

Loudon Zoning Board of Adjustment
Regular Meeting Minutes
December 28, 2023

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

Attendance: Alternate Ned Lizotte, Vice Chair Todd Phelps, Peter Pitman, Chairman Earl Tuson, Charlie Aznive, Alvin See, Alternate Steve Ives

Acceptance of Minutes:

November 30, 2023, Regular Meeting Minutes; December 11, 2023, McNeil Site Walk Minutes
Peter Pitman made a motion to accept the November 2023 Regular Meeting Minutes and the December 11, 2023, McNeil Site Walk Minutes as written. Alvin See suggested a correction to line 162 to change “nay” to “any”. **Peter Pitman revised his motion to accept the November 2023 Regular Meeting Minutes and the December 11, 2023, McNeil Site Walk Minutes as amended. The motion was seconded by Alvin See. All in favor, the motion carried; the minutes were approved as amended.**

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 #Z23-32 McNeil – Map 39 Lot 10 – Variance to permit an ADU on a 2-family
Applicant Stacey McNeil was present. There were no abutters present.

The Board did a site walk of the property on December 11, 2023, with the applicant. Stacey McNeil presented additional materials to the board to address some of the questions received at the site walk regarding the septic capacity, the electrical on the property, and the work needed to the proposed ADU.

The Board reviewed the points of the application. The applicant was requesting a variance from Article V Section 509.3 to permit an ADU on a 2-family dwelling as the building already exists on the site and the applicant would like to be able to use it as an ADU. The variance would not be contrary to the public interest because the structure already exists, and no value would be taken away but added instead. The spirit of the ordinance is observed because the ADU will be rented to a family member. Substantial justice would be done because the applicant would be providing affordable housing. The value of surrounding properties would not be diminished because it would add to the value of the surrounding properties instead. The “special condition” of the property that distinguishes it from other properties in the area is that the property used to be a bed and breakfast. An adequate septic and well exist on the property and are the correct size

for the operation of the former bed and breakfast. The proposed use was reasonable because it would make use of the structures currently existing on the property.

Chairman Earl Tuson closed the public hearing and opened Board deliberations. Vice Chair Todd Phelps said that it was a straightforward application. The building exists, it was a B&B, the septic was designed, the building was on-site, there would be no overcrowding of the site, it would improve the site, and it was a good use of space. Alvin See said that the ordinance specifically says no ADUs on 2-families. Alternate Ned Lizotte said that the B&B was discontinued, and the property became a 2-family. He didn't see a crisis or hardship. The proposed ADU was a sugar shack and was not intended for living quarters. The property retained the 2-family dwelling and that was the deal. Chairman Earl Tuson agreed. Peter Pitman said that there needed to be wiggle room with the variance process.

Chairman Earl Tuson prompted the Board to go through the 5 tests of the variance.

1. The variance would not be contrary to the public interest. Vice Chair Todd Phelps said that the building exists, and they would not be overdeveloping the site. Charlie Aznive asked what the dwelling would be an accessory to. Alvin See said that the building exists not as an ADU, and the benefit is that the building would be rehabbed.
2. The spirit of the ordinance is observed.
3. Substantial justice is done. Vice Chair Todd Phelps said that substantial justice is done to the applicant but not necessarily the Town ordinance. Charlie Aznive said that granting this could allow any other multi-family to apply for the same. Alternate Ned Lizotte mentioned that the Ordinance says that ADUs are for single family properties.
4. The value of surrounding properties will not be diminished. Chairman Earl Tuson said it would not be diminished. Peter Pitman mentioned that the value could increase.
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. Chairman Earl Tuson said that it used to be a B&B, the prior use being abandoned was irrelevant. There was no special conditions of the property. Vice Chair Todd Phelps said that the property could continue to be used as a 2-family.

Chairman Earl Tuson brought the points of the variance to a vote.

1. The variance will not be contrary to the public interest. Alvin See – no; Charlie Aznive – no; Chairman Earl Tuson – no; Peter Pitman – yes; Vice Chair Todd Phelps – yes
2. The spirit of the ordinance is observed. Vice Chair Todd Phelps – yes; Peter Pitman – yes; Chairman Earl Tuson – no; Charlie Aznive – no; Alvin See – no
3. Substantial justice is done. Alvin See – yes; Charlie Aznive – no; Chairman Earl Tuson – no; Peter Pitman – yes; Vice Chair Todd Phelps – yes
4. The values of surrounding properties will not be diminished. Vice Chair Todd Phelps – yes; Peter Pitman – yes; Chairman Earl Tuson – yes; Charlie Aznive – yes; Alvin See – yes
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. Vice Chair Todd Phelps – no; Peter Pitman – no; Chairman Earl Tuson – no; Charlie Aznive – no; Alvin See – no

Vice Chair Todd Phelps made a motion to deny the variance due to failing test 1, 2, and 5. The motion was seconded by Charlie Aznive. Roll call vote: Alvin See – yes; Charlie Aznive – yes; Chairman Earl Tuson – yes; Peter Pitman – yes; Vice Chair Todd Phelps – yes. Application #Z23-32 was denied.

