

Loudon Zoning Board of Adjustment  
Meeting Minutes  
November 29, 2018

**Present:**

Chairman Ned Lizotte, Vice Chairman Howard Pearl, Earl Tuson, Roy Merrill, Charlie Aznive and alternates George Saunderson and Dennis Jakubowski

**Minutes:**

**Regular Hearing October 25, 2018-** Mr. Pearl made a correction to the minutes to correct mute to moot. **Mr. Pearl made a motion to approve the minutes with the corrections. Mr. Merrill seconded the motion; All in favor. APPROVED.**

**Site Walk 10-30-2018 Stylianos-** Mr. Tuson made a motion to approve the minutes as written. **Mr. Aznive seconded the motion; All in favor. APPROVED.**

**Site Walk 11-8-2018 Pilote-** Mr. Tuson made a correction to the minutes to add the ending time 4:40pm. **Mr. Tuson made a motion to approve the minutes with the corrections. Mr. Pearl seconded the motion; All in favor. APPROVED.**

**Discussions:**

None

**Public Hearings:**

**Application #Z18-14 Kim Pilote- Special Exception for reduced driveway setback, Map 21 Lot 41, R/R District-** Attorney Daniel Muller from Cronin, Bisson & Zalinsky represented Kim Pilote also present. Mr. Muller wanted to clarify the record by stating the meeting between the Pilote's and the Little's was to discuss releasing the drainage easement on the Little's property. Mr. Muller said the Pilote's declined releasing the easement and since that time the relationship hasn't been great between the residents. Mr. Muller also wanted to state the Little's purchased the abutting property after the driveway was turned from dirt to gravel. Mr. Muller said the reduced setback is allowed by special exception and it is not a prohibited use. Mr. Muller also stated a Variance is much harder to get and this is a special exception that is permitted if conditions are met. Mr. Muller said at the Site Walk the Board made an indication that the Board only grants certain amounts of relief. Mr. Muller said the Supreme Court has set no such limits. Mr. Muller also said on the Site Walk it was stated that because the driveway was improved, they were required to apply for the Special Exception and if they hadn't improved the driveway no application would be required. Mr. Muller said the Ordinance doesn't decipher between dirt or other material. Mr. Muller said the restriction on gravel and not on dirt doesn't make sense because the use is the same. Mr. Muller showed a map showing a 2.5-foot setback on the Little's property. Mr. Muller said a property could be landscaped or a path to walk on the only difference in this case is cars drive on it. Mr. Muller said there was concern that car lights could shine on the abutter's property; a fence has been put up along the Little's property. Chairman Lizotte questioned how tall the fence was. Mr. Muller said it is 6 feet tall and 200 feet long. Chairman Lizotte said when this driveway was put in the 30-foot setback was in the Ordinance. Mr. Muller said the difference between dirt and gravel must be a classification that furthers an important governmental interest in order to justify the difference in treatment. Chairman

Lizotte said he was looking for the applicant to present a solution and the application itself doesn't show an amount of relief of the setback. Chairman Lizotte brought up another issue on the opposite side setback. Mr. Muller said when Code Enforcement raised the setback issue, they only brought up the setback of the driveway. The Board read the letter from Code Enforcement that states the driveway is in violation. Chairman Lizotte brought up the section of the Ordinance that talks about upgrading any structure. Mr. Tuson brought up the point that you can use your property to drive on as you may need but driving on the property for a use doesn't make it become a driveway. Chairman Lizotte said when the driveway was created the 30-foot setback was in place and only now having the home occupation she needs to utilize the driveway in the setback. Mrs. Pilote said before she had her home occupation, they used that driveway to access the basement. Mr. Aznive said the driveway with a gravel way is different then accessing your garage. Mr. Tuson said you can drive across your property to access what you need. Mr. Tuson said this driveway was presented as dirt and now has been upgraded to gravel. Mr. Muller said a driveway is a driveway whether it is dirt or gravel and argued a constitutional issue by reinforcing this. Mr. Muller said it was pointed out that the driveway can be moved but there is an issue of ledge and trees. Mr. Muller said since the Board has an issue with the other side setback, they would like to withdraw the application and present a new one. Mr. Pearl questioned Mr. Muller's thought on structures not being a driveway. Mr. Muller said in the Ordinance it includes driveways and that makes it separate from structure. Chairman Lizotte raised the issue again that this should have been done when the driveway was put in back in 2005. Chairman Lizotte said that the Board does work with people on the side setbacks and this application offers nothing. Chairman Lizotte brought up that the applicant can move the driveway on the property by removing a tree. Mr. Muller said that the ledge is the real issue why the driveway can't be moved. Mr. Muller said that he understands the Board's issues and will check that an inspection was done when the driveway was built also. Mr. Tuson said an assumption was made that the Board a set rule on what they allow for setback relief. Mr. Tuson said different setback requests are looked at differently. Mr. Merrill said a driveway permit had to be signed off on and it is a little late for the Board to be deciding if this is not in compliance. Mr. Muller said the State statute grants the Planning Board the right to determine where the driveway should go. Mr. Muller withdrew his application.

