

MINUTES OF THE MEETING
LEE ZONING BOARD OF ADJUSTMENT
AUGUST 30, 2023, at 7:00PM

MEMBERS PRESENT: John Hutton, Acting Chairman; Craig Williams; Shawn Banker; Peter Hoyt and Francisco Bardales

OTHERS PRESENT: Tom & Christie Seubert; Anne Tappan, Lee Conservation Commission; Tom Johnson; Tobin Farwell, Farwell Engineering LLC; Robert & Kathleen Fitzpatrick; Tracy Misins Gary & Caren Rossi, Planning/Zoning Administrator.

7:00PM Chairman called meeting to order

The Board introduced themselves; Shawn Banker clerked and read the application into the record.

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Z2324-01

Tobin Farwell, Farwell Engineering Services, LLC, representing Robert Fitzpatrick, of 15 Sheppard Lane, Lee NH. The property is known as Lee Tax Map #11-01-0300. All requests are to the 2023 Lee Zoning Ordinance and are as described on the submitted plans from Farwell Engineering Services, LLC dated 6/20/2023 with a most recent revision date of 7/20/2023. The requests are as follows:

A variance to Article XIV, C -b & Article XXIII, #3 to allow an addition to an existing home located within the Shoreland Conservation District. The closest point of the addition is 46.5 +- feet where 100 feet is required.

A variance to Article XIV, C – c to allow a septic tank to be located in the Shoreland Conservation District.

A variance to Article XV, F- #1 to allow a septic tank to be located 70+-feet where 125 feet is required.

Tobin Farwell explained the application. Its located-on Wheelwright Pond, 1 large lot that has been turned into 2 condo units for sales purposes in 2015; they share a leach field with the other home, owned by Mr. Johnson, as part of this addition they will be building a new system located outside of any setback areas. Meeting both state and town requirements. It will comply with the state's requirements. The current system is too close to the water and as far as they can tell, it's not compliant with the state's requirements. The applicants' 2 daughters that both live with them, and they work from home as well as they want to be able to age in the home and not have to leave. Making it all on one floor which will allow this to happen. Building a garage attached to the home with the snow and ice will allow them to get in and out of the house out of the weather. The orange areas are gravel parking areas, as part of this project those areas will be loamed and seeded. They are here for encroachments to the lake;

they meet the 50' state requirements but they don't meet the Shoreland setbacks so they will be going to the state for the Shoreland permit as well as the septic. The existing driveway services 19 Sheppard Lane as well, not just this home. There are benefits of having all of the concentrated area, there is also benefits to the ground by having the vehicles stored inside and not leaking etc. onto the gravel surfaces, that too is better protection for the lake. They are here tonight to ask for an encroachment waiver for the addition, garage, and deck. The connector is 8' long and will connect the addition to the existing building. The existing impervious area is 27.4 % with the addition and conversion of the gravel areas, 28.8%, which is below the state requirement of 30%. They met with conservation commission they were hoping for a better reception from them but unfortunately, didn't get it, even with the reductions and gravel area reduction as well as the new septic system. Clean run off is a roof and they are eliminating gravel surfaces, his opinion is that's a better situation. The existing building predates zoning, it makes no sense to make a new building, it makes sense to attach it to the existing house. As you get older snow and ice is a concern, it makes sense to attach it to the house to enter the house without going through snow and ice. He clarified that Jim Banks had noted that the lot only has 20 feet of frontage, and he is correct.

Caren Rossi asked for clarification of the 50' protection zone and the 250' Shoreland Zone.

Tobin Farwell replied that the 50' setback is for new structures, if this was a blank lot, you can't build any closer than 50'. No part of this project is over the 50' line. He highlighted the line for clarification. Several lines made it hard to follow.

Public comment

Anne Tappan representing the Lee Conservation Commission and read the letter into the record. (In file)

Tom Seubert, 10 Shepard Lane asked where on the plan the proposed septic tank will be. Will the leach field be a mound leach field. Have you done any test pits to see what the absorption rate will be. What's the effect it will have on the neighbors raised leach field.

Tobin Farwell pointed out on the plan where it is, and most likely it will be a mound. It will meet all state requirements and he doesn't see any issues.

Tom Seubert will there be a basement in the addition. What will the impact be? They have water in their basement if it rains.

Tobin Farwell said yes, and they will put in foundation drains. Standard practice.

