

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
SEPTEMBER 28, 2006**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting on September 28, 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 AUGUST 24, 2006 MINUTES:

Roy Maxfield made a motion to accept 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 as he has had business dealings with Mr. Davis. Howard Pearl was named as a voting member in Mr. Merrill's absence.

Mr. Davis began by saying he wanted to apologize to the Halvorsons as an error was made in the placement of the house on Lot 001. Mr. Davis handed out designs of the house that is under construction, explaining that he used this design knowing that the house would be seen from three different roads. Mr. Davis said he had set the house back 95' from the proposed new road, using that as the front setback, and had at least 30' to each side of the house. He said had he known that corner lot setbacks were different he would have done a different size house. Mr. Davis explained that he is saving rocks removed from the bar way to rebuild the stone wall, and he said he is more than willing to put more screening in for the Halvorsons. He stated that he had specifically pushed the new road over closer to the stone wall so as not to have car lights shine on the Halvorson's house. Mr. Davis said moving the road over made this lot, and others on this side of the new road, long and narrow. He said at the time of the subdivision the road frontage requirements were 100' and had that been done and had he followed the rules of the corner lot this lot would have 50' off Lovejoy, 40' off the back line, and 10' to put a house. He said he went wider on the lots because of the well radii and those dictate that lots needs to be 125-130' wide and that was a saving grace in this case. Mr. Davis said it is his personal opinion that seeing 34' of the house where it's placed is less of an eyesore than 60' spread out that may not be designed to have an attractive side. He said he basically made a mistake in not being aware of the corner lot rule.

Chairman Powelson said he is confused as to how they got to this point with a lot 100' wide. Mr. Davis said the frontage includes the radius on the edge of the lot. George Saunderson asked Mr. Davis, after getting the building permit for the first lot, if the Planning Board approved where the house was going. Mr. Davis stated that the Planning Board has nothing to do with the house location. Mr. Saunderson questioned the building permit sketch and asked Mr. Davis if he checked with anyone before he moved the location of the

house. Mr. Davis explained that because the building permit list is extended so far out he had to submit a plan to get on the list and at the time he did not know just how the parcel would be subdivided. Roy Maxfield asked if it was agreed that Lovejoy is the front road. Mr. Davis said the regulations of a corner lot state that the major travel way is the frontage. Mr. Maxfield asked if Mr. Davis was requesting to reduce the setback from 50' to 15'. Mr. Davis said 50' to 30', explaining that it is 34' from the stone wall per his surveyor. He said he could design a smaller house for Lot 015 to avoid this situation.

Mr. Saunderson asked Mr. Davis if he had shown the setbacks on the plan he submitted. Mr. Davis said he had not as there was no mention of them to him or in the zoning ordinance at the time for open space subdivisions. He said he assumed the setbacks were the same as the zone he was building in. Ned Lizotte stated the setbacks follow those of the RR district, as noted in the 2005 ordinance. Mr. Davis said this layout was a mistake, not knowing the corner lot rule. Mr. Lizotte said the frontage on the proposed new road is less than the required 120'. Mr. Davis said they have to count the radius in that measurement. Chairman Powelson clarified that Mr. Davis is seeking one side setback for one lot and one building. Mr. Davis said on this particular lot it would be the front setback from 50' to 33'. He then suggested the Board stop to discuss this first request. He said the roadway plan shows the driveways next to each other because of drainage and this puts them in the side setbacks, thus the need for other special exceptions. The chairman stated it might be best to discuss one at a time. He clarified that Mr. Davis is asking for a front setback reduction on Lovejoy Road. Mr. Davis said he had listed it as a side setback, thinking the front setback was off the new road, saying it is not the front of the house that faces Lovejoy.