**Mr. Aznive recused himself.**

**Chairman Lizotte appointed Mr. Jakubowski a voting member.**

**Application #Z18-19 Jennifer Stylianous- Variance for single family home on a non-conforming lot, Map 15 Lot**

**1, R/R District-** Property owner Jennifer Stylianous and attorney Ethan Wood presented the application. Mr. Wood presented a plan from Holden Engineering that shows 34 feet of frontage and 21.4 acres. Mr. Wood said the parcel has remained the same configuration since 1948 when it was purchased well before Zoning. Mr. Wood said the parcel has a logging road they are purposing to have the driveway to a single-family home that is within the character of the neighborhood. Mr. Wood said where the driveway is proposed there is a clear line of sight. Mr. Wood said there is no significance to the Town to enforce this and there is only 16 feet less of road frontage than what is required. Mr. Wood said that this will not diminish other properties because it is in line with other developments in the area. Mr. Wood explained that this property is land locked and could potentially create an easement by necessity but that would be a lawsuit and a Variance would be the preferred option. Mr. Wood also said that the Town owns a parcel adjacent to the parcel so even granting an easement to access from that direction would be cost prohibited because it is very large. Mr. Wood said the purpose of the Ordinance is to promote safety and welfare of the general public and that permitting a logging road to be used as a driveway doesn't implicate that. Mr. Merrill said that when he measured the frontage it was about 26 feet of road frontage. Chairman Lizotte said the plan presented says not an exact survey. Mr.

Wood showed an actual survey from the application. Mr. Wood said they are waiting for DES approval and suggested that the approval is conditional upon DES approval. Julie Robinson said DES approval is basically saying yes there was a logging road and a culvert in place and now is the Town's turn to weigh in. Mrs. Robinson said she visited the parcel and expressed concern of crossing the wetland and stated she believes it needs a larger culvert. Chuck Braxton said they are aware they need a special exception approval for the wetlands. Chairman Lizotte asked what the benefit to granting this would be. Mrs. Robinson said there is no benefit, and this will affect the wetlands. Chairman Lizotte asked if the wetlands would be flagged by a Wetland's Scientist. Mrs. Stylianos explained that during the Site Walk they were flagged. Chairman Lizotte said that it was wet outside of those wetlands. Mrs. Stylianos said the Wetlands Scientist had explained that there is a difference between wet land and wetlands. Chairman Lizotte said that the logging operation tore up so much of the surface. Mrs. Stylianos said that was on the Milican property and her family has always been conscientious on how they have handled logging. Mrs. Stylianos explained that she worked with the UNH cooperative board and help selectively pick the trees and logging operations. Mrs. Stylianos said she retained large trees on the property. Mr. Braxton said the Town just repaved the road and put in a 15-inch culvert which has the same stream flow through it to this parcel's 18-inch culvert, so it seems to be adequate. Mr. Merrill said just because the road was paved over doesn't mean the Town changed the culvert. Mrs. Robinson in her opinion this is a year-round stream. Mrs. Robinson said the driveway will impact the wetlands for quite a long way and this driveway has many issues. Mr. Saunderson questioned if DES put limits on the permits. Mr. Merrill believes that it is a winter permit. Mr. Lake said that when a temporary driveway is allowed, they have to remove the culvert and put it back to its original state. Chairman Lizotte questioned if this culvert had intentions of staying in place. Mr. Braxton said that they were leaving this up to DES, Conservation and Planning Board. Mr. Tuson said that S102 talks about the appropriate use of the land. Abutter Charlie Aznive said that he believes that this has always been a woodlot and believes it was separated off from two abutting farms since it is wet it wasn't good for cattle. Mr. Aznive said that both abutting properties drain onto the property. Abutter Ken Michael owner of Millican Nurseries brought up his concerns. Mr. Michael said that he was told the parcel in question would always be a woodlot. Mr. Michael said that they didn't want the access road to their property to be directly across from a residential home and chose to move the driveway away from neighbors which is in close vicinity to the parcel in question. Mr. Michael has concerns about noise and heavy equipment if the owners that build a home have small children. Mr. Michael said putting the driveway in this location costs more money, but they were trying to be better neighbors. Mr. Tuson questioned how far back their operation goes. Morgan McCarthy said about 600 feet. Mr. Braxton said the house will be built roughly 1200 feet back. Attorney Mark Puffer was representing Charlie and Pearl Aznive. Mr. Puffer presented documents to the Board. Mr. Puffer explained that the Ordinance states a lot must have 200 feet of road frontage and non-conforming lots must have at least 50 feet. Mr. Puffer said that the applicant is asking for relief from the 200 feet of road frontage as well as the minimum road frontage of 50 feet. Mr. Puffer showed a deed from John Greene in 1915 that has the same description as 2013. Mr. Puffer said in 1946 when Mr. Greene died the parcel is described as stump land for \$3 per acre. Mr. Puffer said that this lot has been shown this way for many years and was always a stump or woodlot. Mr. Aznive said at one time the John Green field was part of this parcel which is the field that is in front of the parcel along Pleasant Street. Mr. Aznive said that Agriculture was the root of the economy and the portion of land in front of the parcel could be put to good use where the other remaining land remained a wood lot. Mr. Puffer provided deeds that show this land was passed down as a gift in Mrs. Stylianos' family. Mr. Puffer said that Mrs. Stylianos has made the statement that if she is not allowed to develop that property with a residence the Town will be committing an act of Municipal taking of her property rights requiring a compensation from the Town. Mr. Puffer said she has an avenue to pursue those rights because she can appeal to Superior Court. Mr. Puffer said for there to be a

