MINUTES OF THE ZOOM MEETING
LEE ZONING BOARD OF ADJUSTMENT
Wednesday, July 8, 2020
7:00 PM Telephone Call- In is 1 646 558 8656
Meeting Webinar ID 853 0276 1061 Password 113136

MEMBERS PRESENT: John Hutton, Acting Chairman; Craig Williams; Donald Quigley; Francisco Bardales; Alternate; Shawn Banker, Alternate

OTHERS PRESENT: Fred Schultz; Anne Tappan, Conservation Commission; Irene Boisivert; Tim Nanett Bulger; Mr. & Mrs. Dwyer; Jim Dowhan; Erick Johnson; Anne Tucker; Bethany Silva; David Barooby; Erick Johnson; Stephanie Johnson; Bill Booth, Building Inspector & Caren Rossi, Planning/Zoning Administrator.

John Hutton, Acting Chairman read the opening statement into the record (in file) all members responded that they were alone.

Shawn Banker clerked and read the application into the record.

Caren Rossi explained that due to the thunder and lightning storm, we should pick a date to continue to if we should loose connection. The Board determined July 14, 2020 at 7pm.

An application made by Fred Schultz for property owned by Plumer Homestead LLC. The property is located at 71 Demeritt Ave. and is known as Lee Tax Map # 19-06-0100. The applicant requests the following Special Exceptions and Variances to the 2020 Town of Lee Zoning Ordinance except where specified differently.

A Variance to Article XXIII, #3 Non-Conforming Uses to allow for the relocation and expansion of an existing non-conforming building.

A Special Exception to Article V, Residential Zone, Section D to allow for a Professional Office Space in the expanded/relocated existing building.

A Variance to Article V, Residential Zone, Section B, 3- a, Setbacks. To allow a setback of 0 +feet for parking from the right- of-way where a front setback of 50 feet is required.

A Variance to Article XV, Wet soils Conservation Zone-F,2 to expand an existing parking area no closer than 40.6 feet ++, where 75’ is required.

A variance to Article IX, B-4, c of the 2018 Building Regulations to allow test pit depths of 46” to ledge where 60” is require.
Fred Schultz explained that he would like to pick up the existing building. The road keeps getting higher and higher and the building lower and lower. He wants to push it back from the road and expand the existing building in an L shape. He will put a foundation under it when its picked up.

Don Quigley asked if the presentation could be done for each request?

John Hutton, Acting Chairman stated that they would act on each request separately which will make it easier to follow. He asked for the public to comment on the entire application as a hole and then the Board will address each one.

Public Comment

Jim Dowhan, 60 Demeritt Ave, asked if the building will have a basement? Cement slab?

Fred Schultz replied no a crawl space. Rat slap, concrete rough slab to keep the moisture out. 4 ft walls.

Tim Bulger, 57 Demeritt Ave, commented that he has some concerns. He was told by Fred that he was putting a store where the office is. He has real problems with traffic issues especially for the people who live there. Fred doesn't live here. They do. It is hard enough to get out onto Rt. 152 now. They want to know who the traffic will be handled. Its already an extremely dangerous areas, and have been many accidents. What's the traffic plan. No one in here does it talk about a coffee shop and or store.

John Hutton explained that the traffic issues will be reviewed by the planning board if this Board approves the use. As well as lighting, traffic etc.

Nanette Bulger, 57 Demeritt Ave, commented that if you approve these exceptions you are setting it up so the planning board has to approve it. All you have to do is spend a day there and its super dangerous. They want to make sure its handled correctly.

Caren Rossi explained at this time the only request thing he is requesting tonight is a professional office building, if he wants to request a coffee shop or anything else in the future, he has to go back thru this process. He did talk about doing this and about 2 months ago, he changed his mind.

Nanette Bulger explained that they have been here a while she knows how it goes. Its not about the store, its about the traffic. There will be a very dangerous situation on the corner if this goes thru.

Tim Bulger commented if he puts a store or coffee shop the people are going to be sick of trying to get out that way because it's a bottle neck and they are going to go up Demeritt Ave. That will be more traffic, more litter et. There are a lot of little kids on the
road ride their bikes, very dangerous situation. You need to take this into consideration. I am sure he will put in a beautiful building that will look great. He does believe it will affect the traffic on this road and create a huge bottle neck.

