

Loudon Zoning Board of Adjustment
Meeting Minutes
July 25, 2019
7:00pm

Present:

Chairman Ned Lizotte, Howard Pearl Vice-Chair, Roy Merrill, Charlie Aznive, Earl Tuson with alternates Todd Phelps and Peter Pitman.

Julie Robinson of the Conservation Committee was present in the audience. Mr. William Lake of the Loudon NH Code Enforcement was present in the audience.

Chairman Lizotte called the meeting to order at 7:01 p. m.

Minutes:

Regular Minutes June 27, 2019- Mr. Merrill made a motion to accept the minutes as written. Mr. Phelps seconded the motion. Mr. Pearl will abstain as he was not present for this meeting. All in favor. Yes. Approved

Site Walk Minutes for Case #19-02-Diane J Bullock Map 49, Lot 10- Mr. Phelps made a motion to approve the minutes as written. Mr. Tuson seconded the motion. Mr. Pearl will abstain as he was not present for this meeting. All in favor. Yes. Approved

Discussions:

Troy Ellis-Map 22, Lot 6- Fence set in right of way.

Mr. Ellis come before the board due to a letter he has received from NH DOT on June 19, 2019 stating that the wooden stockade fence he put up which is located within the State's approximate 25 feet from centerline right of way. The letter states if the fence is not removed that the DOT will not be liable for any property damage caused by normal winter maintenance activities. Mr. Ellis stated he also received a letter from the Town of Loudon Code Enforcement Office. Mr. Ellis stated he reached out to both the DOT and Loudon Code Enforcement Office to acknowledge these letters regarding the fence and that he will accept full responsibility for any damages to the fence. Loudon Code Enforcement Officer Bill Lake is fine with the fence and that he will draft a letter to send to DOT that all parties agreed that Mr. Ellis will be responsible for any damage to the fence and surround area.

Gary Books- Map 44, Lot 14-Special Exception for business sign.

Mr. Brooks would like to put up a sign for his business for delivery purposes. Currently he has a minor home occupation business which would not allow for a sign to be put up. The board discussed with Mr. Brooks that he would need to apply for a special regulation 502.2 Major Home Occupation, which would allow for him to have a business sign.

Public Hearings:

Application #Z19-08 Joanne Fontaine Map 29 lot 86- Variance for construction of an addition for a veterinarian clinic & expansion of the existing practice with parking.

Ms. Laura Hartz of the law firm Orr & Reno approached the board stating she was here to represent Dr. Fontaine, also with her is Robert Carey of the law firm Orr & Reno. Mr. Matthew Moore of Civil Engineering, PLLC was also in the audience. Ms. Hartz stated she reviewed the application that was approved in 2011 and the meeting minutes of last month along with the site walk minutes. Ms. Hartz would like to clarify some facts and issues that arose during last month's meeting. First it appears there was concern expressed the Ms. Fontaine's business hours expanded beyond what was indicated on her application dated in 2011. Ms. Hartz states that Ms. Fontaine realizes she should have come to the board first to request an expansion of hours. Ms. Fontaine expressed her sincere apologies for the oversight. Since the last hearing on June 27th Ms. Fontaine has redesigned her veterinarian clinic plans to meet the Board's and neighbor's requests. She now proposes:

1. To build a 24 feet x 42 feet addition instead of 44 feet x 40 feet, for a total of 1 ,008 SF for the major home occupation;
2. To construct 4 parking spaces for clinic visitors instead of 8 parking spaces;
3. To pave the clinic driveway to help eliminate the sand dust as requested by a neighbor;
4. To build the addition on piers on the same level as the existing structure to protect any vernal pools and wetlands;
5. To side the addition with the same log-cabin siding as the residential structure;
6. To return her screen porch and bedroom to residential use;
7. To not exceed open hours of 8am to 6pm, Monday to Saturday, plus on-call, urgent care; and to limit animal boarding to only those animals actively receiving veterinary care.

Chairman Lizotte read from 2 documents. One is a letter from code enforcement that read in part: During this review the chairman asked you several questions which included what your current hours of operation are, how many current employees you have, and how many parking spaces you currently have. The answers you gave to some of the questions that were asked do not follow what you were approved for. The chairman of the Loudon Zoning Board has requested that you review your original application for a special exception that was approved for a home-based mobile veterinary clinic and follow what was approved. If you are looking to operate outside of what was approved, then you will need to submit a new application for review by the Loudon Zoning Board. The other is an email correspondence with town legal counsel that read in part: "It could be argued that a violation of the existing permit is evidence that the variance would be contrary to the public interest, and substantial justice would not be done!" If the applicant qualifies for the permit, perhaps the board could make it subject to a condition precedent. The condition could require that he bring his or her property into compliance prior to the permit becoming effective, and only after a hearing demonstrating he has satisfied the condition."

