

**MINUTES OF THE MEETING  
LEE ZONING BOARD OF ADJUSTMENT  
Wednesday, April 18, 2018  
7:00 PM**

**MEMBERS PRESENT:** Jim Banks, Chairman John Hutton, acting Chairman, Clement Way only; Frank Reinhold, Alternate; Peter Hoyt, Alternate; Craig Williams, Alternate; & Shawn Banker, Alternate

**OTHERS PRESENT:** Toni Hartgerink, Lee Conservation Commission Sean McGann; Todd Miller, Joe Burke; Joe Sarno; Noah Chinburg and Caren Rossi, Planning/Zoning Administrator.

**(ZBA1718-12)**

**John Arnold is representing property owners Lee Circle Development LLC., 48 Concord Road PID #07-08-0100 & Concord Road Realty (vacant land) located on Concord Road & Calef Highway, PID #07-08-00. As part of the development the lots will be merged.**

Caren Rossi explained this application will be re-noticed for next month as she errored on the notice.

The Board determined that Frank Reinhold would not vote on Sean McGann & Shawn Banker would not be voting tonight on any.

**(ZBA1718-08)**

Sean McGann is requesting a Special Exception to Article XV, E .1 Special Exceptions. The request is for a driveway to be located 59' from the edge of wet soils (closest point), where 75' is required. The request is to the 2017 Lee Zoning Ordinance. The property is located on 13 Chestnut Way and is known as Tax Map #1-07-02200

The Board introduced themselves.

John Hutton clerked and read the application into the record.

Sean McGann explained his application as submitted. He showed the encroachment to the wetsoils buffer.

Caren Rossi reminded the Board that he addressed the criteria in his application.

Jim Banks, Chairman asked him if there was another location for the driveway?

Caren Rossi explained there was on the approved subdivision plan.

Sean McGann explained that the way he situated the house on the lot, he needed to put the driveway this way to make the swing work.

Frank Reinhold asked him if he was a builder?

Sean McGann replied yes.

Frank Reinhold asked him if this was intentional?

Sean McGann replied no.

Peter Hoyt asked why he didn't ask permission first and then build it?

Sean McGann replied he thought he could.

Public comment

John Burke, 11 Chestnut Way spoke in favor of the application and he is on the driveway side of the house lot.

Public comment closed

John Hutton stated he was not in favor of the request, he bought the lot with the driveway location on it that meets the regulations, he's a builder. This project has been before this board many times for different requests. He's not in favor of granting another request.

Peter Hoyt commented that he is doing this backwards, should have come here first. Cart before the horse.

David Allen asked if the driveway is paved?

Sean McGann replied yes.

Frank Reinhold asked if he has built another houses in Lee?

Sean McGann replied yes.

Craig Williams read the conservation commission letter. (In file) He said he agreed.

The Board determined the Following Findings of Facts for a Special Exception:

**PRELIMINARY FINDING**

After reviewing the petition and having heard the presentation by the applicant, it is found that the Board **has (majority)** 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)**                      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: (majority)**                      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:                      **No: Majority,**                      approved plan wasn't

impinging on the wetsoils.

2. If for Water Impoundment, has the purpose of the District been met?  
Yes: \_\_\_\_\_                      No: \_\_\_\_\_ **N/A**

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: \_\_\_\_\_

No: \_\_\_\_\_ **N/A**

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: \_\_\_\_\_

No: \_\_\_\_\_ **N/A**

**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 (John Peter) will not (Dave; Craig; Jim)** 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 (John & Peter) will not (Jim; Craig; Dave)** 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 deny the request from Sean McGann, requesting a Special Exception to Article XV, E .1 Special Exceptions. The request is for a driveway to be located 59' from the edge of wet soils (closest point), where 75' is required. The request is to the 2017 Lee Zoning Ordinance. The property is located on 13 Chestnut Way and is known as Tax Map #1-07-02200.  
Peter Hoyt second.

Vote: majority, motion carried.

