

**MINUTES OF THE MEETING  
LEE ZONING BOARD OF ADJUSTMENT  
Wednesday, May 16, 2018  
7:00 PM**

**MEMBERS PRESENT:** Jim Banks, Chairman; Tobin Farwell; Frank Reinhold, Alternate; Peter Hoyt, Alternate; Craig Williams, Alternate; & Don Quigley, Alternate; Shawn Banker, Alternate

**OTHERS PRESENT:** Toni Hartgerink, Lee Conservation Commission; Michael Gambino; John Arnold, Hinckley Allen; Frank Montero, MHF Design; Wayne Lucier Jr; Wayne Lucier Sr; Mark & Teresa Laney; Bill Booth, Building Inspector; and Caren Rossi, Planning/Zoning Administrator.

**Z1718-14**

**Applicants, Mark & Teresa Laney are requesting a variance to Article V, B 3, setbacks, to expand an existing garage 10' +/- from the side property line where 25' is required, and 40' +/- from the front property line where 50' is required. And/or a variance to Article XXIII, #3 -Non-conforming uses to expand an existing garage, in area, of approximately 340 sq ft +/- . The property is located on 198 Lee Hook Rd and is known as Lee Tax Map#33-3-0300.**

The Board determined that Frank Reinhold and Don Quigley would not be voting on this application.

Tobin Farwell clerked and read the application into the record.

Mark & Teresa Laney explained they would like to expand the existing garage. They will not be expanding it further into the setbacks it is being extended further onto their property. The original garage was built back in the 1950s by Marks dad when there was no zoning. There is not another location on this lot for the garage because when they moved the road, they took away the frontage from this lot. They would have to put a driveway threw their front yard.

Public comment

None

Floor closed

Tobin Farwell commented that he had no issues with it because there are building it further onto their lot. Feels it is a reasonable request.

Peter Hoyt made a motion to do both of the request as one finding and vote.

Craig Williams second.

Vote: all, motion carried.

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  
(A) Yes majority  
in an unnecessary hardship to applicant.

**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.

Tobin Farwell made a motion to grant Mark & Teresa Laney's request for a variance to Article V, B 3, setbacks, to expand an existing garage 10' +/- from the side property line where 25' is required, and 40' +/- from the front property line where 50' is required. And/or a variance to Article XXIII, #3 -Non-conforming uses to expand an existing garage, in area, of approximately 340 sq ft +/- . The property is located on 198 Lee Hook Rd and is known as Lee Tax Map #33-3-0300.

Peter Hoyt second.

Vote: all, motion granted, request approved.

Jim Banks, Chairman explained the 30-day appeal period to the applicants.

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**Z1718-15**

**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.**

**The applicant requests the following variances from the 2018 Lee Zoning Ordinance:**

- A variance from Article VI.C.3 to permit a front setback of less than 125' for the structures shown on the Plan, the closest being a light pole and drainage structure located 1' from the front lot line, where 125' is required.
- A variance from Article VI.C.3 to permit a side setback of less than 50' for the structures shown on the Plan, the closest being a utility pole and underground electric lines located 6' from the side lot line, where 50' is required.
- A variance from Article VI.C.3 to allow no vegetated buffer in the front setback, and a limited vegetated buffer in a portion of the side setback, as shown on the Plan, where a vegetated buffer would otherwise be required.
- A variance from Article VI.D to permit relocation of two existing driveways on a lot with less than 2,000' of frontage, where 1,000' of frontage is required for each access.
- A variance from Article XV.D to allow alteration of the natural surface configuration within the Wet Soils Conservation Zone in the areas shown on the Plan.
- A variance from Article XV.F.1 to allow a leach field to be constructed 50' from wet soils, where 125' is required.
- A variance from Article XV.F.2 to permit a Wet Soils setback of less than 75' for the construction of structures shown on the Plan, the closest being a retaining wall with no setback, where 75' is required.

**The applicant requests the following special exceptions from the 2018 Lee Zoning Ordinance:**

- A special exception from Article XV.E to allow construction of access ways, utilities and storm water impoundment within 75' of wetland areas as shown on the plans submitted herewith, the closest being a water line located 2' from wetlands.

**Additionally, the Applicant seeks the following variances from the 2018 Lee Building Regulations Ordinance:**

- A variance from Article IX.K.B.4.c to allow a test pit with a depth of 7', where 10' is required.
- A variance from Article IX.K.B4..f to allow a test pit with depth of estimated seasonal high water table between 6" and 22", where a minimum of 24" is required.