George Saunderson asked Mr. Davis how many lots he will be asking for special exceptions on. Mr. Davis said all of them, saying that the Board would be faced with future requests for special exceptions if not done at this point. He said all of the lots are very close to the size of Village lots which require 15' side and front setbacks and 25' rear setbacks. Howard Pearl questioned why a 15 lot subdivision had been designed, knowing it would need special exceptions. Mr. Davis said he does not have to have the special exceptions and could design houses to fit the lots without special exceptions, saying he thought it would be easier to deal with all of them now. The layout of the driveways and drainage are what dictated the need for the special exceptions. Mr. Davis said he could disclose to all prospective buyers that they have reduced setbacks before purchasing the lot as opposed to them moving in, having to deal with neighbors and then having to go to zoning. Roy Maxfield stated that the Board typically listens to abutters and their opinions so he is not 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. 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.

George Saunderson asked Mr. Davis if it is the ordinary rule that cluster developments are to have 150' setbacks around the development. Mr. Davis said it is not necessarily the ordinary rule as it is different in every town. Mr. Saunderson asked Mr. Davis if it is the ordinary rule in Loudon. Mr. Davis responded that it was not when this subdivision was done in 2005. He said the regulations at the time allowed for roadside lots that required the frontage for the particular zone with one half of the typical lot size and could exit onto the main road. Mr. Davis said he did not like that idea so went with this layout. Mr. Saunderson asked Mr. Davis if he is saying that the 150' setback all around the parcel is not the rule in Loudon. Mr. Davis said it was not the rule when he first went for the subdivision that was

granted in July of 2005, saying it would not be worth doing because you would lose so many lots.

Chairman Powelson suggested dealing with the most pressing issue first and that would be the reduced front setback for Lot 001. Mr. Davis agreed, saying he would then like to address the other lots for driveways. He explained that the driveways were close together for drainage purposes and he understands that the Board may not want to issue a blanket special exception; he just thought it might make it easier for the future. Howard Pearl referred to the Land Development Regulations Section 23.8.1. Mr. Davis countered that Section 23.8.5 says you can use the road front as frontage and there was also a rule at the time that said a lot had to be one acre. Mr. Pearl asked Mr. Davis if he is saying that 23.8.5 eliminates the 150' buffer. Mr. Davis said with the road frontage, yes. He said he followed all of the rules required at the time. Ned Lizotte pointed out that Section 23.8.1, Special Setbacks, reads "150 feet in width", saying that is one of the requirements. Mr. Davis stated that he met the 150' around two sides and that 23.8.5 took care of the other two sides. Roy Maxfield asked Mr. Davis if he was telling the Board, after having said that and having known that and having based his original argument on that, that he put the house 30' from the road and he didn't know. Mr. Davis asked what Mr. Maxfield was referring to. Mr. Maxfield said he was referring to Mr. Davis not knowing that the lot had to be in 50'. Mr. Davis said they had been talking about the 150' buffer. Mr. Maxfield stated that Mr. Davis's argument has been that he does not have to be 150' from Lovejoy but does have to have appropriate frontage and needs to be 50' from the frontage to comply with zoning, follows that would be a logical conclusion, and not that his argument was logical, was basing the front on the new road. Ned Lizotte suggested to Mr. Davis that if he knew one, he knew the other. Mr. Davis said he did not think the frontage was on that road; he felt he was creating the frontage on the new road. Howard Pearl addressed the 150' buffer, saying that it would appear that Mr. Davis used LDR Section 23.8.5 to get around Section 23.8.1. Mr. Davis stated that is the way he interpreted the buffer rule. Ned Lizotte asked Mr. Davis why he did not ask for clarification if he wasn't clear on its meaning. Mr. Davis said 23.8.5 made it sound like he could use the frontage as the buffer. Roy Maxfield asked if there are any sight distance issues with the house being where it is. Mr. Davis stated there are not. George Saunderson asked Mr. Davis if he could pencil in where the house would go, assuming there was not a special exception on Lot 001. Mr. Davis pointed this out on maps, giving the 50' front setback, the 40' rear setback, and stated there could be a 35' house in the middle of the 125' wide lot.

