

**TOWN OF LOUDON
ZONING BOARD OF ADJUSTMENT
MINUTES OF
JANUARY 25, 2007**

REGULAR HEARING

Chairman Dave Powelson called the Loudon Zoning Board of Adjustment meeting on January 25, 2007 to order at 7:30 PM at the Loudon Community Building.

ROLL CALL:

The following members were present: Dave Powelson, Chairman; Ned Lizotte, Roy Merrill, George Saunderson, and alternate Howard Pearl. Howard Pearl will be a voting member for this meeting.

I. ACCEPTANCE OF THE DECEMBER 28, 2006 MINUTES:

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

II. PUBLIC HEARINGS:

Case # 06-22, DJP Realty Trust – Special Exception for Reduced Setback & Variance for steep slopes, Map 12, Lot 4. Friedrich Moeckel, Shane Stewart, Web Stout and Joe Bohi were present for this case. Mr. Moeckel spoke on behalf of Mr. Bohi. He reminded the Board that this case came before them in November and that a site walk was done at the property in early December and did an overview of the process to date. Mr. Moeckel said the two issues before the Board are to allow a driveway in the side setback of Lot 2 and to allow a driveway in the steep slope district. Web Stout explained the history of the parcel. It was noted that an area of the road is in slopes. Shane Stewart stated that this parcel has been before the Planning Board two or three times as a cluster subdivision as the applicant had wanted open space. Mr. Stout said the road is 850-900 feet and the cul-de-sac is larger than required. Mr. Moeckel said this parcel is different from others since portions of the slopes have been created over time through sand and gravel operations on the site. He said they have asked for the least impact on the slopes for the maximum use of the parcel. Mr. Moeckel stated that the Planning Board has seen the plan and he feels they are in favor of the project with Zoning Board approvals.

Ned Lizotte stated that the steep slope issue is coming up at town meeting. Chairman Powelson explained the proposed amendments that address special exceptions in steep slope districts and will be on the ballot in March. Mr. Powelson stated that it appears that the applicant will be building a driveway in the buffer of a wetland. Mr. Moeckel said they are here tonight for a special exception for a driveway in the side setback and a variance for a driveway in steep slopes. He said if it goes in the wetland buffer that would be a separate issue and they would have to come back for that. Ned Lizotte asked about steep slopes for the road. Mr. Stout and Mr. Moeckel said there are none. George Saunderson asked how steep the slopes are in the cul-de-sac. Mr. Stout said they are approximately 30%.

There was discussion of the proposed amendments. Mr. Moeckel said the main reason they are going through with these applications is because there is no guarantee that the amendments will be approved. Mr. Saunderson asked if there is a downside to waiting. Mr. Moeckel stated that there are engineering and financial development decisions to be made. Shane Stewart stated that there is an engineer on retainer and Mr. Stout is waiting. He outlined the history of the project over the years and said it still has to go back to the Planning Board.

Chairman Powelson said the Board has to hear the application. There was discussion of building permits and the differences between area and use variances. Mr. Powelson read the permitted uses in Section 302.3. Shane Stewart said he represents Mr. Bohi's lender. He said there is a lot of pressure to get this project done and Mr. Bohi will be building the road this year. Mr. Moeckel stated that this project is not contrary to the Zoning Ordinance and he reviewed some points of the applications. Shane Stewart said there are positives and negatives of the parcel. He said that some dumping has occurred and the piece has been used for sand and gravel as well as storage of lumber, tractors, and other materials. Mr. Stewart said the positive is that the applicant is developing the piece and putting three new high-end homes on it which will bring higher tax revenue to the town.

Chairman Powelson gave a brief overview of both applications. There were no questions from the Board. The chairman asked if there were any abutters who wished to speak in favor or against the application. There were no abutters present. He asked if there has been any response from the Conservation Commission since the site walk of the property. There has not been any response from the Conservation Commission but it was reported that the Commission anticipates a wetlands crossing as part of the Planning Board process. Mr. Powelson stated that the wetlands process could be handled at a later date and he closed the hearing with the applications to be brought up under Unfinished Business.

III. UNFINISHED BUSINESS

Case # 06-22, DJP Realty Trust – Special Exception for Reduced Setback & Variance for steep slopes, Map 12, Lot 4. **Ned Lizotte made a motion to approve the variance. George Saunderson seconded the motion.** Chairman Powelson referred to Section 701.2.1a of the Zoning Ordinance and read from the applicant's response on the application for a variance, asking if the Board agreed with the response. Ned Lizotte said he feels the applicant has made a good case and it appeared clear from the site walk that this is not a natural steep slope area. He said he would like to see the steep slope percentage go back to 25% and does not care to give variances but feels this parcel meets the criteria. Mr. Lizotte said he does not feel there is any better use for this property than what is being proposed by the applicant. George Saunderson said he concurred and feels the Board can go ahead without problems. **Roy Merrill said he would add that the applicant plane the cul-de-sac off to the low side to lessen the steep slopes. He said he would like that to be stipulated as part of the motion.** Mr. Lizotte said this variance allows for use of the parcel. Howard Pearl said he feels it is a perfect example of the intent of a variance.

