

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
July 23, 2014
7:00 PM**

MEMBERS PRESENT: Tobin Farwell, Acting Chairman; John A. Hutton III; Philip Sanborn Jr.; Frank Reinhold, Jr. Alternate; Roy Wilson, Alternate; Craig Williams, Alternate; and Peter Hoyt, Alternate (left shortly after began for a fire call).

OTHERS PRESENT: Robin Wunderlich; Molly Darling; Jim Banks; Frank Eitler; Attorney Matt Whitehead; Attorney John Weaver; Colleen Latham; Emily Latham; Susan Chalifoux; Judy Eitler; Ben Heiderscheidt; Jocelyn Hawe; Bill Haw; Rich Sorensen; Bruno Posset; Elaine McLean; Tom McCabe; Jackie McCabe; Lisa Lentz; Kate Homan; Jean Benoit; Jacob Brownell; Randy Hertog; Attorney Chris Wyskiel; Attorney Sharon Somers; and Caren Rossi, Planning/Zoning Administrator.

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

John Hutton clerked and read the application into the record.

(Z1415-03)

An appeal of the Planning Boards Decision to consider the plans submitted by Molly Darling and Robin Wunderlich in support of a Dog Daycare and Boarding Kennel at 122 Mast Road without referring the plans to Zoning Board of Adjustment.

The original hearing was before the Lee Zoning Board of Adjustment on December 18, 2013.

Attorney Somers explained to the Board what they are reviewing is simply a request to see if the plan accepted by the Planning Board differs than what was presented to the Zoning Board in December. Typically a motion for a rehearing is based upon an error or a belief of some type. But this is different; this is to see whether or not the differences between the two plans, would you have decided differently. If not, the earlier approval remains valid. The scope is limited to this very issue, only testimony from anyone should be consistent with the differences between the two plans and nothing else.

Frank Reinhold asked if the planning board has acted on the plan.

Attorney Somers replied that they have not, just accepted it. They are working under the assumption that it complies with zoning.

Attorney Weaver (see written appeal request in file which outlines the differences) explained his request. He stated that he feels that what has been submitted to the planning board differs from what was originally approved by this board. He feels that if this board has seen the current plans and information they would have decided differently. He doesn't believe that the ZBA had

the full story. The differences are as follows:

1. Number of dogs- in the first plans, the ZBA minutes stated that there will be a maximum of 42 dogs at the proposed kennel. At the planning board/second plan there will be a maximum of 121 dogs at the proposed kennel.
2. Thickly v. sparsely forested- in the ZBA plans it was stated that the property is thickly forested and heavily forested to buffer the neighbors and in fact, according to the satellite image, it is not, it is sparsely forested.
3. Facilities near kennel property- in the ZBA plans it states that there are no facilities near the proposed kennel where in fact, there is a horse trail immediately adjacent to the property, nearby the proposed kennel.
4. Parking- in the ZBA plans they state parking will be located only behind the existing building. On the planning board plans parking spaces will be located in the front of the property within 50 feet of the street, in violation of the setback requirements of Article V. b. (3) of the Zoning Ordinance.
5. More animals than dogs- in the ZBA plan they stated the proposed kennel will only house and service dogs. In the planning board plans it is stated that they propose the kennel will house other animals in addition to dogs.
6. Licensing- in the ZBA plans they stated that there is no state licensing required for the proposed kennel. The planning board plans the applicants need a state license for the proposed kennel. Attorney Weaver stated he found RSA 466:6 stating a license are required.
7. Composting- in the ZBA plans they state ideally we would compost it on site. The planning board plans the applicants have decided to remove it entirely from the site.

Attorney Weaver submitted the following materials to the Board for their review in support of his argument. (All listed are in located in the file)

1. A letter from Dr. Eric Swinebroad
2. A letter from Ledgefield Farm
3. A letter from Lisa Lentz, Bean Group
4. A letter from Michael Behrendt
5. A copy of a tax map with red shaded lots
6. An aerial photo of the abutting horse farm property
7. Pictures of the intersection of Rt. 155 & Rt. 155a
8. Information on Pet Waste from the City of Dover
9. Review of Proposed Companion Animal Complex by Allison Powers
10. Noise report conducted by Harris Miller Miller & Hanson Inc.

