

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
November 28, 2012**

MEMBERS PRESENT: Jim Banks, Chairman; John A. Hutton, III; Tobin Farwell; and Philip Sanborn; and David Allen. (Peter Hoyt, Audit)

OTHERS PRESENT: Allan Dennis, CEO; Caren Rossi, Secretary; Sabrina Campbell Heine; Steve Haight; Toni Hartgerink; Bobby Callioras; Allen & Cynthia Unrein; Donald McPherson; John Gardner

(Z1213-3)

-An application for a Special Exception to Article XV, Section E-1 of the 2012 Lee Zoning Ordinance made by Norman & Sabrina Heine. The applicants request a special exception to allow for a driveway/roadway access and utilities to cross and be within 75' feet of the wet soils conservation zone to access uplands on the property. Property is owned by Patricia Vallee and is located on Stepping Stones Road & Turtle Pond Road and is known as Lee Tax Map #08-04-0900.

Sabrina Heine explained the application and in that she would like to purchase land from Patricia Valley for horse pasture. They need to cross the wetland for them to be able to access the uplands of the parcel. The parcel abutters theirs so they would just do a lot line adjustment. The barn will be constructed on the house side of the wet soils but they would like to build a three sided structure on the other side (across wet soils) for weather protection. They will be logging, stumping and seeding about a 10 acre piece for pasture. They will not be encroaching on any other wet soils, but this one. They have already met with Dori Wigen, NHDES and the type of crossing shown on the plan is what she would prefer. They have not yet sent in the application to DES they are waiting for the approval tonight. If they receive approval tonight, they will then go to the Planning Board for the lot line adjustment and the state for all approvals.

Tobin Farwell asked about the design.

Steve Haight explained that this is what Dori Wigen expressed she wanted for the crossing.

Jim Banks, Chairman asked about electricity.

Sabrina Heine explained that she has no need for electricity that she knows of. She does not see any need for power on the other side of the wet soils.

Public Comment

Allen Unrein spoke in favor of the application.

Toni Hartgerink, LCC spoke that they have no issues with the crossing but they object to the light poles in the wet soils for the electricity on the other side if needed.

Sabrina Heine stated she was fine with not having electricity on the other side.

An abutter asked about future development of the parcel.

Sabrina Heine explained that

Floor closed to public comment.

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 _____.

For Special Exceptions permitted under Article V:

The use is specifically permitted under the terms of Article V for a Special Exception.

Yes: (all) No: _____

For Special Exceptions permitted under Article XV in the Wet Soils Conservation Zone:

The use is specifically permitted under the terms of Article XV.E. _____

Yes: (all) No: _____

Has the Application been referred to the Conservation Commission and the Health Officer for review and comment as required by Article XV.E?

Yes: (all) No: _____

The requested use is specifically permitted under Article XV:

1. If for street, road, access ways and utility rights-of-way, is the use essential to the productive use of land and is it located and constructed so as to minimize any detrimental impact of such uses upon the Wet Soils?

Yes: (all) No: _____

2. If for Water Impoundment, has the purpose of the District been met?

Yes: NA No: _____

3. If for Fire Ponds, has the use been reviewed by the Lee Planning Board and Lee Fire Department and has it satisfied the purposes of the zone?

Yes: NA No: _____

4. If for an undertaking of a use not otherwise permitted in the Zone, has it been shown that the proposed use is not in conflict with any and all of the purposes and intentions listed in Article XV.A?

Yes: NA No: _____

For all Special Exception requests, findings and rulings.

After reviewing the above, the Board has determined the following findings of fact, all of which must be satisfied to grant a special exception as required by Article XXII.3 of the Zoning Ordinance.

- 1) The proposed use **will** ___ **will not (all)** be detrimental to the character or enjoyment of the neighborhood or to future development by reason of undue variation from the kind and nature of other uses in the vicinity or by reasons of obvious and adverse violation of the character or appearance of the neighborhood or cause diminution in the value of surrounding property.
- 2) The use **will** _____ **will not (all)** be injurious, noxious or offensive and thus be detrimental to the neighborhood.
- 3) The use **will** _____ **will not (all)** be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk of life and property, unsanitary or unhealthful emissions or waste disposal, or similar adverse causes or conditions.

Tobin Farwell made a motion to GRANT the request for a Special Exception to Article XV, Section E-1 of the 2012 Lee Zoning Ordinance made by Norman & Sabrina Heine. The applicants request a special exception to allow for a driveway/roadway access to cross and be within 75' feet of the wet soils conservation zone to access uplands on the property. Property is owned by Patricia Vallee and is located on Stepping Stones Road & Turtle Pond Road and is known as Lee Tax Map #08-04-0900. As shown on submitted plan, signed by Chairman Jim Banks and dated today, November 28, 2012

John Hutton second.

Vote: all

Jim Banks explained the 30 day appeal process to the applicant.

(Z1213-4)

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 2012 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 third request for a variance to allow the above listed use, the variances were granted on May 27, 2009 & April 27, 2011 as temporary uses. The first Expired on May 27, 2011 and the second on November 28, 2012. 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 is basically begging for an extension. The state was in recently and renewed his licenses to sell food until August 13, 2013. His property is currently for sale, in its entirety or in smaller parcels. The state wants the unit to be entirely mobile or a new building built. He plans on going to off site locations next year as well as this site. As he has explained before they lost a lot of money on the Walgreens sale.

Tobin Farwell explained that this is the third request for an extension, something needs to happen.

John Hutton stated he is comfortable with the extension, but this is the last time. He realizes that he has a lot to deal with, just with the state alone. If the state gives him until August, he is comfortable with giving him to the end of November.

John Hutton made a motion to amend the previous decision to expire on November 28, 2013.

Tobin Farwell second.

Vote: all

MINUTES TRANSCRIBED BY:

Caren Rossi, Secretary

MINUTES APPROVED BY:

Jim Banks, Chairman

Dave Allen

John A. Hutton, III

Tobin Farwell

Philip Sanborn