

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
January 15, 2014
7:00 PM**

MEMBERS PRESENT: Jim Banks, Chairman; John Hutton, Tobin Farwell; Dave Allen; Philip Sanborn; Roy Wilson, alternate; Craig Williams, alternate; and Peter Hoyt, alternate.

OTHERS PRESENT: Bonnie Winona MacKinnon; Alice MacKinnon; Donald Anderson; Toni Hartgerink, Lee Conservation Commission; Tom Gialousis; Susan Faretra, Faretra Septic Design, LLC and Caren Rossi, Planning/Zoning Administrator.

Jim Banks, Chairman explained that the Conservation Commission has not had ample time to submit a letter of recommendation to the Zoning Board for the Anderson hearing. Therefore meeting will be continued.

Donald Anderson stated he would be fine waiting to the scheduled February hearing.

Caren Rossi stated the next ZBA meeting is on February 19, 2014.

(ZBA1314-15)

An application from applicant Donald W. Anderson & Karen A. MacDonald 50 Northside Road, Lee NH. Property is known as Lee Tax Map #11-04-1200. The applicant requests the following:

A variance of the 2013 Lee Zoning Ordinance, Article XIV; Shoreland Conservation District, section C-b and/or Article XXIII, number-3, in that the applicant is proposing to expand/remodel/raze an existing dwelling that is within the Shoreland Conservation District where no permanent or temporary structures are allowed. Said expansion is shown on the submitted plan dated November 18, 2013.

A variance of the 2013 Lee Zoning Ordinance, Article XIV; Shoreland Conservation District, section C-b and/or Article XXIII, number-3, in that the applicant is proposing to construct a deck within the Shoreland Conservation District. Said deck is shown on the submitted plan dated November 18, 2013

A variance of the 2013 Lee Zoning Ordinance, Article XIV; Shoreland Conservation District, section C-b and/or Article XXIII, number-3, in that the applicant is proposing to construct a garage with a connector within the Shoreland Conservation District. Said garage with connector is shown on the submitted plan dated November 18, 2013.

A variance to the 2013 Lee Zoning Ordinance, Article XIV: Shoreland Conservation District, section C-b and or Article XXIII, number-3, in that the applicant is proposing to reconstruct the existing retaining wall within the Shoreland Conservation District. Said reconstruction is shown on the submitted plan dated November 18, 2013.

John Hutton clerked and read the notice into the record.

(ZBA1314-17)

The Board will consider a motion for rehearing filed by Bonnie Winona MacKinnon relating to a Variance & Special Exception decision that was granted to an abutting property, Three Swallow Properties, LLC. Property is located on 5 Mast Rd and is known as Lee Tax Map #11-10-1000. The aforementioned hearing was on November 21, 2013. Although this is a public meeting, the Board will not take any input from the public while deliberating on this matter. Motion for rehearing is on file with the Office of Planning & Zoning.

Jim Banks, Chairman opened up the hearing.

The Board discussed the motion for rehearing.

(Muffled could not get exact wording) Craig Williams stated he felt that the request did have some valid points.

Jim Banks, Chairman asked Tobin Farwell his feelings.

Tobin Farwell stated he thinks possibly a special exception was not the way to go in this case, because of the buffer requirements, therefore we should rehear it, exactly not sure of the proper procedure but he thinks the applicant should request a variance because the buffer is not going to be met. On those grounds he will grant the rehearing but not on a rehearing on a special exception but on a variance.

Jim Banks, Chairman asked is this for the setback against the property next door? Not against the water? You're not talking about the wet? Not the parking lot or anything else?

Tobin Farwell replied correct, not regarding wet. He is talking about the buffer. In order for the special exception there has to be a buffer between the two uses. Based on those merits a variance should be applied for and not a special exception.

Jim Banks, Chairman replied OK but that buffer relates to soil that belongs to somebody alongside the building which would have a vegetated buffer planted in.

Tobin Farwell commented right

Jim Banks, Chairman and I haven't seen anything that is stamped by an engineer or a surveyor that shows where that line is. So we are dealing with maybe a few inches of someplace to plants something or not.

John Hutton spoke. A lot of valid points; a lot of history with this property. We have quiet enjoyment and everything else. But he believes that part of that property is in commercial use that is next door that abuts it. Is this correct? There is 2 apartments?

Jim Banks, Chairman replies it is a professional office.

