

**MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
December 18, 2013
7:00 PM**

MEMBERS PRESENT: Jim Banks, Chairman; John Hutton, Dave Allen; Roy Wilson, alternate; Craig Williams, alternate; and Frank Reinhold, alternate.

OTHERS PRESENT: Molly Darling; Robin Wunderlich; Mike Seivert, MJS Engineering; Robert Callioras; Dan Gabrielle; Tobin Farwell, Farwell Engineering Services LLC; David Chopect and Caren Rossi, Planning/Zoning Administrator.

John Hutton clerked and read the notice into the record.

An application submitted by Molly Darling & Robin Wunderlich, agents for property owned by 122 Mast Rd LLC, known as Lee Tax Map #13-11-0200 and is located at 122 Mast Rd. The applicant requests a variance to Article V, Section -A permitted uses, to allow for a Dog Daycare and a Boarding Kennel with support services as well as the existing Profession Office Use currently on sight. The request is to the 2013 Town of Lee Zoning Ordinance.

Robin Wunderlich explained the proposal and provided a model showing what it will look like. It will be in an existing building and in an existing footprint of an old greenhouse structure. Part of the existing building is currently leased to UNH. UNH will be staying on; they will construct a sound proof wall between the offices and the dog facility. They have completed numerous studies on the barking and feel they can control it will. The building will essentially be built as a sound proof building. The area behind the buildings will be the outside dog area. This area is heavily screened to the abutters. Parking will be added on the existing gravel area. They don't foresee any issues with parking this is just a precaution. The slab in the kennel area will be heated but not high energy consumption. A new septic system will be installed for the new construction at the old green house.

Jim Banks, Chairman asked about the apartment?

Robin Wunderlich replied that it is staying.

Craig Williams asked what the cap is for the number of dogs.

Robin Wunderlich replied 42, 3 pods of 14.

Molly Darling replied that they have experienced staff to run it the facility and a manger is already lined up.

Frank Reinhold asked if any state licensing is involved.

Molly Darling replied not that she is aware of.

Roy Wilson asked where the dog waste was going to go?

Robin Wunderlich replied that the solid waste will be picked up and disposed of properly. They are currently working with Tom Ballesteros from UNH on the removal of the waste and will have it ready for the planning board process.

Mike Seivert, MJS Engineering addressed the 5 criteria for a variance. (In file)

Public Comment

David Chopect spoke as the realtor for the property. He felt it was a great use for the property; it keeps with the agriculture theme of the site. These types of business are generally viewed as an asset to the community.

Molly Darling also spoke to the employment for the community.

Toni Hartgerink spoke with concerns of the nitrogen from the urine to the environment. She would like to see the applicants look into ways to treat the nitrogen from all causes before it gets into the Chelsea Brook.

Molly Darling commented that in Durham they did a rain garden to treat the waste.

Floor closed to public comment.

John Hutton commented that it looks like an innovated use of the building and property. He feels they have their work cut out with the parking as it is not as easy as they think. He feels they have done their due diligence.

Jim Banks, Chairman spoke of the new septic that is involved, will be designed per the states standards.

Craig Williams asked if they anticipated baths for the dogs?

Molly Darling commented that they have potential for full service grooming, not a do-it- yourself dog wash.

Craig Williams did not participate in this finding.

The Board determined the following Findings of Fact:

Variance Requested to Article:

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 majority**
- 2) **Granting the variance would be consistent with the spirit of the ordinance. Yes majority**
- 3) **In granting the variance, substantial justice is done. Yes majority**
- 4) **In granting the variance, the values of surrounding properties are not diminished. Yes majority**
- 5) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. Yes majority**
 - A) To find that an "unnecessary hardship" exists, the Board must find:
 - o There are special conditions on the subject property that distinguish it from other properties in the area; *and*
 - o 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.**

Pre zoning; commercial use; very limited to other markets.

John Hutton made a motion to grant the request for a variance to Article V, Section -A permitted uses, to allow for a Dog Daycare and a Boarding Kennel with support services as well as the existing Profession Office Use currently on sight.

Frank Reinhold second.

Vote: all, motion carried.

