

**MINUTES OF THE MEETING  
LEE ZONING BOARD OF ADJUSTMENT  
May 22, 2013**

**MEMBERS PRESENT:** James Banks, Chairman; Tobin Farwell, (Acting Chairman-Richardson); David Allen; Philip Sanborn; and Roy Wilson, Alternate.

**OTHERS PRESENT:** Caren Rossi, Planning/Zoning Admin; Chris Nadeau; Bill Humm, Lee Conservation Commission; Erick Fiegenbaum, Oyster River Watershed; Wayne Webb; John Webb; Bryan Richardson; Barry Scott; and Maureen Rich.

The board introduced themselves to the applicants and welcomed Roy Wilson as he is a new member to the Board.

**(Z1213-6)**

**A continued 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;**

**A variance from Article VI; Section- C.2 Density: To allow total impervious coverage of approximately 55% (+/-) where 25% is allowed**

Chris Nadeau explained that he has gone back since the last meeting and made a few changes. He reduced the number of parking spaces to 30; moved the HVAC pad to the roof; and provided the drainage area to the back of the lot. They do not recommend porous pavement as there will be too much traffic for it. It will not hold up. Making these changes reduces the percentage to 51%. He provided a list of the other impervious variances granted with their percentages. Wendy's 67.8%; J & B Plow Sales 52.7%; Family Dollar 63% are all larger than this request.

No public comment.

Tobin Farwell feels comfortable with the request, he feels they will deal with the runoff adequately, he has demonstrated he can provide storm water treatment that will meet the planning board's intent.

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: granted similar in the past, and improvement and adequate area to take care of the run off.
- 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 lot, small lot, and very little land in the commercial zone for commercial business.
  - 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: size of the lot, commercial land needs more impervious area.
- 3.) The variance **is (all)** consistent with the spirit of the ordinance because: commercial lot on Rt. 4.
- 4) By granting the variance, substantial justice **will (all)** be done because: similar to what was granted to others.
- 5) The value of surrounding properties **will not (all)** be diminished because: improvement to the lot.

Tobin Farwell made a motion to grant a variance from Article VI; Section- C.2 Density: To allow total impervious coverage of approximately 51% (+/-) where 25% is allowed.

Second by Philip Sanborn

Vote: all, motion carried.

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

### **(Z1213-7)**

- **A continued 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.**

Wayne Webb provided the Board with pictures of what the proposed building pad looked like when it had the barns on it. He provided layouts ( in file) of the proposed apartment both inside and outside. He also provided a copy of a letter he received from the homeowners association allowing him to build such. He recapped his presentation from before (in file) in summary that he has a hardship on his land that a requirement of leasing the land is that the land needs to be maintained. He would like the person who occupies the apartment to be the caretaker of the land or the income from the rental would be to hire someone to take care of the land. He needs the hay to feed the horses he boards there. He would like to remain farming the land. He has an apartment in his home already. This would be in addition to that. The land that he is required to take care of is 15 acres of open space.

Jim Banks, Chairman asked what the requirements are of taking care of the open land?

Wayne Webb explained that it has to be mowed.

Jim Banks, Chairman read from the lease that it states it has to be mowed once in every three years or they take it back. He doesn't see the hardship with this request.

Dave Allen commented he doesn't either and the Board has set a precedent not allowing stand alone living spaces. It would be one thing if it was something like a bunkhouse for workers, but this is a rental for income.

Tobin Farwell expressed that he appreciates that Mr. Webb takes such great care of the farm, but the next person might not and the variance goes with the land not the owner. The next person might not choose to take such great care and or farm the land.

Philip Sanborn agreed and further stated he thinks that if this is granted, will have floods of people looking for the same variance. He isn't saying it's not a good idea; we have just already set a precedent not to grant this type of request. He feels this is something the Agricultural commission should address.

#### Public Comment

John Webb spoke in favor of the request; he is a neighbor, son and president of the homeowners association.

Tobin Farwell commented that he appreciates how well Mr. Webb cares for the land, but he won't be there forever.

Philip Sanborn sees this if granted to simulate throughout town, the thinks the zoning needs to change.

Jim Banks, Chairman comments that there are other ways to keep the land open.

