

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
March 20, 2013**

MEMBERS PRESENT: Jim Banks, Chairman; John A. Hutton, III; Tobin Farwell; David Allen; Philip Sanborn; Frank Reinhold, Alternate and Peter Hoyt, Alternate.

OTHERS PRESENT: Caren Rossi, Secretary; John Hutton (audience for Webb application) Fred Schultz; Craig Maggio; Eric Finnebaum, Oyster River Local Advisory Committee; Chris Nadeau- Nobis Engineering and Scott Holman, Zaremba Group.

The board introduced themselves to the applicants and audience.

Jim Banks, Chairman explained that a few members' terms have expired and the BOS has not reappointed anyone yet. The RSA is clear that this is ok. **673:5 Terms of Local Land Use Board Members.** –

I. (a) Except as provided in subparagraph (b), the term of any ex officio member serving on a local land use board shall coincide with the term for that other office; except that the term of the administrative official appointed by the mayor shall terminate with the term of office of the mayor appointing the official, and that the term of the administrative official appointed by the town council, board of selectmen, or village district commissioners shall be for one year.

(b) A city or town council, board of selectmen, or the village district commissioners may determine that the city or town council member, the selectman member or the village district commission member shall be subject to a 4 month or an annual appointment under such conditions as it determines.

II. The term of an elected or appointed local land use board member shall be 3 years. The initial terms of members first appointed or elected to any local land use board shall be staggered so that no more than 3 appointments or elections occur annually in the case of a 7 or 9 member board and no more than 2 appointments or elections occur annually in the case of a 5 member board, except when required to fill vacancies.

III. The term of office for an appointed local land use board member shall begin on a date established by the appointing authority, or as soon thereafter as the member is qualified, and shall end 3 years after the date so established. If no successor has been appointed and qualified at the expiration of an appointed member's term, the member shall be entitled to remain in office until a successor has been appointed and qualified.

Tobin Farwell clerked and read the following application into the record.

(Z1213-7)

- **An application made by Wayne D Webb. The property is owned by Wayne D & Leslie H Webb Revocable Trust, Wayne & Leslie Trustees, 28 Riverside Farm Drive, Lee NH Property is known as Lee Tax Map #26-11-01700. The applicant is requesting a Variance to Article V, Section A in that the applicant is requesting to have two residential structures on the property where no more than one residential structure is**

allowed. The second residence requested is an apartment to be constructed on an existing foundation. The request is to the 2012 Town of Lee Zoning Ordinance.

John Hutton stepped down for the Web application.

Wayne Webb explained that he, his wife and his daughter live on the farm. They have constructed a 10- stall horse barn on the property. As part of the covenants to their parcel, they are required to maintain the 23+- acres of farmland held in common with all of the other members of the Riverside Farm Drive association. An emotional please is that he is 80 years old and can't do all the work himself and has found that every year he needs to hire more and more people to do the work. His hope is to build an 800 sq ft barn managers apartment on the old foundation that was the former dairy's milking area on the south side of the existing red barn. The person who lives there will pay rent and that income can help pay for the farm work that needs to get done. He can't build an apartment at his home because he already has one.

Jim Banks, Chairman asked what the condition of the foundation was that he was planning on using.

Wayne Webb explained that the structure was bulldozed so it is rough and most likely needs repair work with rebar etc. prior to using it. He thought the board would be more favorable if he used this foundation. He would be happy to construct a new foundation.

Frank Reinhold asked if the association had covenant restrictions on this.

John Webb claims that there are restrictions against this.

Jim Banks, Chairman felt he should get approval from the homeowners association first and then come back to the board.

Fred Schultz a resident in town, not an abutter explained that he has applied for this same thing 2 years ago, and he was denied. He thinks farms should be allowed to have apartments.

John Hutton he stated he was the past owner of the property, and a past president of the association. He should go to the homeowners association first; there are lots of covenants and restrictions on the property. He was the one that bulldozed the old dairy barn into the foundation; this foundation will most likely not be able to be reused. He agrees with Mr. Schultz, great idea but not allowed.

The Board discussed the covenant requirements and felt he should possibly start there. Wayne Webb agreed.