Chairman Powelson asked Mr. Davis to go through his application as to why the special exception is needed. Mr. Davis covered each point of the application. The chairman asked if there were any questions from the Board. There were none. He asked if the Planning Board representative in the audience had any comments. Mr. Prescott said he did not at this time. Mr. Powelson asked if there was anyone who would like to speak in favor of the application. Bernie Albair stated that when his house was built, prior to excavating, the house and driveway had to be staked out and inspected. Mr. Albair said he does not understand how this was okay that the house was moved. Mr. Davis said the house was staked where originally shown on his building permit application and then staked in the new area. Mr. Albair asked if it was inspected after being re-staked. Mr. Davis said he was not sure. Mr. Albair stated that it seems that the whole house was planned with the frontage being on the new road. He said that where Mr. Davis put the house, facing the new road, seems to make the most sense.

Abutter Huntley Halvorson said he understands what Mr. Davis is going through but the house could not have been put in a worse spot for their house. He submitted a letter and two pictures (before & after) of the lot as seen from his house across Lovejoy Road. Mr. Halvorson referred to page 4, item # 1 of the application, which reads "on Lot 001 existing building footprint is separated by Lovejoy Road, stone wall and trees from nearest abutter".

Mr. Halvorson stated that no one has said anything about trees being planted until tonight and pointed out in the pictures that it is not separated by trees but looks directly at his house. He asked if the 2500 sf mentioned by Mr. Davis includes the basement. Mr. Davis stated it is 29' x 34' on the first floor, 34' x 34' on the second floor, and the area above the garage.

Abutter Mark Seltzer stated that he lives at Lovejoy and Batchelder Roads. He said he appreciates the type of house that Mr. Davis is building but does question how it got to this point, asking about the requirement of a 150' vegetative buffer. Mr. Seltzer said he has a hard time understanding how this goes from the 150' buffer that voters from the town agreed to, to a 50' setback to a 30' setback. Abutter Martha Butterfield stated that she lives across from Lot 015 and asked Mr. Davis how he would be placing that house. Mr. Davis said he will design something suitable for the lot. Mrs. Butterfield asked if she would be looking at one long house, similar to a mobile home. Mr. Davis said he would design something attractive that would fit the lot. He talked of other ways he could have put the house in across from Mr. Halvorson but thought the way he did it was less egregious. Mr. Davis said he understands that no one likes to see a subdivision come in when they have a beautiful open field across the street. Mr. Halvorson stated that he had accepted the subdivision but not the placement of the house.

Roy Maxfield asked Planning Board member Stan Prescott if this is the subdivision that got away from them, thus the subsequent work in order not to let it happen again. Mr. Prescott said the Planning Board had approved it with second thoughts afterward. He stated that he was the only dissenting member at the time, and there has been a lot of thought given the project since, thus the open space improvements. Mr. Maxfield asked Mr. Prescott if it would have changed the frontage issue in this situation. Mr. Prescott said he thinks the intent was to have the 150' buffer and they have since strengthened that. He said there is an open space subdivision application before the Planning Board at this time that will have the buffer around the entire development, and that was the spirit and what was meant on Mr. Davis's project.

Ned Lizotte asked to address Mr. Davis for answers to an outline that was assembled with some of the history of this subdivision.