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

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**(ZBA1718-10)**

**Noah Chinburg, applicant, is requesting a variance to Article V, B 3, Setbacks. The request is to construct a garage 20' x 25' + - 1' (one) foot from the property line where 50' is required. The request is to the 2018 Lee Zoning Ordinance. The property is owned by Joseph M Sarno Family Trust, located on 23 Clement Way, and is known as Tax Map #11-10-800.**

Jim Banks removed himself from the Board and sat in the audience for this application.

John Hutton, Acting Chairman for this application.

Craig Williams clerked and read the notice into the record.

Noah Chinburg explained his request. Very small lot along the pond. This is the only buildable spot on the lot. It is He stayed away from the high water mark, he will be removing the existing shed if he can construct this. He moved as far away from the shoreland protection area to achieve this construction.

Public comment

Jerry Hanscom- 17 Clement Way spoke in favor of the application. Can't change lot sizes. Should grant it, not deny it.

Joe Sarno, 23 Clement Way, he has lived in town for 30 years, hope they votes in favor of the application.

Public comment

Frank Reinhold asked how long he has owned the property?

Joe Sarno replied 30 years.

Frank Reinhold asked if you have always been aware of your setbacks?

Joe Sarno replied yes.

Frank Reinhold asked how far away you are proposing to be from structures?

Noah Chinburg replied at least 150'.

Peter Hoyt replied this to his is better than a shore land variance request.

Frank Reinhold stated it is consistent with the other variances granted in the area.

John Hutton commented that that is will be better than before by removing the shed.

Frank Reinhold asked how big the shed is that is coming down?

Noah Chinburg replied 8' x 9'.

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 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. (A)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)**

- 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.

Frank Reinhold made a motion to grant the request from Noah Chinburg, applicant, is requesting a variance to Article V, B 3, Setbacks. The request is to construct a garage 20' x 25' + - 1' (one) foot from the property line where 50' is required. The request is to the 2018 Lee Zoning Ordinance. The property is owned by Joseph M Sarno Family Trust, located on 23 Clement Way, and is known as Tax Map #11-10-800.

David Allen second.

Vote: majority, motion carried.

John Hutton, Acting Chairman explained the 30-day appeal process to the applicant.



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**Z1718-11.**

**Todd Miller is requesting a variance to Article XV, II, Signs, section A #1-6, as applicable. The request is for a sign of approx. 15 sq. ft. to be located below the existing sign. The request is to the 2018 Lee Zoning Ordinance. The property is located on 29 Calef Highway, and is known as Tax Map #03-03-00.**

John Hutton clerked.

Todd Miller explained that he has a martial arts studio inside the dance studio. He needs a sign to advertise his business. He presented pictures to the Board of the renderings. (in file) He addressed the criteria in his application.

Caren Rossi explained that historically there was plenty of signage on that site but it has been gone for over a year so he needs to come to the ZBA for approval.

Jim Banks, Chairman asked about the window sign?

Todd Miller explained that is only on the drawings, he is not requesting it.

John Hutton commented he does not feel this is an unreasonable request, other business in the area, the commercial zone have more than one sign.

The other Board members agreed.

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 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. \*John Hutton stated that he needs a sign for his business. Consistant with other commercial sites. (A) Yes majority

**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)**

- 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 request from Todd Miller is requesting a variance to Article XV, II, Signs, section A #1-6, as applicable. The request is for a sign of approx. 15 sq. ft. to be located below the existing sign. The request is to the 2018 Lee Zoning Ordinance. The property is located on 29 Calef Highway, and is known as Tax Map #03-03-00.

Frank Reinhold second.  
Vote: majority, motion carried.

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

MINUTES TRANSCRIBED BY:

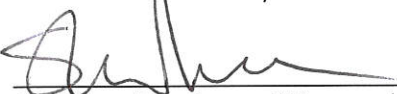
  
Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:

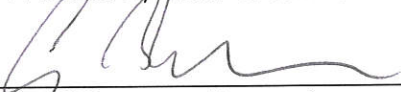
  
Jim Banks, Chairman

David Allen

  
Frank Reinhold, Alternate

  
Shawn Banker, Alternate

John Hutton, Act. Chair Chinburg

  
Craig Williams, Alternate

  
Peter Hoyt, Alternate