John Hutton continued. Professional Office so some of that doesn't really wash with me. If we want to go back and revisit that he is fine with that. But, I would ask that, this isn't going to end until someone surveys it. If they want to us to give a ruling, he thinks it should be surveyed and put an end to who owns what and where and everything else. If we are going to rehear it, let's rehear it with a surveyed property line. I think we did a lot of good things with the application. Where before it was a store and or a pizza parlor that was open 7 days a week. With not a lot of restrictions and we went to something that was more restrictive 5 days a week. Monday thru Friday. Which, if you're going to have a property that is in an area that it isn't zoned for or whatever purpose the more you can make it restrictive and the applicant is willing to restrict it, the better off you are. Because it does lessen the impact on everyone in the neighborhood. If they want to argue about this, let's get a property line and get it surveyed. They need to survey it. These two neighbors need to agree to disagree that they are going to spend some money on a surveyor and get it surveyed. We are being asked to argue about 6 inches, and nobody knows where it is and no one is willing to go get it. But they are both are willing to complain to us about it. So let's take that part out of it. That part is not under our control.

Tobin Farwell commented so what do you mean? So if there is 6 inches...so the property line is right up against the building...

John Hutton commented let's find out where the property line is Tobin. We don't know where it is.

Tobin Farwell commented that he is always in favor of more information.

John Hutton commented that for us to be able to make a good decision at this point for either person, either one, let's find out where the line in the sand is. Because that is going to be a point or argument one way or the either for either one for appealing the appeal. You can't do that. But it is not going to go away. Both these applicants, both these people are very well aware of the history of the property, nobody can say oh geeze I bought this I didn't know about this or geeze, everybody has some history with the property, lets clean it up. I mean..

Tobin Farwell asked if he is going to ask for a special exception. Or a variance? Wants to make sure it's....

Caren Rossi explains how the process would work is the applicant reapplies and it would be just like it was before and then you would vote to say this doesn't qualify for the special exception criteria. Therefore, then, in the same notice, just like Peter MacDonald with it would be a variance.

Tobin Farwell replied ok, I gotcha.

Caren Rossi continued as far as the survey, I will have to look because she doesn't know, what I assume will happen, but I will verify with council, we have thirty days to hear this, he will apply but you would ask for more information. Then the more information would be the survey.

Jim Banks, Chairman commented then will extend it out so they can get it done.

Caren Rossi explained correct, because we have a deadline, a statutory obligation so then that would be more information and that would be the survey.

Jim Banks, Chairman asked if they chose not to do the survey after they have made the second application. What do we do?

Caren Rossi commented I would assume, I'll have to check, but I could assume he would withdraw the application.

Tobin Farwell replied or they can vote that they don't have enough information.

Caren Rossi commented that then you would deny it.

Jim Banks, Chairman that would deny the request, by having the second hearing it would wash out the first hearings result no matter what we do.

Tobin Farwell replied this is putting the onus on the applicant.

Caren Rossi replied correct.

Tobin Farwell commented I don't want it on the record that we are requesting a survey, just for the record, I am not sure I entirely agree. We are not requesting a survey.

Jim Hutton commented that was my idea, my opinion.

Tobin Farwell commented he doesn't want it getting out the he can't make an application without a survey.

Caren Rossi commented the only decision to be made tonight is if you will grant the rehearing or not. That is for requests, the special exception and the variance to the wet soils.

Tobin Farwell ok, we are handling two separate requests.

Tobin Farwell once again, the special exception was for the use and the variance was for the wetlands setback.

Caren Rossi commented correct.

Tobin Farwell commented for clarification on the two. I will grant the special exception request for a rehearing; I would deny the request for the wetland setback application.

John Hutton commented I would concur with that, Mr. Tobin Farwell.

Jim Banks, Chairman commented so that is a second. Are we ready to vote on that? Any discussion?

Craig Williams asked so you guys are saying that the variance for the wetland stands?

John Hutton commented it stands.

Tobin Farwell stated we didn't discuss that too much.

Craig Williams so we are just going to address the line issue between the two properties?

John Hutton replied and the use.

Craig Williams commented and the use.

Tobin Farwell explained that the issue, in order to qualify for the special exception the criteria is that an adequate buffer had to be in, and because that line is in question #1; and its very close to that wall in some locations; is there a buffer there? I guess maybe its 6", is that an adequate buffer? And if it doesn't have that buffer than it would not apply for a special exception. Did we review this properly? This is his issue with it. He is conceding this; we should look at it harder. That is what is breaking this whole discussion of where that property line is.

Jim Banks, Chairman commented but the town doesn't have a definition of a buffer in terms of a dimension. Mold on a wall, that's vegetation.

Caren Rossi explained but the wording is landscape buffer.

Tobin Farwell commented that which there is no definition it's just the word.

Jim Banks, Chairman there is no number to it.

Caren Rossi read the ordinance *A landscaped buffer zone must be maintained between the Special Exception and any residential lot line.* It is a one liner.

Tobin Farwell explained it is up to us to interpret, it makes it even greyer.

