

Loudon Zoning Board of Adjustment
Regular Meeting Minutes
January 25, 2024

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

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

Alternate Steve Ives was not present.

Julie Robinson from the Conservation Commission was also present.

Acceptance of Minutes:

December 28, 2023, Regular Meeting Minutes:

Peter Pitman made a motion to approve the December 28, 2023, Regular Meeting minutes as written. The motion was seconded by Alvin See. All in favor, the motion carried; the minutes were approved.

January 8, 2024, LaCourse Site Walk Minutes:

Peter Pitman made a motion to approve the January 8, 2024, LaCourse Site Walk 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.

Chairman Earl Tuson discussed a law that was passed by the legislature 2 years ago in August 2022 requiring written findings of facts for each decision made by the Board. He said that the Board had neglected this requirement but will be fulfilling the requirement moving forward.

Public Hearings:

Old Business –

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 a site walk was conducted on January 8 with the ZBA and Conservation Commission. The fire chief recommended having the driveway designed to be able to handle a tanker truck. The engineer redesigned the driveway to reflect the suggestion. Having the driveway at a 14' width minimizes impacts to the buffer. The driveway width is closer to 16' near Route 129. Both culverts are being improved. The owner of the property wants to access the backland of the property. Addressing the crossings now means that a future application to the

state would not be required. The Conservation Commission had recommended an open-bottom culvert, but the engineer would have required footings, and it would have led to higher design costs and higher material costs. The planned structure is a single family house. The pipe would be 36" for the intermittent stream. The watershed above the crossing is steep and the larger pipe would accommodate the water. The 1st crossing would be a 24" pipe. The applicant and the Board discussed the options for culverts and the restrictions because of the slope. The land had been previously used for forestry activities.

Julie Robinson gave the Board members a map with drawings. The red line on the map signifies the 25' no touch buffer, the yellow shows the 75' wetland buffer, and the green shows the proposed underground power to the house. The buffer is in place to protect the wetlands. Julie Robinson shared concerns about the buffer becoming totally compromised and the 25' no touch being encroached on at many points. The property is on the Bee Hole Brook Watershed which feeds into the Soucook. The fear is the wetland would become compromised. The owner owns a decent amount of land in the upland. The impervious material of the house makes the water flow downward.

Adam Doiron explained that moving the house further back into the property means more driveway. Chairman Earl Tuson asked if other house sites had been identified further back on the property. Adam Doiron said that the wetland extends to the rear boundary and the back area was not delineated for wetland boundaries. Michael LaCourse said that bringing the power back further onto the lot is costly. There was a previous approval for the driveway a few years ago for the driveway.

The Board took a 5-minute recess for the previous application to be brought up from the office. Chairman Earl Tuson said that any work outside the red line would be subject to the "no cut" buffer. Adam Doiron said that no additional cutting was proposed within the 25' buffer. Michael LaCourse said that they were not planning on cutting anything further. There would be some excavation between the 25'-75' buffers on the west side.

Application #Z20-03 allowed for a special exception for the wetland impacts. Vice Chair Todd Phelps clarified that the approval in #Z20-03 was more than 2 years ago and had since expired. The Board reviewed the points of the application with the applicant's agent. A Special Exception was requested from Article III Section 301.5 A. The special exception will provide reasonable access to the property without injurious or detrimental effects on the neighborhood.

301.5 A. 1. – The proposed construction allows access and productive use of the non-wetland areas of the property.

301.5 A. 2. – Impacts will be minimized by using the existing gravel access road and existing woods road. Construction is proposed during dry conditions. Silt fences are proposed to contain impacts. Slopes will be stabilized with vegetation.

301.5 A. 3. – There is no other alternative that is feasible or reasonable to gain access to the usable non-wetland areas of the property. The proposal is for the least impacting alternative.

301.5 A. 4. – A wetlands permit application will be submitted to NHDES.

301.5 A. 5. – All special exception criteria have been addressed.

301.5 A. 6. – The disturbed areas will be stabilized with vegetation.

The Special Exception will allow permanent impacts to forested wetland, an intermittent stream, and wetland buffer areas and temporary impacts to wetland buffer areas. Appropriate erosion and

sediment control measures are proposed to prevent impacts outside of the proposed project area. There will be no impact on groundwater resources.

Chairman Earl Tuson closed the public hearing at 7:39 PM and opened Board deliberations.

Vice Chair Todd Phelps touched on feasibility and reasonability – if the applicant moves the house location up on the land, there would be more impacts because of excavation without the help of the existing logging roads. Chairman Earl Tuson said that without seeing what is back on the property, it is unknown. Vice Chair Todd Phelps said that the current place seems feasible and reasonable.

Vice Chair Todd Phelps made a motion to approve Application #Z23-37 as presented. The motion was seconded by Peter Pitman. Roll call vote: Vice Chair Todd Phelps – yes; Peter Pitman – yes; Chairman Earl Tuson – yes; Charlie Aznive – yes; Alvin See – yes.

Application #Z23-37 was approved.

The Board completed the Findings of Fact for the application.

1. There is no alternative construction site that would avoid wetland impact.
2. The application adequately addresses design, construction, and maintenance, and minimizes detrimental impacts.
3. No feasible or reasonable alternative was identified during testimony.
4. Applicable permits were addressed during testimony.
5. All Special Exception criteria were satisfied.
6. Appropriate mitigation measures were addressed during testimony.

Vice Chair Todd Phelps made a motion to approve the Findings of Fact for Application #Z23-37. The motion was seconded by Charlie Aznive. All in favor.

New Business –

Application #Z24-01 NH Consistory Map 20 Lot 100 – Special Exception to allow for a reduced side setback for a driveway

Gary Roy was present. Bob DuFour, representing the owner of lot 20-101, was present.