taking of property rights there must be a violation of investment backed expectations. Mr. Puffer said this lot was a gift and has been passed on as a woodlot for decades. Mr. Puffer said the applicant indicated that the use of the property as a woodlot doesn't pay the real estate taxes. Mr. Puffer said that is incorrect because it is in current use and the taxes on it is about \$22 per year. Mr. Puffer said when the parcel was logged in 2015 she made enough money to pay for the taxes for many years. Mr. Puffer argued the applicant's indication that this would be a benefit to the public due to the taxes from a single-family house. Mr. Puffer said that the Board should be looking at land use issues not financial issues when determining if this would impact the Town. Mr. Puffer brought up Municipal services this house will add. Mr. Merrill questioned if the survey is a legal survey. Pearl Aznive said that she was told by the Engineering company and this was a tape and compass and is the least accurate measurement they have, and it was done by an Agricultural survey. Mr. Puffer said even if the road frontage is 34 feet which they believe it is less, they are still required to get a Variance. Mr. Wood said that it was brought up that if denied Mrs. Stylianos can appeal, this would cost the Town of Loudon money in legal fees. Mr. Wood said that this can be done but is not the route they would like to take. Mr. Wood also said that Mrs. Stylianos has a purchase and sales on the property with a buyer that wants to build a single-family home. Erin and Kendra Thibeault are the buyers and were present in the audience. Mr. Puffer said legal fees are not the same as a taking.

Chairman Lizotte called for a break at 9:07 p.m.

Chairman Lizotte resumed at 9:17 p.m.

Mr. Tuson looked at the tax maps and couldn't find another lot that had less than 50 feet of road frontage besides map 44 lot 8 and believes that is due to a recent survey and has a right of way on another property. Chairman Lizotte went through the application with Mr. Wood and Mrs. Stylianos. Mr. Merrill stated he believes this is a woodlot and the public's opinion was that no lot be built on under 50 feet of road frontage. Mr. Pearl said the spirit of the Ordinance isn't observed because the lot doesn't meet the requirement. Mr. Pearl said they could look at this different if it was 48 feet, but this is a huge reduction. Mr. Pearl said that the applicant does meet substantial justice. Mr. Tuson said there is no issue with surrounding properties being diminished. Chairman Lizotte brought up that there was no hardship. Mr. Tuson said there is a minimum lot frontage, so it gives you options on where the driveway can go, and this lot doesn't have that. Chairman Lizotte said the wetlands cause too many issues on this lot. Chairman Lizotte also stated this will still can be a woodlot going forward. Mr. Tuson brought up that currently the fair market value is based on history give or take \$100. Mr. Pearl said there is no hardship. **Mr. Pearl made a motion to deny the application because it doesn't meet question 1,2 and 5 of the application. Mr. Jakubowski seconded; A roll call was taken. Mr. Jakubowski-yes, Mr. Tuson-yes, Mr. Lizotte- yes, Mr. Pearl-yes, Mr. Merrill-yes. Unanimous- DENIED.**

**Board Discussion:** None

**Adjournment:**

**Mr. Pitman moved to adjourn the meeting at 10:12 pm; seconded by Mr. Aznive; All were in favor.**

Submitted by,  
Danielle Bosco  
Administrative Assistant