

Loudon Zoning Board of Adjustment  
Meeting Minutes  
December 27, 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. Tuson made a correction to a statement. The line should read two lots were found in Town with less than 50 feet of road frontage. The adjournment was made by Mr. Pearl at the end of the meeting. **Mr. Pearl made a motion to approve the minutes with the corrections. Mr. Tuson seconded the motion; All in favor. APPROVED.**

**Discussions:**

None

**Public Hearings:**

**Application #Z18-20 Kim Pilote- Special Exception for reduced driveway setback, Map 21 Lot 41, R/R District-**

Mr. Green is representing a case that is being re submitted as a new application after being withdrawn last month. Mr. Green said they are now asking for a five-foot setback rather than having the driveway right on the property line. With the lay of the land there is a tree and a retaining wall that is preventing them from moving the driveway any farther. Mr. Green said Mrs. Pilote has a home occupation and people park in the area. Mr. Green said they have a turn around for Mr. Pilote's truck as well. Mr. Green said there is an easement for drainage on the abutter's property and a French drain that has made an improvement to the water runoff. Mr. Tuson asked about a pipe going onto the abutter's property. Mr. Green said it is a foundation drain put in by the builder. Mr. Tuson questioned the abutter if the foundation pipe comes right onto his property. Mr. Little said it bubbles up right at the property line. Chairman Lizotte questioned if the fence has made an improvement for any light from the cars. Mr. Little said it blocks the view. Mr. Tuson clarified the question is does it block light from the cars. Mrs. Little said it does. Chairman Lizotte said the water issue isn't the Boards domain, they are dealing with the side setback. Chairman Lizotte asked if this was an improvement in air, space and light. Mrs. Little said they don't see over to the property so no light issues. Mrs. Little said the applicant had stated last month the fence was to hold back water, but a fence can't. Chairman Lizotte said he doesn't remember that being said. Mrs. Little said the application does state it will not result in increase water runoff. Mr. Little said he showed the Board at a previous meeting showing storm run off on their property. Mr. Green said there is a difference between storm runoff, driveway runoff, drainage coming from both as well as the foundation pipe. Mr. Green said there is an easement for drainage and a pipe that was place in 2006. In a storm you will have run off. Mr. Green stated the fence is a foot higher than the driveway. Mr. Aznive said this would push it to the drain. Mr. Green said this property has a natural runoff of water. Mr. Tuson asked for a clarification of what a French drain is and if they could make a larger drain to help ease the water issue. Mr. Green said he believes they dug a hole and put stone and a pipe, so it would take the water slowly. Mr. Tuson said the surface the driveway has currently allows the water to come

down faster and absorb less. Mr. Green said he could speak with the applicant about a larger drain. Mr. Saunderson questioned the size of the drain. Mr. Burdette was in the audience and placed the French drain. Mr. Burdette said the drain is 2 feet deep of stone and can't go down more than that due to ledge. The drain is as large as the parking lot so the only way to increase it is to increase the size of the parking lot. Mr. Aznive questioned if the runoff would be worse if the drain wasn't in place. Mr. Burdette said this drain has helped the water runoff. Attorney Ray Dumonte represented Dave and Sigrid Little. Mr. Dumonte said the Little's have no issues with the business. Mr. Dumonte presented google earth pictures from 2011 and 2016 showing trees removed and the driveway altered. No relief from the ZBA was ever granted stated Mr. Dumonte. Mr. Dumonte said the truck turn around isn't shown on the map, but Mr. Green stated it was 30 feet away from the boundary. Mr. Green said he did not say an amount and it isn't part of this application. Mr. Tuson said it is part of it so if it's only pulled back two feet that wouldn't comply. Mr. Green said they will pull it back to what the ZBA grants. Mr. Dumont suggested to the Board to only allow 15 feet of a reduced setback because five feet isn't enough. Mr. Dumont said the application states the driveway has been in place since 2006 but it shows on google maps that it wasn't as large. Mr. Dumonte said the french drain isn't accomplishing much. Mr. Dumonte said they have to compare today's driveway to natural conditions. Mr. Dumonte said the ZBA stated at the last meeting the maximum relief the Board has granted is 15 feet and that is what the Little's have done on their property. Mr. Dumonte also stated the Pilote's have another access to their basement. Mr. Dumonte said this type of run off does affect the abutting property. Mr. Dumonte also pointed out the application states Planning Board and not ZBA and shows lack of detail by the applicant. Mr. Dumonte stated the plan says it shows everything and it doesn't the shed isn't shown. Mr. Green said the plan doesn't say it shows everything just the house and driveway. Mr. Dumonte apologized. Mr. Tuson said it would be up to code enforcement to look at the shed. Mr. Little said at a previous meeting it was stated that Mr. Burdette witnessed the driveway put in place for the purpose of the concrete trucks entering the property. Mr. Green said you can't use any information said from another meeting. Chairman Lizotte referenced back to the google images. Mr. Tuson said you can see in both where the driveway is. Mr. Tuson said there clearly has been change made and it has been widened. Mr. Tuson said that it was stated to compare to the natural state, but the Board doesn't know what the actual natural state is. Mr. Green said if you look at the google images the image from 2011 shows a large pond of water and that is where the Little's property now sits. Mr. Green said this is where a cellar hole was dug but it filled with water in 2010. Mr. Little said they were told to build their home higher up or else they would have water problems in their basement. Mrs. Little said there is a ditch that allows water to flow onto their property. Mr. Tuson said with the application being on the Pilote's property the specifics of the drainage on the Little's property is irrelevant. Mrs. Little asked if the Board wanted to see the video of the drainage issues. The Board chose not to see the video again. Mr. Dumonte said it was stated at the last meeting the fence would stop the water. Mr. Tuson said that himself and Chairman Lizotte didn't recall that statement. Mr. Dumonte said it was stated there are pipes underground, but they don't know any details and requested the Board have detail on the pipes. Mr. Tuson spoke about the flow rate increasing with the French drain and if they can balance the two. Chairman Lizotte said this type of thing is more of a Planning issue. Mr. Tuson said if they were to deal with it, they would have the Town Engineer investigate it. Mr. Green questioned what prevents any Resident from doing drainage on their property. Mr. Green said when a property has water problems you put in a French drain. Mr. Green said an easement was granted for the water drainage. Mr. Green said stone slows water, the State always uses stone. The applicant has done everything possible. Mr. Tuson said he had questioned if the drainage was adequate. Chairman Lizotte questioned if more stone would help. Mr. Green said they have done as much as they can with the land and where the septic is located. Mr. Merrill said adding a pipe along the Little's property to further drain the water and the drainage easement should have included carrying the water to the road. Mr. Little said the