The Board determined that Craig Williams and Shawn Banker would not vote on this application

Tobin Farwell clerked and read the application into the record.

Caren Rossi explained that this project was done a little different than past projects, they have already received their state wetlands permits and the state has already received payment prior to coming to the town for local approvals. The town has received this money and it has gone to the balance on the Powder Major easement.

John Arnold explained that he represents the Lucier's in this project. He submitted the application on behalf of them. They proposed uses are allowed by right. It's the commercial zone and they are commercial uses. He turned the floor over to Frank Montero, MHF Design to do the presentation.

Frank Montero, MHF Design explained the plans. They have been working with NH DES for almost 2 years now on the site design. NH DES requested moving the building forward, away from the wet soils as much as possible, which is what has shifted the site development closer to the road. They have their AOT permit, DOT permit is pending. There are no changes to the existing building. They are moving the existing entrance on Rt. 4 to line up with the Walgreens entrance and the entrance on Rt. 125 to line up with the Sunoco entrance. The original proposed plan in 1994 had a building to be built behind the existing store now but it was never built. The wetlands around the building are manmade. However, the ones in the back of the site are not. They tried to stay as far away from these as they could. All of the buildings on the plan do meet the setbacks. As we know Lees structure regulations mean things like light poles, man holes, drainage etc. They are proposing a 3,000 sq. ft. quick service restaurant with a drive through, a 30,000 sq. ft. retail building, and a 6,000 sq. ft. dry retail space with all the associated parking. They do have several green spaces in the parking lots. Some of the pavement is proposed to be pervious pavement. They will be removing some of the nonconforming pavement. The total wetlands fill is 35,290 sq. ft. They are not asking for any waivers from the state on the septic design, just the building code. The states regulations are less restrictive than that of the towns. He then read thru the list of requests and showed them on the plans.

John Arnold stated that the property is a significant property, commercially zone, 33 acres in a high traffic area. The uses are allowed by

right, a number of encroachments, all relatively minor and they are all consistent with the sites at the circle. The setback requests are due to the town's definition of a structure being very broad. The site has been designed to minimize impact, some wetland impact is unavoidable. The conservation commission supports this application and the ARM fee paid was \$140,000. The nonconforming car wash will be removed. It's a very detailed project, great tax base with minimal impact.

#### Public comment

Michael Gambino (McDonalds) spoke against the development due to further contamination of his site water quality. Letter in file.

Caren Rossi explained that the state is in the process of installing a water line from the Durham well down Rt. 4 to all of the contaminated sites to address the contaminated water issues.

Caren Rossi read Floyd Hayes email into the record.

#### Floor closed

Tobin Farwell asked what the time line for the phases was.

Frank Montero replied that they would like to do all of the site work, grading, drainage etc. and then just construct the buildings as they get tenants.

Jim Banks, Chairman asked what the percentage of impervious is.

Frank Montero stated he wasn't sure, they had calculated it for NH DES but it was well over the 25% allowed.

Jim Banks, Chairman asked where the commercial zone line is.

Caren Rossi explained where it is.

Peter Hoyt made a motion to do all the zoning ordinance as one findings and motion because they are all one package, the building ordinance requests as one and the special exception as another.

Donald Quigley second.  
Vote: all, motion carried.



The Board determined the following Findings of Fact for all of the variances to the Zoning Ordinance as outlined above.

#### 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.

Peter Hoyt made a motion to grant the requests for the variance as listed below as shown on the submitted plan drawn by MHF Design, dated March 19, 2018.

- A variance from Article VI.C.3 to permit a front setback of less than 125' for the structures shown on the Plan, the closest being a light pole and drainage structure located 1' from the front lot line, where 125' is required.
- A variance from Article VI.C.3 to permit a side setback of less than 50' for the structures shown on the Plan, the closest being a utility pole and underground electric lines located 6' from the side lot line, where 50' is required.
- A variance from Article VI.C.3 to allow no vegetated buffer in the front setback, and a limited vegetated buffer in a portion of the side setback, as shown on the Plan, where a vegetated buffer would otherwise be required.
- A variance from Article VI.D to permit relocation of two existing driveways on a lot with less than 2,000' of frontage, where 1,000' of frontage is required for each access.
- A variance from Article XV.D to allow alteration of the natural surface configuration within the Wet Soils Conservation Zone in the areas shown on the Plan.
- A variance from Article XV.F.1 to allow a leach field to be constructed 50' from wet soils, where 125' is required.
- A variance from Article XV.F.2 to permit a Wet Soils setback of less than 75' for the construction of structures shown on the Plan, the closest being a retaining wall with no setback, where 75' is required.