Tracey Misins Gary- 3 Gibb Lane- is there a way to move the septic tank further away to better meet the setback.

Tobin Farwell stated that it meets the states requirement, they line the tanks etc. they don't leak. It's currently less than 50' and they are moving it back about 200'. It must be plumbed into the septic tank so you can't move it to much back. They will be eliminating the existing tank and making it more conforming.

Tom Seubert asked what the grade is that the septic will be pumped up? What about lost power? We have a generator.

Tobin Farwell stated he wasn't sure yet, but it will be a 1/3rd horsepower electric motor pump with an alarm.

Robert Fitzpatrick, they plan on putting in a generator because they lose electricity often.

Christie Seubert replied that they don't have any objections to the septic as it's an improvement, anything is better than sharing a septic system with anyone. That is an improvement to the entire area. They are just curious.

Tom Johnson - 15 Sheppard Lane what has been helpful with meeting with the town earlier is the separation of the zoning specifics and civil specifics. His sisters, Martha and Patty, are definitely against it because their experience is tree cutting and there is no positive is what could happen to the land. Basic sensitivity to habitat is his passion. He has had different real estate people come in; his property value is key in having an updated septic. Is it possible to have the septic built with the provision that when it's completed that they could be arranged. If something happens and he ends up with just holes in the ground, his property value drops without the new septic. He doesn't have concerns with the building, his concerns are with the septic.

Caren Rossi explained that typically prior to issuing a building permit they have the design and it approved by the state and then prior to the certificate of occupancy they must put it in. The Board can make a conditional of approval, if they grant the request, something different. But this is often who we do it.

Tom Seubert asked how deep the septic lines will be under the roadway/driveway, will it be sufficient protection to protect it from large delivery trucks etc.? What type of pipe?

Tobin Farwell replied that typically they are sleeved under the driveway, they are typically 3' deep and it doesn't really need to be 4' to get below frost, its warm water in the line and is allowed to leak back until the septic tank when the pump isn't on. HDPE pipe in PVC sleeve, he believes to be SDR 36.

Anne Tappan asked if she understood correctly that you will be going to the state for septic approval and shoreland approval?

Tobin Farwell replied that's correct.

Tom Seubert asked what the building will look like?

Tobin Farwell stated that they want to see if the footprint gets approved before they spend too much money.

John Hutton, Chairman replied that is not something this Board considers, they look at the use.

Tracey Misins Gary asked if there is a limit to the size of a building you can put on by lot in the zoning ordinance? Does the proposal meet the setbacks to the abutters?

Caren Rossi replied that yes, it does meet setbacks. The Shoreland Conservation District does not allow any structures in the setback that is why they are requesting the variance and outside of the zone, we do not have a requirement.

Floor closed.

Peter Hoyt commented that it's an awful big addition for a house that size.

Craig Williams commented that he agreed with Pete, it's a fairly aggression use of the property. And a very large, proposed addition for what's there now. How many people are going to live there, how many bathrooms will they have. The impact on a sensible area is not small here and we have to respect the goal of the protection of the shoreline in our town. He is a little 50/50 about the request.

Shawn Banker stated he looks at Miss Tappan's diagram and the idea of the size of the building, we heard we don't restrict that out of the shoreland, but when he looks at the sketch, it's a lot of roof top in the area that the conservation commission is concerned about. He likes the thoughts and the ideas of upgrading the septic and the neighbors agree. That's an asset to everyone but he's concerned about all that area, in that one area.

Francisco Bardales commented that that he has an issue with the size of the proposed building compared to the existing building.

Peter Hoyt asked if it's a non-conforming lot, it's not improving that.

Caren Rossi replied yes.

John Hutton commented that it has always been the Boards idea that when we can improve the septic conditions that is better, and we have granted quite of few of these requests, improving the septic, even if it's still non-conforming, which is better than before. The size of the building for this, he is having a little issue with.

Tobin Farwell asked if he could speak? He would like to add some information that he forgot.

John Hutton replied, yes, in a moment.

John Hutton continued that they have a lot of surfaces, gravel areas, he understands the argument for the garage. He is sympathetic to the clean water coming off the roofs, verse where people have parked in the past. The size of the building along with the garage is a little bit much. He agrees with the other board members.

Shawn Banker stated that the gravel area being removed loamed and seeded, that's a positive, right?