Ms. Hartz stated that if the veterinarian clinic was approved in 2011 and then the zoning ordinance was changed in 2012, then the ordinance in 2011 is what is to govern the veterinarian clinic as it is a preexisting non- conforming use. What Ms. Fontaine is requesting for a variance and she laid out the 5 legal

requirements that need to be met for a variance to be accepted. (A) Substantial Justice that denying the application would do a public benefit. Here we are doing the opposite. It is a benefit to have this veterinarian clinic within the neighborhood. (B) Hardship-special circumstance that are unique to lot. It is not a self-created hardship. We have 25 acres in a location with a barn with easy access (ramps) that leads up into the property and the building that provides for the veterinarian clinic. A long-time resident of the town who has been historically providing veterinary services to the residences of Loudon at a discount. (C) Contrary to the Public Interest. Something that differs a large degree from the town ordinance. In this situation what we have here is a major home occupation only the slight misfit in the pet grooming that was historically done in 2011. This would be a normal major home occupation. (D) Is it contrary to the spirit and content of the ordinance. Courts look to the master plan and what zone the property is in. This property is in a rural residential and the intent of the rural residential is to preserve low density housing and low-density development and allow some commercial development and some home-based occupation, like what we have here. (E) Diminution of property value. There is no evidence that property values have diminished due to the veterinary clinic. No abutters have come forward stating their property value has decreased. We see no reason for denial of the special exception as we have proven that these changes are minor and will be a benefit to the area. Chairman Lizotte asked if there were any questions from the board? No additional questions were asked. Chairman Lizotte asked the public if anyone had any questions or comments. Mr. Ora George of Foster Rd. approached the board. He states he is concerned that Ms. Fontaine is not using the property as permitted with the expansion of the building and adding a new driveway. He expressed concern that when this property is sold in the future, that someone else moving in will use the property as veterinary clinic as well. Chairman Lizotte then recapped the original application approved in 2011 for a Home-Based Mobile Clinic. He then stated she was a test case that they allowed within the Rural Residential Zone and since 2012 all veterinary clinics will need to be in a Commercial or Commercial-Recreational zone. With the expansion of the business you would need to go in front of the town for a variance. Mr. Pearl asked Ms. Fontaine do you see a change in traffic to your business? I counted visits 2 weeks ago after the last meeting and saw no increase in traffic the usual 2 to 3 cars per hour. Mr. Pearl asked, "you are not increasing your business?" Ms. Fontaine replied, "No". Ms. Robinson spoke to the board that she went on a site walk of Ms. Fontaine's property. She feels that to allow the development of the business is changing the dynamics of the property. Prior to Ms. Fontaine owning this property the wetlands were dredged, there is concern there is no wetland buffer. There is concern for water run-off and vernal pools. Pine Island Brook has been comprised a long time ago. The expansion of the building will need to consider a gutter system or ground drainage system that would help conserve the wetlands. Mr. Lake asked, "When was the house built?" Mrs. Atkins spoke up and said it was built in 1980. Ms. Fontaine said "I purchased the property in 2006. Mr. Lake stated that there have been no inspections since Ms. Fontaine has owned the property. Mr. Tuson stated that maybe we can make the application with the condition of regular code inspections. Mr. Tuson stated "in reviewing your applications here before the board tonight it appears the application reasons that are being presented are reversed as you have a request for a variance for the wetlands and not the expansion of the clinic and a special exception for the expansion of the clinic and not the wetland. These applications will need to be rewritten". Chairman Lizotte made a motion to continue these applications until they have been rewritten and resubmitted. Mr. Pearl seconded the motion.

All in favor. Yes.

Application #Z19-09 Joanne Fontaine Map 29 lot 86- Special Exception for construction of an addition for veterinarian clinic & expansion of the existing parking lot. –

Mr. Tuson stated “in reviewing your applications here before the board tonight it appears the application reasons that are being presented are reversed as you have a request for a variance for the wetlands and not the expansion of the clinic and a special exception for the expansion of the clinic and not the wetlands. These applications will need to be rewritten”. Chairman Lizotte made a motion to continue these applications until they have been rewritten and resubmitted. Mr. Pearl seconded the motion. All in favor. Yes.

