MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
Wednesday, January 18, 2017
7:00 PM

MEMBERS PRESENT: Jim Banks, Chairman (Maple Heights) John Hutton, Acting Chairman, (Peter MacDonald); Craig Williams, Alternate; Don Quigley, Alternate & Peter Hoyt, Alternate.

OTHERS PRESENT: Peter MacDonald; James F. Cummings; Paul Goodwin; John Jurgel; Lynn Jurgel; Kelly Newick; Bill Booth, Building Inspector and Caren Rossi, Planning/Zoning Administrator.

A continued request for a motion to rehear the variances granted on November 2, 2016 to Tuck Realty Group, representing Maple Heights Realty LLC; Equine Properties LLC; Heather & Daniel Couture; Vilicus Homes Inc.; Bonza Builders LLC; Edward Sunshine & Elizabeth & Michael Vardaro. The request is to 2008 Building Regulations, Article IX, E -Wells, as applicable. The properties are known as Lee Tax Map #01-07 sub lots - 01; 02; 03 04; 05; 06; 07; 08; 09; 10; 11; 15; 16; 17; 20; 21; 25; 26; 27 & 28 all are located on Chestnut Way. Please note, while this is a public meeting that is subject to the minimum posting requirements as set forth in the Right to Know Law it is not a public hearing and no formal notice is required to either the applicant or abutters.

Jim Banks, Chairman read the notice into the record.

Caren Rossi asked if the Board wished for her to clarify the process. They did.

Caren Rossi explained that this request was originally scheduled in December but there was only 3 board members present at this meeting and James Cummings requested for the hearing to be continued. At this time a meeting date of January 2, 2017 was scheduled. When Caren Rossi went to schedule the meeting for this night there was not a meeting room available. Courtesy notices were sent out regular mail to all that signed the rehearing request as well as someone was available at the public safety complex that night to explain the new meeting date to

anyone that arrived, no one did. She then read the following from the Zoning Board Handbook.

When a Motion for Rehearing is received, the board must decide to either grant the rehearing or deny it within 30 days. (RSA 677:3, II) Since this is a board decision, the board must meet to consider the motion and act to grant or deny it. This is a public meeting subject to the minimum posting requirements of the Right to Know Law but is not necessarily a public hearing and no formal notice is required to either the applicant or abutters (or the moving party) unless required by the board's Rules of Procedure. If the board decides to grant the rehearing, a new public hearing is scheduled with new notice to everyone and the process moves forward. If the board decides not to grant the rehearing, their work is done. All they must do is inform the petitioner that the rehearing was denied and the petitioner then has 30 days to challenge that decision by appealing to superior court.

Once the board decides to grant a rehearing, they must set the date for the new hearing. It is recommended that the rehearing be held within 30 days of the decision to grant the rehearing provided notice fees and an updated abutters list have been received from the party requesting the rehearing and that the Rules of Procedure outline the rehearing process. (See the draft Rules of Procedure in Appendix A.) There is no statutory requirement that the petitioner actually attend the rehearing. In the event someone requests a rehearing, then asks that it be delayed or postponed, the board may honor that request at their discretion. However, if the petitioner continually asks for delays and postponements, the board may proceed with the hearing (after proper notice to all) even if the petitioner does not attend. The chair of the ZBA also has the authority to compel witnesses to attend. (See RSA 673:15 Power to Compel Witness Attendance and Administer Oaths.) If in its review of the motion for rehearing the board feels compelled to add additional reasons for denial beyond those issues raised in the motion, they should grant the motion, hold a new hearing, and include their additional reasons in a new denial decision. This would allow the moving party to file a new motion for rehearing and, if appealed to superior court, bring forth all the reasons the ZBA denied the application. (See McDonald v. Town of Effingham ZBA, 152 N.H. 171 [2005].) It is recommended that the meeting to consider a Motion for Rehearing not be a public hearing and that no testimony is taken. It is a public meeting and anyone has the right to attend but all the board is acting on is the motion in front of them (what has been submitted) and should not involve comments by the applicant, petitioner or abutters. If the board believes there are sufficient grounds to reconsider their original decision, the motion should be granted; if not, the motion should be denied.

