

Loudon Zoning Board of Adjustment
Regular Meeting Minutes
February 22, 2024

Chairman Earl Tuson called the meeting to order at 7:00 p.m.

Attendance: Alvin See, Charlie Aznive, Chairman Earl Tuson, Peter Pitman, Alternate Ned Lizotte

Vice Chair Todd Phelps and Alternate Steve Ives were not present. Alternate Ned Lizotte was moved to voting member for the duration of the meeting.

Acceptance of Minutes:

January 25, 2024, Regular Meeting Minutes:

Peter Pitman made a motion to approve the January 25, 2024, Regular Meeting minutes as written. The motion was seconded by Alvin See. All in favor, the motion carried; the minutes were approved.

The Zoning Board hears appeals for rehearings, special exceptions, variances, and administrative appeals. They need to be filed within a timely basis within 45 days of an action. For further information, applicants can see the Loudon Zoning Ordinance, the RSAs, or can stop by the Zoning Office and talk to Lindsey during business hours.

Public Hearings:

Old Business –

Application #Z23-36 Osborne – Map 21 Lot 11 – Variance to allow an auto repair/body shop in the RR District – REHEARING

Applicant Joe Osborne was present. Abutters present included Sid Porter of 24 Plateau Ridge Road, Doug and Judy Hayes of 128 Route 129, and Joe Jackson of 35 Plateau Ridge Road. Meredith Goldstein represented the applicant.

In 2022, a Special Exception was granted to operate as a major home occupation.

Chairman Earl Tuson paused to accept a motion from Alvin See that Application #Z23-36 did not constitute a Development of Regional Impact. The motion was seconded by Peter Pitman. All in favor, the motion carried.

Meredith Goldstein continued to explain that the business was limited by a 5-car parking restriction and needed to return to the Board. The business faces supply chain issues and delays which cause vehicles to remain parked while waiting for parts. Being limited to 5 parking spaces makes business nearly impossible due to the supply chain delays. At the December ZBA meeting, the Board concluded that 4 out of the 5 variance criteria were met.

Chairman Earl Tuson paused for the Board to redetermine if Alvin See should recuse himself. Peter Pitman did not have a problem with Alvin See remaining on the Board as he was not an abutter. **Peter Pitman made a motion that Alvin See need not recuse himself. The motion was seconded by Charlie Aznive. All in favor, the motion carried.**

Meredith Goldstein continued to discuss criteria 2 of the variance application which related to the spirit of the ordinance. She quoted a letter that she presented to the Board which included guidance from the Supreme Court about variance criteria #1 and #2 being related and intertwined. A conflict did not indicate a violation of the spirit of the ordinance. In terms of the essential character of the property, the Major Home Occupation already exists and during the granting of this special exception, it was ruled that the business was not injurious or detrimental with the criteria that had to be met. The property is on a major road and is across a commercially zoned property. There is no concern to the general welfare of the public. There are no traffic concerns, there has been no harm to the public in the 18 months since the MHO was granted, and the public benefits from the needed business in Town. Meredith Goldstein said that the property across the street is commercial, and the applicant's property is not viewed as residential in nature. Ned Lizotte shared concerns regarding the Master Plan's designation of C/I properties and how the applicant's property was separated by RR properties from this zone. He was concerned about the work done on the property without a site plan review and the excavation done to make room for parking. He was concerned about steep slopes on the property. Meredith Goldstein said the applicant wanted to move forward in the right way.

Chairman Earl Tuson said that the variance was requested to allow an auto repair/body shop. The MHO that was granted was for truck repair. He wanted to know what additional activities would be performed on site. Meredith Goldstein said that nothing further was being proposed and they used language present in the ordinance. They were not intending to change the business. They did not know about stating a specific number of parking spots because they didn't know what would be needed.

Chairman Earl Tuson said that there had been changes to the property since the Board did the site walk in the fall of 2022. He said that the granting of an auto repair/body shop could allow for much more on the site. Variances run with the land.

Doug Hayes of 128 Route 129 spoke in favor of the application. He knows that Joe Osborne had enlarged the area around the garage to allow the movement of trucks and trailers and worked on landscaping.

Joe Jackson of 35 Plateau Ridge Road spoke in support of the application. He said that Joe Osborne was a great neighbor and kept his property well maintained.