Fred Schultz said he will be sending the traffic directly onto Rt. 152. He has an existing driveway that he will be using as an entrance.

Caren Rossi showed the plan with the old road highlighted in yellow on the shared screen. She explained that DOT has not issued an approval for this. It's her understanding that Mr. Schultz has spoken to them but there is no approval for this.

Fred Schultz said he would do anything in his power to stop traffic from going up Demeritt Ave. He has tried to do that with his business as well as the BNB. He can't control what is going on now. He agrees that there are issues now and has asked for the speed limit sign to go up. That is why he is trying to use the drive on Rt. 152 and only use Demeritt Ave to exit. The entrance will be on Rt. 152.

Don Quigley asked for clarification on the yellow trail on the map.

Caren Rossi explained yes it's an old existing road.

Tim Bulger commented that Fred has done a great job with the Bed and Breakfast, it has very limited traffic impact but this will impact 10-fold and then some. You need to look at the whole impact and traffic on the road. Yes, they are going to exit on Demeritt Ave but so is everyone else. You need to look at the entire picture.

Nanette Bulger explained that they are most concerned about traffic. They moved to a dirt road for a reason, the town needs to be sure they do it correctly. They take this very seriously and it needs to be looked at.

Irene Boisvert, 30 Demeritt Ave, asked are you adding the office space for your business or will you be leasing these spaces out to other entities and if so, what kind are you looking at?

Fred Schultz replied that he isn’t sure yet. Professional office as required by the town. He maybe renting out a portion of the building he isn’t sure yet.

Irene Boisvert state that Fred, you had mentioned too that this is going to be enhancing your property and the neighborhood, how is this so and how is it related to the Inn?

Fred Schultz replied that the office now is basically falling off of the foundation it needs to stabilized or the building won’t be here much longer. Over the years the road keeps getting higher and higher and when it rains it gets under the building. It’s getting worse and worse; it needs to be picked up and stabilized or it will fall in. It will be moving 33’ away from the road.
Anne Tucker, 44 Demertt spoke with concerns of traffic as well as she shares the same concerns as Bulger and Boisivert and is concerned with the size of the building. Already there are issues with people going quickly down the street. She walks her dog and cat on the street daily. She has concerns with the rational that an additional will enhance the value of the neighborhood.

Fred Schultz spoke its just like putting an addition on to your home, its his right, building needs work. If he is going to pick it up, he will be putting a foundation under it and making it a little bit bigger. The building needs work, doing work enhances the value. He has proven himself time and again. The inn was a mess, the barn he put a foundation under it. He is fed up, this is very low impact. Don't you agree it looks better?

Anne Tucker replied that yes, she agrees they look great. Very low impact, as well as the current business is very low impact. Her concern is if the space is double, then there are rental offices, more people would be coming in, we don't even know what kind of business will be in there. If you did decided to rent it. Her concern is it will no longer be a low impact.

Fred Schultz stated that he is trying to minimize traffic, there should be no traffic going up Demeritt Ave. if they use what they have coming in and doing a left hand turn out. He agrees with the speeding on the road. People need to slow down.

Erick Johnson 43 Demeritt Ave, if you build the new additional, what's the maximum number of units you will have?

Fred Schultz replied his existing office and then one more, total of 2 offices.

Erick Johnson asked how many more people do you think will be driving on the road?

Fred Schultz replied none, if they follow the guidance that he is putting together.

Stephanie Johnson, 43 Demeritt Ave, asked the effects of the building to the wetlands. What are the environmental impacts if it goes forward?

Caren Rossi replied that the plan shows that the building meets the town setbacks for wetsoils. It just meets it in the closest corner.

Bethany Silva, 40 Demeritt Ave asked how the impact of GPS would be affect the traffic as most often they send people the shortest mileage as opposed to the safest route.

Tim Bulger commented that he has lived here for 35 years, he thinks Fred has done a great job but he has super concerns with traffic. They have fought many different businesses that have gone in there. He doesn’t think that the town has advocated for the people who live on the road. They advocate for who live in the house. He thinks it’s in the best interest to pick up the building but he doesn’t think a store/coffee shop is in
the best interest. He feels those uses are eventually going to happen there. He really would like to think that the town at some point would actually advocate for the people who live on the road.

