

MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
November 15, 2023, at 7:00PM

MEMBERS PRESENT: John Hutton, Acting Chairman; Craig Williams; Don Quigley; Peter Hoyt- Wiswell only; Shawn Banker -Wolfe only and Francisco Bardales

OTHERS PRESENT: Mark Nelson, Lee Conservation Commission; Anne Tappan, Lee Conservation Commission; Devin Wolfe; Dan & Marie Wolfe; Aiden Wiswell; Aaron Wiswell; Derek Durbin, Durbin Law Office; Kevin Gorski; John Henry Gorski; Scott Moreau; Paula Moreau; Bryan Richardson; Joe Parish; Sue Robar and Caren Rossi, Planning/Zoning Administrator.

Z2324-7

An Appeal to an Administrative Decision by Devin Wolfe. The property is located at 59 Campground Road and is known as Lee Tax Map # 27-01-0200. The applicant is appealing a decision of Caren Rossi, Planning and Zoning Administrator, that the applicant is running a business out of his home. This appeal is to the 2023 Town of Lee Zoning Ordinance.

The Board introduced themselves and Don Quigley clerked and read the application into the record. Peter Hoyt did not vote on this application.

Caren Rossi explained that she received a complaint about the property and determined that he was operating a business at the property which is in violation of our zoning ordinance.

Devin Wolfe stated that he disagreed with Caren interpretation of the ordinance. He does most of his work, about 70% on the road and the rest he does inside of his garage on the property. The reason that it appeared that way was that he had an open trench for electricity for the garage and had been waiting for over a year for Eversource to inspect the trench so he could backfill it and put the machinery where it belongs. Most of the items in the picture are either owned by him personally or inside the shop, now. He was finally able to get Eversource to do the inspection just last week and he was able to clean up the yard.

John Hutton asked if he had any photos of what it currently looks like?

Devin Wolfe did not but his dad, Dan Wolfe did. (in file)

Don Quigley asked how many vehicles/customers are in and out of the property?

Devin Wolfe replied about 1 per week, he does about 70% of his work on the road working all over the area.

Don Quigley asked if he gets parts delivered.

Devin Wolfe replied that no, he goes and gets them.

Don Quigley asked how long he has been there?

Devin Wolfe replied 7 years. He has done a lot of work on the property, inside and out. Including basically rebuilding the house.

Shawn Banker asked if the vehicles in the photos were registered?

Devin Wolfe replied, yes.

Craig Williams stated that he bikes by several times a month and has for years. Most of the time the property looks like the photos. The property stands out in the neighborhood. He sees how it can easily be seen as a business on the property.

Devin Wolfe stated that he often has visitors that have big trucks etc. and he can't control who stops by. The only vehicles that belong there are his brand-new truck and his girlfriend's brand new car. The yard has been cleaned up for about 2 weeks.

Public comment

Dan Wolfe, 41 Lee Hill Rd- spoke in support of Devin Wolfe, his son, he is a hard worker, has worked hard the last few weeks to get his property cleaned up, now that Eversource has done the inspection.

Bryan Richardson-139 Tuttle Rd- spoke in support of Devin Wolfe, he has been working on the house and property, he has done a lot of work. He has several vehicles that have crashed, and he is working on them. It is his hobby to restore vehicles, it is just a hobby of his. A lot of his friends are in the same business, and they visit frequently and they too, have 26,000 lb. vehicles. They don't have anything to do with the business, he doesn't understand how the Town can tell people what they can do and can't do.

Marie Wolfe, 41 Lee Hill Rd- spoke in favor of Devin Wolfe, he is her stepson. She lives across the street from a mess and a pile of junk, she doesn't say anything.

Joe Parish- 68 Campground Rd- spoke in favor of the application. He has seen the phases of work done on the property and he has done what he can to clean up the property. There has been a wave of improvements made to the property and he has been working on it safely. He is a quality member of the Town, and he is trying to make it a nice place.