Tobin Farwell made a motion to continue this application until May 22, 2013 allowing the applicant time to contact and receive approval from the homeowners association.

Peter Hoyt second. Vote: all

(Z1213-6)

An application for Variance(s) and Special Exception(s) of the 2012 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 variance from Article VI; Section- C.2 Density: To allow total impervious coverage of approximately 55% (+/-) where 25% is allowed.**
- 2. A variance from Article VI; Section- C.3 Setback:**
 - a) To allow a structure and parking setback from the Highway Right-of-Way of approximately 15 feet (+/-) where 125 feet is allowed;**
 - b) To allow a structure and parking side yard setback of approximately 10 feet (+/-) where 100 feet from a residential lot is allowed (east abutter – residential use);**
 - c) To allow a structure and parking side yard setback of 11 feet (+/-) where 50 feet from a commercial lot is allowed (west abutter – Dunkin Donuts);**
 - d) To allow a structure and parking rear setback of 72 feet (+/-) where 100 feet from a residential lot is allowed (south abutter – residential use).**
- 3. A variance from Article XV F to allow a structure within 66 (+/-) feet of the Wet Soils Zone where 75 feet is allowed.**
- 4. A variance from Article XVII; Section-III-C; .4h and b, Commercial Signs: to allow a 150 square foot building sign where 8 square feet is allowed and a 96.5 square foot sign (see special exception request for pole sign as part of this application), where 32 square feet is allowed.**
- 5. A special exception from Article XVII Section-III-C; 4e and f, Commercial Signs to allow a pole sign with 96.5 square feet, 21feet high (+/-), 0 (zero) feet from ROW.**

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.

Tobin Farwell clerked.

Chris Nadeau explained the application. This is currently a residential use in the commercial zone. It is a very small lot that is in dire need to be cleaned up. It is currently a small, what appears to be a small engine repair shop in the building. An environmental study has been done; they will remove the house and clean up the site.

Scott Holman explained that Dollar General is a general merchandise store. They have 10,000 stores; it fills a hole in the market in Lee. This store will be owned by corporate; it's in the commercial zone. The store hours are typically 8 am to 9 pm daily. The parking lot lights go off ½ hour after closing. Large truck deliveries are once a week. Local products are more often but in smaller vehicles. They will employ 6 to 10 people and have 2 to 3 on at all times with a manager.

Chris Nadeau explained that they have met with the conservation commission. They feel they can mitigate the impact and address their concerns. It is a consistent use for the circle. He explained on the plan the setbacks and the requests. He also showed a very small read box where the building envelope would be if they were to adhere to the setback requirements. He explained that the variance requests were all consistent with the existing businesses at the circle. The request for the residential lots, the south lot is a large, wet, vacant lot. The east neighbor is a split zone lot, between two commercial uses. There is a very small pocket of wet soil in the back corner of the lot. They are not purposing any structures behind the building, just the front of the building. 33 parking spaces. They have not done a complete boundary survey yet so it may change a bit when this is complete.

Frank Reinhold asked if they have addressed the traffic yet.

Chris Nadeau replied not yet, that will be addressed if approved, for the planning board.

Philip Sanborn spoke with concerns of snow removal. He wasn't sure there is enough room on the east side of the plot line. How would they be sure snow doesn't get onto the neighbors property?

Scott Holman explained that they typically put up a fence if they have a close abutter.

John Hutton asked what would be out back.

Chris Nadeau explained only the HVAC system and the leach field. The loading dock will be on the side. The building isn't large enough to be sprinkled.

Peter Hoyt spoke as fire chief and stated that it will need to be alarmed at the least.

Public Comment

None in favor or opposed. General comments.

Fred Schultz spoke about the signs in town being out of control. He wants to know what their landscaping is going to be. He wants the board to look at the details more carefully.

Frank Reinhold explained that those were planning board issues. We deal with the use and they deal with the details.

Eric Finnenbaum explained that they are a state authorized committee; he submitted a letter for the board to review. (In file)

Public comment closed.

Tobin Farwell asked what they were planning on doing about drainage. This seems to be the concern of the Oyster River Local Advisory Committee with the impervious request.

Scott Holman they are not sure yet.