Chairman Powelson referred to Section 701.2.1b. Ned Lizotte said he would agree. Mr. Powelson continued through the points of 701.2 and read the applicant's responses. Ned Lizotte said what the applicant plans to do with the lot is an improvement. **Chairman Powelson called for a roll vote. Howard Pearl – Yes; George Saunderson – Yes; Roy Merrill – Yes; Dave Powelson – Yes; Ned Lizotte – Yes. Unanimous; variance granted.**

Ned Lizotte made a motion to approve the special exception for reduced side setback on Lot 2. Howard Pearl seconded the motion. Howard Pearl asked how close the driveway will be to the side line. Web Stout said approximately 10-11 feet at the closest point, 20 feet at the furthest point. Ned Lizotte said the driveway would be going down so would not be entirely visible from the abutting property. Chairman Powelson asked if the applicant is agreeable that it is 10 feet. Mr. Moeckel said the applicant would like it to be as generally depicted on the plan and not hold someone to precisely 10 feet. The chairman asked if they would be agreeable to five feet. Mr. Moeckel said they would. George Saunderson asked if ten feet would be out of the question. Roy Merrill asked if the driveway would have to come back for wetland buffer approval. It was agreed that it would. Ned Lizotte said five feet seems pretty close and asked what the applicant seemed to think would be fair. Howard Pearl said five feet gets the driveway farther from the steep slopes. Shane Stewart said this project will be done

smartly as these are going to be \$600K houses and the developer is not going to mess up the driveways. ***Ned Lizotte amended the motion to approve the application for special exception for reduced side setback to five feet on Lot 2. Howard Pearl seconded the amended motion. He then called for a roll vote. Ned Lizotte – Yes; Dave Powelson – Yes; Roy Merrill – Yes; George Saunderson – Yes; Howard Pearl – Yes. Unanimous; special exception for reduced side setback to five feet on Lot 2 granted.***

IV. DISCUSSION:

Chairman Powelson informed the Board that he has received correspondence from town counsel with regard to the decision from Merrimack County Superior Court on Roy Merrill's appeal of the Board's decision in the Volunteers of America case. The Court upheld the Board's decision. Ned Lizotte stated that he felt a portion of the Board has been kept in the dark. He said he feels the Board should have all been aware of the happenings, regardless of past votes and opinions. Mr. Lizotte said, as part of the democratic process, the members should be kept informed. Chairman Powelson said there had been no attempt to keep the proceedings secret. He said the town attorney prepared arguments in conjunction with VOA. Howard Pearl asked if members are allowed to contact the attorney or if protocol is that the chairman make the calls. Chairman Powelson said it has traditionally been the chairman that communicates with the attorney on behalf of the Board. Mr. Pearl asked if it would be possible for the entire Board to discuss things with the attorney in the future. There was discussion of instances when that may have been done or may need to be in the future. It was noted that it has been established in the past that the contact be limited to the chairman in an effort to manage costs. Roy Merrill said he found it interesting that the decision was just reached to his attorney the day before yet it has been brought up at this meeting tonight. He noted that through all of the process no members were notified that the ZBA decision was being challenged. He said the Board never got notified. Mr. Merrill said there were two instances that he was aware of when the Board was given dates that they had to decide if they wanted to continue with their position. He said the Board members were not given that opportunity. Mr. Merrill said he felt the members should have seen the correspondence from the attorney and he personally believed this was deliberately withheld from the Board. He cited other cases where the Board was updated regularly. Mr. Merrill stated that at no time did anyone tell the Board that their decision was being challenged and he felt this was a definite injustice to the Board. There was discussion of how such situations should be handled in the future. Chairman Powelson said he was unaware that Board members did not know the matter was being challenged and said he would be sure to keep them informed in the future.

Howard Pearl said the Board needs to consider naming an alternate as he is running for a full position in March. Should he become a full member and Jon Huntington is away for the winter that could leave the Board short in the event of absences or recusals. Ned Lizotte said he is talking with someone about becoming an alternate. Chairman Powelson said the Board is generally alright with two alternates and it works most of the time. There was discussion of the quorum needed for hearing an application; this will be researched. Mr. Pearl suggested this could be addressed at the February meeting.

A variety of correspondence was presented to the Board.

VII. ADJOURNMENT:

Howard Pearl made a motion to adjourn the meeting at 9:00pm, seconded by Ned Lizotte. All were in favor.

Respectfully submitted,
Donna White, Secretary