

MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
Wednesday, March 15, 2017
7:00 PM

MEMBERS PRESENT: Jim Banks, Chairman; John Hutton; Craig Williams, Alternate & Peter Hoyt, Alternate.

OTHERS PRESENT: Jason Pohopek; Darika Frichittavong; Sam Marino; Deanne Freitas; Kevin Strong; Annamarie & Paul Gasowski; Karl Durand and Caren Rossi, Planning/Zoning Administrator.

ZBA1617-12

An application made by Kevin Strong & Deanna Freitas. The property is located on Wednesday Hill Road and is known as Lee Tax Map # 2803-00. The applicant is requesting the following Variance to the of the 2008 Town of Lee Building Regulations.

A Variance to Article IX, Section B, Site Evaluation section f, to allow the use of a test pit for an installation of Subsurface Disposal System (septic system) with a seasonal high water table depth of 21" where 24" is required.

Jim Banks, Chairman explained that they are entitled to a Board of 5 but tonight only have 4. He explained the process to them.

Jason Pohopek after consulting with his clients, agreed to proceed.

Jason Pohopek explained he is representing Deanne Freitas and Kevin Strong on their application for property on Wednesday Hill Rd. They have a purchase and sales agreement with Mr. Diberto pending a building permit approval for the lot. Upon advice of Caren Rossi, they went to the conservation commission to get some input as to what would be best for the area, a setback request for the wet soils or the 3' for the test pits. They felt the test pit request. He showed on the plan the 2 pits that passed and explained why they would not work. He explained that the lot is 54 +/- acres and this is the only spot to build a house. The lot got a special exception for a driveway crossing in 1999. The state permits on this will need to be renewed. The lot is primary wetlands. The recent

work was witnessed by Marc Jacobs. Lee's regulations are more restrictive than the states. The state requires 18" to seasonal high water and if you don't have that you can bring in certain material to make a receiving layer.

John Hutton asked if they received anything from the Conservation Commission.

Caren Rossi explained that are regulations for this don't require it. She has spoken to them and assumes that they do not have any issues. She felt if they did, they would have submitted something.

Jim Banks, Chairman asked if there was enough frontage to subdivide the lot?

Caren Rossi explained that the lot is very wet and even if they have the frontage, she doesn't believe it has the required density of contiguous developable area.

Jim Banks, Chairman opened up the floor for public comment.

Mike Arsenault asked what the 24' depth was to protect?

Karl Durand stated that the depth was to protect the wetlands too. How far is it to the river?

Jason Pohopek replied over $\frac{1}{4}$ mile, about 3,500 feet.

Karl Durand asked if this area has ever flooded?

Jason Pohopek replied he did not see any evidence of it in this area or around it.

Paul Gasowski spoke, he walked out there recently. The sight was closer than he thought it was going to be. Very nice habitat. He had hoped that the con com would preserve it. Having one house on 50+ acres would help to protect the habitat as it seems they have taken nice measures.

Kevin Strong spoke in favor. He and Deanna want land, not going to develop it even if they could. They want to keep the open land and the beautiful property.

Sam Marino spoke in favor of the proposal.

Floor closed.

John Hutton stated it would be nice if the board could put some type of deed restriction on the property for no future subdivision.

The Board discussed this and felt at the very least a condition in the decision, if granted would show the intent of the board.

Caren Rossi reminded everyone that if they did want to subdivided, they would need to go before the planning board at the very least and all abutters would be notified.

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 majority
- 2) Granting the variance would be consistent with the spirit of the Yes majority ordinance.
- 3) In granting the variance, substantial justice is done. Yes majority

- 4) In granting the variance, the values of surrounding properties are Yes majority not diminished.
- 5) Literal enforcement of the provisions of the ordinance would result (A)Yes majority in an unnecessary hardship to applicant.

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** No fair and substantial relationship exists between the purpose of the ordinance and its application to the property in question

John Hutton made a motion to grant the application made by Kevin Strong & Deanna Freitas. The property is located on Wednesday Hill Road and is known as Lee Tax Map # 28-03-00. The applicant is requesting the following Variance to the of the 2008 Town of Lee Building Regulations. A Variance to Article IX, Section B, Site Evaluation section f, to allow the use of a test pit for an installation of Subsurface Disposal System (septic system) with a seasonal high water table depth of 21" where 24" is required. Subject to the following condition:

- 1. A single lot with no further subdivision with an allowance of a conservation easement division.

Craig Williams second.

Vote: all, motion granted.

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

ZB1617-5

Amy & Yuheda Daskal Bed and Breakfast

Caren Rossi explained that when the Daskal's originally approached her with this idea, she directed them to the fire chief to see if there were any

fire codes, such as a sprinkler system that would deter them from doing this. They meet with him and he said they did not need one because the bedroom was on the first floor and sprinkler systems are only required if they are on the second floor. They then proceeded with the process. When Caren asked the fire chief for a letter for the planning board for the site review application, the Chief while looking to cite the correct code, noticed that the code has been recently changed to require all B&B to have a fire sprinkler system installed regardless of the location of the bedrooms. This code was effective June 30, 2016. Had the Daskal's had this correct information they would not have started the process. She asked the Planning Board last week and they voted no. They agreed with Mark Beliveau that while he does sympathize with the Daskals, he feels that the town is not held liable as they acted in good faith. The town employees act in good faith and try to advise correctly but it is ultimately up to the applicants to seek advice from professionals, such as an engineer, as to what is and is not required.

Peter Hoyt stated he was at the meeting and he understands and agrees with Mark. He feels that they should have hired an outside expert to advise what they needed.

Craig Williams, also at the planning board meeting agreed.

John Hutton stated concerns of setting a precedent.

Jim Banks, chairman stated we could word it in the motion that it was without prejudice.

John Hutton made a motion to refund the money to the Daskals without prejudice.

Jim Banks, Chairman second.

Vote: yes John and Jim

No- Craig and Peter

Motion did not pass, no refund.

ZBA Rules of Procedure

Caren Rossi presented the revised Rules of Procedure as amended by the town's attorney to reflect the new RSA limiting the time frame for a

special exception and a variance. This outlines the procedure the town will follow for the ones not executed in the time allowed.

John Hutton made a motion to accept the Rules of Procedure Craig Williams second.

Vote: all, motion carried.

MINUTES TRANSCRIBED BY:

Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

Jim Banks, Chairman

John Hutton

Peter Hoyt, Alternate

Craig Williams, Alternate