Easement has never been presented. Mr. Aznive said he didn't know what size pipe would solve it but if everyone can work together this problem can be solved. Mr. Pearl said removing the driveway this problem will not be solved. Mr. Pearl said you can see in the original pictures there was a water issue. Mr. Pearl said he believes they have taken efforts to resolve this. If they had requested permission for this originally the Board would have granted it he believes. Mrs. Little said if they had asked permission wouldn't they have needed a reason to have it so close. Mr. Pearl stated they would have had them put gravel down. Mrs. Little said they wouldn't have granted it so close. Mr. Pearl said they have granted 3 feet of relief. Mr. Pearl said you can see where the driveway was in 2011 it was in the same place, removed trees and upgraded to gravel with drainage. Mrs. Little questioned the type of stone. Mr. Dumonte asked the Board to look at what they would have requested the applicant to do and said they would have required more drainage. Mr. Merrill said the abutting property wasn't built and they would not have made them do drainage and a drainage easement in place. Mr. Merrill said how do you have a drainage easement and then tell someone they can't use it. Mr. Tuson questioned if anyone had a copy of the easement. Mr. Pearl questioned if the driveway was in its current state when the Littles purchased their home. Mr. Little said it was there when they bought it. Mr. Pearl said to Little's they are requesting them to have a driveway removed that was in place prior to the Little's buying the property that was a wet property. Mr. Dumonte said the easement wasn't disclosed to them and they only found out after closing. Chairman Lizotte said its buyer beware. Mr. Pearl said often applicants come in after they have done something and ask for permission and they do approve them. Mr. Pearl said the applicant has done a substantial amount of drainage work. Mr. Dumonte said a larger French drain would help mitigate this problem. Mr. Green said the whole parking lot is all 2 feet of drainage. Mr. Merrill said moving the driveway another 10 feet wouldn't improve the water issue. Mr. Little said if they return 15 feet back to its original state that will help the drainage. Mr. Green said the original soil is hard pan and would be worse for water runoff. The Board questioned engineer approval for the drain. Mr. Dumont provided a case from Supreme Court about using the easement reasonably. Mr. Tuson said they don't know the maximum flow rate from 2011, 2016 or now. Mrs. Tuson said a unreasonable request would be to pave the parking lot and that is not what they have done. Mr. Green discussed what was presented about the easement and said you can only go back to when it was created and what it is for which is drainage across the abutting property. The Board discussed the placement of the foundation pipe. Mrs. Pilote said the water that is coming down is from the rain. Mr. Burdette said there is no pipes in the drain the only pipe is the foundation drain that has been in place since the house was built in 2006. Mr. Burdette said a catch basin on the Little's property would help with this. Mr. Aznive said if they can work together this can be solved. Chairman Lizotte went through the application. Chairman Lizotte closed the Public Hearing and opened it up to the Board only. **Mr. Tuson made a motion to table the application requesting a copy of the drainage easement and additional testimony for question #4.** Mrs. Bosco asked to recess and get a copy of the easement. Mr. Tuson withdrew his motion.

**Recess: 9:18 pm**

**Return: 9:28 pm**

#### **Application #Z18-20 Kim Pilote continued**

Mr. Pearl said the language in the deed states the easement is defined as lasting for an unknown length of time. Chairman Lizotte asked the Board if they were all set with the easement. Mr. Pearl said the Easement settles his feelings on question 4 and the drainage. **Mr. Pearl made a motion to approve the application for a 5-foot setback on the south side boundary; Seconded by Chairman Lizotte. A roll call vote was taken, Mr. Merrill-yes, Mr. Pearl, Mr. Lizotte- yes, Mr. Tuson- yes, Mr. Aznive- no. Approved 4-1.**

**Board Discussion:** None

**Adjournment:**

**Mr. Pearl moved to adjourn the meeting at 9:36 pm; seconded by Mr. Aznive; All were in favor.**

Submitted by,  
Danielle Bosco  
Administrative Assistant