

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
November 20, 2013
7:00 PM**

MEMBERS PRESENT: Jim Banks, Chairman; Peter Hoyt, alternate; Roy Wilson, alternate; Craig Williams, alternate; and Frank Reinhold, alternate.

OTHERS PRESENT: Robin Willis; Bobby Callioras; Wayne Morrill, Jones & Beach Engineer; Philip Bernard; and Caren Rossi, Planning/Zoning Administrator.

An application for a Special Exception to Article XV Section E-1 of the 2013 Lee Zoning Ordinance made by Lee Properties, LLC, agent is Wayne Morrill, Jones & Beach Engineers, Inc. The request is for a buffer impact of 9,450 sq ft for the construction of streets, roads and other access ways and utility right-of-way easements, including power lines and pipe lines. The property is known as Tax Map #01-04-00; #01-04-0500; & #01-07-00 and is located at Hayes Rd & Cherry Lane.

Jim Banks, Chairman explained that the application from Jones & Beach Engineers will be continued until December 4, 2013. They were notified earlier in the day by Caren Rossi that there was not going to be enough board members for a full board. Therefore, they will be continuing the application. He explained that there will not be any further mailings/notices sent out.

Frank Reinhold clerked and read the notice and abutters into the record.

-A Variance to Article V, Section B-3 setbacks of the 2013 Lee Zoning Ordinance made by Robin Willis. The applicants request a variance to construct a shed of approximately 10' X 10', 18' +/- at its closest point, from the side setbacks where 25' is required. As well as 42'+- from the front setback where 50' is required. The property is known as Tax Map #11-04-0900 and is located at 56 Northside Road.

Caren Rossi explained that she does not need a variance for the front setback as this distance is actually 35' not 50' as it is a r-o-w. The only variance needed is for a side setback.

Robin Willis explained that she recently purchased the property. She needs a shed to store items in, such items are a snow blower, shovels etc. There is an existing shed on the property but it is on a hill. She wants a shed near the driveway and not on a hill. The entire lot is only 50' wide. There is no place that it would fit on the site without a variance.

Public comment

Philip Bernard spoke in favor of the application.

Floor closed

The board members commented that they did not have a problem with this request, it was a very reasonable request.

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 (all)
- 2) **Granting the variance would be consistent with the spirit of the ordinance.** Yes (all)
- 3) **In granting the variance, substantial justice is done.** Yes (all)
- 4) **In granting the variance, the values of surrounding properties are not diminished.** Yes (all)
- 5) **Literal enforcement of the provisions of the ordinance would results unnecessary hardship to applicant.** Yes (all)
 - 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:
- o There are special conditions on the subject property that distinguish it from other properties in the area; *and*
 - o The property cannot be reasonably used under the ordinance and therefore, a variance is necessary to enable a reasonable use of it.

Frank Reinhold made a motion to grant the request for a variance to Article V, Section B-3 setbacks of the 2013 Lee Zoning Ordinance made by Robin Willis. The applicants request a variance to construct a shed of approximately 10' X 10', 18' +/- at its closest point, from the side setbacks where 25' is required. The property is known as Tax Map #11-04-0900 and is located at 56 Northside Road.

Roy Wilson second.

Vote: all, motion carries.

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

Frank Reinhold clerked and read the notice and abutters into the record.

The Lee Zoning Board will conduct a public hearing on an application from Robert and Barbara Callioras with an address of 87 Calef Highway, Lee NH, known as Lee Tax Map #04-07-0500 and #04-07-0600.

The applicant is requesting a variance to the 2013 Lee Zoning Ordinance, Article VI, Commercial Zone (Zone C); section C-Land Requirements, number-3 Setback, in that the applicant is requesting a variance to allow various structures to include but not limited to a mobile kitchen, outside seating, product display area(s) and parking for a limited time on a temporary basis to be no closer than 25' (feet +/-) to the right-of-way of Route 125 (Calef Highway) where 125' (feet) is required and that if granted, a natural vegetative buffer zone shall not be required as specified in this section since this request is for a limited time on a temporary basis as specified if granted.

Also note: This is the fourth request for a variance to allow the above listed use, the variances were granted on May 27, 2009; April 27, 2011; & November 28, 2012 as temporary uses. The first Expired on May 27, 2011; the second on November 28, 2012 and the third on November 28, 2013. This request is also for a temporary use and the time frame, if granted, shall be decided at this public hearing. The public should be aware that, the front setback to the right-of-way may be adjusted at the discretion of the Lee Zoning Board due to the existing conditions of this site, i.e. that the area for parking is open in nature and not well defined and that this request is for a limited time and temporary in nature.

Bobby Callioras explained that he has been hear in the past and has asked for extensions. This has been because he hasn't been able to do anything with the property. He is working on something now. He asks that the board continue his use until the expiration of his food license, which is August.

Caren Rossi stated that if the Board does agree to grant him an extension, she suggests it expire the end of November 2014 as to prevent him from coming back in August for a little more time. By the time the approvals are all in place for a new commercial site, it will most likely be spring. She has met with a developer that is currently working on a portion of the site and he hopes to be before the Boards ASAP.

Frank Reinhold spoke with concerns of the request continuing to ask to be continued, year after year.

Bobby Callioras explained he understood and thinks this will be the last request.

Public Comment.

Being none, floor closed.

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.

6) **Granting the Variance will not be contrary to the public interest.**

Yes (all)

7) **Granting the variance would be consistent with the spirit of the ordinance.**
Frank no)

Yes (majority,

- 8) **In granting the variance, substantial justice is done.** Yes (all)
- 9) **In granting the variance, the values of surrounding properties are not diminished.** Yes (all)
- 10) **Literal enforcement of the provisions of the ordinance would results unnecessary hardship to applicant.** Yes (all)
- C) 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.
- D) 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.

Frank Reinhold made a motion to grant the variance to the 2013 Lee Zoning Ordinance, Article VI, Commercial Zone (Zone C); section C-Land Requirements, number-3 Setback, in that the applicant is requesting a variance to allow various structures to include but not limited to a mobile kitchen, outside seating, product display area(s) and parking for a limited time on a temporary basis to be no closer than 25' (feet +/-) to the right-of-way of Route 125 (Calef Highway) where 125' (feet) is required. This approval expires on November 28, 2014.

Roy Wilson second.

Vote: all, motion carries.

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

Craig Williams, Alternate

Peter Hoyt, Alternate

Roy Wilson, Alternate

Frank Reinhold, Alternate