Peter Hoyt replied yes, it slows the water down and acts like a filter.

Caren Rossi asked if there is any consideration of a smaller footprint?

Tobin Farwell stated that he has talked to the owners, and this is the box for the entire footprint. Because they have not met with the architect, it may have jogs etc. it will certainly not fill the entire 40' x 35' box. The intent is to give the box to the architect and see what they can do. We would be ok to say that a maximum of 80 % of the 40' x 35' can be used for the building footprint. The garage is as small as it can go, that will not change.

Tracey Misins Gary commented that it's not someone's Constitutional right to have a garage so when they say they can't go small on the garage, they can.

Christie Seubert commented that their entire house is only 30' x 40' so when she looks at it they are building another house.

Tom Seubert commented that he and his wife don't have an issue with the addition, they were just making a comment.

Christie Seubert replied she agreed, they don't even see it.

With no further questions, the Board determined the following Findings of Facts: **A variance to Article XIV, C -b & Article XXIII, #3 to allow an addition to an existing home located within the Shoreland Conservation District. The closest point of the addition is 46.5 +- feet where 100 feet is required.**

Caren Rossi asked if they were discussing the size presented or the reduction. Or if approved, make the reduction a part of the conditions.

John Hutton said that is what he was thinking too. As presented with a possibility of conditions.

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- comments and considerations we have heard tonight.
2. Granting the variance would be consistent with the spirit of the ordinance. Will, majority, have allowed them in the past.
3. In granting the variance, substantial justice is done. Is done, all, have done this in the past for several on the pond to upgrade homes that are less confirming or up to code, always looked at as getting something newer and up to code and bringing things up instead of either status quo or downhill.
4. In granting the variance, the values of surrounding properties are not diminished. Are not, majority, because no evidence/presented.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. Yes, all, special conditions of the lot.
 - 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.

Caren Rossi stated that as we know, the findings granted the request, she would suggest asking the conservation commission if they had any suggestions for conditions. They are also going to apply to DES for Shoreland and they have conditions as well.

John Hutton said we are talking BMPs etc., as well as the 20% reduction, if the motion is made to support the request.

Anne Tappan said she doesn't have anything because they don't support it. She then found proposed conditions that she had drafted.

Peter Hoyt made a motion to grant A variance to Article XIV, C -b & Article XXIII, #3 to allow an addition to an existing home located within the Shoreland Conservation District. The closest point of the addition is 46.5 +/- feet where 100 feet is required. Subject to the following conditions:

- All Best Management Practice be followed.
- All required State permitting.
- Stormwater management practices
- Removal of invasive species in the disturbed area
- The footprint be reduced by 20% as offered.

Shawn Banker seconded the motion.

Discission:

Craig Williams stated he has a problem saying that improvement is better than nothing. We are going to be improving something that is against the spirit of what the regulations were intended to create. Is the end result better than what we could hope for? Maybe. How do we make a fair judgement on a case like this? to him, it looks like we are violating the concerns of the conservation commission.

Vote, all in favor of the motion. None
No all

Motion failed.

Tobin Farwell stated that they would like to withdraw the other requests. It is disappointing that the Board didn't voice these concerns during the meeting and waited until deliberation to bring them up. We wished they had more discussion during the presentation. This type of things has been approved in the past. He continued to explain what they will be reversing on the project. The pros are not mentioned in the conservation commissions discussions either.

Robert Fitzpatrick stated he was confused, the guidelines they were trying to conform to, not sure where they didn't, what does it mean, we didn't meet the spirit.

John Hutton, Acting Chairman replied keeping the shoreland as natural as possible. The size of the building is what is going against the spirit, it's not what you are trying to do, they are for the right reasons. He explained the 30-day appeal process to the applicant.

Approve DRAFT minutes 3/15/23; 5/17/2023 & 8/2/2023.

Craig Williams made a motion to approve the minutes as presented.

Peter Hoyt seconded the motion.

Vote: all, motion carried.

Adopt revised Rules of Procedures

Caren Rossi explained the only change from 30 days to 45 as discussed for the application to be before the Board after it has been submitted. That is the only change to these documents.

Peter Hoyt made a motion to accept the change.

Francisco Bardales seconded the motion.

Vote: all, motion carried.

Minutes transcribed by:

Caren Rossi

Planning & Zoning Administrator