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

An application from Tobin Farwell, Farwell Engineering, agent for Dan Gabriel of Dan Gabriel, Inc. The property is owned by Robert & Barbara Callioras, Calef Highway, Lee NH. Property is known as Lee Tax Map #04-07-0600. The applicant requests the following:

-A variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, setbacks. To allow for a non- vegetated front set back no closer than 10'+- (ten feet) to the nearest structure, leach field, where a 125' (one hundred twenty five feet) vegetated buffer is required. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

-A variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, setbacks to allow side & rear setback(s) no closer than 17' (seventeen feet) +- at the closest point, curbing, where 50' (fifty feet) is required. The structure is pavement. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

Tobin Farwell presented the proposed plan to the Board. The entrance to this development is a shared access along with the neighboring lot. The building will be in-line with the others, but not as close to the highway as Walgreens. The leach field is the closest thing to the property line. The building will be a single story unit with 4 separate units. Currently the only known tenant is Aroma Joes. The lot is not quite 2 acres, making it harder to meet all of the setback requirements. The existing dilapidated building will be removed as part of this development as well as the trailers.

No public comment.

Roy Wilson did not participate in this finding.

The Board determined the following Findings of Fact:

Variance Requested to Article:

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 majority**

7) **Granting the variance would be consistent with the spirit of the ordinance. Yes majority**

8) **In granting the variance, substantial justice is done. Yes majority**

9) **In granting the variance, the values of surrounding properties are not diminished. Yes majority**

10) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. Yes majority**

C) To find that an "unnecessary hardship" exists, the Board must find:

- o There are special conditions on the subject property that distinguish it from other properties in the area; *and*
- o 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:**

- 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.**

John Hutton made a motion to grant the request for a variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, setbacks. To allow for a non- vegetated front set back no closer than 10'+- (ten feet) to the nearest structure, leach field, where a 125' (one hundred twenty five feet) vegetated buffer is required. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

David Allen Second.

Vote all, motion carried.

Variance Requested to Article:

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.

11) **Granting the Variance will not be contrary to the public interest. Yes majority**

12) **Granting the variance would be consistent with the spirit of the ordinance. Yes majority**

13) **In granting the variance, substantial justice is done. Yes majority**

14) **In granting the variance, the values of surrounding properties are not diminished. Yes majority**

15) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. Yes majority**

E) To find that an "unnecessary hardship" exists, the Board must find:

- o There are special conditions on the subject property that distinguish it from other properties in the area; *and*
- o No fair and substantial relationship exists between the purpose of the ordinance and its application to the property in question.

F) **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.**

John Hutton made a motion to grant the request for a variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, setbacks to allow side & rear setback(s) no closer than 17' (seventeen feet) +- at the closest point, curbing, where 50' (fifty feet) is required. The structure is pavement. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

David Allen second.
Vote, all motion carried.

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

An application from Tobin Farwell, Farwell Engineering, agent for Robert & Barbara Callioras, 87 Calef Highway, Lee NH. Property is known as Lee Tax Map #04-07-0500. The applicant requests the following:

-A Special Exception of the 2013 Lee Zoning Ordinance, to Article XV; Wet Soils Conservation Zone, Section; E-4 Special Exceptions, for the filling and construction work necessary in and within 75' (seventy five feet) of the Wet Soils Conservation Zone for the purposed development as shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

-Special Exception of the 2013 Lee Zoning Ordinance to Article XV; Wet Soils Conservation Zone, Section; E-1 Special Exceptions, for any access ways and utilities (shown or not shown) in and within 75' (seventy five feet) of any wet soils as shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

-A Variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, Setbacks. To allow for a non- vegetated front set back no closer than 0'+- (zero feet) at its closest point to the nearest structure, pavement/curbing, where a 125' (one hundred twenty five feet) vegetated buffer is required. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

-A Variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, Setbacks to allow side & rear setback(s) no closer than 0'+- (zero feet) at the closest point, pavement/curbing, where 50' (fifty feet) is required. The structure is pavement. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

-A Variance to Article XV; Wet Soils Conservation Zone, Section F-2 Special Provisions, to allow a structure, being a building to be 31.1 '+- (feet) at the closest point, from wet soils where 75' is required. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

Tobin Farwell explained the above requests as a package. The proposed building will be a 15,000 sq ft commercial building. The exact number of retail spaces isn't determined as of yet. It will have a shared access with the other proposed building. The wet soils behind the building will be encroached by the building. As well as the access road is creating a fill of the wet soils. This has already been permitted by the state as part of the original approval for the Walgreens site. This building will be in line with the other sites in the area. Not as close to the front as Walgreens.

John Hutton read the Conservation Commissions letter into the record.

Public comment

Robert Callioras spoke in favor of the project, he has been working hard to improve the site and this development he feels it is a win- win.

Jim Banks, Chairman asked if the proposed road connects to the larger track of land.

