

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
June 26, 2014
7:00 PM**

MEMBERS PRESENT: Tobin Farwell, Acting Chairman; David Allan; Frank Reinhold, alternate (did not vote); Roy Wilson, Alternate; Craig Williams, Alternate, and Peter Hoyt, Alternate.

OTHERS PRESENT: James Banks, Laurel Cox; Dorn Cox; Andrew Keller; David Cedarholm; (several others that did not sign in) Caren Rossi, Planning/Zoning Administrator.

Tobin Farwell, Acting Chairman opened up the meeting at 7:00 pm.

Craig Williams clerked and read the application into the record.

(Z1314-25)

An application from Carpenter Lane Solar, LLC, 22 Rosemary Lane, Durham NH. Property is located at 36 Carpenter Lane and is known as Lee Tax Map #20-12-00. The property is owned by the James R. Banks Revocable Trust, James R. Banks Trustee. The applicant requests a variance of the 2014 Lee Zoning Ordinance, Article V; Residential Zone, A, Permitted Uses to allow for a Community Solar Garden.

Andrew Keller explained the application. He explained that his company leases land from landowners and provides the structure(s) that produce solar power. The units are hooked up directly to the existing telephone poles and power is then sold to other people who wish to purchase solar power essentially "off the grid". He explained that the lease is typically a 10-year lease of the land. This array is about ½ an acre in size. It will be located high enough off the ground for grass below to be maintained.

Jim Banks explained for the record that he solicited Andrew Keller's company. He also explained the location of the panels and that they would be located on Rt 155. Not the area that he is currently having cleared. That area is being cleared for a land conversion. Sunflowers will be planted in this area and harvested. The panels are going to go on the corner of the property by the large coop side of the property next to the existing Carpenter Lane and hook directly into the power lines above. He didn't feel they would be very noticeable to people as they would be hidden behind a line of trees that are along Rt. 155.

Public Comment

Several people asked questions about the financial process only of the solar panels. (Not applicable)

Andrew Keller answered the financial questions.

Public Comment closed

Frank Reinhold spoke with concerns that by allowing this use, the board is setting a precedent for all other land owners in town. He understands that on this property it will not be very visible but he feels that other parcels, such as his, it would be very visible and does not feel that is what you want people to see when they drive into town.

Tobin Farwell, Acting Chairman commented that he felt each application would be on a case by case basis on their own merits. He didn't feel this was an issue.

David Allen agreed with Tobin Farwell.

Caren Rossi explained we needed to determine who would not be voting.

Frank Reinhold stated he would not vote.

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 aren't 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:

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

Craig Williams made a motion to grant the request from Carpenter Lane Solar, LLC, 22 Rosemary Lane, Durham NH. Property is located at 36 Carpenter Lane and is known as Lee Tax Map #20-12-00. The property is owned by the James R. Banks Revocable Trust, James R. Banks Trustee. The applicant requests a variance of the 2014 Lee Zoning Ordinance, Article V; Residential Zone, A, Permitted Uses to allow for a Community Solar Garden.

David Allen second.

Vote: majority, motion carried.

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

(Z1314-26)

An application from Tuckaway Farm Solar, LLC, 22 Rosemary Lane, Durham NH. Property is located at 36 Captain Smith Emerson Road and is known as Lee Tax Map #02-05-00. The property is owned by the Charles & Laurel W. Rev. Trusts, Charles & Laurel Cox, Trustee. The applicant requests a variance of the 2014 Lee Zoning Ordinance, Article V; Residential Zone, A, Permitted Uses to allow for a Community Solar Garden.

Andrew Keller explained the application. He explained that his company leases land from landowners and provides the structure(s) that produce solar power. The units are hooked up directly to the existing telephone poles and power is then sold to other people who wish to purchase solar power essentially “off the grid”. He explained that the lease is typically a 10-year lease of the land. This array is about ½ an acre in size. It will be located high enough off the ground for grass below to be maintained. This array is located behind buildings and will not be visible for anyone.

Public Comment

None

Frank Reinhold voiced that his concerns that by allowing this use, the board is setting a precedent for all other land owners in town. He understands that on this property it will not be very visible but he feels that other parcels, such as his, it would be very visible and does not feel that is what you want people to see when they drive into town.

The other board members disagreed as they felt it was a case by case basis. As stated in the last case. Each land is unique.

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 aren't 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.

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

Minutes

David Allen made a motion accept the 05/21/2014 minutes as amended.
Roy Wilson second.
Vote: majority, motion carried.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Tobin Farwell, Acting Chairman

David Allen

Peter Hoyt, Alternate

Frank Reinhold, Alternate (not voting)

Roy Wilson, Alternate

Craig Williams, Alternate