Irene Boisvert has the same concerns as everyone else with the traffic. She has seen so much with our residential area eroded away with a business here and a business there. Our commercial zone is not fully realized and to now add additional business. This intersection, when not busy is a very attractive, rural very appealing but as we start adding business on that corner that goes away. I know Fred has the best of intentions but you only have so much control. People are going to use that road that suits their needs and their convenience. That is such a dangerous intersection and to add business offices, we don’t know how many clients that are going to be visiting there and she just doesn’t think it’s the best place to be adding additional offices. What’s there now is fine, it has not created a problem. But when you start adding additional its only opening the neighborhood up for headaches.

Anne Tappan read the letter from the Conservation Commission into the record. (In file) She then added her person opinion that if the applicant were to eliminate 4 parking spaces, the variance would not be needed.

Jim Dowhan made comments about conservation commission that do not pertain to the application so they were not documented. He also commented that he remembers that site having cat and nine tails on it. There are wetlands but they are hidden.

Fred Schultz commented he isn’t hiding anything. He hired a wetlands scientist to delineate the entire parcel.

Matt & Deb Dwyer, 8 Demeritt Ave spoke with concerns of the traffic and the process. He doesn’t want it to turn into another Make A Difference. The business has been sold and they are not doing what has been approved. He feels this will happen here just like there. Plumber Homestead is a choke point. Its not just this project, its all the traffic and what’s happening to this neighborhood. The town caterers to the busines interest and not the neighborhood. It’s a terrible concern being ignored by the town. If you listen to the noise coming from Make a Difference you would understand. What kind of guarantees can we get from Fred that this isn’t going to happen?

Fred Schultz stated all you he can say is look at his reputation. He feels hes proven himself. His word speaks for himself. Hes trying to make the property more appealing. This building needs to be redone, it’s a simple as that.

Matt Dwyer stated as he understands it, you are not going to do anything else in the future to this building, is that what you are saying?

Fred Schultz stated that is not a fair statement, he doesn’t know what hes going to be doing in the future. He doesn’t know what the future brings just like Matt doesn’t know.
Matt Dwyer stated again he wants the committee to understand the concerns of the neighbors are. He does feel that Fred’s past record has been great, he has done what he said he would do. The traffic is also a chokepoint.

Public closed

Donald Quigley spoke with concerns of not being enough information. Not a solid plan for what kind of business, how many parking spaces are needed. He doesn’t feel Mr. Schultz has made a strong enough case. He feels a stronger case and more information is needed. He then asked Caren if Demeritt Ave was a scenic road. Are the variances connected to the things required for a scenic road?

Caren Rossi replied that a scenic road is really special when it comes to tree cutting. We have been challenged in court and when it comes to zoning, there is no special concerns.

Donald Quigley asked if the traffic concerns can be addressed by the planning board before it comes to the ZBA?

John Hutton, Acting Chairman replied no. It has to come here first.

Shawn Banker asked if there is currently a special exception for office use for this property?

Caren Rossi replied, yes and its specifically just for Fred’s business, Versacon. Previous approvals are in the Boards packets.

Shawn Banker asked where the road that he wants to use is?

Caren Rossi explained its an existing gravel, it’s not used now and it’s not approved by NH DOT its what Fred is proposing.

Shawn Banker asked if there will be a requirement to have 2 exits to the property.

Caren Rossi explained that if this Board grants this request, they can put any conditions you want to ensure it works. If he doesn’t get approval from NHDOT he doesn’t have an approval.

Shawn Banker asked how many spaces are required by the town for the proposed use? How did he arrive at the 10 spaces.

Fred Schultz replied that he was told by the town hall that the proposed structure square footage wise has to have that many spaces.

Craig Williams asked does the existing office building have a septic system now?
Fred Schultz replied no.

Craig Williams stated he is concerned about the number of parking spaces. What is the towns requirement? Looks like we are giving a pre-approval for a 2 business uses based on the size of the parking lot. Is there any plan to connect the septic system to the Inn?

Fred Schultz said it’s in the packet.

Caren Rossi stated he can’t connect to the Inn as its too old. The last request is for a septic for this building.

Craig Williams says he has heard several people, including Fred that he is planning on putting a restaurant in the barn is that true?

Fred Schultz replied no, he can’t get septic in there, its too wet.

Craig William asked if he would consider moving the office space further up the road and away from the wetlands etc.

Fred Schultz replied no.