The Board discussed this and the request of 55%+- impervious. They discussed the other requests as well and this was the only one they were uncomfortable with. They wanted to see how they would address run off.

The applicant requested to table the discussion regarding the impervious coverage and come back to the board with more drainage information.

Vote: all the board granted this request.

Jim Banks, Chairman asked how far the building was from the road.

Chris Nadeau replied 100'+-.

The board discussed the remaining requests and did not have any issues with them, they felt they were all consistent with that has been requested and granted in the past for this area.

Voting members for this application are as follows: John Hutton, Frank Reinhold, Jim Banks, Tobin Farwell and Dave Allen.

The Board determined the following findings of fact: (A variance from Article VI; Section- C.3 Setback: To allow a structure and parking setback from the Highway Right-of-Way of approximately 15 feet (+/-) where 125 feet is allowed; To allow a structure and parking side yard setback of approximately 10 feet (+/-) where 100 feet from a residential lot is allowed (east abutter – residential use); To allow a structure and parking side yard setback of 11 feet (+/-) where 50 feet from a commercial lot is allowed (west abutter – Dunkin Donuts); To allow a structure and parking rear setback of 72 feet (+/-) where 100 feet from a residential lot is allowed (south abutter – residential use)).

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board **has all** 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 _____.

FINDINGS AND RULINGS

After reviewing the petition, hearing all of the evidence, and by taking into consideration the personal knowledge of the property in question, the Board of Adjustment for the Town of Lee has determined the following findings of fact:

- 1) The variance **will not be (all)** contrary to the public interest because: consistent with previous approvals. Actual footprint allowed is almost nothing.
- 2) Special conditions **do (all)** exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding this criteria, you must decide whether:
 - a) The zoning restriction as applied to the property **interferes (all)** with the reasonable use of the property, considering the unique setting of the property and its environment because: commercial use that is allowed, which will not encroach the abutters.
 - b) You may consider, although you are not required to make any specific findings, the following no dispositive factors:
 1. Whether the zoning restriction, as applied, interferes with the Landowner's reasonable use of the property, where reasonable use includes consideration of the landowner's ability to receive a Reasonable return on his investment;
 2. Whether the hardship is a result of the unique setting of the property; and
 3. Whether the landowner's proposed use would alter the essential Character of the neighborhood.
- b) There **is no (all) fair** and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: small use envelope after setbacks, it is not reasonable.
- 3.) The variance **is (all)** consistent with the spirit of the ordinance because: past items granted in this areas and with recent history of this board.

4) By granting the variance, substantial justice **will (all)** be done because: they are allowing a reasonable commercial use for which it is zoned.

5) The value of surrounding properties **will not (all)** be diminished because: it will raise values to area properties.

John Hutton made a motion to grant the request for Variance(s) of the 2012 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; A variance from Article VI; Section- C.3 Setback: To allow a structure and parking setback from the Highway Right-of-Way of approximately 15 feet (+/-) where 125 feet is allowed; To allow a structure and parking side yard setback of approximately 10 feet (+/-) where 100 feet from a residential lot is allowed (east abutter – residential use); To allow a structure and parking side yard setback of 11 feet (+/-) where 50 feet from a commercial lot is allowed (west abutter – Dunkin Donuts); To allow a structure and parking rear setback of 72 feet (+/-) where 100 feet from a residential lot is allowed (south abutter – residential use).

Tobin Farwell second.

Vote: all, motion carried.

The Board determined the following findings of fact: (A variance from Article XV F to allow a structure within 66 (+/-) feet of the Wet Soils Zone where 75 feet is allowed)

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board has all 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

_____.

FINDINGS AND RULINGS

After reviewing the petition, hearing all of the evidence, and by taking into consideration the personal knowledge of the property in question, the Board of Adjustment for the Town of Lee has determined the following findings of fact:

- 1.) The variance will not be (all) contrary to the public interest because: consistent with what has been allowed and granted in the past.**
- 2.) Special conditions do (all) exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding this criteria, you must decide whether:**

- a.) The zoning restriction as applied to the property interferes (all) with the reasonable use of the property, considering the unique setting of the property and its environment because: the lot is small and the wet soils area is small.