John Hutton commented because part of that she has a residential use and she has a commercial use in the same building that makes it even greyer.

Craig Williams commented so the other little side issue is that we discussed that we discussed (can't hear)

Tobin Farwell answered the next application. I can tell your not coming.

Jim Banks, Chairman asked are we ready to vote?

Jim Banks, Chairman

Tobin Farwell asked if we are handling these separate, are they a separate vote. Are we doing them one at a time?

Jim Banks, Chairman stated we are having a rehearing and were going to lump them together.

Tobin Farwell explained I am voting two separate ways.

Caren Rossi read the motion; Tobin Farwell motioned to grant the special exception request for a rehearing, and not wetland setback request application. John Hutton second.

Jim Banks, Chairman asked if we are ready to vote on that.

John Hutton second.

Vote: John; Tobin; Craig- motion carried

Caren Rossi will contact Ms. MacKinnon with the exact date.

Voting members for this application are Jim Banks, Chairman; David Allen; Tobin Farwell; John Hutton & Peter Hoyt, alternate member.

John Hutton clerked and read the notice into the record.

(ZBA1314-16)

An application from Gary & Toni Smith, 47 Stepping Stones Rd, Lee NH. Property is known as Lee Tax Map #12-02-0500. The applicant requests the following:

A variance of the 2013 Lee Zoning Ordinance, Article XIV; Shoreland Conservation District, section C-b and/or Article XXIII, number-3, in that the applicant is proposing to expand/remodel/raze an existing dwelling & expand existing parking all is within the Shoreland Conservation District where no permanent or temporary structures are allowed. Said expansion is shown on the submitted plan dated December 23, 2013.

Tom Gialousis explained the application. He explained that they want to raze the building that is currently there and replace it in the same footprint. They want to raise it up a few feet and add a septic system. There is currently no septic or well on site. They have gone thru the process with DES and they will approve the design that they have proposed.

Susan Faretra, Faretra Septic Design, LLC explained that she met with DES this fall, they will not approve a holding tank if any reasonable options can be met. She has designed a system that they will approve. It will be a seasonal home use per DES requirements. It does not meet the states requirements for a year round use. The system will be a "Clean Solutions" system. It is not a pump system; it will be a gravity system.

Jim Banks, Chairman spoke with concerns for the system freezing in the winter.

Susan Faretra explained it should not be an issue. Bacteria will keep the system from freezing. These types of systems are used on islands etc.

Tom Gialousis explained that as part of removing the entire house, 3 trees that are growing into the house will also be removed. He showed the Board pictures of the trees growing thru the house.

Tobin Farwell asked what the flood elevations were?

Susan Faretra explained that it is in an undetermined area per FEMA.

There was discussion of the flood area. Tobin Farwell is concerned that the system would flood. Members who are familiar with the area, were not concerned about this happening.

Tom Gialousis explained that they wish to bring the house up 2 ½ feet higher than it is now and it will be on stilts. The bottom height will be 3 ½ feet higher than now. The water would need to come up 6' to 7' before it would affect the house.

Susan Faretra explained that the septic tank will be 2' above the current existing grade and it is a 3 compartment tank.

Tom Gialousis continued to explain that there will be no increase in the footprint, the rooflines will change, the style of the home may change, but the footprint will remain the same. He also wanted to clarify, due to the height increase of the home, he will need to add exterior staircases.

Tom Gialousis read to the Board his Findings of Fact for the request. (In file)

Public Comment

Toni Hartgerink spoke with concerns of the tree cutting. She requested where possible if they could leave the roots of the trees.

Jim Banks, Chairman asked about the parking area expansion as shown on the plan?

Tom Gialousis explained that the applicant does not want this now.

Floor closed to public comment.

John Hutton spoke that he is all set with the application. He feels that they have done their due diligence; no increase in the square footage other than stairs; septic system maintenance program; seasonal usage; as well as adding a septic system and the conservation commissions concerns, he supports the application.

Tobin Farwell and Craig Williams agreed.

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 are not diminished. Yes majority**
- 5) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. Yes majority**

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.**

John Hutton made a motion to grant the request for a variance of the 2013 Lee Zoning Ordinance, Article XIV; Shoreland Conservation District, section C-b and/or Article XXIII, number-3, in that the applicant is proposing to expand/remodel/raze an existing dwelling & expand existing parking all is within the Shoreland Conservation District where no permanent or temporary structures are allowed. Said expansion is shown on the submitted plan dated December 23, 2013. Subject to the Conservation Commissions recommendations a thru e.

Tobin Farwell second.

Vote: all, motion carried.

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

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Jim Banks, Chairman

John Hutton

David Allen

Tobin Farwell

Craig Williams, Alternate

Roy Wilson, Alternate

Peter Hoyt, Alternate