

**MINUTES OF THE MEETING  
LEE ZONING BOARD OF ADJUSTMENT  
July 16, 2014  
7:00 PM**

**MEMBERS PRESENT:** James Banks, Chairman; Tobin Farwell; John A. Hutton III; Philip Sanborn Jr.; Roy Wilson, Alternate (non-voting); Craig Williams, Alternate,(non-voting) and Peter Hoyt, Alternate.

**OTHERS PRESENT:** Antoinette Hartgerink, Lee Conservation Commission; Craig Maggio; David Garvey; Caren Rossi, Planning/Zoning Administrator.

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

**Tobin Farwell clerked and read the application into the record.**

**(Z1415-01)**

**An application made by Craig Maggio. The property is owned by GTM Investments and is located at 40 Concord Road and known as Lee Tax Map # 07-04-0000. The applicant is requesting a Variance to Article XVII, Signs 4-C, a thru h, as applicable. This request is to the 2014 Town of Lee Zoning Ordinance.**

Craig Maggio explained that he has a dog park which was previously approved by the Planning Board. He needs a sign to show its location as it is five hundred feet from the road. The sign is eight feet by ten feet and will be mounted to posts next to the installed dog park fence. Approximately 2 sections down from the double gated entry. Eventually when the neighboring lot is built, there will be a building in front of the sign and it will not be visible from the road. He provided a picture of the sign to the Board.

Jim Banks, Chairman asked where people visiting the dog park, park?

Craig Maggio replied that they park out front as they need to go inside the store and get the code for the park. The planning board did allow some parking spaces out back near the entrance to the park as well as a making sure the cistern isn't blocked. He also stripped the area in front of the cistern showing no parking. The park is free to the public, but you need to go into the store and get the access code as it changes daily.

Jim Banks, Chairman opened up the floor for public comment.

Toni Hartgerink spoke with concerns of the nitrates from the dog urine in the park getting into the nearby water.

Floor closed

John Hutton stated that he felt the request was in keeping with past requests. It is back five hundred feet, hard to see from the road. It is not lit, he had no issues with it.

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 made a motion to grant the request by Craig Maggio. The property is owned by GTM Investments and is located at 40 Concord Road and known as Lee Tax Map # 07-04-0000. The applicant is requesting a Variance to Article XVII, Signs 4-C, a thru h, as applicable. This request is to the 2014 Town of Lee Zoning Ordinance John Hutton second.  
Vote: majority, motion carried.**

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

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**(Z1415-2)**

**An application made by Garvey & Company LTD, agent for Paula & Ethan Booth. The property is located at 38 Jenkins Road and is known as Lee Tax Map # 14-01-0300. The applicants is requesting the following Variance to the of the 2014 Town of Lee Zoning Ordinance. A Variance to Article XV, Section F-2 Wet Soils to allow the construction of a house to be located, at its closest point, 28' +/- from wet soils where 75' feet is required. A Variance to Article V, Section B-2 Setbacks to allow the construction of a house to be located, at its closest point, 33.97'+/- from the front setback where 50' is required.**

Dave Garvey explained that originally there was a mobile home on the site that predated zoning. It was removed a few years ago with the intention of being replaced within the one year allowed by zoning but it didn't happen. The septic was replaced about one year prior to removing the mobile home. A man had lived in the trailer for many, many years and when he passed away, the Booths purchased the property. The wet soils were identified and Mr. Garvey showed the Board where the purposed building envelope was. (see file) It is 30' x 60'. He showed the existing leach field, existing gravel driveway and proposed new well. He met with the Conservation Commission and the only issue they have with their recommendations is the not paving of the driving. It is very difficult to sell a new house these days without paving the driveway. It is only a 60' long driveway and is very compact and hard now. Paving it would not be much different than what already exists.

Mr. Garvey read the findings of facts into the record that were submitted with his application.

Jim Banks, Chairman opened up the floor for public comment.

Toni Hartgerink spoke and stated that she doesn't feel that the Lee Conservation Commission has strong feelings against the paving of the gravel driveway.

Caren Rossi asked that if the Board grant this application, they require a Foundation Certification as part of the decision.

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 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 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.

Tobin Farwell made a motion to GRANT the request by Garvey & Company LTD, agent for Paula & Ethan Booth. The property is located at 38 Jenkins Road and is known as Lee Tax Map # 14-01-0300. The applicants is requesting the following Variance to the of the 2014 Town of Lee Zoning Ordinance. A Variance to Article XV, Section F-2 Wet Soils to allow the construction of a house to be located, at its closest point, 28' +/- from wet soils where 75' feet is required. A Variance to Article V, Section B-2 Setbacks to allow the construction of a house to be located, at its closest point, 33.97'+- from the front setback where 50' is required. Subject to the following conditions:

1. Foundation Certification is required prior the issuance of a building permit. Foundation permit will be issued upon a completed application.
2. Avoiding landscape plantings that require fertilizer and pesticides (landscape with native shrubs).
3. Avoiding impervious materials in landscaping the site, especially between the house and the wetland.
4. Retaining as much as possible of natural vegetation between buildings and wetland, as naturally vegetated buffers are more effective at slowing runoff.
5. Managing storm-water runoff from the roof so as to minimize potential erosion. This can best be done with installation of a drip edge crushed-stone-filled water catchment in the ground under each of the new roof edges where runoff would fall.

John Hutton second.

Vote: majority, motion carried.

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

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## Minutes

### Approve the draft minutes from 06/26/14

Peter Hoyt made a motion accept the 06/26/14 minutes as amended.

Roy Wilson second.

Vote: majority, motion carried.

MINUTES TRANSCRIBED BY:

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

MINUTES APPROVED BY:

\_\_\_\_\_  
James Banks, Chairman

\_\_\_\_\_  
Tobin Farwell

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Peter Hoyt, Alternate

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John A. Hutton III

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

\_\_\_\_\_  
Craig Williams, Alternate (non-voting)

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Roy Wilson, Alternate (non-voting)