

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
May 21, 2014
7:00 PM**

MEMBERS PRESENT: Jim Banks, Chairman; John A. Hutton, III; Tobin Farwell; Frank Reinhold, alternate (did not vote Anderson); Roy Wilson, Alternate, non-voting; Craig Williams, Alternate, voting Anderson only and Peter Hoyt, alternate.

OTHERS PRESENT: Ed Bannister; Joe Falzone; Christian Smith, Beal's Associates; Mark Johnson; Toni Hartgerink; Scott Bugbee; Don Anderson; Peter Hoyt and Caren Rossi, Planning/Zoning Administrator.

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

(ZBA1314-20)

A continued application from Three Swallow Properties LLC, agent, Ed Bannister. The applicant request a Variance to Article V, Section A, Permitted Uses to allow for a Day Care Center in an existing building This request is to the 2013 Town of Lee Zoning Ordinance. The property is known as Tax Map #11-6-0200 and is located at 5 Mast Rd.

Caren Rossi explained she has received an email requesting to continue this until the August 20, 2014 meeting.

John Hutton made a motion to grant the continuation.

Tobin Farwell seconded the motion.

Vote: all, motion carried.

(Z1314-24)

An application for a Variance to Article VIII, (Open Space Residential Development), Section B-6 (Buffer Zone) of the 2014 Lee Zoning Ordinance made by Kelsey Lee LLC. The request is to allow a fire cistern & 2 storm water mitigation area(s) to be located in the 100' perimeter buffer zone. The property is known as Tax Map #19-04-0000 and is located on Kelsey Rd.

Tobin Farwell clerked and read the application into the record.

Christian Smith, Beal's Associates explained that they have gone to the Planning Board and received approval for a cluster subdivision. As part of this process a cistern and drainage and treatment needs to be installed and the needed area is in the 100' required buffer zone. They feel the drainage system will actually improve the road drainage as the run off now has a place to go.

Mark Johnston, applicant's attorney explained that the planning board preferred the frontage lots rather than creating a new town road.

Caren Rossi explained that as part of the cluster design, it is required to have a 100' buffer to the entire parcel; therefore, there is not a place to install a cistern that would not impact a portion of the buffer. This parcel is very unique with almost 1,900 feet of road frontage allowing this type of development without having to construct a town road.

Public comment.

None, floor closed.

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 enhances fire protection which is everyone's gain. 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 aren't diminished. Yes majority
This is what the design that the neighborhood wanted.
- 5.) Literal enforcement of the provisions of the ordinance would result (A) Yes majority
in an unnecessary hardship to applicant.
 - 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.

Proposing a cluster which requires a 100' buffer, leaving no place for a cistern.

- 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 request for a Variance to Article VIII, (Open Space Residential Development), Section B-6 (Buffer Zone) of the 2014 Lee Zoning Ordinance made by Kelsey Lee LLC. The request is to allow a fire cistern & 2 storm water mitigation area(s) to be located in the 100' perimeter buffer zone. The property is known as Tax Map #19-04-0000 and is located on Kelsey Rd.

Tobin Farwell second.
Vote: all, motion carried.

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

(Z1314-15)

A continued 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.

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.

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. A

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.

Tobin Farwell clerked and read the application into the record.

Donald Anderson explained the plan he presented. He explained that he originally, back in January was going to remodel the existing home but now he is going to actually tear it down and move it further back away from the water. He would like to reconstruct the existing retaining walls that are on site. This will provide better stabilization for the site. They have already received Shoreland approval from the state for the remodel and will be filing an amendment to the approval for the relocation. They do not feel it will be an issue with the state because it is being moved further away from the water. They will be leaving more vegetation than originally thought. He has meet with the conservation commission and they do not have any issues with the proposal. He addressed the variance criteria. (In file)

Jim Banks, Chairman asked if he anticipated any issues with ledge.

Don Anderson stated that he hoped not, but wasn't sure.

Public comment
None, floor closed.

Jim Banks, Chairman stated it was a beautiful spot and beautiful piece of property.

Tobin Farwell stated that he felt the request was consistent with what has been allowed.

John Hutton stated that he reviewed the conservation commission's requests and he finds that they were in line with the standards and were reasonable.

Tobin Farwell made a motion to consider all of the requests in one finding.
John Hutton second.
Vote: all, motion carried.

The Board determined the following Findings of Facts:

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
Brings the property more into compliance, moving away from the water.

- 2.) Granting the variance would be consistent with the spirit of the ordinance. Yes majority
More in compliance

- 3.) In granting the variance, substantial justice is done. Yes majority
Allows them to use it, similar done all around, improving property.

- 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 (A) Yes majority
In an unnecessary hardship to applicant.

- 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.
- The size of the lot and its proximity to the pond.

- 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.

Tobin Farwell made a motion to grant the request for 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. 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. 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 A. 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.

As shown on submitted plan dated November 18, 2013 subject to the following conditions:

- 1.) State Shoreland Permit is received.
- 2.) Conservation Commissions conditions 1-4 be applied. They are as follows:
 - a. Installation of silt fencing.
 - b. Minimize ground disturbance around the building during construction.
 - c. Continually remove destruction/construction debris from the site as it is created. (A dumpster at street level would work well).
 - d. Immediately re-vegetate disturbed ground upon completion of project.

John Hutton second.
Vote: all, motion carried.

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

Minutes

Caren Rossi read to the Board the changes that were spelling errors, Chairman Banks had on the 03/19/2014 minutes. There were no other corrections to the other minutes.

Frank Reinhold made a motion to accept the 03/19/2014 minutes as amended.
Tobin Farwell second.
Vote: all, motion carried.

Frank Reinhold made a motion to accept the 03/20/2014 & 04/16/2014 minutes as presented.
John Hutton second.
Vote: all, motion carried.

Frank Reinhold made a motion to adjourn at 7:51pm
Tobin Farwell second.
Vote: all, motion carried.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Jim Banks, Chairman

John A. Hutton III

Tobin Farwell

Frank Reinhold, Alternate

Roy Wilson, Alternate

Craig Williams, Alternate

Peter Hoyt, Alternate