1. *May 5, 2004, Original application for 1 building lot. Front setbacks 75 feet, rear setbacks 500 feet, side setbacks 75 feet. Building permit to be issued on 1/3/2006. Original site plan from Web Stout submitted with one house and septic system in position and enough information to give the house setbacks. Q. Where is the building now from the original permit? Why did you move the house from the original site plan without a new/revised application?* Mr. Davis stated that he did not think that he needed to, explaining that this is done on many subdivisions where a building permit is issued on the main parcel and the house location is moved around.
2. *Site plan was rushed through Planning Board meetings of June/July 2005. Change to a new submission of an open space site plan on property. Complete change of intent from original application for 2006 building permit. No new application submitted for update of building permit to an Open Space project. Q. Have all the requirements of an open space subdivision been met? Have you executed a deed to the town?* Mr. Davis said that the deed has not been done as he is waiting for the town to send him revised minutes of the 7/21/05 Planning Board meeting. He said the minutes had been changed by the Planning Board adding an additional condition to the approval of his subdivision. He said the minutes were supposed to be amended and he can not sell a house until the deed is done nor will a certificate of occupancy be given.

3. *Open Space approval for project appears to be invalid as criteria for submission of two sets of plans have not been met by developer. Version 1: Developer to submit a plan showing the proposed development under conventional zoning and Version 2: a plan showing the open space provisions. Both plans to include sufficient detail to allow the Planning Board to make an informed decision when comparing them. Mr. Lizotte stated that that is right from the book. Mr. Davis asked if it was in the book at the time of his application. Mr. Lizotte confirmed that it was. **Q. Open space has a required 150 foot setback around the property on all sides. Where are they indicated on your current plan?** Mr. Davis showed the 150' strips along one side and to the rear of the development. Mr. Lizotte asked Mr. Prescott if the 150' buffer was intended to be around the entire subdivision. Mr. Prescott stated that Mr. Davis considered the roads as abutters. He said he contends that the buffer should have been around all sides of the parcel. George Saunderson read the definition of abutter as given in the NH Planning and Zoning Regulation handbook. *Abutter means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board.* Mr. Davis insisted that he was covered by Section 23.8.5, and he asked if Mr. Lizotte is questioning the validity of the entire subdivision. Mr. Lizotte said 'absolutely'.*
4. *Applicant had full knowledge of what was required for this project and it is his responsibility to provide the Planning Board all credible information due to his prior experience in providing the correct plan information from his project on Ilona Way up off Hemlock Drive in Loudon. His site plan for that project includes all setbacks, septic and house foundations. On his current plan for Kristian Way, only the well and septic notes are listed. There are no references to any lot with regards to setbacks and house foundations. **Q. Did you have your surveyor draw up any other plans with the necessary information of house foundation, side setbacks, and 150 foot buffer zone setbacks?** Mr. Davis stated that he left this up to Mr. Stout to provide what is needed and said that is what the Planning Board is for, to help go through the planning steps. George Saunderson pointed out that there is a large amount of sub-dividable land off to the right of the cul-de-sac and he suggested to Mr. Davis that should this plan come back before the Boards he combine the areas and allow for the setbacks. Mr. Lizotte said he is baffled, that Mr. Davis has done this before as seen on the properly marked plans of Ilona Way, yet there are none on this plan and he is surprised Mr. Davis could have missed that fact. Mr. Davis said again that he left it up to Mr. Stout and it was missed. Mr. Lizotte pointed out that it is listed in the regulations and is Mr. Davis's responsibility. Mr. Davis explained that the two plans were done by two different surveyors and as plans go before the Planning Board if something is missing it is noted and fixed.*
5. Mr. Lizotte read point #5 as follows: *Applicant's open space project appears to be invalid due to complete change of intent from original building permit application for one house lot; change of project without complete documentation to back it up for approvals from Planning and Zoning Boards and lack of required plans showing the required zoning ordinances and the open space provisions not having been met yet. The applicant should be required to go back to planning to meet the 2006 regulations for Zoning and Planning.*

Mr. Davis asked who wrote this outline. Mr. Lizotte stated that he wrote it because he didn't feel Mr. Davis had met the criteria. Mr. Davis said he had been through the proper planning steps. Mr. Lizotte stated that he feels there were too many gaps.