Sid Porter of 24 Plateau Ridge Road said he cringes with the thought of a body shop business. He feared that it was going to be slipped in with the approval. In January, there were over 20 big rigs on the property. It is noisy. He was against a body shop with odors, fumes, and toxins.

Chairman Earl Tuson said they received a letter from abutter Linda Porter of 24 Plateau Ridge Road speaking against the application. They received other letters, but they were not from abutters. Chairman Earl Tuson read RSA 676.7 1 A – "The board shall hear all abutters and holders of conservation, preservation, or agricultural preservation restrictions desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The board may hear such other persons as it deems appropriate."

Rodney Phillips of 143 Clough Hill Road called for a point of order from the Chairman. In the Rules of Procedure for the ZBA, it says "those appearing in favor of the appeal shall be allowed to speak" and "those in opposition to the appeal shall be allowed to speak". Chairman Earl Tuson stated that it does not clarify or specify as to whom "those" is referring to. The Board allowed

the public to speak at the December meeting at the Board's discretion and they were not bound by their previous decision.

Tracy Koufos of 65 Plateau Ridge Road requested to speak. She was not a direct abutter of the applicant but said she was affected as a taxpayer and passes by the property daily. Plateau Ridge Road abuts the property in question, and she is concerned about the town ordinances being followed. Chairman Earl Tuson said that there was established case law to RSA 676.7 that being a town resident does not bring someone to the level of being directly affected. He said it was on the burden of Tracy Koufos to prove why she is directly affected. The points she made do not establish that she is directly affected. She replied that she has concerns about her property values.

Peter Pitman made a motion that Tracy Koufos was not directly affected by the application. The motion was seconded by Charlie Aznive. Alvin See chose to abstain. The Board voted with 3 yes and 1 no that she was not directly affected.

Chairman Earl Tuson explained that the Board can choose to hear testimony from her. She has been very involved in the process and they did let her speak in the past. Peter Pitman said that when the Board agreed to rehear the application, they started over from scratch and what was previously allowed does not need to stick this time around. Chairman Earl Tuson said that the Board has been very inclusive with allowing others to testify and he was in favor of allowing her to testify.

Tracy Koufos spoke against the application. She said that granting the variance would be contrary to the public interest and it would go against the spirit of the ordinance. The business is operating as more than the approved MHO and there is no site plan.

Doug Hayes of 128 Route 129 said that their property values have increased according to a letter received from their mortgage company.

Steven Zawiska of 518 Old Shaker Road said that he tries to stay local with his purchases and uses Osborne's. It is an asset to have the business in Town.

Paul Johnson of 109 Flagg Road spoke in favor of the application.

Rodney Phillips of 143 Clough Hill Road spoke in opposition of the application. He said that the spirit of the ordinance is not observed because the criterion of a MHO specifically excludes automotive uses. Substantial justice is not done because there is no "gain" to the general public's conveniences does not equate to gain. Literal enforcement of the ordinance does not establish unnecessary hardship because the special conditions of the property do not include its closeness to other zones. The hardship is not related to the characteristics of the property. If this variance is granted, it changes the use of the property to commercial which ceases the residential use.

Jacob Farwell, as a family representative to his relatives at 603 Route 129, spoke in favor of the business.

Meredith Goldstein said that the property was being used as mixed use which is why they were coming for the variance. It was a permissible use with other businesses in Town. Without an adjustment, the delays will shut him down. She presented a letter from Realtor Biana Contreras which stated there was no impact to property values. In terms of the concerns with DES, the agency was on site about a month ago and had no concerns with toxins. Joe Osborne said that he burns his waste oil, which is all stored in double-walled certified containers, and he stores under the amount that is allowable.

Chairman Earl Tuson asked a question in relation to an auto body document that was submitted by abutter Linda Porter about the storage of coatings. He asked Joe Osborne if he was using

more than 500 gallons of coatings in a year on the vehicles he was working on. Joe Osborne answered that he was not doing coatings. Meredith Goldstein expressed their interest and intention for the business to stay purely mechanical in nature. Alvin See asked if they were using any type of paint in their work. Chairman Earl Tuson said that any paint being used was incidental to the work being done on vehicles.

Chairman Earl Tuson asked the Board that with all the changes that had been done to the site if they had any interest in going out and viewing the site. Charlie Aznive and Peter Pitman answered that they had no interest. Ned Lizotte answered that he would like to see it. Alvin See and Chairman Earl Tuson were on the edge with their decision. Alvin See said that he would like to review what is considered to be parking on the site and what was turnaround area. Ned Lizotte said that it would help with the understanding of steep slopes on the site. Chairman Earl Tuson said that seeing the site would help with applying conditions to the approval if necessary.