Tobin Farwell replied that it does, it connects to the connector road of Walgreens and will provide access to the landlocked piece outback.

Frank Reinhold commented that it will be good to get this project going as it has been talked about for 10 or so years.

John Hutton commented that he feels the application is consistent with the areas properties; it's been a long time coming; and nice to see.

John Hutton made a motion to vote on the 2 special exception requests as one.

Frank Reinhold second.

Vote: all, motion carries.

Roy Wilson did not participate in this finding

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 XV in the Wet Soils Conservation Zone:

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

Yes: (majority)

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

Yes: (majority)

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: **(majority)**

2. If for Water Impoundment, has the purpose of the District been met?
N/A **(majority)**

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?
N/A **(majority)**

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?
N/A **(majority)**

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 (majority)** 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 (majority)** be injurious, noxious or offensive and thus be detrimental to the neighborhood.
- 3) The use **will not (majority)** 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 requests for a Special Exception of the 2013 Lee Zoning Ordinance, to Article XV; Wet Soils Conservation Zone, Section; E-4 Special Exceptions, for the filling and construction work necessary in and within 75' (seventy five feet) of the Wet Soils Conservation Zone for the purposed development as shown on submitted plans from Farwell Engineering Services, LLC dated December 2013. As well as a -Special Exception of the 2013 Lee Zoning Ordinance to Article XV; Wet Soils Conservation Zone, Section; E-1 Special Exceptions, for any access ways and utilities (shown or not shown) in and within 75'

(seventy five feet) of any wet soils as shown on submitted plans from Farwell Engineering Services, LLC dated December 2013. Subject to the following conditions:

- 1.) The Lee Conservation Commissions recommendations are followed.
 - a.) Excavated materials be removed immediately from construction site;
 - b.) All runoff be infiltrated onsite and use of NAXCL for deicing be minimized;
 - c.) Native plants be used where landscaping is needed; and
 - d.) Best management practices are followed

David Allen second.
Vote- all; motion carried

The Board determined the following Findings of Fact:

Variance Requested to Article: front setback

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 majority**
- 2.) Granting the variance would be consistent with the spirit of the ordinance. Yes majority**
- 3.) In granting the variance, substantial justice is done. Yes majority**
- 4.) In granting the variance, the values of surrounding properties are not diminished. Yes majority**
- 5.) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. It was commented that there is no evidence to the contrary. Yes majority**

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:

- **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.**

John Hutton made a motion to grant the Variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, Setbacks. To allow for a non- vegetated front set back no closer than 0’+- (zero feet) at its closest point to the nearest structure, pavement/curbing, where a 125’ (one hundred twenty five feet) vegetated buffer is required. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

Dave Allen second.

Vote: all, motion carries.

The Board determined the following Findings of Fact:

Variance Requested to Article: side & rear setbacks

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 majority

7.) Granting the variance would be consistent with the spirit of the ordinance. Yes majority

8.) In granting the variance, substantial justice is done. Yes majority

9.) In granting the variance, the values of surrounding properties are Yes majority not diminished. No evidence to the contrary

10.) Literal enforcement of the provisions of the ordinance would result Yes majority in an unnecessary hardship to applicant.

G) 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.

H) 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.

John Hutton made a motion to grant the request for a Variance of the 2013 Lee Zoning Ordinance, Article VI, Section C-3, Setbacks to allow side & rear setback(s) no closer than 0'+-(zero feet) at the closest point, pavement/curbing, where 50' (fifty feet) is required. The structure is pavement. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

Frank Reinhold second
Vote: all, motion carried

The Board determined the following Findings of Fact:

Variance Requested to Article: wet soils

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.

- 11.) **Granting the Variance will not be contrary to the public interest. Yes majority**
- 12.) **Granting the variance would be consistent with the spirit of the ordinance. Yes majority**
- 13.) **In granting the variance, substantial justice is done. Yes majority**
- 14.) **In granting the variance, the values of surrounding properties are not diminished. Yes majority**
- 15.) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. Yes majority**
- I) 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.
 - J) **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.**

John Hutton made a motion to grant a Variance to Article XV; Wet Soils Conservation Zone, Section F-2 Special Provisions, to allow a structure, being a building to be 31.1 '+- (feet) at the closest point, from wet soils where 75' is required. As shown on submitted plans from Farwell Engineering Services, LLC dated December 2013.

Frank Reinhold second
Vote: all, motion carried

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

John Hutton

David Allen

Craig Williams, Alternate

Frank Reinhold, Alternate

Roy Wilson, Alternate