Jon Huntington asked Mr. Davis where in town a building permit has been issued and the house arbitrarily moved. Mr. Davis stated that it has been done in Merullo subdivisions. Tony Merullo stated this is somewhat common to determine the entire parcel and apply for a permit before subdividing but you really have to know where the house is going to be. He said you can have movement within a few feet and you would generally sub-divide around the house already permitted. Mr. Merullo said he feels a contractor puts the house and sub-divides around it, not put the house and sub-divide through it and have to move it to a different area. George Saunderson asked if the general rule would be the smaller the lot, the less room to move the house. Mr. Merullo said that was true and it required planning in the beginning. Mr. Davis stated that at the time of purchase he was not sure how the parcel would be subdivided and explained the need to get the plan approved in order to get on the building permit list. Mr. Lizotte said there was a big gap in the intent of the original building permit and where he is right now. Mr. Davis said the intent was to build one house this year. Mr. Lizotte feels this is a dramatic change. Mr. Davis said there is one permit, one lot to build on, and this became what was considered the first lot in the subdivision. Jon Huntington stated it is not where Mr. Davis said it was going to be built.

Howard Pearl asked Stan Prescott at what point the Planning Board considers a sub-division to be complete. Mr. Prescott said it is complete when it meets all of the regulations that are set forth. Mr. Pearl stated that it appears that Mr. Davis is asking the Board to consider this under the 2005 rules yet all criteria has not been met. Mr. Davis said it has not and that the only criteria left is to sign the deed over to the town and the town was going to provide him part of that with a copy of the revised minutes. Mr. Pearl asked Mr. Davis if all the criteria of the sub-division had been met. Mr. Davis said they do not have the deed yet. Mr. Pearl asked Mr. Davis if that was a yes or no. Mr. Davis said no. Mr. Pearl asked the Board if they can issue a special exception on a plan that is not complete. Mr. Lizotte and Mr. Maxfield said they can not. Mr. Maxfield stated there is a bigger issue but isn't sure this is the time to address it or if it should be under unfinished business. He said he goes along with Mr. Lizotte's second recommendation which is send him back to Planning and correct the mistake that was made. The chairman asked if there were any other questions or comments. **Hearing none, Chairman Powelson closed the hearing; application to be considered under Unfinished Business. Mr. Merrill re-joined the Board.**

Case # 06-16, Robert Young – Special Exception for reduced side setback, Map 11, Lot 16, Chichester Road. Mr. Young explained that he would like to put up a hobby greenhouse made of double poly and unheated. He went through the points of the application, asking for a reduced side setback from 30' to 15'. Mr. Maxfield asked if abutters have been notified; it was confirmed that they have. The chairman asked if there was anyone wishing to speak in favor of the application. Mr. Huntington asked if Mr. Young would need a building permit. Mr. Young said he has been to the building inspector and was sent to the Zoning Board. Abutter Evangia DeCato asked Mr. Young if the greenhouse would go in the area of the existing shed on his property. Mr. Young clarified the location on the map he provided. Mrs. DeCato said she was fine with the location as long as it wasn't any closer than 15' to the property line. Mr. Maxfield asked Mr. Young if he would consider removing the greenhouse when it shows signs of deterioration. Mr. Young showed the Board pictures of the proposed greenhouse and agreed that he would not leave anything decrepit in his yard. Mr. Powelson asked if there was anyone wishing to speak against the application. **Hearing none, the chairman closed the hearing; application to be considered under Unfinished Business.**