Standing exists only when relevant factors lead the trier of fact to conclude that the plaintiff has a sufficient interest in the outcome of the proposed zoning decision. Where the only adverse impact that may be felt by the plaintiffs is that of increased competition with their businesses, there is not sufficient harm to entitle plaintiffs' standing to appeal. (See Nautilus of Exeter, Inc. v. Town of Exeter and Exeter Hospital, 139 N.H. 450, 656 A.2d 407 [1995].) If the motion for rehearing cites as a reason for the request the failure of the board to adequately explain its decision, i.e., not address all five criteria for a variance, the board could use the rehearing process to complete its records: "The… rehearing process is designed to afford local zoning

boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts." Fisher v. Boscawen, 121 N.H. 438 [1981]

A person has a right to apply for a rehearing and the board has the authority to grant it. However, the board is not required to grant the rehearing and should use its judgment in deciding whether justice will be served by so doing. In trying to be fair to a person asking for a rehearing, the board may be unfair to others who will be forced to defend their interests for a second time. If the board reverses a decision at a rehearing, a new aggrieved party results and that party then has 30 days in which to appeal for a rehearing on the new decision.

It is assumed that every case will be decided, originally, only after careful consideration of all the evidence on hand and on the best possible judgment of the individual members. Therefore, no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing. The evidence might reflect a change in conditions that took place since the first hearing or information that was unobtainable because of the absence of key people, or for other valid reasons. The board, and those in opposition to the appeal, should not be penalized because the petitioner has not adequately prepared his original case and did not take the trouble to determine sufficient grounds and provide facts to support them. The coming to light of new evidence is not a requirement for the granting of a rehearing.The reasons for granting a rehearing should be compelling ones; the board has no right to reopen a case based on the same set of facts unless it is convinced that an injustice would otherwise be created, but a rehearing should be seriously considered if the moving party is persuasive that the board has made a mistake. Don't reject a motion for rehearing out of hand merely because there is no new evidence. To routinely grant all rehearing requests would mean that the first hearing of any case would lose all importance and no decision of the board would be final until two hearings had been held. ". When a rehearing is held, all legal actions such as public notice (required for the first hearing) must be followed. If possible, the same board members from the original hearing should be present at the rehearing. After the board of adjustment has acted on a motion for rehearing, it has essentially completed its responsibilities. If the petitioner makes a further appeal to the superior court, the board of adjustment will be required to produce its records and may become a party to the proceedings.

Jim Banks, Chairman asked if there were any questions on the process?

None

Jim Banks, Chairman continued. The first statement is that the hearing occurred before the abutters received their notice. They were notified 4 days after the hearing. He stated he believes he is correct that all we have to do is prove that we mailed it on time. The Board is not responsible for the post offices quality control. If the post office doesn't deliver, the Board isn't responsible for that. If you go back a couple years ago with the

doggie daycare we had this issue and they sued the town and they did not get what they wished. He believes this isn't an issue.

John Hutton agreed.

Caren Rossi stated she can provide information on this.

Jim Banks, Chairman stated, please do.

Caren Rossi stated the add was in the Fosters on 10/21/16, 12 days prior to the meeting. The abutter notices were mailed on 10/25/16, 8 days not including day of the meeting. The law says given not less than 5 days of the date of the appeal and public notice shall be placed in the newspaper not less than 5 days of the fixed date of the meeting. Like Mr. Banks said we were taking to court on the same issue with the doggie daycare and we were not found at fault.

Jim Banks, Chairman asked for any discussion on the first point.

None

Jim Banks, Chairman continued the next is that there should have been a hearing for each lot separately. But if I remember a conversation with Caren the town council said the board was correct in having one hearing for all of them.

Caren Rossi explained that the applicant in the application had a signed letter of authorizing from all letting them apply for them on their behalf.

Jim Banks, Chairman continued and read *the distance between the well and the septic system is not in compliance with code sing the lots listed above share a common well and septic system*.
Jim Banks, Chairman stated he doesn't have a comment on this, he doesn't understand.

Caren Rossi stated she feels probably they were given the wrong information because they are individual wells and septic's.

Jim Banks, Chairman stated so this doesn't mean anything.

Don Quigley asked for clarification.