Gary Roy explained that he presented drawings to the Board to show circumstances of how the roads are aligned and how everything is angled. They met with the Road Agent, Russ Pearl, to discuss entrance onto the property from Chichester Road. Shifting the side setback from 30' to 15' aligns with what is needed for access.

Alvin See made a motion that application #Z24-01 did not constitute a Development of Regional Impact. The motion was seconded by Peter Pitman. All in favor, the motion carried.

Alvin See clarified that the drawings provided show proposed future improvements of the intersection and does not reflect what is currently in place.

Bob DuFour, representing the owner of lot 20-101, spoke in favor of the application.

Gary Roy explained they were denied access from 106 for a driveway onto the property.

The Board reviewed the points of the application. A Special Exception is requested from Article II Section 206.5 to allow a reduction in in the side setback from 30' to 15'. The Special Exception will improve property access. There are no additional demands or impact on municipal services. There would be no impacts on the natural environment or groundwater resources. In the criteria for a reduced setback, the applicant explained that the driveway would not unreasonably diminish the light, air, and space between the properties and would probably

increase them. There would be no unreasonable hardship because of the commercial nature of the lots. The requested reduction in setback would increase visibility and give more room for larger emergency vehicles to enter the property. There would be no increase in storm runoff, no negative impact on abutting property values, and would increase the potential development capability of the lot. The special exception would improve traffic and pedestrian safety by providing better visibility.

Chairman Earl Tuson closed the public hearing at 8:07 PM.

Vice Chair Todd Phelps said that it seems like a fairly easy application. The Board agrees with the 9 justification questions for a reduced setback. There is really no other alternative for a driveway. **Vice Chair Todd Phelps made a motion to approve application #Z24-01. 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. The motion carried. Application #Z24-01 was approved.**

The Board completed the Findings of Fact for the application.

1. The Special Exception addressed all 9 individual required criteria in the application for the Board to approve a setback reduction.
2. The Board regularly approves applications of this nature.

Alvin See made a motion to accept the Findings of Fact for Application #Z24-01. The motion was seconded Peter Pitman. All in favor, the motion carried.

Board Discussion & Correspondence:

Chairman Earl Tuson introduced Application #Z24-03 Town of Loudon as an application for a rehearing of #Z23-36. He explained that this application did not constitute a public hearing and no testimony would be provided. The attorney for Joe Osborne from Orr & Reno had submitted a letter to the Board regarding the rehearing, but because the Board does not take testimony in this type of application, the letter was not distributed to members. The RSA allows the Board of Selectmen to motion for a rehearing of an application. The ZBA can also decide to do a rehearing. The application for a rehearing submitted by the Town of Loudon stated in 4. d. that there was a legal error on behalf of the ZBA. “At the December 28th meeting, the ZBA voted that Osborne failed to satisfy the spirit of the ordinance prong but then nonetheless voted to grant the variance. To issue a variance, the ZBA must determine that each of the five (5) variance elements has been satisfied; if they are not satisfied, the ZBA cannot legally grant the variance. Because a majority of the ZBA determined that the spirit of the ordinance element had not been satisfied, it was legal error for the ZBA to then vote to grant the variance.” Chairman Earl Tuson explained that the Board had voted 3-2 that the spirit of the ordinance was **not** observed, and because of that the Board did not have the legal ability to approve the variance. The ZBA also failed to determine if the application constituted a Development of Regional Impact and Findings of Fact were not completed for #Z23-36. Without Findings of Facts, any court would sent the application back to the Board to be reheard. Vice Chair Todd Phelps said it seems like there is good cause to rehear the application. Chairman Earl Tuson explained that the Board did not have the ability at this time to reverse the decision they made in granting the variance. They could either grant or deny the rehearing request. **Vice Chair Todd Phelps made a motion based on the errors made by the Board to grant a rehearing of Application #Z23-36. The motion was**

seconded by Alvin See. Roll call vote: Alvin See – yes; Charlie Aznive – yes; Chairman Earl Tuson – yes; Peter Pitman – yes; Vice Chair Todd Phelps – yes.

The rehearing of Application #Z23-36 was scheduled for the February 22, 2024, Zoning Board Meeting.

Public Hearings:

New Business –

Application #Z24-02 Koufos – Appeal of an Administrative Decision

Tracy and Chris Koufos submitted an application to appeal an administrative decision made by the ZBA in Application #Z23-36.

Tracy Koufos was present. Doug and Judy Hayes of 128 Route 129 were present, Joe Jackson of 35 Plateau Ridge Road was present, Linda Porter of 24 Plateau Ridge Road was present. Chairman Earl Tuson asked Tracy Koufos if she wanted to continue with her application for an appeal of the decision made in Application #Z23-36 that was just granted a rehearing for February 22, 2024. Tracy Koufos withdrew Application #Z24-02.

Board Discussion & Correspondence:

The Board reviewed correspondence from Code Enforcement dated January 18, 2024, as a notice of Violation to Nelson Perron. The Board reviewed correspondence from Code Enforcement dated January 18, 2024, as a letter addressed to Mr. and Mrs. Sanborn.

Joe Jackson of 35 Plateau Ridge Road questioned the Board regarding the motion for a rehearing. Chairman Earl Tuson explained that the Board had legally no right to approve the variance because one of the 5 variance tests failed.

Adjournment:

Peter Pitman made a motion to adjourn the meeting at 8:39 PM. Alvin See seconded the motion. All in favor. The meeting adjourned at 8:39 PM.

Respectfully Submitted,
Lindsey Roy, Administrative Assistant