

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
May 16, 2012**

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

OTHERS PRESENT: Allan Dennis, CEO; Caren Rossi, Secretary; Maryanne Banks; Bill Schoonmaker; Maria Meyer; Donald Anderson; Bud Meader; and Mike Seivert, MJS Engineering

The board introduced themselves to the applicant.

Jim Banks stepped down for the Meyer application.

John Hutton made a motion to appoint Tobin Farwell as Chairman for the Meyer application.

Dave Allen second.

Vote: all

John Hutton clerked and read the following application into the record.

(Z1112-12)

An application for Variance from applicant Richard & Maria Meyer of 14 Periwinkle Lane, Glastonbury, Ct. 06033 for property located at 30 Northside Road, Lee NH, known as Lee Tax Map #11-04-2100 for the following:

The applicant is requesting a variance of the 2012 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 April 12, 2012.

Bill Schonmaker presented the application to the Board. He explained that they wish to put a frost wall under the existing house. They want to expand up, they will not be adding any additional bedrooms as they are taking one of the existing bedrooms and making that the area that the stairway to above and adding a bathroom and a bedroom upstairs. He continues to explain the Conservation Commission is in favor of the application. (Letter in file) The house is currently on piers and this will make the house more secure and stable. They will be adding a canopy over the front entrance way, this is will be safer entrance into

the building. They will also be a 2nd story window bay. They will be also designing a new septic design; this is not finalized, but almost. He presented this plan for all to review.

Public comment.

Abutter Howard Reith had a question as to the field's location.

Allan Dennis answered this.

Acting Chairman Tobin Farwell explained that this meeting has nothing to do with the septic, which is a DES issue.

Abutter Jim Banks asked what the weekend hours of operation will be as they have a tenant who has requested the work not to begin before 7 am on the weekends.

Allan Dennis explained that the town has a noise ordinance and these hours will have to be followed.

No more public comment. Floor closed.

John Hutton feels this is an improvement to the property, not expanding the foot print, no huge red flags.

Allan Dennis explained that there was a lot line adjustment done in 2000 with this lot and the abutting property. This actually makes the building further away from the side setback.

Tobin Farwell commented that the footprint isn't being expanded.

Peter Hoyt felt it was overall improvements.

The Board determined the following findings of fact:

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: the improvements on the foundation & septic in past has been allowed to do whatever, improvement to the pond.
- 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: not allowing them to make upgrades which will improve the watershed.
 - 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: won't allow making any improvements to bring it more into compliance. Improvements are going forward, not backwards septic improvements.
- 3.) The variance **is (all)** consistent with the spirit of the ordinance because: upgrades and protection of the shoreland.
- 4) By granting the variance, substantial justice **will (all)** be done because: the total improvements.
- 5) The value of surrounding properties **will not (all)** be diminished because: the above previously mentioned.

John Hutton made a motion to grant the request for a Variance from applicant Richard & Maria Meyer of 14 Periwinkle Lane, Glastonbury, Ct. 06033 for property located at 30 Northside Road, Lee NH, known as Lee Tax Map #11-04-2100 for the following:

The applicant is requesting a variance of the 2012 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 April 12, 2012.

Peter Hoyt second.

Vote: all, motion carried.

Tobin Farwell explained the 30 day appeal process to the applicant.

(Z1112-13)

An application for property owned by Donald Anderson & Karen Macdonald, 5 Lee Hill Rd, Lee NH. Property is known as Lee Tax Map#20-01-0100. The applicant is requesting a Variance to the 2012 Zoning Regulations, Article V, B-3 in that the applicant is proposing an addition to the existing house 43.8 +- feet from the front property line where 50 feet is required.

Donald Anderson explained that he will be replacing the existing roof and putting a dormer (phase 1) on the second floor of his home, he would also like to put on a front porch with railings for safety (phase 2). His insurance company would like this. The house was built to close to the property line. This porch and dormer will also keep with the neighborhood. His neighbor's house is actually closer to the line than his. He had a surveyor come out and locate his home.

There was no public comment.

Tobin Farwell had no issues.

David Allen had no issues.

John Hutton felt that there was not a hardship.

Tobin Farwell felt that the hardship was the home was built to close to the property line.

Philip Sanborn stated and the insurance company would like railings for safety.

The Board determined the following findings of fact:

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: similar to other homes in the neighborhood, no testimony otherwise.
- 2.) Special conditions **do (majority)** exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding these criteria, you must decide whether:
 - c) The zoning restriction as applied to the property **interferes (majority)** with the reasonable use of the property, considering the unique setting of the property and its environment because: building is close to the r-o-w interferes with the reasonable use of the property by adding on a porch and a dormer.
 - 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.
- 3.) The variance **is (majority)** consistent with the spirit of the ordinance because: the proximately of how close it is to the r-o-w now, tiny space of encroachment.
- 4) By granting the variance, substantial justice **will (majority)** be done because: allowing the reasonable use of the home and safety.
- 5) The value of surrounding properties **will not (majority)** be diminished because: improve and there are similar houses in the neighborhood.

