

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
March 20, 2014
7:00 PM**

MEMBERS PRESENT: Jim Banks, Chairman; John Hutton, Philip Sanborn; David Allen; Frank Reinhold, alternate; and Peter Hoyt, alternate non-voting.

OTHERS PRESENT: Wayne Morrill; Jones & Beach Engineers; John Dicaprio, Lee Properties; Lynn & John Jurgel; Kelly Newick; Tobin Farwell, Farwell Engineering Services LLC; Robert Callioras; and Caren Rossi, Planning/Zoning Administrator.

Jim Banks, Chairman opened up the meeting at 7:00 pm.

The Board introduced themselves.

John Hutton clerked and read the notice into the record.

(ZBA1314-21)

A Variance to Article VIII, Section B-6 of the 2013 Lee Zoning Ordinance made by Lee Properties, LLC, agent is Wayne Morrill, Jones & Beach Engineers, Inc. The request is to allow a fire cistern to be located in the buffer zone. The property is known as Tax Map #01-04-00; #01-04-0500; & #01-07-00 and is located at Hayes Rd & Cherry Lane.

Wayne Morrill presented the application and explained as part of the housing development on Hayes Rd, the Fire Chief has requested that the one of the required fire cisterns be located in the required 100' buffer. A 100' vegetated buffer is required for a cluster subdivision. The impact is approximately 15'. He showed the impact on a plan (In file). The other cistern will be located around lot 15. The planning board sent the applicants to the ZBA for relief as the requirement is in the zoning ordinance. This will allow the fire department better service for the existing homes as well as the new homes.

Caren Rossi read a letter from the Fire Chief into the record.

Public Comment

Kelley Newick, 54 Newtown Plains Rd asked why it couldn't be moved 15' and not in the buffer.

Peter Hoyt explained that for the fire trucks to be able to hookup to the cistern most efficiently it needs to be on the edge of the road with a an apron for the best access to the cistern.

Floor closed for public comment.

Frank Reinhold asked if there would be an easement for the area.

Wayne Morrill replied that yes, the area would have a deeded easement.

The Board discussed the application and didn't have any issues with the application.

John Hutton felt it would be beneficial as it enhances the fire protection in the entire neighborhood as well as possible help with the insurance rating.

The Board determined the following Findings of Fact:

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. (A) Yes majority
 - A) To find that an "unnecessary hardship" exists, the Board must find:
 - o There are special conditions on the subject property that distinguish it from other properties in the area; *and*
 - o 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.

John Hutton made a motion to grant the request for a Variance to Article VIII, Section B-6 of the 2013 Lee Zoning Ordinance made by Lee Properties, LLC, agent is Wayne Morrill, Jones & Beach Engineers, Inc. The request is to allow a fire cistern to be located in the buffer zone. The property is known as Tax Map #01-04-00; #01-04-0500; & #01-07-00 and is located at Hayes Rd & Cherry Lane.

David Allen second.
Vote: all, motion carried.

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

(ZBA1314-22)

An application from Tobin Farwell, Farwell Engineering, agent for Dan Gabriel of Dan Gabriel, Inc. The property is owned by Robert & Barbara Callioras, Calef Highway, Lee NH. Property is known as Lee Tax Map #04-07-0600. The applicant’s requests are to the Town of Lee 2013 Zoning Ordinance and are as follows:

Amend a previous decision granted on 12/18/13 for a variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, setbacks to allow side & rear setback(s) no closer than 17’ (seventeen feet) +- at the closest point. The amendment would be to a setback of no closer than 7’ (seven feet) And/or a Variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, setbacks to allow side & rear setback(s) no closer than 7’ (seven feet) +- at the closest point, curbing/pavement, where 50’ (fifty feet) is required.

A Variance to Article XVII, Signs C;4:h to allow 5 (five) building signs, 20 sq ft. (twenty square feet) each, where 8 sq ft (eight square feet) per business use is allowed. As shown on submitted plan by Burr Signs, dated 2/25/2014.

A Variance to Article XVII, Signs C; 4; a thru h, as applicable, to allow for a directional sign, 6 sq ft (six square feet). This is in addition to the 48 sq ft. (forty-eight square feet) signage that is permitted on site.

A Special Exception to Article XVII, Signs Section III, 4 – f to allow for a pole sign in the commercial zone.

Tobin Farwell presented a plan and explained that as part of the development of the site, they needed to add a few more parking spaces to accommodate the needs of the development. He was here with the original site plan December of 2013 and received side setback relief then of 17’+-. With the site redesign they need relief of 7’+- to accommodate the required parking. The site development will increase the neighbor property values, as well as the neighborhood; it will provide a better traffic flow of the site which will enhance the safety.

Tobin Farwell then explained the sign requests. The directional sign requested is just to regulate the flow of the cars, showing them in which direction to go for Aroma Joes. The building signs will be located on the face of the building above each business identifying what is there. The pole sign is the allowed size, just a special exception is required to install a pole sign.

No public comment.

The Board didn't have any issues with the sign requests; they felt it was all in line with what currently exists.

John Hutton asked why if this is a vacant site, the lot-line can't be moved to make it conform.

Tobin Farwell replied that it is an existing lot of record; they are not creating the lot.

John Hutton made a motion to amend the previous previous decision granted on 12/18/13 for a variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, setbacks to allow side & rear setback(s) no closer than 7' (seven feet) +/- at the closest point.

Philip Sanborn second.

Vote: all, motion carried.

John Hutton made a motion to do the variance requests together.

David Allen second.

Vote: all, motion carried.

The Board determined the following Findings of Fact. A Variance to Article XVII, Signs C; 4: h & A Variance to Article XVII, Signs C; 4; a thru h, as applicable.

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. (A)Yes majority

A.) To find that an “unnecessary hardship” exists, the Board must find:

- o There are special conditions on the subject property that distinguish it from other properties in the area; *and*
- o 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:

- o There are special conditions on the subject property that distinguish it from other properties in the area; *and*
- o The property cannot be reasonably used under the ordinance and therefore, a variance is necessary to enable a reasonable use of it.

John Hutton made a motion to grant the requests to A Variance to Article XVII, Signs C;4:h to allow 5 (five) building signs, 20 sq ft. (twenty square feet) each, where 8 sq ft (eight square feet) per business use is allowed. As shown on submitted plan by Burr Signs, dated 2/25/2014 and a Variance to Article XVII, Signs C;4; a thru h, as applicable, to allow for a directional sign, 6 sq ft (six square feet). This is in addition to the 48 sq ft. (forty-eight square feet) signage that is permitted on site

Frank Reinhold second.

Vote: all, motion carried.

The Board determined the following Findings of Fact: A Special Exception to Article XVII, Signs Section III, 4 – f to allow for a pole sign in the commercial zone

PRELIMINARY FINDING

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board has (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 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 request for a Special Exception to Article XVII, Signs Section III, 4 – f to allow for a pole sign in the commercial zone. The applicant, Tobin Farwell, Farwell Engineering, agent for Dan Gabriel of Dan Gabriel, Inc. The property is owned by Robert & Barbara Callioras, Calef Highway, Lee NH. Property is known as Lee Tax Map #04-07-0600. The applicant's requests are to the Town of Lee 2013 Zoning Ordinance.

Frank Reinhold second.

Vote: all, motion carried.

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

The Board approved the minutes from 01-15-2014 & 02-19-2014.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Jim Banks, Chairman

John A. Hutton III

David Allen

Philip Sanborn

Frank Reinhold, Alternate

Peter Hoyt, Alternate