursday is Thanksgiving so the meeting would need to be changed to a different date. Because there is a fifth Thursday in the month this year it was suggested that the Board meet on that day, November 30th. All were in favor of the change.

VII. ADJOURNMENT:

Jon Huntington made a motion to adjourn the meeting at 9:10pm, seconded by Ned Lizotte; all were in favor.

Respectfully submitted,

Donna White, Secretary