New Business –

Application #Z23-36 Joseph Osborne – Map 21 Lot 11 – Variance to permit an auto repair/body shop in the RR district

Alvin See asked the Board to take an advisory vote to see if he should recuse himself. His property on Plateau Ridge is 1100 feet away from the applicant's and he drives by the property daily. Alternate Steve Ives said he didn't see a problem as long as Alvin See could remain unbiased. The remaining Board members voted if Alvin See should recuse himself. Vice Chair Todd Phelps – no; Peter Pitman – no; Chairman Earl Tuson – no; Charlie Aznive – no. Alvin See remained on the Board.

The applicant Joe Osborne was present. Chairman Earl Tuson discussed the definition of an abutter for testimony purposes and then asked for abutters in the audience. Doug and Judy Hayes of 128 Route 129 were present. Joe Jackson of 35 Plateau Ridge Road was present. Tracy Koufos of 65 Plateau Ridge Road asked if she would be able to testify.

Meredith Farrell Goldstein from Orr & Reno was present to represent Joe Osborne. She explained that Joe Osborne currently operates a Major Home Occupation that he received in October 2022. There is a limitation of 5 vehicles at a time. He has found that he is often having vehicles on the property for longer than anticipated due to supply chain issues and waiting for parts which leaves him with more than 5 vehicles on his property. They worked with the building inspector, and it is no longer a Major Home Occupation because of the parking. They were requesting a variance to continue running the business.

Joe Osborne explained that he has been in the field for 14 years working in heavy truck repair. He started out a year ago and it has been a good year for him. The variance would allow him to continue operating his business and allow the business to grow.

Alternate Steve Ives asked if he could have requested a variance for the allowed number of vehicles. Joe Osborne explained that he wanted to expand his business. Vice Chair Todd Phelps asked how many employees he had; Joe Osborne answered that he had 3 including himself.

Alternate Ned Lizotte said that it seems he wants to substantially change the property for commercial use in a Rural Residential zone. At the previous site walk, the expectations were clear. He had talked about raising the roof of the garage to allow for bigger vehicles. Joe Osborne said that the business operations have not changed. Meredith Farrell Goldstein explained that the issue at this time was really parking. If he is limited to the number of vehicles allowed, it hinders his business. Joe Osborne said that he expanded the area on his property to have room for up to 25 trucks. Alternate Ned Lizotte asked if he had an opportunity to procure a commercial property; Joe Osborne answered that it was very cost prohibitive. Alternate Steve Ives said the variance would be more powerful if it was limited to parking. Chairman Earl Tuson said it looks like he is requesting a spot zoning change. Vice Chair Todd Phelps said that Joe Osborne had talked about the landscaping he has done but buffer impacts were not addressed. Meredith Farrell Goldstein explained again that they have worked with the building inspector to determine the amount of parking needed in an attempt to permanently solve the parking issue. Vice Chair Todd Phelps asked Chief Blanchette if he was the first to bring up concerns with the wetlands. The Chief answered that a complaint regarding the wetlands had not been filed and with no complaint, there was no issue. The primary concern was the number of vehicles on site.

This type of situation takes time. Charlie Aznive said that he understands the issue of waiting for parts to be delivered.

Doug Hayes of 128 Route 129 spoke in support of Joe Osborne. His dwelling is within 200 feet of Osborne's. The complaints received regarding the property were from almost ¼ mile away and he thinks a little cooperation from the town could go a long way, and he would like to see the application pass. He said he wasn't concerned about the stream on the property, but he doesn't know the rules.

Joe Jackson of 35 Plateau Ridge Road spoke in support of the application. He said that Joe Osborne as a by-the-book kind of guy and he had no issues moving forward.

Chairman Earl Tuson asked for any other testimony from the audience.

Tracy Koufos of 65 Plateau Ridge Road spoke against the application. She had complaints about Osborne not following the ordinance. She said the business threatens surrounding homeowners due to hazardous materials being used that cause health issues. She asked if he was in compliance with state regulations and if he had an EPA number. She shared concerns about the impact on the public and first responders. She was concerned about trucks leaving the property onto 129 that would not have the acceleration to get onto the roadway and likelihood of an accident was high. She said it was hearsay about the property values not being diminished. She said that any hardship was self-inflicted and explained that the RR district had rules. She explained that the variance does not meet the 5 criteria and is hoping the Board does not approve because the property is in RR.

