

**MINUTES OF THE MEETING  
LEE ZONING BOARD OF ADJUSTMENT  
September 28, 2011**

**MEMBERS PRESENT:** Jim Banks, Chairman; John A. Hutton, III; Philip Sanborn; Tobin Farwell and Frank Reinhold, Alternate.

**OTHERS PRESENT:** Allan Dennis, CEO; Caren Rossi, Secretary, Bonnie Winona Whitmore; Kevin and Jane Crawford; Roger Rice; Kevin Hatch, Cornerstone Surveying; Wayne Kinney; Ed Bannister; Naithan Couse; Diane Gavin and Antoinette Hartgerink.

**(Z1112-08)**

**An application for Variance(s) of the 2011 Lee Zoning Ordinance from Three Swallow Properties, LLC at 5 Mast Road, Lee NH, know as Lee Tax Map#11-06-0200, by applicant Ed Bannister of 2 Mast Road, Lee NH. The applicant is requesting the following;**

**To grant a variance to allow an extension of time, to be determined at this meeting to provide the applicant further time to remove or refill the same to ground level or shall repair, rebuild or replace the structure that sustained damage from fire on September 8, 2010 in that the structure was not removed and/or construction commenced to rebuild same as provided under the 2011 Lee Zoning Ordinance, Article III, Section C-Temporary Shelter.**

**And/or a variance to Article XXIII; Nonconforming Uses, Number-2 to allow the re-establishment after discontinuance for one (1) year of the uses on site prior to the fire being a convenience store with deli/pizza along with another space for a mercantile use on the first floor and two (2) apartments on the second floor, one apartment with two (2) bedrooms and the other with three (3) bedrooms.**

**Note: The Board may choose one or both of the above requests.**

John Hutton read the application into the record.

Ed Bannister, applicant explained that he had a purchase in sales agreement with the town to purchase the property. It went to a special town meeting vote on Tuesday, September 8, 2011 and it was defeated. He started negotiations with the town shortly after the fire. It was not cost effective to start working on the building as if the town were to purchase it, it would be torn down so it would not cost effective to work on it and then have to tear it down. He would like to rebuild what was there prior to the fire, on the same footprint. He has done the required test pits for a new septic system as required by the state. He also has had an engineer out to evaluate the existing structure to see if it could be used to be rebuilt on and it can.

Allan Dennis explained that he had advised the applicant to wait until after the town vote before he goes before this board.

John Hutton commented that he felt the applicant was here as quickly as possible after the vote, he did not have an issue with the time frame at all. He feels the town does owe him flexibility they had better stand up and work with the applicant.

Tobin Farwell asked the applicant how soon it would be before he got started?

Ed Bannister replied that he would like to get started before snow flies.

The Board discussed the length of time he should be given. Frank Reinhold suggested 6 months.

Jim Banks, Chairman opened the floor for public comment.

Roger Rice spoke in favor of the application.

Bonnie Winona Whittemore read a letter, in the file, for and against the application.

Floor closed to public comment.

Tobin Farwell asked if the footprint would be expanded.

Ed Bannister replied no, he is not expanding the existing footprint.

Philip Sanborn commented that he felt that they have to give him the ability to clean up the site, he was waiting for the town. It will help give Bonnie the chance to rent out her building.

Jim Banks, Chairman spoke with concerns on where the one year rule came from, he felt it couldn't be defended; it was just an arbitrary number.

John Hutton felt that he did not have a problem with the year time frame, its going to take him time to get all the necessary items addressed.

John Hutton made a motion to act on the request The Board discussed the variance requests and they would act on the request to 2011 Lee Zoning Ordinance, Article III, Section C-Temporary Shelter.

Philip Sanborn second.

Vote: all

The Board determined the following findings of facts:

### **PRELIMINARY FINDING**

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board **has all has no** \_\_\_\_\_ 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 \_\_\_\_\_ **will not all** be contrary to the public interest because: town vote they had to wait, keeping with the one year will keep consistency.
- 2) Special conditions **do all do not** \_\_\_\_\_ 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 does not interfere** \_\_\_\_\_ with the reasonable use of the property, considering the unique setting of the property and its environment because: has been a delayed due to the towns proposal which was negative.
  - b) You may consider, although you are not required to make any specific findings, the following no dispositive factors:
    1. Whether the zoning restriction, as applied, interferes with the Landowner's reasonable use of the property, where reasonable use \_\_\_\_\_ includes consideration of the landowner's ability to receive a Reasonable return on his investment;
    2. Whether the hardship is a result of the unique setting of the property; and
    3. Whether the landowner's proposed use would alter the essential Character of the neighborhood.