You may consider, although you are not required to make any specific findings, the following no dispositive factors:

1. Whether the zoning restriction, as applied, interferes with the Landowner's reasonable use of the property, where reasonable use includes consideration of the landowner's ability to receive a Reasonable return on his investment;
2. Whether the hardship is a result of the unique setting of the property; and
3. Whether the landowner's proposed use would alter the essential Character of the neighborhood.

- b.) There is no (all) fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: small lot, wetlands are small, large buffer, restrictive therefore it has to be granted

- 3.) The variance is (all) consistent with the spirit of the ordinance because: have granted in the past in this area.

- 4) By granting the variance, substantial justice will (all) be done because: treating the same as every other applicant.

- 5) The value of surrounding properties will not (all) be diminished because: residential home in the commercial zone.

John Hutton made a motion to grant the request for Variance(s) of the 2012 Lee Zoning Ordinance from The Zarembo 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; A variance from Article XV F to allow a structure within 66 (+/-) feet of the Wet Soils Zone where 75 feet is allowed.

Tobin Farwell second.

Vote: all

The Board determined the following findings of fact: A variance from Article XVII; Section-III-C;.4h and b, Commercial Signs: to allow a 150 square foot building sign where 8 square feet is allowed and a 96.5 square foot sign (see special exception request for pole sign as part of this application), where 32 square feet is allowed.

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board has all 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 _____.

FINDINGS AND RULINGS

After reviewing the petition, hearing all of the evidence, and by taking into consideration the personal knowledge of the property in question, the Board of Adjustment for the Town of Lee has determined the following findings of fact:

- 3.) The variance will not be (all) contrary to the public interest because: consistent with what has been allowed and granted in the past, it's in the commercial zone.**
- 4.) Special conditions do (all) exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding this criteria, you must decide whether:**

- b.) The zoning restriction as applied to the property interferes (all) with the reasonable use of the property, considering the unique setting of the property and its environment because: speed limit requires a certain size to be visible. Location warrants a larger sign.**

You may consider, although you are not required to make any specific findings, the following no dispositive factors:

- 1. Whether the zoning restriction, as applied, interferes with the Landowner's reasonable use of the property, where reasonable use includes consideration of the landowner's ability to receive a Reasonable return on his investment;**
- 2. Whether the hardship is a result of the unique setting of the property; and**
- 3. Whether the landowner's proposed use would alter the essential Character of the neighborhood.**

b.) There is no (all) fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: past granting's.

3.) The variance is (all) consistent with the spirit of the ordinance because: to allow a visible reasonable sign.

4) By granting the variance, substantial justice will (all) be done because: consistent with the past granting's.

5) The value of surrounding properties will not (all) is diminished because: consistent with the area.

John Hutton made a motion to grant the request for Variance(s) of the 2012 Lee Zoning Ordinance from The Zarembo 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; A variance from Article XVII; Section-III-C;.4h and b, Commercial Signs: to allow a 150 square foot building sign where 8 square feet is allowed and a 96.5 square foot sign (see special exception request for pole sign as part of this application), where 32 square feet is allowed.

The Board determined the following findings of fact: (A special exception from Article XVII Section-III-C; 4e and f, Commercial Signs to allow a pole sign with 96.5 square feet, 21feet high (+/-), 0 (zero) feet from ROW).

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board has (all) 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 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 (all) 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 (all) be injurious, noxious or offensive and thus be detrimental to the neighborhood.**
- 3) **The use will not (all) 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 request for Variance(s) of the 2012 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: A special exception from Article XVII Section-III-C; 4e and f, Commercial Signs to allow a pole sign with 96.5 square feet, 21feet high (+/-), 0 (zero) feet from ROW.

Tobin Farwell second.

Vote: all

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

.....
(Z1213-8)

An application from Craig Maggio, property owned by GTM Investments LLC. The applicant is requesting a variance(s) for signage for an existing commercial property located on 40 Concord Road and is known as Lee Tax Map #07-04-0000. The requests are as follows:

A Variance to the 2012 Lee Zoning Ordinance, Article XVII, - Signs, section III, C4-h where the applicant is requesting a building sign of twenty- seven (27.58) square feet +-, where only eight (8) square feet is allowed and is as shown on plan submitted dated 2/20/2013.