Tobin Farwell made a motion to approve the request an application for property owned by Donald Anderson & Karen Macdonald, 5 Lee Hill Rd, Lee NH. Property is known as Lee Tax Map#20-01-0100. The applicant is requesting a Variance to the 2012 Zoning Regulations, Article V, B-3 in that the applicant is proposing an addition to the existing house, phase 1 & phase 2, as shown on submitted plan, and be no closer than 43.+ a foot from the front property line where 50 feet is required.

Dave Allen second.

Vote: Majority, motion carried.

Jim Banks, Chairman explained the 30-day appeal process to the applicant.
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(Z1112-11)

An application for property owned by The James & Helen Paleologos Living Trust, James & Helen Trustee, agent, Mike Sievert, MJS Engineering. The property is 119 Calef Highway, Lee NH, known as Lee Tax Map #07-09-100. The applicant is requesting the following requests to the 2012 Zoning Ordinance.

A Variance to Article XXIII, Section (3), Non-Conforming Uses. The requirement states that any nonconforming building may not be extended in area. The variance is sought to allow for the expansion of the existing 3,396 square foot building to the proposed 3,584 square foot building. There is no change in use. And/ or A Variance to Article VI, Section (C)(3), Commercial Zone Setbacks. The requirement states the building must be located 125' from the front setback. The variance is sought to allow a portion of the front of the proposed building to encroach 4' further into the front setback. There is currently a bump out on the front of the building and the request is to square the front of the building off.

A Variance to Article XV, Section (F)(2), Special Provisions in the Wet Soils Conservation Zone. The requirement states no structures with the exception of wells and well housing shall be constructed within 75 feet of the Wet Soils Zone. Approximately 75% of the existing building is located within this buffer. The variance is sought to allow the construction of the proposed building within the buffer as well as any drainage structures that may be required by the Planning Board during the site review process.

A Special Exception to Article XV, Section (E)(1) Special Exceptions. A special exception is required to construct underground utilities including pipelines and power lines within the 75 foot Wet Soils Conservation Zone. A Special Exception is sought to place underground power lines as well as drainage that may be required by the Planning Board during the site review process within the 75 foot Wet Soils Conservation Zone.

Mike Seivert explained the proposed plan to the Board and explained that they wanted to raze the existing building and it replaces it with a new one. The new building will be slightly larger, a 188 square ft. increase in size. It will be a metal framed building; the size of encroachment is 130 sq ft. The underground utilities are in the setback as well, so if the planning board requires drainage requests, this will be needed so he thought he would apply while he was here. There will not be any increase in impervious coverage.

No public comment.

Lee Custom Cycles sent a letter with the applicant in favor of the application. (In file)

Tobin Farwell commented that it is a very tough area to build anything.

David Allen commented it makes sense to square off the building.

Philip Sanborn felt that they were needed improvements.

Jim Banks felt that burring the utilities is an improvement and a safety improvement.

John Hutton commented that the esthetics will be an improvement.

Tobin Farwell made a motion to do all the variance requests together.

John Hutton 2nd. Vote: all, motion carried.

The Board determined the following findings of fact:

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: existing structure and existing pavement
- 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: wetland setbacks & road setbacks overlap.
 - 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.

3.) The variance **is (all)** consistent with the spirit of the ordinance because: the ordinance wants you to use the property and with this request, you are can do that.

4) By granting the variance, substantial justice **will (all)** be done because: reasonable use of the property and improve the property.

5) The value of surrounding properties **will not (all)** be diminished because: new building.

Tobin Farwell made a motion to grant the request for a Variance to Article XXIII, Section (3), Non-Conforming Uses. The requirement states that any nonconforming building may not be extended in area. The variance is sought to allow for the expansion of the existing 3,396 square foot building to the proposed 3,584 square foot building. There is no change in use. And/ or A Variance to Article VI, Section (C) (3), Commercial Zone Setbacks. The requirement states the building must be located 125' from the front setback. The variance is sought to allow a portion of the front of the proposed building to encroach 4' further into the front setback. There is currently a bump out on the front of the building and the request is to square the front of the building off. And the request for a Variance to Article XV, Section (F) (2), Special Provisions in the Wet Soils Conservation Zone. The requirement states no structures with the exception of wells and well housing shall be constructed within 75 feet of the Wet Soils Zone. Approximately 75% of the existing building is located within this buffer. The variance is sought to allow the construction of the proposed building within the buffer as well as any drainage structures that may be required by the Planning Board during the site review process.

Subject to the following condition:

Be mindful of the Conservation Commissions suggestions.

John Hutton second.

Vote: All, motion carried.

The Board determined the following findings of fact.

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 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: (all)

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

Yes: (all)

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: (all)

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

Yes: N/A

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?

Yes: 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: N/A

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 a Special Exception to Article XV, Section (E) (1) Special Exceptions. A special exception is required to construct underground utilities including pipelines and power lines within the 75 foot Wet Soils Conservation Zone. A Special Exception is sought to place underground power lines as well as drainage that may be required by the Planning Board during the site review process within the 75 foot Wet Soils Conservation Zone. Subject to the following condition.

- 1) Be mindful of the Conservation Commissions concerns.

David Allen second.

Vote: all, motion carried.

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, Meyer Only

Tobin Farwell

Philip Sanborn