

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
February 19, 2014
7:00 PM**

MEMBERS PRESENT: Jim Banks, Chairman; John Hutton, Tobin Farwell; Frank Reinhold, alternate; and Craig Williams, alternate.

OTHERS PRESENT: Attorney Sharon Cuddy Somers, Donauhue, Tucker & Ciandella, PLLC; Bonnie Winona MacKinnon; Alice MacKinnon; Toni Hartgerink, Lee Conservation Commission; Scott Holman, Zarembela Group; Chris Nadeau, Nobis Engineering; Sean McDowell, Nobis Engineering; Peter Schauer, Schauer Environmental Consultants, LLC and Caren Rossi, Planning/Zoning Administrator.

Old Business

(ZBA1314-17) Attorney Somers to met with the Board to discuss for clarification purposes the motion for rehearing filed by Bonnie Winona MacKinnon relating to a Variance & Special Exception decision that was granted to an abutting property, Three Swallow Properties, LLC. Property is located on 5 Mast Rd and is known as Lee Tax Map #11-10-1000. The original hearing was on November 21, 2013 and the rehearing was on January 15, 2014.

Caren Rossi passed out verbatim minutes from the 1/15/2014 meeting at the request of Chairman Banks.

The Board took several minutes and reviewed them.

Jim Banks, Chairman pointed out two spelling corrections on page one of these minutes.

Attorney Somers asked to have page numbers put on each page.

Tobin Farwell asked why the Chairman asked what the concern was.

Jim Banks, Chairman explained that he wanted the exact wording in case something came up that hindered on a word. He wanted the capability in case something did come up. It may not be needed, but he wanted the capability.

Tobin Farwell asked to see the zoning regulation that pertains to the special exception requested.

Attorney Somers explained that Caren Rossi asked her to come over to make sure everyone was on the same page and knows the process following the January 15, 2014 meeting. She thought what she would do is start on with the history. On December 21, Bonnie Winona MacKinnon submitted a motion to rehear on the decision. There were really two grounds for the rehearing. One was that the applicant didn't address the five criteria; this is with regards to the

special exception. The second was with the granting of the variance and the general theme was the five criteria again were not addressed. A few other subsidiary comments were made in the request. On January 15, 2014 this Board met and had a discussion on the motion to rehear. She recapped the Minutes of the January 15, 2014 meeting as to the motion that was made. The motion is as follows. *Tobin Farwell motioned to grant the special exception request for a re-hearing, and not wetland setback request application. John Hutton second. Vote: John; Tobin; Craig- motion carried.*

Attorney Somers continued to explain that when a request for a rehearing is presented, you must act on the request only. Procedurally this was voted to be done at the January meeting. We are going to start from scratch with regards to the special exception, but will let the variance to the wet soils stand. If anyone is unhappy with this decision made on January 15, they can appeal this to superior court. A public hearing date needs to be set up for the rehearing of the special exception. One of the items discussed in January was that possibly a special exception should not have been granted, it should have been a variance that was requested. She continued to explain the process. She explained that there were possibly a couple different ways to procedure. One, if the applicant and the person who filled the motion for rehearing were willing to withdraw their requests and then the applicant can apply for a variance. Or the applicant can apply for a variance and hold that hearing after the rehearing. She reminded the Board that they have voted to have a rehearing so this must happen. You have voted to rehear the request and it must happen.

Board members discussed the landscape buffer requirement and the lack of a definition for it.

Tobin Farwell explained to the 2 options to Bonnie Winona MacKinnon and asked her if she would be willing to withdraw her request.

Bonnie Winona MacKinnon expressed that she needed time to think about this. Caren Rossi had told her she would not be allowed to speak tonight and did not have anything to prepare for. She explained that the Board keeps referring to the landscape buffer but it is not only about the landscape buffer. The five criteria were not addressed in his presentation. She needs time to think.

Attorney Somers clarified to the Board that the Board has granted the request to rehear, this is agreeing with her.

Craig Williams asked Ed Bannister if he would be willing to apply for a variance.

Ed Bannister explained that he is.

The sequence of the applications was discussed.

Attorney Somers stated to do the special exception first, and then the variance request if requested. For the rehearing, there is no application to be filled out and the fee is paid by the person who requests the rehearing.

The Board set the date of the rehearing to March 19, 2014 at 7:00PM.

Jim Banks, Chairman explained this application will be continued to March at the applicant's request.