Attorney Chris Wyskiel argued the statutory requirement to reopen the case. He feels that the case that Attorney Weaver is arguing is different than this case. He stated that the points Attorney Weaver is arguing should have been made in December. They had the 30 day appeal period to do this and they didn't. The planning board now has jurisdiction to hear this case and they have hired experts to sort it all out. In December the ZBA granted a use variance knowing it was going to site plan review and the plan will change. It has made three changes to date. Engineer plans are required for the planning board but not for the zoning board. A conceptual plan, this is what we want to do, is what is required for the ZBA. It is very routine for a conceptual plan to change when it's engineered and goes thru the planning board process. He quoted the verbatim minutes which were done after the fact of the earlier ZBA hearing, where Jim Banks specifically asked about the nitrogen and the applicants stated they would be putting in a rain garden. Existing and proposed parking was shown on the plans, just in numbers not the spaces outlined. He explained that these showed up later on the engineered plans. The setbacks are shown on the pre existing site plan, the plan that shows what is on the lot now. The only section of trees that will be disturbed is where they are putting in the rain garden. The "thickly forested" is just a label; the cutting is the planning boards' jurisdiction. The number of dogs is cleared discussed in the verbatim minutes. He referenced page 7 of them. He explains that the only actual number given is for the kennel, not the daycare dogs. There is no number given for the daycare dogs. The kennel number has not changed. He addresses other animals that on the original plan it says small animals. Boarding of small animals is more of a courtesy for people when they go away, they bring the dog and now they have a place to bring the other small animals as well. Traffic and parking goes to the planning board to decide. He continued to point out other changes on the interior of the building that are different than the original submittal. He continued to say that the NH Law states that the Board members use their personal knowledge of the property to make a decision. You don't need a sound expert to figure out dogs bark and it will be heard on a trail. The applicants have worked to accommodate the trail by moving the dog yards back and installed solid fence so they won't be seen. The RSA for licensing is for ownership of 5 or more dogs, not this proposal. He provided an email from the State of NH stating there are no licensing requirements. He also provided an operations manual outlining the operations of the facility. He continued to explain they will not be composting the waste; it will be double bagged and hauled off site. He closed by stating that he feels it is unfair of Attorney Weaver to make the conclusion or fractural arguments. There are no relevant differences between the two plans.

Tobin Farwell, Acting Chairman opened up the floor for public comment. He reminded everyone that we are here to see if there are significant changes in the plans as to what was presented, and that is it.

Bill Hawe, 150 Mast Rd read a letter into the record. (In file)

Frank Eitler, 1 Sheep Rd read a letter into the record. (In file)

Ben Heiderscheidt, 21 Caverno Dr, read a letter into the record. (In file)

Judy Eitler, 1 Sheep Rd, read a letter into the record. (In file)

Lisa Lentz, Bean Group read a letter into the record. (In file)

Randy Hertog, 15 Caverno Drive read a letter into the record. (In file)

Bruno Possett, 23 Caverno Drive read a letter into the record. (In file)

John Hutton reminded Mr. Possett that the Boards have no control over the state road.

Tom McCabe, 145 Mast Rd read a letter into the record. (In file)

Jacqueline McCabe, 145 Mast Rd spoke stating she felt this was not consistent with the low impact nature of the area and from the transcript it was clear it was only 42 dogs. This use will have a negative impact on the neighborhood as well as change the historical neighborhood.

Colleen Latham, owner of 122 Mast Rd read a letter into the record.

Robin Wunderlich, applicant, stated that they didn't bring a comradery of people as they are just discussing if there are any plan differences. They didn't misrepresent anything, the original plan was presented as a use and they just responded to issues that have arisen as they have gone thru the process.

Tobin Farwell, acting Chairman closed the floor to public comment.

John Hutton made a motion to continue the deliberation session to July 31, 2014 at 7:30 pm.

Roy Wilson second.

Vote: all, motion carried.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Tobin Farwell, Acting Chairman

John A. Hutton III

Philip Sanborn

Craig Williams, Alternate

Roy Wilson, Alternate

Frank Reinhold, Alternate