Francisco Bardales spoke with concerns of setting a track record of giving approvals for others things to come up. He agrees to fix the existing building but has concerns with adding more to the lot.

John Hutton, Acting Chairman stated and explained that every applicant has to be looked at as a clean slate and a neutral field.

Donald Quigley asked what mechanics we had to ensure that it doesn’t creep?

Caren Rossi stated that if you were to grant the use and limit the number of employees, you would limit the number of parking spaces. Our regulations call for .5 per employee. If you limit it to one additional business, that limits it. If he chooses to change the use, he has to come back. She advises you to have Mr. Schultz give you more information as to what he would like to be limited to. A separate request is the building expansion. Does he want the same footprint or does he want to reduce it after hearing everyone’s concerns. If you don’t grant the special exception and the variance to relocate the building the other are not needed.

John Hutton, Acting Chairman asked Fred Schultz what he wanted to do.

Fred Schultz commented that he has a plan that will enhance the neighborhood, look around at the neighborhood, food trailers etc. This is discrimination.
Shawn Banker commented that the Instant Messaging is out of line. Its very distracting and disrespectful to the Board. The Board discussed the bubbles coming up on the screen. There is a time to speak and that has been given.

Caren Rossi will look into shutting this off. (It has been shut off for the future)

The Board determined the following Findings of Fact.

**A Variance to Article XXIII, #3 Non-Conforming Uses to allow for the relocation and expansion of an existing non-conforming building.**

**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. Majority

**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 Moving it away from the road, be an improvement.

2. Granting the variance would be consistent with the spirit of the ordinance. Yes, majority Move away from the road, be an improvement more in compliance with zoning.

3. In granting the variance, substantial justice is done. Yes, majority Improving the conformation with current zoning.

4. In granting the variance, the values of surrounding properties are not diminished. Yes majority No information that it would, mute point.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant. Yes, majority Deteriorating building is a result to the proximately to the road and the height of the road causing problems.
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.

Shawn Banker made a motion to Grant the request for a Variance to Article XXIII, #3 Non-Conforming Uses to allow for the relocation and expansion of an existing non-conforming building.

Francisco Bardales second.
Vote: majority, which was done by a roll call vote

The Board determined the following Findings of Fact.

A Special Exception to Article V, Residential Zone, Section D to allow for a Professional Office Space in the expanded/relocated existing building.

PRELIMINARY FINDING
After reviewing the petition and having heard the presentation by the applicant, it is found that the Board has not sufficient information available upon which to render a decision.

The Board would like the following information to proceed.

How many offices will be in the building?
How many employees in the building/ how many offices?
How many customers?
How many parking spaces he believes he needs in addition to the .5 per employee the site review regulations require?

Fred Schultz will get Caren this information tomorrow and she’ll pass it along to any interested party.

The Board determined the meeting will be continued to July 14, 2020.
The Board determined the following Findings of Fact.

A variance to Article IX, B-4, c of the 2018 Building Regulations to allow test pit depths of 46” to ledge where 60” is require.

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, Majority

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   Good documented from DES relative to the approval.

2. Granting the variance would be consistent with the spirit of the ordinance.
   Yes, majority   Approved by DES and all related science has been done on the project.

3. In granting the variance, substantial justice is done.
   Yes, majority   Improving a situation that does not have septic. Any business needs to have an adequate septic system.

4. In granting the variance, the values of surrounding properties are not diminished.
   Yes, majority   Neighborhood benefits from an adequate septic system.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship to applicant.
In the alternative, if the above criteria are not satisfied, the Board may still find that an unnecessary hardship exists if it finds:
  o There are special conditions on the subject property that distinguish it from other properties in the area; and
  o The property cannot be reasonably used under the ordinance and therefore, a variance is necessary to enable a reasonable use of it.

Yes, majority A septic is better than no septic.

Donald Quigley made a motion to approve the variance to Article IX, B-4, c of the 2018 Building Regulations to allow test pit depths of 46” to ledge where 60” is require.
Craig Williams second.
Roll call vote: yes, majority.

This application is continued to July 14, 2020 at 7pm.

Shawn Banker made a motion to adjourn at 9:15pm.
Craig Williams second
Roll call vote: all, meeting ended

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

MINUTES TRANSCRIBED BY:

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Caren Rossi, Planning & Zoning Administrator