(ZBA1314-15)

An application from applicant Donald W. Anderson & Karen A. MacDonald 50 Northside Road, Lee NH. Property is known as Lee Tax Map #11-04-1200. The applicant requests the following:

A variance of the 2013 Lee Zoning Ordinance, Article XIV; Shoreland Conservation District, section C-b and/or Article XXIII, number-3, in that the applicant is proposing to expand/remodel/raze an existing dwelling that is within the Shoreland Conservation District where no permanent or temporary structures are allowed. Said expansion is shown on the submitted plan dated November 18, 2013.

A variance of the 2013 Lee Zoning Ordinance, Article XIV; Shoreland Conservation District, section C-b and/or Article XXIII, number-3, in that the applicant is proposing to construct a deck within the Shoreland Conservation District. Said deck is shown on the submitted plan dated November 18, 2013

A variance of the 2013 Lee Zoning Ordinance, Article XIV; Shoreland Conservation District, section C-b and/or Article XXIII, number-3, in that the applicant is proposing to construct a garage with a connector within the Shoreland Conservation District. Said garage with connector is shown on the submitted plan dated November 18, 2013.

A variance to the 2013 Lee Zoning Ordinance, Article XIV: Shoreland Conservation District, section C-b and or Article XXIII, number-3, in that the applicant is proposing to reconstruct the existing retaining wall within the Shoreland Conservation District. Said reconstruction is shown on the submitted plan dated November 18, 2013.

(ZBA1314-18)

An application for Variance(s) and Special Exception(s) of the 2013 Lee Zoning Ordinance from The Zaremba Group for Dollar General Stores, 14600 Detroit Ave, Cleveland, OH 44107 for property located at 60 Concord Road, Lee NH, known as Lee Tax Map#07-08-0300, for the following;

- 1. A Special Exception to Article XV, section E- 1 to allow for access & utilities for the site development to be in, and within 75' of the wet soils where 75' is required.**
- 2. A Special Exception to Article XV, section E -4 to allow for any filling associated with the parking; leach field and access associated with the development in the Wet Soils Conservation Zone.**

3. **A Special Exception to Article XV, section E -2 to allow for a water impoundment (detention pond) for the site development to be located in the Wet Soils Conservation Zone.**
4. **A Variance from Article XV section F-2 to allow a structure within 0 (zero) (+/-) feet of the Wet Soils Zone where 75' is required.**
5. **A Variance from Article XV, section F-1 to allow a septic tank and leach field within the Wet Soils Conservation Zone where 125' setback is required.**

Note: The Board may act on each of the above listed items, combine or change the order of one or more of the above listed items during this meeting.

John Hutton clerked.

Chris Nadeau explained that they were here just about a year ago seeking relief to construct a Dollar General Store. When finalizing the plans to submit them to the planning board they noticed a small wet soils pocket at the front of the site, they had not noticed these pockets before. This is because this is the area that the cars always parked in at the site.

Peter Schauer, Schauer Environmental Consultants explained that it is a truncated wet soils pocket that got cut off when the site was developed in the past and when the highway was put it. The wet soil has been filled many times many years ago but its characteristics will never change. It is considered poorly drained to our regulations but not to the states regulations, not jurisdictional. This is because it they will always have wet soils parameters.

John Hutton read the conservation commission's letter into the record.

No public comment.

John Hutton made a motion to bundle the special exception requests together as well as the variance requests together.

Tobin Farwell second.

Vote, all motion carried.

The Board determined the following Findings of Fact.

A Special Exception to Article XV, section E- 1 to allow for access & utilities for the site development to be in, and within 75' of the wet soils where 75' is required. A Special Exception to Article XV, section E -4 to allow for any filling associated with the parking; leach field and access associated with the development in the Wet Soils Conservation Zone. A Special Exception to Article XV, section E -2 to allow for a water impoundment (detention pond) for the site development to be located in the Wet Soils Conservation Zone.

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board **has yes (majority)** sufficient information available upon which to render a decision. If there is sufficient information, the application will be deemed accepted and the public hearing will continue. If it is found that the Board does not have sufficient information, the public hearing will be postponed to a date certain on _____.

For Special Exceptions permitted under Article V:

The use is specifically permitted under the terms of Article V for a Special Exception.