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:

- 3) The variance **will not be (all)** contrary to the public interest because: consistent with previous approvals. Will allow him to find another avenue of income.
- 4) Special conditions **do not (all)** exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding this criteria, you must decide whether:
  - c) There **is (all) fair** and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: zoning ordinance says only one residential structure and there is one already.
- 3.) The variance **is not (all)** consistent with the spirit of the ordinance because: looking to put 2 residences on one lot and not allowed.
- 4) By granting the variance, substantial justice **wills not (all)** be done because: turned down others for the same request.
- 5) The value of surrounding properties **will not (all)** be diminished because: beautiful building.

Tobin Farwell made a motion to DENY the request from 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.

Second by Dave Allen. Vote: all.

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

\*\*\*\*\*

**(Z1213-11)**

**An application made by Bryan Richardson, 117 Tuttle Road, and property is known as Lee Tax Map # 30-01-0001. The applicant is requesting the following Variances.**

**-A Variance to Article XXIII, #3 Non Conforming Uses to allow the expansion of a nonconforming use/site in that applicant wishes to reconstruct and expand an existing residence. The proposed 2-story addition is approximately 20' X 22' +-. The variance request is to the 2013 Town of Lee Zoning Ordinance.**

**- A Variance to Article XXIII, #3, Non Conforming Uses to allow the expansion of a nonconforming use/site to place or construct a shed, 6' X 8' +- , as an accessory building to be located near the existing residence of the applicant. The variance request is to the 2013 Town of Lee Zoning Ordinance.**

**\*\* These requests can be acted on separately or individually.**

Jim Banks recused himself for this application.

Tobin Farwell, acting Chairman explained that there are only 4 members here tonight for this application and the applicant is entitled to a board of 5. He explained the requirements of the granting and the appeal process with a board of only 4.

Bryan Richardson stated he would go forward with a board of 4.

Dave Allen clerked.

Bryan Richardson explained that his home currently is one large room with a bathroom. He has back problems and can no longer go up three flights of stairs which is what is required in his Boston home. They are moving here full time and need more space. They also need a place for storage outside. He is proposing a small addition with upstairs storage.

Caren Rossi explained that all of the homes in Glenmere Village are non-conforming lots, in order to do anything they need to get approval.

Public comment

Maureen Rich president of the Association for Glenmere Village spoke in favor of the application.

Barry Scott spoke in favor.

Public comment closed.

Tobin Farwell asked about the septic.

Bryan Richardson explained it has been designed and is ready to go to the state.

Philip Sanborn made a motion to act on both requests together.

Dave Allen 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 \_\_\_\_\_.

### **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:

- 5) The variance **will not be (all)** contrary to the public interest because: granted similar in the past.
- 6) 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: anything he does he needs a variance.
  - d) There **is no (all) fair** and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: uniqueness of the village, built before zoning.
- 3.) The variance **is (all)** consistent with the spirit of the ordinance because: been done in the village, not unreasonable for the use of the property.
- 4) By granting the variance, substantial justice **will (all)** be done because: improvement.

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

**Dave Allen made a motion to grant the request made by Bryan Richardson, 117 Tuttle Road, and property is known as Lee Tax Map # 30-01-0001. To the following:**

**-A Variance to Article XXIII, #3 Non Conforming Uses to allow the expansion of a nonconforming use/site in that applicant wishes to reconstruct and expand an existing residence. The proposed 2-story addition is approximately 20' X 22' +/- . A Variance to Article XXIII, #3, Non Conforming Uses to allow the expansion of a nonconforming use/site to place or construct a shed, 6' X 8' +/- , as an accessory building to be located near the existing residence of the applicant. The variance requests are to the 2013 Town of Lee Zoning Ordinance.**

**Philip Sanborn second.**

**Vote: all**

Tobin Farwell, Acting Chairman explained the 30-day appeal process to the applicant.

.....

MINUTES TRANSCRIBED BY:

\_\_\_\_\_  
Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

\_\_\_\_\_  
James R. Banks

\_\_\_\_\_  
Tobin Farwell, (Acting Chairman Richardson)

\_\_\_\_\_  
David Allen

\_\_\_\_\_  
Philip Sanborn

\_\_\_\_\_  
Roy Wilson, Alternate