

MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
June 7, 2012

MEMBERS PRESENT: Jim Banks, Chairman; Tobin Farwell; Peter Hoyt, Alternate; Frank Reinhold Jr. Alternate and Carol Anne LaCourse, Alternate.

OTHERS PRESENT: Allan Dennis, CEO; Caren Rossi, Secretary; Dave Garvey, Malcome “Jerry” Chase; John F. Weaver, McLane Law Firm and Charles “Chip” Fredette Representing Verizon.

The board introduced themselves to the applicant.

Tobin Farwell clerked and read the application into the record.

(Z1213-4)

- **An application for Equitable Waiver of Dimensional Requirements as provided in RSA 674:33a, made by Dave Garvey & Linda Connell representing Malcome Jerome Chase Jr., Trustee of the Malcome Jerome Chase Trust. To grant the request for the wireless communications centers fence, utility shelter and supporting concrete to be at its closest point, approximately 55' +- to the wet soils setback where 75 feet is required. Property is located at 11 Concord Road and is known as Tax Map #04-04-0000.**

Allan Dennis gave all of the Board members a copy of the RSA explaining that if the qualifications are met, this waiver “*Shall be granted*”.

John F. Weaver, McLane Law Firm attorney for the applicant showed the approved plan and explained that approvals were granted back in 2005 and the structure was built back in 2006 to construct the monopole tower. When approved it fit all of the required setbacks. While it was built too close, they are unsure. They are unable to contact the contractor. The wetlands are in a wooded dense area. Possibly the contractor was not aware of the wetlands. All of this was discovered in 2012 when a survey was done for the pending purchase of the land. He continued to reviewed the four requirements of the request.

- (a) That the violation was not noticed or discovered by any owner, former owner, owner’s agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been

subdivided by conveyance to a bona fide purchaser for value; The *violation was not noticed until 2012 when the survey was completed, prior to this Verizon had no idea.*

- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority; *Not ignorance, unaware of it, meant to be built correctly, good faith mistake.*
- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and will *in no way diminish the property values.*
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected *the costs to move this would be approximately \$60,000 and service from this tower would be shut down for approximately 10 days.*

Allan Dennis explained that the statue is designed for situations like this.

Tobin Farwell explained at great length that he does not agree that this was a good faith mistake; he feels this is a large area. It is not a few feet, it was a huge error.

John F. Weaver commented that this was not Verizon's intent at all. They have 50,000 towers thru out the country and they to build them correctly. They rely on their contractors to do the job correctly.

Tobin Farwell and John F. Weaver discussed the ignorance of the law. John F. Weaver does not feel this is the case at all, he feels it's just a mistake. There is not a benefit at all for Verizon to make these mistakes, they are costly.

Tobin Farwell replied he felt it was not an accident, it was intentional.

John F. Weaver felt it was a mistake on Verizon's part to trust the contractor.

Frank Reinhold and Tobin Farwell discussed the situation at length. Frank Reinhold commented that he presumes that Verizon has nothing to gain with the mistake. He doesn't feel it was an advantage to either party to make this mistake, it happened for whatever reason that we will never know.

- Frank Reinhold made a motion to Grant the request for an **application for Equitable Waiver of Dimensional Requirements as provided in RSA 674:33a, made by Dave Garvey & Linda Connell representing Malcome Jerome Chase**

Jr., Trustee of the Malcome Jerome Chase Trust. To grant the request for the wireless communications centers fence, utility shelter and supporting concrete to be at its closest point, approximately 55' +- to the wet soils setback where 75 feet is required. Property is located at 11 Concord Road and is known as Tax Map #04-04-0000.

Jim Banks second.

Vote: Yes - Peter Hoyt; Carol Ann LaCourse; Frank Reinhold

No- Tobin Farwell

Motion carried

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

MINUTES TRANSCRIBED BY:

Caren Rossi, Secretary

MINUTES APPROVED BY:

Jim Banks, Chairman

Frank Reinhold, Alternate

Peter Hoyt, Alternate

Carol Anne LaCourse, Alternate