Ned Lizotte made a motion to continue application #Z23-36 to a site walk. The motion was seconded by Alvin See. By a vote of 3 yes and 2 no, the motion carried. A site walk of the property was scheduled for February 26, 2024, at 4:30 PM. No further notice will be given.

The Board took a 5 minute recess from 8:23 PM to 8:28 PM.

New Business –

Application #Z24-04 Muzzey Map 31 Lot 03 – Special Exception to allow for a reduced front setback

Application #Z24-05 Muzzey Map 31 Lot 03 – Special Exception to allow for an ADU

Applicant Steven Muzzey of 143 Piper Hill Road was present.

Alvin See made a motion that application #Z24-04 did not constitute a Development of Regional Impact. The motion was seconded by Charlie Aznive. All in favor, the motion carried.

Alvin See made a motion that application #Z24-05 did not constitute a Development of Regional Impact. The motion was seconded by Charlie Aznive. All in favor, the motion carried.

Steven Muzzey explained that they wanted to add an addition to their existing house with a garage and an ADU. They had initially asked for a reduction in the front setback from 50' to 40' on their application, but after receiving finalized plans from their surveyor, they needed to ask to reduce the setback from 50' to 25'. Steven Muzzey updated the application to reflect the change. They wanted to add a 3 car garage with an ADU. The ADU would be maxed out at 1000' and would have a walk out basement.

The Board reviewed the points of application #Z24-04. A Special Exception was requested from Article II Section 204.5 to reduce the front setback from 50' to 25'. A reduction in the front setback allows the new structure to stay on the front side of the property away from the steeper grades further back. There would be no further impacts in the reduction of the front setback. It appears that properties within the neighborhood and surrounding properties have similar front setbacks.

Ned Lizotte said he was very familiar with the property and understood the steep slopes on the rear of the property.

The Board reviewed the points of application #Z24-05. A Special Exception was requested from Article V Section 509 to allow for an ADU on the property. The plans for the ADU include a 1500 gallon septic disposal system, mini splits will be used for heating and cooling, and the ADU would be maxed out at 1000'. There would be adequate parking on site.

Chairman Earl Tuson closed the public hearing and opened Board deliberations. **Peter Pitman made a motion to approve Application #Z24-04 as amended by the applicant.** Chairman Earl Tuson stated they needed to complete the findings of fact first. **Peter Pitman withdrew the motion.**

The Board discussed the findings of fact for Application #Z24-04. They found that:

1. The rear of the property is steep.
2. Neighboring parcels have comparable setbacks.

Peter Pitman made a motion to approve Application #Z24-04 as amended by the applicant. The motion was seconded by Charlie Aznive. Roll call vote: Ned Lizotte – yes, Peter Pitman – yes, Chairman Earl Tuson – yes, Charlie Aznive – yes, Alvin See – yes. Application #Z24-04 was approved.

Ned Lizotte made a motion to approve application #Z24-05 as amended by the applicant. The motion was seconded by Peter Pitman. Roll call vote: Alvin See – yes, Charlie Aznive – yes, Chairman Earl Tuson – yes, Peter Pitman – yes, Ned Lizotte – yes. Application #Z24-05 was approved.

Application #Z24-06 Hague Map 53 Lot 7-1 – Variance to allow a duplex in AFP

The applicant was not present.

Abutter Michael Harris of 485 Lower Ridge Road was present.

Peter Pitman made a motion to continue Application #Z24-06 to the March 2024 meeting.

Michael Harris stated that he was a disabled and elderly man, and it was difficult for him to show up. Chairman Earl Tuson said that the Board feels they need to continue the application to the March meeting. The Rules of Procedures require the applicant to testify. **The motion was seconded by Alvin See. All in favor, the motion carried.** There will be no further notice.

Board Discussion & Correspondence:

The Board received correspondence from M. Whittemore. They will take it under advisement.

Report of the Board of Permit

Chairman Earl Tuson reported that the permits presented were for motorcycle shows that were done in the past. They were approved.

Adjournment:

Peter Pitman made a motion to adjourn the meeting. Alvin See seconded the motion. All in favor. The meeting adjourned.

Respectfully Submitted,
Lindsey Roy, Administrative Assistant