Application #Z-10 Diane J Bullock Map 49, Lot 10-Special Exception for impact to the Wetlands Conservation Overlay District- Driveway-

Mr. Bernier came before the board to discuss the construction of a 900-foot driveway through wetlands and their buffers in order to access the buildable portion of new lot #10 for a single residence. Mr. Bernier referred to Article III 301.4A and proceeded to provide evidence for the granting of the special exception as presented on the application and in front of the board. Mr. Bernier referenced the joint boards site walk on June 26, 2019 where they viewed the proposed driveway and culvert locations that will be placed underneath the driveway. The largest wetland crossing will be on private land 200 feet from Flagg Rd. The smaller wetland crossing is at the roadside where the culvert will be added to help promote drainage along the road and maintain hydrologic connection between the wetlands and the existing road drainage system. The ditch line turns out to be jurisdiction right at the road that is 220 square feet of impact to the wetlands. There is a total of 2,686 square feet of wetland impact and total 75 feet buffer impact for a total of 12,200 square feet. The house site will be 600 feet from Flagg Rd on a 29-acre lot. The wetlands that are being impacted do not have any hydrology, so there is minimal impact to the wetlands as we selected the narrowest point to cross the wetlands. Any disturbed soils will be promptly revegetated. Traffic volume and impact will be minimal as the driveway to be constructed will serve one single family residential home. Chairman Lizotte asked are there any additional question from the board? There were no additional questions presented from the board members. Mr. Merrill made a motion to accept the application as presented. Mr. Pearl seconded the motion. All in favor. Yes. Approved.

Application #Z-10 Part B Diane J Bullock Map 49, Lot 10-Special Exception for Water Impoundment-

Pond- Mr. Bernier come before the board to discuss using an existing pond will be as a fire pond. The pond will be dredged deeper to increase its capacity and a dry hydrant will be installed for use as a fire department water source. It will have a strainer that will need to be maintained by the fire department. A pumper truck will be used to pull the water from the pond via the dry hydrant. There will be approximately 7,000 square feet of disturbance to the existing pond and approximately 3,100 square feet of disturbance to the adjacent wetlands and approximately 1,010 square feet of impact to the adjacent wetland buffer from regrading. The dredging will make the pond bigger. There will be someone from conservation to observe when we dredge the pond to make sure there is no wild-life impact. The pond is fed by a watershed and spring. The traffic volume and impact will be minimal once the work is completed. There may be occasional visits by the fire department for routing testing/maintenance. The dredging will be done during the dry period so there is no flow out of the pond in accordance to the recommendation by the NHDES Wetlands Bureau. The adjacent regraded slope will

be revegetated. The dry hydrant standpipe will be located a safe be accessible distance from Flagg Rd near the intersection of Lesmerises Rd. Currently we have requested a permit from NHDES. We believe this pond will be a great water source for the fire department that will benefit the residence in the area. There will be minimal impact on Loudon's ground water as the pond will continue to function as it has, but with added capacity for water storage. This will create minimal demand on municipal services vs having cistern which demands greater on municipal services due to maintenance and funds. The pond will have about 100,000 gallons of water at the ready to put out a fire. Chairman Lizotte asked how deep are you dredging down to? They will dredge down to 8 feet deep, currently the pond is 4 feet deep. Mr. Bernier is working to compile a report to the NH Fish & Game regarding the types of vegetation that is in the pond. The pond doesn't appear to be a turtle habitat. Chairman Lizotte asked how often the pond will need to be drudged due to sedimentation? Sedimentation will be minimal due to the land will be forested instead of open fields; this produces less sedimentation. The fire department can maintain the pond by sending a letter to the neighbors that they are going to be maintaining the pond. They will take pictures of the pond (once done) and use that as a guide and standard to keep the pond size to. Chairman Lizotte asked "when will you be looking to get starting on the project"? Mr. Bernier stated we still need to get through the planning board and the wetland bureau. Looking somewhere in September/ October timeframe. Mr. Phelps asked, "Where is the nearest water source now"? Mr. Merrill responded, "Clough Pond". Mr. Phelps stated I think this is a substantial improvement in that area, instead of going to Clough Pond for your water. Chairman Lizotte asked "any other questions from the board members or the public? No addition questions were raised. Mr. Tuson made a motion to accept the application as presented. Mr. Merrill seconded the motion. All in favor. Yes. Approved.

Adjournment:

Mr. Pearl made a motion to adjourn. Mr. Merrill seconded that motion. All in favor. Meeting was adjourned at 9:13 pm.

Submitted by,
Karen Hayes
Administrative Assistant