Caren Rossi explained that the lots are individual wells and septic's, not common.

Jim Banks, Chairman continued *granting the variance will be contrary to public interest. He continued public interest could be a matter of health. The state rules were meet*. The distance meets the state requirements which certainly would be appropriate for a health issue. He doesn't see where the public interest is not met. Any discussion or comment?

John Hutton stated he has nothing to the contrary.

Jim Banks, Chairman continued *granting the variance will be inconsistent with the spirit of the ordinance.* What is the spirit of the ordinance with regards to this issue?

John Hutton stated the spirit was to clean up a mistake that was made as much by the town as it was the applicant that is not the person who made the appeal. The town was in part responsible for the ordinance being questioned.

Jim Banks, Chairman continued *granting the variance will result in substantial injustice to abutter property owners.*

John Hutton commented if we hadn't met the mailing time and with our recent decision with the doggie daycare, we did our due diligence as far as notifying people which I think is one of the biggest complaints and I can understand it, but I understand that they are not happy and don't feel they were notified in a specific time but we held up our end of the bargain.

Jim Banks, Chairman commented that we did what was required by the state.

Jim Banks, Chairman continued by *granting the variance, the values of the surrounding properties will be significantly diminished.*

Don Quigley asked how that would be quantified?

Jim Banks, Chairman stated they could bring in a realtor and show how the setbacks would diminish values. It's not the development itself it's the distance between the wells and the septic's affecting the value of the

other lots not part of the subdivision. It's not clear to him that lots beyond the bounds of the subdivision would be affected.

John Hutton replied he feels if they didn't meet the state standards, they have some standings, but where they do meet the state standards…

Craig Williams stated he doesn't feel that there is any abutter close enough to be affected by the variance.

Jim Banks, Chairman asked if there were any other comments or question? Any discussion at all?

None.

John Hutton made a motion to deny the request for a motion to rehear.

Peter Hoyt second.

Vote: all

Motion carried.

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

Caren Rossi stated to Mr. Cummings if he wanted to call her she could explain the next process to him.

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John Hutton stated for the record Mr. Banks will be vacating his chair and he will be the acting chairman.

A request for a motion to rehear an application from Peter MacDonald, representing the Veteran Resort-Chapel, 101 Stepping Stones Road. The property is known as Lee Tax Map# 12-03-0300. The application is for an Appeal to an Administrative Decision from Planning and Zoning Administrator Caren Rossi. The applicant states the purposed use is a church and Ms. Rossi disagrees. The request is to the 2015 Lee Zoning Ordinance under Article V, Section-A, Permitted Uses, Churches on a site approved by the Planning Board. The ZBA uphold the Planning and Zoning Administrators decision.

John Hutton explained the same rules apply. He explained we are short Mr. Reinhold from the original hearing but we have 4 out of the original 5 members.

Caren Rossi distributed copies of the appeal and the Board members all reviewed it again.

John Hutton, Acting Chairman asked if religious reading rooms was verbiage on the last submittal?

Caren Rossi stated that some of it was, it was in the packet as when he made the original application to the planning board there were referred too as religious reading rooms.

John Hutton, Acting Chairman asked if any of the members saw anything new that would add any weight to changing our decision?

Don Quigley stated he does not see any new statements that are substantially different from the last presentation.

Peter Hoyt asked if the religious reading rooms were mentioned before, didn't we call them sheds?

Caren Rossi stated that when he had council, his original planning board application they were referred to as religious reading rooms, this was also outlined in the packets at the original meeting.

Craig Williams stated it's the exact same argument we had last time, unless we want to have a review of that he doesn't see this will be beneficial.

John Hutton, Acting Chairman stated he would entertain a motion.

Peter Hoyt made a motion to deny the motion for a rehearing. There is nothing substantially different from the original presentation and it is the exact same argument as originally discussed.

Craig Williams second.

Vote: all, motion carried.

John Hutton, Acting Chairman explained the 30-day appeal process.

MINUTES TRANSCRIBED BY:

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Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

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Jim Banks, Chairman for Maple Heights

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John Hutton, Acting Chairman for MacDonald

_____ _____
Don Quigley, Alternate Peter Hoyt, Alternate

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Craig Williams, Alternate