Sue Robar- 34 Campground Rd- lives three houses down and across the street from Devin Wolfe and she supports his business and when he is working at home, he is working in the garage/shop and not in the yard and not visible off the property.

Scott Moreau- 6 Federal Hill Lane spoke in favor of the applications, he is one of the visitors in a large truck.

Caren Rossi read into the record letters in support of the applicant (in file) as follows:

Bruce Miller – 195 Wadleigh Falls Rd

Marilyn Cook – 64 Campground Rd

Lee Wilson – 64 Campground Rd

Rebecca Barsi- 56 Campground Rd

Don Quigley asked what we can do to ensure that the business won't grow?

Devin Wolfe replied that he would love to put up a fence and he has discussed fence regulations with Bill Booth, Building Inspector recently.

Don Quigley replied that if he were to get a variance, we could put restrictions on it ensuring that it does not grow.

Craig Williams asked Caren Rossi to read the complaint to them.

Caren Rossi read the complaint. (in file)

John Hutton, acting Chairman stated that after hearing from the applicant and the abutters, the appearance can tell a different story and Caren Rossi must act on the written complaints.

Don Quigley made a motion to overturn Caren Rossi's decision.

Shawn Banker second.

Vote: majority, Caren Rossi's Administrative Decision has been overturned.

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

Z2324-6

An application from A & B, LLC and Route 4, LLC requesting the following to the 2023 Zoning Ordinance for property located at 64 Concord Rd and known as Lee Tax Map # 07-08-0500.

A variance to Article VI, Section C.3 – Setbacks to allow a structure (pavement) to be located 20.7' (+-) from the highway right-of-way where 125' is required.

A variance to Article VI, Section C.3. Setbacks to allow for a structure (pavement) to be 0.' (+-) from the side setback where 50' is required.

A variance to Article VI, Section C.3. Setbacks to allow a structure (building) to be located 10' (+-) where 50' is required.

A variance to Article XV, Section F.1. – Wetsoils Conservation Zone to allow a septic system and leach field to be located 78' (+-) from poorly drained soils where 125' is required.

A variance to Article XV, Section F.2 Wetsoils Conservation Zone to allow a structure(building) to be located 5.3' (+-) from poorly drained soils where 75' is required.

Don Quigley clerked and read the application into the record. Shawn Banker did not vote on this application.

Derek Durbin, representing Aaron Wiswell read the submitted application into the record complete with addressing the 5 variance criteria. He addressed both requests with the one presentation as well as it was all on the same application.

John Hutton, Acting Chairman asked, as he understands it, there are reducing a curb cut and they will have a shared access with the car wash?

Derek Durbin, replied, yes which is an actual reduction of 164'. The 7 parking spaces are more than what is required for both sites but they wanted to make sure they have enough. The remnants of the existing structure are there as well as the age and condition of the existing well and septic are unknown. They will be hooking up to the municipal water as well as installing a new septic. It's a very narrow property, only 155' wide.

Public comment

Anne Tappan, Lee Conservation Commission read the letter from the commission into the record.

Floor closed.

Peter Hoyt commented that he feels it's a big improvement to what is there.

John Hutton, Acting Chairman stated that the reduction of the large curb cut is huge.

Don Quigley replied that if they made the conservation commission happy that is a big step.

John Hutton, Acting Chairman stated that they will be getting an abandoned site cleaned up, new septic, which is always an improvement and hooking it onto the municipal water. All positives.

Don Quigley made a motion to combine the requests to one.

Peter Hoyt seconded the motion.

Vote: all, motion carried. The requests will be addressed as one.

With no further questions, the Board determined the following Findings of Facts:

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. **Will not, (all)**- general site improvement, over all improvement and general consensus and an environmental improvement.
2. Granting the variance would be consistent with the spirit of the ordinance. **Will, (all)**, general site improvement, overall improvement and general consensus and an environmental improvement.
3. In granting the variance, substantial justice is done. **Is done, (all)**, it's a lot of record.
4. In granting the variance, the values of surrounding properties are not diminished. **Are not, (all)**, because no evidence was presented.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. **Yes, (all)** due to the lots size and shape it can't meet any requirements.
 - 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.

