

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
December 04, 2013
7:00 PM**

MEMBERS PRESENT: Jim Banks, Chairman; John Hutton, Tobin Farwell, Roy Wilson, alternate; and Frank Reinhold, alternate.

OTHERS PRESENT: Wayne Morrill, Jones & Beach; Mike Black; John Dicaprio and Caren Rossi, Planning/Zoning Administrator. Several abutters were in attendance, but they did not sign in. Names were noted when they commented.

John Hutton clerked and read the notice into the record.

-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.

Wayne Morrill explained the proposed project. This process began June of 2013. They have made many drafts of the proposed development, this is #6. They began by mapping all of the wet soils. This was done by Jack Hayes, Soil Scientist. It is a proposed 28-single family home cluster subdivision in the Town of Lee with approximately 37+- acres left in open space. Madbury will have approximately 5 single family convention homes with 43+- acres of open space. All lots will have individual septic and wells. The total lot is 150 acres total, 90 acres in Lee and 60 in Madbury. All of the lots proposed meet the current zoning requirements. The lots on the right as you enter the development are larger than required. This will allow the land to be owned by individual residents to help control the four wheeler & dirt bike activity. They will not be able to connect as easily to the open space. The road is a 60' ROW; pavement is 22' wide; with gravel shoulders; and about 2600 linear feet in length. There are two wet soils buffer impacts, one is 5,050 sq ft and the other is 4,400. This request includes the access for lot #9. Due to the wet soils layout on the site, the road is located at the best possible spot for it. He has met with Randy Stevens and discussed the road layout and the turnaround. Originally it was a hammer head and Randy Stevens did not like the layout, he requested this type of cul-de-sac. It is modeled after Captain Parker Drive. As part of this development, they will be relocating a portion of the trail and they will be creating 4 gravel parking spaces by the cul-de-sac for people to park and enjoy the open space. The open space will be maintained by the homeowners association. The previous owner planted some Chestnut Trees and other trees down along the river bank. These will not be impacted by the development.

Jim Banks, Chairman opened up for public comment.

Kristie Blanchard- 8 Cherry Lane spoke against the development. You have a setback to the wet soils to protect them, how will this affect them? Cemetery what will you do with the graves?

Wayne Morrill explained that the existing cemeteries have been located, they will not be affected. They are in the area that will remain open space. An oversized culvert will be placed as well as the trees/brush will not be cut any more than necessary and this will protect the wet soils that are affected. This is not a high profile wet soils area. It is a very minor wetland, with no real significance.

Gregg Blanchard asked if any studies have been done in the water impact.

Wayne Morrill explained that this will be discussed with the planning board process. Permitted still needs to be done with the State to ensure no post development run off etc.

Kelly Newick- Newtown Plains Rd asked if the open space land will be under easement. And why lower expectations to allow for the development?

Wayne Morrill replied no, but it will be owned by the homeowners association.

Jim Banks, Chairman explained that this use is a use that is required under the Special Exception criteria as long as the criteria are met; the Board has to grant the request.

Paul Gregoire – 7 Cherry Lane spoke against it. If the Tent Man wasn't allowed to do it, they should be either.

Toni Hartgerink- Lee Conservation Commission-spoke in favor. They felt that they had done a very nice job protecting the wetlands; she hasn't seen anyone do a better job than this. It is a very well thought out plan. The road isn't in the wetlands its encroaching the buffer to them. They have asked that they don't cut the vegetation and they are not going to. They don't feel this will have a negative impact at all.

Jim Cummins asked if there were any vernal pools.

Toni Hartgerink- Lee Conservation Commission stated that there were, but they are low quality.

Floor closed.

Board deliberation

Tobin Farwell stated that it looks like the driveway for lot #9 is also in the buffer; this is part of the request as well?

Wayne Morrill explained yes it is.

Frank Reinhold stated that he feels it is a well thought out plan.

Tobin Farwell commented he feels they are just barely touching the buffer; the Conservation Commission supports it; lots are condensed; avoiding large impacts; you will be hard pressed to find any lots on the seacoast that don't impact the wet soils.

Jim Banks, Chairman asked for the conservation Commissions letter to be read into the record and John Hutton did so.

John Hutton stated he saw the earlier plan that was presented to the Planning Board. This is much better; they have done a nice job and put a lot of work into it. This plan is a huge improvement over the previous one he saw.

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)** 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)

Satisfactory arrangements have been made for the following as required by Article V of the Zoning Ordinance:

1. Ingress and egress to the property and proposed structures or uses with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and in case of fire or catastrophe;

Yes (all)

2. Off-street parking and loading areas where considered necessary by the board;

Yes (all)

3. Control of noise, glare, odor or other potentially adverse effects of the proposed use on nearby property and screening or buffering to alleviate such effects;
Yes (all)
4. Refuse and service areas; **Yes n/a (all)**
5. Control of drainage and erosion; **Yes n/a (all)**
6. Lighting must be installed with due regard to glare, traffic safety and compatibility and harmony with adjoining property and the character of the area.
Yes n/a (all)

In addition, the following criteria have been satisfied:

1. A landscaped buffer zone must be maintained between the Special Exception and any residential lot line.
Yes (all)
2. Signs must conform to requirements of Article XVII of this ordinance.
Yes n/a (all)
3. Only one (1) residential structure and/or one (1) business shall be permitted for that use on each lot.
Yes n/a (all)

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)

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)

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)
2. If for Water Impoundment, has the purpose of the District been met?
Yes: (all)

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: **(all)**

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: **(all)**

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 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 not (all)** be injurious, noxious or offensive and thus be detrimental to the neighborhood.
- 3) The use **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.

John Hutton made a motion to grant the request 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. Subject to the Conservation Commissions concerns.

Tobin Farwell second.

Vote: all, motion carried.

John Hutton explained to the audience that they all have valid concerns that need to be brought to the attention of the Planning Board. That is the Board that can handle these concerns. This is where your input is heard. This is the first step off the process.

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

Caren Rossi, Zoning Administrator presented the Board with a letter from council. (Non Public Information)

John Hutton made a motion for no action at this time.

Frank Reinhold second.
Vote: all, motions carries.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Jim Banks, Chairman

John Hutton

Roy Wilson

Tobin Farwell

Frank Reinhold, Alternate