Don Quigley second.  
Vote: all, motion carried.

The Board determined the following Findings of Fact for all of the variances to the building regulations as outlined above.

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 (A)Yes majority

in an unnecessary hardship to applicant.

**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.

Tobin Farwell made a motion to grant the variances to the 2018 Lee Building Regulations Ordinance:

- A variance from Article IX.K.B.4.c to allow a test pit with a depth of 7', where 10' is required.
- A variance from Article IX.K.B4..f to allow a test pit with depth of estimated seasonal high water table between 6" and 22", where a minimum of 24" is required.

Peter Hoyt second.

Vote: all, motion carried.

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: Yes      No:

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 **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 **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.

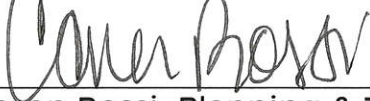
Tobin Farwell made a motion to grant the request for a special exception from the 2018 Lee Zoning Ordinance, from Article XV.E to allow construction of access ways, utilities and storm water impoundment within 75' of wetland areas as shown on the plans submitted herewith, the closest being a water line located 2' from wetlands.

Peter Hoyt second.  
Vote: majority, motion carried.

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

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MINUTES TRANSCRIBED BY:



Caren Rossi, Planning & Zoning Administrator

MINUTES APPROVED BY:



Jim Banks, Chairman

Tobin Farwell

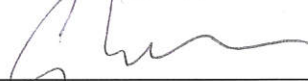


Frank Reinhold, Alternate



Shawn Banker, Alternate

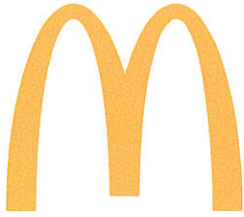
Donald Quigley, Alternate



Craig Williams, Alternate



Peter Hoyt, Alternate



Crescent Group LLC  
2 Cote Lane, Unit #5  
Bedford, NH 03110

May 16<sup>th</sup>, 2018

Town of Lee, NH  
Zoning Board of Adjustments  
7 Mast Road  
Lee, NH 03861

To Whom It May Concern,

We oppose the consolidation of the lots because a large development site could negatively impact the quality of the water. We already have an extensive filtration system which is monitored by Second Wind Water and paid for by the State of NH. The purpose of this filtration system is to reduce the level of MTBs in the water.

Please find the attached email summary from Second Wind Water describing the filtration system in place at McDonald's.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gambino", is located below the "Sincerely," text.

Michael Gambino

McDonald's of Lee Owner/Operator



## McDonalds - Lee Traffic Circle

GM Gambino Michael (US Partners)  
Today, 6:22 PM  
Gambino Michael (US Partners) ✓

  Reply all | ✓

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**From:** Steve Guercia <sgg@secondwindwatersystems.com>  
**Sent:** Wednesday, April 18, 2018 8:22 AM  
**To:** Gambino Michael (US Partners)  
**Subject:** RE: McDonalds - Lee Traffic Circle

Hi Mike

The well for the Lee McDonalds is contaminated with gasoline from a spill from the station across the street about 30 years ago. I have been working at the circle treating contaminated wells there for over 25 years. Nobis Engineering and DES can provide details on the spill and the condition of the groundwater. Our job is to clean up the drinking water.

The State has a program to provide funds for this. We have treatment in the restaurant to remove MTBE and other gasoline components. Nobis samples the water periodically to monitor the effectiveness of treatment.

The installation and maintenance of the treatment is completely covered by the State program as it relates to the gasoline. Other water quality issues are usually the responsibility of the owner. There have not been other issues with this well.

I am not in the office, so I don't know when our schedule is. We will contact you when the site is due for preventive maintenance. I would think Nobis will contact you when they are going to sample, but they might not since they have been doing it so long.

I would like to meet you there when you're in the area to go over this in more detail. I am on my way to a meeting at DES now and will be unavailable all morning. Let me know if you need more and I'll get back to you when I can. Also let me know when we can meet at the site.

Thanks, Steve

Steve Guercia | COM/PWS Manager  
Secondwind Water Systems, Inc.  
[735 East Industrial Park Drive](http://735 East Industrial Park Drive)

Manchester, NH 03109

Tel: 603-641-5767

Direct: 603-518-3109

Web: [www.secondwindwater.com](http://www.secondwindwater.com)



## Secondwind Water Systems, Inc. - Clean, Safe Water

[www.secondwindwater.com](http://www.secondwindwater.com)

Secondwind Water Systems offers custom designed water filtration systems for your home or business. You can have clean, safe, great-tasting water.