

MINUTES OF THE MEETING  
LEE ZONING BOARD OF ADJUSTMENT  
December 14, 2023, at 7:00PM

MEMBERS PRESENT: Jim Banks, Chairman; Don Quigley; Peter Hoyt

OTHERS PRESENT: Wayne Lucier; Angela Dowd; Colleen Arnold; Hong Xuan Jin and Caren Rossi, Planning/Zoning Administrator.

Jim Banks, Chairman explained to both applicants that they are entitled to a Board of 5, they only have 3 members present tonight. If they are denied, it's not a reason for an appeal.

Z2324-08

Colene Arnold is requesting a Variance to Article XVII, Section III, A - #5. The request is to add an additional building sign of 88 Sq Ft. +/- The request is as shown on the submitted plan by Portsmouth Sign Company. The property is owned by Wildhuskies Unlimited LLC, is located at 40 Concord Road and is known as Lee Tax #07-04-0004. The request is to the 2023 Lee Zoning Ordinance.

Donald Quigley clerked and read the application into the record.

Colene Arnold explained that she is opening her practice at the circle. She needs a variance for the signage on the building. It is the same size as the existing sign for the Breast Center. She doesn't need any approvals for the pole sign.

Public Comment

None

Floor closed.

Jim Banks, Chairman spoke as a resident and questioned the wording of the sign.

Colene Arnold explained that the signage is how her business is licensed and can't be changed.

Donald Quigley spoke in support of the request as he feels it's of value to the community.

With the further questions, 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. **Will not, (all)**- had to do for several other properties in the area, signage is necessary for all business.
2. Granting the variance would be consistent with the spirit of the ordinance. **Will, (all)**, reasonable size, reasonable sign. Consistent with the others in the area and on the site.
3. In granting the variance, substantial justice is done. **Is done, (all)**, treating it the same as the other properties.
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)**. Similar hardships a storefront needs a sign.
  - 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 request from Colene Arnold, requesting a Variance to Article XVII, Section III, A - #5. The request is to add an additional building sign of 88 Sq Ft. +/- The request is as shown on the submitted plan by Portsmouth Sign Company. The property is owned by Wildhuskies Unlimited LLC, is located at 40 Concord Road, and is known as Lee Tax #07-04-0004. The request is to the 2023 Lee Zoning Ordinance.

Donald Quigley seconded the motion.

Vote: all, motion carried.

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

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Z2324-09

Angela Dowd is requesting a Variance to Article VI, Section III, A - #1, to allow multifamily development in the commercial zone where no residential use is allowed. The property is owned by Lee Circle Development LLC and is located at 48 Concord Road and is known as Lee Tax Map#07-08-0100. The request is to the 2023 Lee Zoning Ordinance.

Jim Banks, Chairman asked the applicants if they too wish to continue with a Board of only 3.

They replied yes.

Donald Quigley clerked and read the application into the record.

Angela Dowd read her application addressing the 5 variance criteria into the record.

Public comment

Hong Xuan Jin depending on the people you bring in they are worried about safety issues. What kind of units, what kind of families will be living there is their concern. Their property is behind them in the back land. Stepping Stones Road is a very quiet road, their secondary concern is noise. What kind of people will they be over there with all these units. She can see the light from the snowplow place now. Lights aren't a problem.

Angela Dowd explained that the lot is already cleared, they are not looking to cut any trees etc. it's all cleared. She explained that she feels that if they were to do a commercial development it would be noisier with the customers and the delivery trucks etc.

Hong Xuan Jin asked how tall the building will be.

Wayne Lucier replied that it can't be any taller than 35' due to the building regulations. The tallest will be most likely 3 stories. They are already approved for a 30,000 square foot retail building. Which will bring in more people and noise than residents.

Hong Xuan Jin asked are they town house style or building?

Angela Dowd replied it will be one building, just like the complex's on Rt. 4 on the other side of McDonalds. Mostly one bedroom with some 2

Hong Xuan Jin asked will you be having plan areas for the children?

Wayne Lucier answered no, more like workforce housing, like blue collar workers. Not saying that there won't be children but not targeting children.

Floor closed.

Donald Quigley stated he would like to see how the building is sited on the actual lot. It would be helpful to see where the buildings are located with reference to the abutters.

Peter Hoyt replied that there is a big swamp that separates the 2.

Jim Banks, Chairman asked who would own the building.

Wayne Lucier replied that now he would own it but in the future it would most likely be Angelas. They are not sure exactly how much they want to do an apartment or commercial. Where the large pilon sign is they want to keep commercial.

Wayne Lucier showed the Board on the site plan where they are proposing to put it. (see file)

Caren Rossi stated that when she met with them, she suggested that they get the use approved and then if they get the approval, then they design it. If they design, it per our regulations and need to get further relief then they come back and if not, they go to the planning board. She continued to explain that up until around the year 2000, residential was allowed in the commercial zone but the thinking back then was to not allow residential use in the commercial zone because we had a limited commercial zone. Since then, we have expanded the commercial zone.

Jim Banks, Chairman commented as well as adding Noble Farm as commercial.

Donald Quigley asked if there were other residences in the commercial zone?

Peter Hoyt asked how far it's been expanded.

Caren Rossi replied to Sheep Rd and Noble Farm, about 500 feet deep.

Caren Rossi explained that yes, there are the 4 Sterling Realty Apt buildings on the other side of McDonalds. Several houses too.

Donald Quigley commented that he was only concerned about setting a precedent, but it doesn't appear that there is enough space to do so. Up north, on the Callioras property there is room.

Caren Rossi explained that the only difference between the properties is Callioras are not on municipal water. They could hook up at their own expense.

Donald Quigley asked if we are restricting it to this number of units.

Jim Banks, Chairman replied no, we are granting the use.

Caren Rossi stated correct, but she wanted to be clear that it would be making the lot a mixed-use lot. Commercial and residential. Rember, if approved, there are still design requirements that they must follow and then go to the planning board for site plan review.

Donald Quigley asked if there was enough septic capacity.

Wayne Lucier replied that they are not sure what they are doing or doing this much but he thinks they have enough for 80 bedrooms. They still need to see what will fit, they need to design it, and see what the parking standards etc. are and they still want to keep it mixed use.

Donald Quigley asked if there were any conservation commission issues.

Caren Rossi replied no.

Jim Banks, Chairman stated that we need to remember when this site was previously approved, the world was different. Things were very different then. The commercial world has all kinds of jolts hit it and he

feels we need to pay attention to that. If he had to do it over, things might be different. He is in favor of the proposal.

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)**- filling a need, site already promised for other types of development.
2. Granting the variance would be consistent with the spirit of the ordinance. **Will, (all)**, the ordinance was written when there was a lot less commercial land than there is now.
3. In granting the variance, substantial justice is done. **Is done, (all)**, needed for housing and it's not different than commercial use and proposed approved use on the property.
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)** the lot size is large enough and open enough.
  - B) 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.

Donald Quigley made a motion to approve the request from Angela Dowd. The request for a Variance to Article VI, Section III, A - #1, to allow multifamily development in the commercial zone, making this a mixed use lot, where no residential use is allowed. The property is owned by Lee Circle Development LLC and is located at 48 Concord Road and is known as Lee Tax Map#07-08-0100. The request is to the 2023 Lee Zoning Ordinance.

Peter Hoyt seconded the motion.  
Vote: all, motion carried.

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

Minutes transcribed by:

Caren Rossi- Planning & Zoning Administrator