Dana Silcock from Eustis Cable in Gilmanton spoke in support of the application. He said he runs an essential service, and his business relies on Osborne's business to operate when his trucks break down. He knows that Town vehicles turn to Joe Osborne when their vehicles break down also.

Paul Johnson of 109 Flagg Road spoke in support of the application. He owns Best Septic. He understands the part shortage. He wants the Town to help come up with a solution.

Stephen Zawiska of 518 Old Shaker Road spoke in support of the application. He is a customer of Joe Osborne's and believes the business is an asset to the community.

Morgan McCarthy of 640 Route 129 spoke in support of the application. He firmly believes that Joe Osborne is an asset to the community.

Brad Prescott of 118 Route 129 spoke in support of the application. He rents from Joe Osborne on the property.

Joe Osborne addressed the Board. He said that even with the complaints and concerns, he is still allowed to operate on the site with the Major Home Occupation. He is an expert on the chemicals he uses, and he properly disposes of all waste oils with his waste oil furnace. In terms of landscaping, trucks were not required to back onto his property from 129 because of the work he did. The truck drivers sometimes still choose to but its not because of his requirement. Meredith Farrell Goldstein said that there were concerns about the type of business Joe Osborne operates but the special exception was already granted. The approval of the variance would allow for the growth of the business. Joe Osborne said that he will understand if the business needs to leave the property at some point, but it costs money. He explained his eventual plan to own show trucks and house them in the garage.

The Board reviewed the points of the application. A variance was requested from Article II Section 204.2 to allow an auto repair/body shop in the RR district.

The variance would not be contrary to the public interest because the business already exists, and the issue at hand is parking. It is a minor change to allow for more parking and natural growth of the business. There is no detriment for the character of the area. A direct abutter is in the C/I district, and this property is close to the border. Vehicles are dropped at the property, worked on, then picked back up; there is not much incoming and outgoing traffic.

The spirit of the ordinance is observed because the business already exists and it is in close proximity to C/I. The business has been approved to operate on the property. The front of the property looks residential and has natural screening.

Substantial justice is done because the business already exists. If Joe Osborne is limited to 5 cars, it is difficult to operate his business and his livelihood is impacted. There is a limited impact to the public.

The values of the surrounding properties will not be diminished because the area is not in a neighborhood. There will be no harm to the value. The goal is to improve the appearance of the property.

Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of the property that distinguish it from other properties in the area, including that the property already exists, it is on the edge of C/I, the location of the property makes it unique, and it has natural topography. No fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property because of the proximity to C/I and the established existence of the business. Additional parking would have a very limited impact. The public testimony states that Joe Osborne provides a great service. They are willing to work with the Board moving forward for remediation of any wetland issues.

Chairman Earl Tuson closed the public hearing and opened Board deliberations. Alvin See asked if there was anything that could be done other than an autobody/repair shop. He was concerned that the approved use stays with the property. Alternate Ned Lizotte explained that with the special exception, Joe Osborne opened a business and then asked for the exception. He has a history of doing first and then asking. The Board is being asked to find ways to allow the business to grow. They were very understandable regarding the Major Home Occupation. This would open the door for RR to become commercial. Charlie Aznive said that the property was 800 feet from C/I. Alternate Steve Ives said that the Major Home Occupation exists and asked if the Board could allow for more parking. He said that the variance could have been for parking. Vice Chair Todd Phelps said that Joe Osborne's attorney said that it operates as a business but it is currently operating beyond an approved Major Home Occupation. He is fearful to give this when the Major Home Occupation has been stepped over. Chairman Earl Tuson explained that a Major Home Occupation is not intended to be a gateway. Alternate Ned Lizotte explained that a Major Home Occupation is clearly encouraged to help businesses succeed and then make a move to a commercial property. Charlie Aznive said he would rather see successful business stay in Town. Vice Chair Todd Phelps said that the problem is the location due to growth; he is in an in-between right now by not being big enough to move but being too big to stay where he is. Alternate Ned Lizotte said that approvals go with the land. This would change the property to

commercial. Chairman Earl Tuson said that application is asking to open the approval very wide. Peter Pitman questions what the Board could tell the applicant about this current application and if they could suggest a new application to request a variance for parking. Chairman Earl Tuson said that the Board rules on the applications submitted to them. The business will continue to operate as a Major Home Occupation if the variance is denied. Peter Pitman said that they were there as a Board to make decisions and if the Board could not make decisions, then they were not needed. They needed to find some way to help the people in the Town. Vice Chair Todd Phelps had concerns about spot-zoning. Alternate Steve Ives said the business should stay as a Major Home Occupation and the applicant could come back with a new application to increase parking. Chairman Earl Tuson said they would need a plan with the current conditions of the property, a parking plan, and a site development plan.