Case # 06-17, Geraldine Gowlis – Variance, Map 12, Lot 33, Bee Hole Road. Ms. Gowlis explained to the Board that she would like a variance for her home on Bee Hole Road so that she can leave it with multiple kitchens. She explained that the town has been taxing her as having two in-law apartments which she said is incorrect. She told the Board that her mother, sister, two sons, and a cousin lived with her but said it is a one family house and because of the size of the house, needs additional kitchens. She has downsized, is trying to sell the house and feels it would sell easier with the extra kitchens. Ms. Gowlis said she was not aware that she was to have building permits to install the additional kitchens, which were put in to make it easier at holiday time or when coming in from working outside or being in the family room. Mr. Maxfield asked the applicant how she got to the Zoning Board. Chairman Powelson showed the Board a copy of Ms. Gowlis's tax card that indicates the two in-law apartments. Ned Lizotte said that real estate agents are marketing the property with two in-law apartments, showing a copy of the ad he found. Ms. Gowlis stated it is an extended family house, not two in-law apartments. Mr. Lizotte stated that he is not sure how she got this far without the building inspector knowing there were additional kitchens in the house. She said she wasn't aware that she needed permits. Roy Merrill asked if there were any permits pulled. Ms. Gowlis said there were not, thinking permits were only required when installing bathrooms.

Mr. Lizotte asked how it was that the house is being listed as it is. Scott Jackson, Ms. Gowlis's realtor, said the information for listing was taken from the tax card. He stated that he has since talked with Bob Fiske. Roy Merrill said the code enforcement officer determines if they are apartments by the number of kitchens and noted there have been several in town that have had to take them out. Mr. Lizotte stated that in-law apartments are illegal in Loudon. Ms. Gowlis stated that she will have to take the kitchens out if she does not get a variance. Mr. Lizotte confirmed this. Ms. Gowlis asked if she would take them out and then go for permits and put them back in. Mr. Lizotte said she would have to take them out and that is it, they are not allowed. Roy Merrill explained that the house is being marketed with multiple kitchens and someone could buy the property and use them as apartments. There was discussion about someone buying it, thinking it would be a good rental property. Chairman Powelson asked how the Board defines 'removal of kitchens'. Several members said that is up to code enforcement. The chairman said he believes a sink is permissible but once there is a stove it is considered a kitchen. Roy Merrill said that Mr. Fiske had told him that if there is a stove it becomes another apartment. Discussion followed about listing the house, how this situation could have been avoided had the applicant gone for permits prior to installation of the additional kitchens, and what documents a kitchen.

Chairman Powelson asked if it would be worth reviewing the points of the application. Mr. Maxfield stated he did not feel they need to go through the application. Ms. Gowlis suggested ways of keeping at least one of the additional kitchens. Mr. Lizotte said he does not understand what difference this makes to Ms. Gowlis if she is selling the property. Ms. Gowlis said she does not think it will sell with only one kitchen because the house is too big. Mr. Lizotte said there have been other large houses that have sold with only one kitchen and he does not feel this is reasonable criteria to allow for a second kitchen. There was discussion about the entrances/egresses of the house and it was suggested that maybe it should be put in the deed that it is a single family dwelling or at least on the tax map. Mr. Maxfield explained to Ms. Gowlis that if this was just a large family being discussed as compared to three separate living units then the building inspector might view it differently. Mr. Maxfield suggested the Board turn this over to compliance officer to work with Ms. Gowlis to come up with something that is sellable and comply with the ordinance. Ms. Gowlis asked what she should do next. Mr. Maxfield suggested that the application be tabled until the compliance officer comes back with a resolution that is satisfactory to him and then deny the application. He said the Board would contact Mr. Fiske and have him

contact Ms. Gowlis. Chairman Powelson asked if there was a motion. **Roy Maxfield moved to table the application pending the compliance officer's review of the premises; seconded by Ned Lizotte. All in favor.**

Case # 06-18, Ken Conte – Special Exception for reduced setbacks, Map 20, Lot 32, Berry Road. Mr. Conte explained that he is proposing to put a farmer's porch on the front of this newly constructed home and a deck on the side of the home. He said the house is 28' from the side line and 52' from the road. There was discussion on how the measurements were taken. Tony Merullo said the 52' was from the boundary as surveyed. Chairman Powelson clarified that the porch on the front would bring the front line to 46'. Mr. Maxfield clarified that the deck on the side would bring the side line to 28'. Mr. Powelson asked if there were any questions from the Board. Hearing none, he asked Mr. Conte to read through the points of the application. Once the application was reviewed Mr. Powelson asked if there were any questions from the Board. Hearing none, he asked if there was anyone in the audience who would like to speak in favor of the application. Steve Jackson stated that he lives on Berry Road and these are smaller lots. He said the farmer's porch and deck would bring additional value to the property and area. Mr. Powelson asked if there was anyone who would like to speak against the application. **Hearing none, the chairman closed the hearing; application to be considered under Unfinished Business.**