Peter Hoyt made a motion to grant the requests to the 2023 Zoning Ordinance as detailed below, subject to the following conditions:

1. Install silt fences or other erosion control devices prior to any soil disturbance to minimize run off and siltation. Jute or coco netting or matting is preferred over plastic mesh for erosion control. Jute is fully biodegradable and therefore does not require removal. Avoid the use of welded plastic netting, "biodegradable plastic" netting, or synthetic thread, as these materials have been document to entangle and kill snakes, birds, and other wildlife. 'Wildlife friendly' erosion control mesh, such as coco or jute matting or other materials that don't include a welded plastic component, are recommended by NH Fish & Game in NH DES "Wetlands Best Management Practices Techniques for Avoidance and Minimization." [Wetlands- BMP- Manual – 2019.pdf](#).
2. Remove non-native invasive plants from the site. The LCC requests an onsite meeting with the project contact person to flag the invasives for removal. Species on site include glossy buckthorn, oriental bittersweet, multiflora rose, and autumn olive. Other invasive species may be present.
3. Spread straw mulch to cover soils disturbed during the project to prevent erosion and to promote seed growth during revegetation.
4. Revegetate the site as soon as possible with suitable grasses and native plants.

A variance to Article VI, Section C.3 – Setbacks to allow a structure (pavement) to be located 20.7' (+-) from the highway right-of-way where 125' is required.

A variance to Article VI, Section C.3. Setbacks to allow for a structure (pavement) to be 0.' (+-) from the side setback where 50' is required.

A variance to Article VI, Section C.3. Setbacks to allow a structure (building) to be located 10' (+-) where 50' is required.

A variance to Article XV, Section F.1. – Wetsoils Conservation Zone to allow a septic system and leach field to be located 78' (+-) from poorly drained soils where 125' is required.

A variance to Article XV, Section F.2 Wetsoils Conservation Zone to allow a structure (building) to be located 5.3' (+-) from poorly drained soils where 75' is required.

An application from A & B, LLC and Route 4, LLC requesting the following to the 2023 Zoning Ordinance for property located at 68 Concord Rd and known as Lee Tax Map # 07-08-0400.

A variance to Article VI, Section C.3 – Setbacks to allow a structure (pavement) to be located 70.8' (+-) from the highway right-of-way where 125' is required.

A variance to Article VI, Section C.3. Setbacks to allow for a structure (pavement) to be 7.3' (+-) from the side setback where 50' is required.

A variance to Article XV, Section F.2 Wetsoils Conservation Zone to allow a structure (pavement) to be located 3.8' (+-) from poorly drained soils where 75' is required.

Don Quigley made a motion to act on the requests as one request.

Peter Hoyt second.

Vote: all, motion carried.

With no further questions, the Board determined the following Findings of Facts for the requests to #07-08-0400.

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. **Will not, (all)**- improvements to the property.

2. Granting the variance would be consistent with the spirit of the ordinance. **Will, (all),** improvements to the property, tight lot.
3. In granting the variance, substantial justice is done. **Is done, (all),** building lot, difficult to develop without variances.
4. In granting the variance, the values of surrounding properties are not diminished. **Are not, (all),** because no evidence was presented.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. **Yes,(all)** cant do anything on the lot without relief, relief is need to develop lot.
 - o 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*
 - o 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 as follows:

A variance to Article VI, Section C.3 – Setbacks to allow a structure (pavement) to be located 70.8' (+-) from the highway right-of-way where 125' is required.

A variance to Article VI, Section C.3. Setbacks to allow for a structure (pavement) to be 7.3' (+-) from the side setback where 50' is required.

A variance to Article XV, Section F.2 Wetsoils Conservation Zone to allow a structure(pavement) to be located 3.8' (+-) from poorly drained soils where 75' is required.

Craig Williams second.

Vote: all, motion carried.

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

Minutes transcribed by:

Caren Rossi- Planning & Zoning Administrator