The Board discussed the variance tests.

1. The variance will not be contrary to the public interest. Chairman Earl Tuson said that the expectation stands that properties zoned similarly would be treated similarly. Charlie Aznive said that he could argue that the business provides a valuable public service.
2. The spirit of the ordinance is observed. Chairman Earl Tuson said that it was not observed. To have an auto repair in RR when it is not even allowed as a Major Home Occupation is not observing the spirit of the ordinance. Charlie Aznive said that they need to allow growth in town. Peter Pitman explained that every application is separate and they are not supposed to set precedent. Alternate Ned Lizotte said that all approvals go with the land, and it is not as clear as it used to be. The applicant can always return with a new application. Vice Chair Todd Phelps mentioned that the applicant could have asked for a variance for the number of parking spaces.
3. Substantial justice is done.
4. The values of the surrounding properties will not be diminished. Chairman Earl Tuson said that no subject matter experts presented testimony to this effect.
5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. Chairman Earl Tuson said that an allowed use of a property is not a special condition. Vice Chair Todd Phelps said that the proximity to commercial locations does not make it unique. Peter Pitman said that no matter what variance an applicant asked for, they won't get it because of the Board's opinion on the 5 criteria. Alvin See said that literal enforcement of the ordinance would cause a hardship on the applicant. Chairman Earl Tuson said that the ordinance is clear about what is permitted; given the ordinance, it would be tough for the applicant to prove the need for a variance. Alternate Ned Lizotte agreed that it is supposed to be tough to get a variance.

The Board voted on the variance tests.

1. The variance will not be contrary to the public interest. Vice Chair Todd Phelps – no; Peter Pitman – yes; Chairman Earl Tuson – no; Charlie Aznive – yes, Alvin See – yes
2. The spirit of the ordinance is observed. Alvin See – no; Charlie Aznive – yes; Chairman Earl Tuson – no; Peter Pitman – yes; Vice Chair Todd Phelps – no
3. Substantial justice is done. Vice Chair Todd Phelps – yes; Peter Pitman – yes; Chairman Earl Tuson – no; Charlie Aznive – yes; Alvin See – yes
4. The values of the surrounding properties will not be diminished. Alvin See – yes; Charlie Aznive – yes; Chairman Earl Tuson – yes; Peter Pitman – yes; Vice Chair Todd Phelps – yes

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship. Vice Chair Todd Phelps – no; Peter Pitman – yes; Chairman Earl Tuson – no; Charlie Aznive – yes, Alvin See – yes

Vice Chair Todd Phelps made a motion to deny the variance due to failing test #2. The motion was seconded by Alvin See. Roll call vote: Alvin See – no; Charlie Aznive – no; Chairman Earl Tuson – yes; Peter Pitman – no; Vice Chair Todd Phelps – yes. The motion did not pass.

Peter Pitman made a motion to approve application #Z23-36 as presented. The motion was seconded by Charlie Aznive. Roll call vote: Vice Chair Todd Phelps – no; Peter Pitman – yes; Chairman Earl Tuson – no; Charlie Aznive – yes; Alvin See – yes. The motion passed by a 3-2 vote. Application #Z23-36 was approved.

Application #Z23-37 LaCourse – Map 23 Lot 27 – Special Exception to allow wetland impacts
Adam Doiron from Doiron Environmental was present. The applicants, Michael & Katherine LaCourse, were present. No abutters were present. Julie Robinson from the Conservation Commission was present.

Adam Doiron explained that there was a large wetland system on the northeast part of the property. There was an existing gravel access road. The applicant was proposing to build a single family house on the property and use the existing gravel access road as the driveway.

Alvin See made a motion that Application #Z23-37 was not a Development of Regional Impact. The motion was seconded by Peter Pitman. All in favor, the motion carried.

Adam Doiron explained that they were looking to increase the pipe size at the first crossing to 24” and the pipe size at the second crossing to 36”. They were looking to be able to gain access to the large upland area on the back of the lot. Julie Robinson said that she would like to do a site walk of the property to get a better understanding of what was being proposed. **Peter Pitman made a motion to continue application #Z23-37 to a site walk scheduled on Monday, January 8, 2024, at 3:00 PM. The motion was seconded by Alvin See. All in favor, the motion carried.**

Board Discussion & Correspondence:

Adjournment:

Peter Pitman made a motion to adjourn the meeting at 9:00 PM. Charlie Aznive seconded the motion. All in favor. The meeting adjourned at 9:00 PM.

Respectfully Submitted,
Lindsey Roy, Administrative Assistant