

Lyme Zoning Board of Adjustment Minutes: January 17, 2008

Board members: Present - Alan Greatorex, Chair; George Hartmann, Jim Poage, Walter Swift, Ross McIntyre
(arrived 20 minutes after hearing had started)

Alternate members: Present - Margot Maddock, Jane Fant

Absent - Frank Bowles

Staff: Francesca Latawiec, Zoning Administrator; Adair Mulligan, recorder

Public: Luc Beaubien

Minutes of the December 20 meeting were approved as amended, by correction of a typo, on a motion by George, seconded by Margot.

Walter recused himself because of a potential conflict. Alan appointed Jane and Margot to sit as regular members.

Jim announced that he plans to move away from Lyme in the spring, and will resign after the May meeting. Alan noted that as chair, he had relied upon Jim's extensive knowledge of the ordinance. Jim has served on the board since 1990. Margot extended an official welcome to Francesca Latawiec, the new Zoning Administrator.

Peter and Janice Treadwell, Applicants, Permit Application 2007-094, Map 408 Lot 47.1

Project: permit existing telecommunications tower and extend it 30 feet at 36 Horton Lane.

Continuance of public hearing held on December 20, 2007. The Treadwells requested a special exception for the existing, unpermitted telecommunications tower and proposed 30' extension at their property in the Rural District. The tower is located within the Ridgeline and Hillside Conservation District and the Steep Slopes Conservation District and a special exception is required under Article 4.60, sections 4.66 and 4.62.

The Conservation Commission agreed, at their meeting of January 7, 2008, to "not object to this particular project, given that it has minimal visual impact and will cause no erosion concerns or disturb important habitat, with the understanding that the tower and pole height will remain beneath the tree line." The Planning Board, at their meeting of January 10, 2008, voted to grant a conditional use approval for the project "subject to all necessary approvals from the Zoning Board of Adjustment." The approval is also conditioned upon the concerns of the Conservation Commission being met.

George inquired about the Conservation Commission's comments regarding the tree line. Francesca read the definition of tree canopy height from the new telecommunications ordinance, which was amended by the town in March, 2007. Luc Beaubien, representing the Treadwells, explained that the final height of the tower will be less than 20 feet above the average height of the surrounding trees. Alan referred to the photos provided. Luc explained that the first array now in place is blocked by foliage and the bedrock mass of the Pinnacle itself. He believes a 30 foot extension will resolve problems for customers on the north side of the hill. Jane asked about other towers in town, and Luc said that the town has installed a 110 foot public safety radio tower on the fire station, and that the 2007 ordinance was revised to take his type of facility into account (Type 2).

Walter asked if anyone had viewed the existing tower on the Treadwells' property. Margot and Adair said that they had, and that it is visible, but does not now reach above the tree line. Luc said that he installed approximately 20 feet of additional height on the tower in the fall of 2007, and would wait until spring to extend it the rest of the 30 feet. Walter asked about management of the surrounding trees and whether there would be a prohibition on cutting them. Jane cited the ordinance's section on maintenance, noting that tree growth could overtop the tower again. Jim recommended specifying the maintenance of trees to sustain the proper height.

George asked about Luc's agreement with the Treadwells. Luc said he has an open ended contract with them to allow him to place the facility there, but it includes no other details. George advised that the lease be modified to include the provisions of section 4.4.5A of the telecommunications ordinance for maintenance.

Jane asked whether the tower would be taken down if it becomes obsolete. Luc said that the ordinance requires removal and that it is in the contract with the Treadwells. Walter asked for assurance that someone is identified to pay for the removal of the tower if it is no longer needed. Luc said that the Planning Board did not require a performance bond. Members agreed that it was not essential to include the contract in the decision. Luc offered to sign an affidavit stating the terms that are part of the contract.

Margot asked if the application is after the fact. George said that the original tower did not have a permit. Luc added that when the current application was filed in the fall of 2007, the 20 foot extension had been added, and it went into commercial use in January 2008. The original 50 foot tower was put up in August, 2004. The tower is now 70 feet tall, and the plan is to extend it to 80 feet. He said that the height of the pole can be adjusted. If trees

blow down, the tower can be lowered to remain in compliance with the ordinance. Jane asked why the tower had been located there. Luc said that he felt it would reach the maximum number of people, and the Treadwells were cooperative. He kept the tower height to 50 feet to avoid a visual impact. Trees have now grown, creating a significant performance problem.

There were no questions regarding his responses to aspects of the telecommunications ordinance.

Deliberations - Jim said that the last section of the ordinance is clear that the owner of the facility is responsible for removal, and he thought this was the Finowen, Luc's business, not the Treadwells. He cited sections 6.3, 7.2, and 7.3. George said that Lyme's ordinance is relatively new and untested, and has some inconsistencies. He recommended doing what makes sense, and fixing the ordinance later. Since the landowner is the applicant, he is the most appropriate one to take responsibility for removal.

Alan noted that there is no fall zone danger. Ross pointed out that the tower will not be lighted, and that there is no equipment shed. Luc said that there is a cooler attached to the building that contains electronics, and an uninterruptible power supply. Jim said that the future buyer of the Treadwells' land would be reluctant to pay to remove the tower, and that the burden should be on Finowen. It was clarified that the owner of the tower is Finowen. Luc reiterated that the removal is part of the contract with the Treadwells, and said that he has not had to post bond in other towns. The Planning Board did not require a bond. He estimated a cost of \$1000 to disassemble the tower. Francesca pointed out that the Planning Board did not consider sections 6.3-7.3. Jim said that the Planning Board must confirm that no bond is required, and suggested requiring a plan on vegetation maintenance so that the tower retains its visual and transmitting capabilities. Luc said he checks the tower quarterly.

Margot moved to approve the request for a special exception to allow an additional 30 feet on the existing 50 foot tower, with the following findings of fact:

- the tower will have no lights
- there is a box and an uninterruptible power supply attached to the tower
- the initial 50 foot tower was erected in 2004, and the request is for a 30 foot extension for a total height of 80 feet.
- the tower will not exceed the average surrounding tree height by more than 20 feet, from evidence provided by the applicant and by others making site visits
- the Conservation Commission's January 2008 minutes indicate that the CC does not object to this tower given that it has minimal visual impact and will cause no erosion concerns or disturb important habitat
- the board specifically will not include the CC's comment regarding the tower height, because the ordinance allows a tower to be up to 20 feet above the average surrounding tree height
- the Planning Board voted on January 20 to give conditional use approval, upon the concerns of the CC being met, and approval from the ZBA
- the Planning Board did not comment on security issues of section 6.3.

Conditions - receipt of a statement from the Planning Board on its intentions regarding sections 6.3-7.3. Jim seconded the motion, and it passed unanimously, with Ross abstaining because he had arrived late in the discussion.

Bruce and Susan McLaughry, Applicants, Permit Application 2007-001, Map 421 Lot 10

Project: construct a 1,000 square foot dwelling at 651 Dorchester Road in the East Lyme District

Francesca reported that the applicant has requested continuance of the hearing until February. George moved to continue the hearing until February 21, 2008 at 8:00 pm. Jim seconded the motion and it passed unanimously.

Meeting adjourned 9:20 pm.

Respectfully submitted,
Adair Mulligan, Recorder