A Variance to the 2012 Lee Zoning Ordinance, Article XVII, - Signs, section III, C4-h & any other applicable section under XVII, Section III, C4 to allow an additional sign to be mounted below the existing Family Dollar pole sign of sixty (60) sq feet +-, even though the sign appears to be two sided, it is two single units attached to the existing pole and is as shown on plan submitted dated 2/20/2013.

Tobin Farwell clerked.

Craig Maggio explained that his business is moving into what is currently Play. He will be putting his sign on the existing pole sign and on the building. He is renting all but 2,500 sq ft of the

building. His business isn't a chain business. He will have a full line of pet supplies, not any dogs or cats for sale. He will have a self serve dog wash, no boarding, and no vet. The sign is a little taller than wider due to his logo.

No public comment.

The board didn't have any issues with the request.

The Board determined the following finds of fact: A Variance to the 2012 Lee Zoning Ordinance, Article XVII, - Signs, section III, C4-h where the applicant is requesting a building sign of twenty-seven (27.58) square feet +/-, where only eight (8) square feet is allowed and is as shown on plan submitted dated 2/20/2013. And to Article XVII, - Signs, section III, C4-h & any other applicable section under XVII, Section III, C4 to allow an additional sign to be mounted below the existing Family Dollar pole sign of sixty (60) sq feet +/-, even though the sign appears to be two sided, it is two single units attached to the existing pole and is as shown on plan submitted dated 2/20/2013.

Voting members for this application are as follows: John Hutton, Frank Reinhold, Jim Banks, Tobin Farwell and Philip Sanborn.

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board **has all** 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 _____.

FINDINGS AND RULINGS

After reviewing the petition, hearing all of the evidence, and by taking into consideration the personal knowledge of the property in question, the Board of Adjustment for the Town of Lee has determined the following findings of fact:

- 3) The variance **will not be (all)** contrary to the public interest because: consistent with previous approvals.
- 4) Special conditions **do (all)** exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding this criteria, you must decide whether:
 - c) The zoning restriction as applied to the property **interferes (all)** with the reasonable use of the property, considering the unique setting of the property and its environment because: doesn't allow him reasonable use, in line with what has been previously granted.

d) You may consider, although you are not required to make any specific findings, the following no dispositive factors:

1. Whether the zoning restriction, as applied, interferes with the Landowner's reasonable use of the property, where reasonable use includes consideration of the landowner's ability to receive a Reasonable return on his investment;
2. Whether the hardship is a result of the unique setting of the property; and
3. Whether the landowner's proposed use would alter the essential Character of the neighborhood.

b.) There **is no (all) fair** and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: 2 businesses on one lot both need a sign

c.) The variance **is (all)** consistent with the spirit of the ordinance because: sign and pole consistent of what has been granted previous.

4) By granting the variance, substantial justice **will (all)** be done because: allow the 2nd business a sign to promote their business.

5) The value of surrounding properties **will not (all)** be diminished because: nice sign, consistent with the area.

Tobin Farwell made a motion to grant **A Variance to the 2012 Lee Zoning Ordinance, Article XVII, - Signs, section III, C4-h where the applicant is requesting a building sign of twenty-seven (27.58) square feet +/-, where only eight (8) square feet is allowed and is as shown on plan submitted dated 2/20/2013. And a Variance to Article XVII, - Signs, section III, C4-h & any other applicable section under XVII, Section III, C4 to allow an additional sign to be mounted below the existing Family Dollar pole sign of sixty (60) sq feet +/-, even though the sign appears to be two sided, it is two single units attached to the existing pole and is as shown on plan submitted dated 2/20/2013.**

Frank Reinhold second.

Vote: all

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

MINUTES TRANSCRIBED BY:

Caren Rossi, Secretary

MINUTES APPROVED BY:

Jim Banks, Chairman

David Allen

John A. Hutton, III

Peter Hoyt, Alternate

Tobin Farwell

Philip Sanborn

Dave Allen

Frank Reinhold, Alternate