Yes: **majority**

For Special Exceptions permitted under Article XV in the Wet Soils Conservation Zone:

The use is specifically permitted under the terms of Article XV.E. _____

Yes: **majority**

Has the Application been referred to the Conservation Commission and the Health Officer for review and comment as required by Article XV.E?

Yes: **majority**

The requested use is specifically permitted under Article XV:

1. If for street, road, access ways and utility rights-of-way, is the use essential to the productive use of land and is it located and constructed so as to minimize any detrimental impact of such uses upon the Wet Soils?

Yes: **majority**

2. If for Water Impoundment, has the purpose of the District been met?

Yes: **majority**

3. If for Fire Ponds, has the use been reviewed by the Lee Planning Board and Lee Fire Department and has it satisfied the purposes of the zone?

n/a

4. If for an undertaking of a use not otherwise permitted in the Zone, has it been shown that the proposed use is not in conflict with any and all of the purposes and intentions listed in Article XV.A?

Yes: **majority**

For all Special Exception requests, findings and rulings.

After reviewing the above, the Board has determined the following findings of fact, all of which must be satisfied to grant a special exception as required by Article XXII.3 of the Zoning Ordinance.

- 1.) The proposed use **will not (majority)** be detrimental to the character or enjoyment of the neighborhood or to future development by reason of undue variation from the kind and nature of other uses in the vicinity or by reasons of obvious and adverse violation of the character or appearance of the neighborhood or cause diminution in the value of surrounding property.
- 2.) The use **will not (majority)** be injurious, noxious or offensive and thus be detrimental to the neighborhood.
- 3.) The use **will not (majority)** be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk of life and property, unsanitary or unhealthful emissions or waste disposal, or similar adverse causes or conditions.

John Hutton made a motion to GRANT the requests for a Special Exception to Article XV, section E- 1 to allow for access & utilities for the site development to be in, and within 75' of the wet soils where 75' is required. A Special Exception to Article XV, section E -4 to allow for any filling associated with the parking; leach field and access associated with the development in the Wet Soils Conservation Zone. And a Special Exception to Article XV, section E -2 to allow for a water impoundment (detention pond) for the site development to be located in the Wet Soils Conservation Zone. Subject to the Lee Conservations Commissions comments.

Tobin Farwell second.

Vote: all, motion carries.

The Board determined the following Findings of Fact:

Variance from Article XV section F-2 to allow a structure within 0 (zero) (+/-) feet of the Wet Soils Zone where 75' is required. A Variance from Article XV, section F-1 to allow a septic tank and leach field within the Wet Soils Conservation Zone where 125' setback is required.

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, the Board finds that it does not have sufficient information upon which to render a decision. The public hearing will be postponed until _____.

There is sufficient information before the Board to proceed. **Yes all**

FINDINGS

After reviewing the petition and considering all of the evidence as well as the Board members' personal knowledge of the property in question, the Board makes the following determinations pursuant to RSA 674:33. The Board has checked each statement that applies.

- 1) **Granting the Variance will not be contrary to the public interest. Yes majority**
- 2) **Granting the variance would be consistent with the spirit of the ordinance. Yes majority**
- 3) **In granting the variance, substantial justice is done. Yes majority**
- 4) **In granting the variance, the values of surrounding properties are not diminished. Yes majority**
- 5) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. Yes majority**
 - A) To find that an "unnecessary hardship" exists, the Board must find:
 - There are special conditions on the subject property that distinguish it from other properties in the area; *and*
 - No fair and substantial relationship exists between the purpose of the ordinance and its application to the property in question.
 - B) **In the alternative, if the above criteria are not satisfied, the Board may still find that an unnecessary hardship exists if it finds:**
 - **There are special conditions on the subject property that distinguish it from other properties in the area; *and***
 - **The property cannot be reasonably used under the ordinance and therefore, a variance is necessary to enable a reasonable use of it.**

Tobin Farwell made a motion to GRANT the request for a Variance from Article XV section F-2 to allow a structure within 0 (zero) (+/-) feet of the Wet Soils Zone where 75' is required. And a Variance from Article XV, section F-1 to allow a septic tank and leach field within the Wet Soils Conservation Zone where 125' setback is required.

Frank Reinhold second.
Vote: all, motion carried

Jim Banks, Chairman explained the 30-day appeal process to the applicant.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Jim Banks, Chairman

John Hutton

Frank Reinhold, Alternate

Tobin Farwell

Craig Williams, Alternate