Case # 06-19, Robert Every – Special Exception for Major Home Occupation, Map 20, Lot 32, South Village Road. Mr. Every explained that this is a rental property and was approved for a home occupation in 1991; however, the original application stated that there would be no signage and it was approved prior to the ordinance of minor and major home occupations. He said he would envision a 2 x 2 sign for identification of the business. Roy Maxfield stated this seems to be pretty straightforward, saying it is what the original applicant used it for except for the sign and employees. He said he would go along with a 2 or 3 person professional office and if it becomes more than what approved for he would have to come back to the Board. Ned Lizotte asked if the tenant would live there and have an office. Mr. Every said that was correct and he has spoken with both of the abutters, neither having a problem with the plan. The chairman had Mr. Every go through the application. After Mr. Every covered all points of the application, the chairman asked if there were any questions from the Board. Mr. Maxfield asked how many cars could be parked at the property. Mr. Every stated five cars can park in the yard, three headed into the fence area and two in the upper driveway. Abutters have been notified and there was no one from the audience who wished to speak to the application. **Chairman Powelson closed the hearing; application to be considered under Unfinished Business.**

III. UNFINISHED BUSINESS

Ned Lizotte suggested taking the applications in reverse order; the board concurred.

Case # 06-19, Robert Every – Roy Maxfield made a motion to approve the Special Exception for a small professional office not to exceed the tenant and up to two part time employees and not to exceed five cars. Roy Merrill seconded the motion. There was discussion about the number of employees. The motion stood as initially stated. **Roll vote: George Saunderson – Yes; Roy Merrill – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous; Special Exception for Major Home Occupation approved.**

Case # 06-18, Ken Conte – Roy Maxfield made a motion to approve the Special Exception to reduce front setbacks from 50' to 40' and side setbacks from 30' to 25'. George

Saunderson seconded the motion. **Roll vote: George Saunderson – Yes; Roy Merrill – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous; Special Exception for reduced setbacks approved.**

Case # 06-17, Geraldine Gowlis – **Tabled under Public Hearings**

Case # 06-16, Robert Young – George Saunderson made a motion to approve the Special Exception for reduced side setback. Roy Maxfield seconded the motion, adding as long as the greenhouse remains in good repair. **Roll vote: George Saunderson – Yes; Roy Merrill – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous; Special Exception for reduced setback approved.**

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 applicant's request for reduced setbacks. George Saunderson seconded the motion. Chairman Powelson stated that they would need a reason to deny. Mr. Lizotte said he moved to deny the application because the setbacks are against the Zoning Ordinance. Roy Maxfield said a special exception is an applicant's right provided it does not infringe on someone else's right and it is a pretty low hurdle to overcome. He said he does tend to agree that the building permit and site plan in this instance were not appropriately obtained or implemented. Mr. Maxfield said he feels that Mr. Lizotte's second motion will do a lot to explain what the Board sees as a solution, and he thinks the reason they have to deny the application is that the building permit was moved around and has not had appropriate approval. George Saunderson said that Mr. Davis did state clearly that a mistake was made. Howard Pearl asked for the motion again. Mr. Lizotte stated that his motion is to deny the applicant's request for reduced setbacks. Mr. Pearl asked to clarify that it is on that one lot. Mr. Lizotte said it was on the whole application. Mr. Pearl stated that his concern is this is not a completed sub-division and not all conditions have been met. Roy Maxfield said that might be the point that Mr. Lizotte raised earlier that if he went with his second motion referring the applicant back to the Planning Board for review and reapplication, that would probably answer Mr. Pearl's question and be a good reason to not approve this application. Mr. Pearl asked if it might be better to make a motion to table the application rather than deny it. Mr. Lizotte said he thinks it should be denied based on the application for reduced setbacks and that motion needs to be addressed right now, and then, because of what he outlined and the two criteria not being met, that would be voiced in his second motion.