- b) There **is is no all** fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: timeline it took, non-conforming lot to begin with.
- c) 3) The variance **is all is not** \_\_\_\_\_ consistent with the spirit of the ordinance because: allow the landowner to use his property the way it was used for before the fire.
- 4) By granting the variance, substantial justice **will all will not** \_\_\_\_\_ be done because: to allow the landowner to use his property the way it was used for before the fire and also an updated septic system which is an improvement.
- 5) The value of surrounding properties **will** \_\_\_\_\_ **will not all** be diminished because: hurting properties around it now, and by improvement, cleaning up will improve it.

John Hutton made a motion to grant the following requests:

**To grant a variance to allow an extension of time, one year (1) to provide the applicant further time to remove or refill the same to ground level or shall repair, rebuild or replace the structure that sustained damage from fire on September 8, 2010 in that the structure was not removed and/or construction commenced to rebuild same as provided under the 2011 Lee Zoning Ordinance, Article III, Section C-Temporary Shelter.**

Philip Sanborn second.

Vote: all

Jim Banks explained the 30-day appeal process.

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(Z1112-6)

**An application for Variance(s) of the 2011 Lee Zoning Ordinance from Wayne Kinney of 36 Danville Road, Kingston NH 03848 for property located at 199 Calef Highway, Lee NH, known as Lee Tax Map#11-03-0400, for the following;**

**The applicant is requesting a variance to Article XIV; Shoreland Conservation District, Section C-b to allow the replacement of the existing manufactured home on site with another same size unit but allowing the expansion of a full basement/foundation and possible expansion of existing front and rear decks.**

**And/or a variance to Article XXIII; Nonconforming Uses, number 3 to allow the extension in area of said manufactured home as sited above where no expansion is allowed.**

**Note: The Board may act on each of the above listed items or combine the two during this meeting.**

Kevin Hatch, Engineer for the applicant explained that they want to raise the existing mobile home as it is old, decrepit and unsafe. They would like to replace a new living structure on the same footprint but also put a foundation under it. They will be replacing and upgrading the existing septic system, moving it further from the water. Cleaning up the yard as the applicant recently acquired the property. The deck will be constructed further away from the pond. The oil barrels will be cleaned up.

Public comment.

Diane Gavin an abutter spoke in favor of the applicant. She said already in the short time the applicant has owned the property he has made a huge improvement.

No other comments.

Floor closed.

John Hutton commented that he felt the project was a substantial improvement. There moving the septic further away from the water, updating it, there cleaning up the oil tanks, cleaning up the site and rebuilding a rotting house. He feels its an overall site improvement.

Tobin Farwell agreed as well as Philip Sanborn.

Tobin Farwell comment that the owner is already showing good faith by cleaning up the site.

The Board had previously received the Conservation Commissions concerns via email. Copy in the file and John Hutton commented that the owner had already addressed several of their concerns.

Frank Reinhold commented that he felt you are taking a mobile home, which is temporary and creating possibly a permanent home by allowing this request.

John Hutton replied that he realizes what Frank is saying, but he feels that the project will be better that it is now and the town will be better off than it is now. He still needs state permits.

John Hutton made a motion to combined the two requests.

Tobin Farwell second.

Vote: all

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 has no** \_\_\_\_\_ 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 \_\_\_\_\_ **will not all** be contrary to the public interest because: moving more into compliance, septic up to code, and drainage of water controlled and handled.
- 4) Special conditions **do all do not** \_\_\_\_\_ exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding this criteria, you must decide whether:
  - c) The zoning restriction as applied to the property **interferes all does not interfere** \_\_\_\_\_ with the reasonable use of the property, considering the unique setting of the property and its environment because: small size of the lot and the proximately of the pond, cant do anything within the 100 setback.
  - d) You may consider, although you are not required to make any specific findings, the following no dispositive factors:
    1. Whether the zoning restriction, as applied, interferes with the Landowner's reasonable use of the property, where reasonable use includes consideration of the landowner's ability to receive a reasonable return on his investment;
    2. Whether the hardship is a result of the unique setting of the property; and
    3. Whether the landowner's proposed use would alter the essential Character of the neighborhood.

- d) There **is is no all** fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because: small size of the lot and the proximately of the pond.
- e) 3) The variance **is all is not** \_\_\_\_\_ consistent with the spirit of the ordinance because: we will be pulling the building and septic back from the water.
- 4) By granting the variance, substantial justice **will all will not** \_\_\_\_\_ be done because: will be allowing a reasonable use.
- 5) The value of surrounding properties **will \_\_\_\_\_ will not all** be diminished because: clean up the place.

John Hutton made a motion to grant the following request.