Chairman Powelson said he was thinking it might be best to table this motion until hearing the second motion. Mr. Maxfield stated that he was not opposed to tabling the motion, saying it does not do any harm to table it except we are not making ourselves perfectly clear. Howard Pearl said he feels that the second motion might make it perfectly clear. George Saunderson suggested that Mr. Lizotte withdraw his motion for now rather than tabling it. Mr. Lizotte stated he would withdraw the motion to deny the application for special exception for reduced setbacks, with the option to bring it up again in the hearing.

Ned Lizotte made a motion to require the applicant to return to the Planning Board for a complete review of 2006 zoning and planning requirements. Howard Pearl seconded the motion. Roy Maxfield said he feels this is a can of worms and he thinks that Mr. Davis needs to be directed back to the Planning Board and that the ZBA needs to get some direction for this particular piece of property. He noted that there have been some fairly nice homes build in this area and to park something on the road across the street is not his intention of managing the ordinance very well. Mr. Maxfield feels that the Planning Board needs to look at this and make sure they have done their planning appropriately. He said if the Planning Board comes back with the same thing then the ZBA will address the setbacks at that time. The chairman asked if there was any other discussion, saying that it does seem

that the subdivision is incomplete at this time. Ned Lizotte said he thought they should vote. **Roll vote: Howard Pearl – Yes; George Saunderson – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous; Motion to require applicant to return to the Planning Board for a complete review of 2006 zoning and planning requirements approved.**

Roy Maxfield asked Howard Pearl made a motion to table the application until further review by the Planning Board. Roy Maxfield seconded the motion. The chairman clarified the motion. There was discussion about having the Planning Board review the site plan, possibly revoke any permits, establish a buffer, and giving the Planning Board the opportunity to reconsider the project if they choose. **Roll vote: Howard Pearl – Yes; George Saunderson – Yes; Ned Lizotte – Yes; Roy Maxfield – Yes; Dave Powelson – Yes. Unanimous; Motion to table the application until further review by the Planning Board approved. Roy Merrill re-joined the Board.**

IV. DISCUSSION:

James McNeil – Mr. McNeil explained that he has been approved for a 2007 building permit and would like to be able to put the foundation in and cap it before this coming winter. There was discussion that covered winter construction, setting precedent, and the fact that building permits are issued in January, the foundation must be in during the first year, but the applicant doesn't have a full year because of weather conditions. Tony Merullo stated that the town of Barnstead has a provision that an applicant can apply for an early start. This allows the applicant to do the foundation which is inspected and capped, with no further construction being done until after the first of the year when the permit is issued. He explained that there is an extra fee, and the town sends a letter to applicants for the following year to advise them of the early start permit if they are interested. Discussion covered changing the time of issuance of building permits, possibly introducing this type of early start program, and gathering information from Barnstead. Mr. McNeil asked about constructing a barn on the property. Discussion followed about accessory buildings. Mr. McNeil asked if this is a matter for the selectmen at this point. Roy Maxfield stated that he feels that the selectmen could take care of it. Steve Jackson spoke about the spirit of the building permit for growth management, saying he likes the idea of permits issued by the fiscal year and that he feels there is a lot of micromanagement of a building permit.

VII. ADJOURNMENT:

Jon Huntington made a motion to adjourn this meeting at 10:00pm, seconded by Roy Maxfield; all were in favor.

Respectfully submitted,

Donna White, Secretary