**The applicant is requesting a variance to Article XIV; Shoreland Conservation District, Section C-b to allow the replacement of the existing manufactured home on site with another same size unit but allowing the expansion of a full basement/foundation and possible expansion of existing front and rear decks.**

**And a variance to Article XXIII; Nonconforming Uses, number 3 to allow the extension in area of said manufactured home as sited above where no expansion is allowed.**

**Subject to the following conditions:**

- 1.) The proposed constructed deck be 38+- ft. from the average high water mark.**
- 2.) Install a French drain to handle the water.**

Tobin Farwell second.  
Vote: all

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

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**(Z1112-6)**

**An application for Variance(s) of the 2011 Lee Zoning Ordinance from Naithan Couse for 10 Fox Garrison Road, Lee NH, known as Lee Tax Map#19-07-0900, for the following;**

**The applicant is requesting a variance to Article XVII; Signs, Section III-Permitted Signs, section C-5 Special Exception Signs; items c and e for the following;**

**Item c, to allow sign of approximately 6 feet by 6 feet (6' x 6' +/-) with supporting post to also include an attached interchangeable sign being hung at the bottom of the main sign of approximately 1 foot by 5 feet (1' x 5' +/-) for a total aggregate square footage of approximately 41 square feet (+/-) where only eight (8) square feet is allowed.**

**Item e, to allow the top of such sign (if granted) to be approximately twelve feet (12' +/-) in height measured from the crown of the road (Route 125) where only eight feet (8) is allowed.**

**Note: The Board may act on each of the above listed items or combine the two during this meeting.**

John Hutton read the application into the record.

Naithan Couse explained that he would like the 1' x 6' sign for promotion. The entire sign will be landscaped with landscape lighting within the landscape. Where the dog kennels are in the area, they are coming out and lawn will be planted with landscaping.

Kevin Crawford, abutter, spoke in favor of the application especially due to the speed of traffic as they go by.

John Hutton also agreed with the speeding by of the cars.

Caren Rossi provided the Board with a letter received from abutters in opposition. Jim Banks, Chairman read the letter into the record. (Copy in file)

The Board discussed a variance received by the applicants competitor not far up the road and agreed that it was very similar in size as the one he received and actually a little smaller.

Jim Banks, Chairman asked the applicant how much road frontage he had along Rt. 125?

Naithan Couse replied that he has 750' ft.

John Hutton commented he felt it was a practical request especially with that much road frontage.

Jim Banks, Chairman agreed.

Tobin Farwell made a motion to combined the two requests.

Philip Sanborn second.

Vote: All

The Board determined the following findings of facts:

### **PRELIMINARY FINDING**

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board **has all has no** \_\_\_\_\_ 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 \_\_\_\_\_ **will not all** be contrary to the public interest because: allowing a sign smaller than granted by the same type of business.
- 6) Special conditions **do all do not** \_\_\_\_\_ exist such that the literal enforcement of the ordinance results in unnecessary hardship. In deciding this criteria, you must decide whether:
  - e) The zoning restriction as applied to the property **interferes all does not interfere** \_\_\_\_\_ with the reasonable use of the property, considering the unique setting of the property and its environment because: on Rt. 125 , high rate of speed, same type of zoning.
  - f) You may consider, although you are not required to make any specific findings, the following no dispositive factors:
    1. Whether the zoning restriction, as applied, interferes with the Landowner's reasonable use of the property, where reasonable use \_\_\_\_\_ includes consideration of the landowner's ability to receive a reasonable return on his investment;
    2. Whether the hardship is a result of the unique setting of the property; and
    3. Whether the landowner's proposed use would alter the essential Character of the neighborhood.
- f) There **is is no all** fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property

because: location and granted him the ability to have this business needs to let people know.

g) 3) The variance **is all is not** \_\_\_\_\_ consistent with the spirit of the ordinance because: allowing to advertise his business there keeping the rural nature of Lee, size is less than previous sign granted.

4) By granting the variance, substantial justice **will all will not** \_\_\_\_\_ be done because: conforming to his business.

5) The value of surrounding properties **will** \_\_\_\_\_ **will not all** be diminished because: cleaning up property, business there, sign will allow business to prosper.

John Hutton made a motion to grant the following request.

**The applicant is requesting a variance to Article XVII; Signs, Section III-Permitted Signs, section C-5 Special Exception Signs; items c and e for the following;**

**Item c, to allow sign of approximately 6 feet by 6 feet (6' x 6' +/-) with supporting post to also include an attached interchangeable sign being hung at the bottom of the main sign of approximately 1 foot by 5 feet (1' x 5' +/-) for a total aggregate square footage of approximately 41 square feet (+/-) where only eight (8) square feet is allowed. And item e, to allow the top of such sign (if granted) to be approximately twelve feet (12' +/-) in height measured from the crown of the road (Route 125) where only eight feet (8) is allowed.**

Philip Sanborn second.

Vote: all

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

MINUTES TRANSCRIBED BY:

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Caren Rossi, Secretary

MINUTES APPROVED BY:

\_\_\_\_\_  
Jim Banks, Chairman

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Frank W. Reinhold Jr.

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John A. Hutton, III

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Tobin Farwell

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Philip Sanborn