

Lyme Zoning Board of Adjustment Minutes: February 21, 2008

Board members: Present - Alan Greatorex, Chair; George Hartmann, Jim Poage, Ross McIntyre

Absent - Walter Swift

Alternate members: Present - Frank Bowles, Jane Fant

Absent - Margot Maddock

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

Public: Bruce and Susan McLaughry, Wayne Pike, John Quimby, Elena Marshall, Michael O'Donnell, Randy Mudge, Jane Kitchel McLaughlin, Pat Hill, Judith Bastianelli, John and Nomi Stadler

Minutes of the January 17 meeting were approved on a motion by Ross, seconded by George. Francesca supplied the permit number for the McLaughry application.

Bruce and Susan McLaughry, Applicants, Permit Application 2008 – ZB – 001, Map 421 Lots 7&10

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

Bruce and Susan McLaughry have requested a building and zoning permit to construct a 1,000 square foot dwelling in the East Lyme District near Reservoir Pond. The hearing is an administrative appeal of the decision of the Planning and Zoning Administrator to deny the project because it does not meet the area and setback requirements prescribed for the East Lyme District in Table 5.1 of Article V, entitled Dimensional Controls.

Bruce offered a copy of a survey by Ken LaClaire. He said he is aware of the provisions of the NH Comprehensive Shoreland Protection Act and the changes in this law that will go into effect on April 1. He has contacted NH DES and said the project will meet the new criteria. He said that the project will also meet the requirements of Lyme's Shoreland District with its 200 foot setback, and used the more conservative measurement of the location of the Reservoir Pond shoreline from a 1981 survey. He said that the project will meet the 100 foot setback from a seasonal stream that runs through the lot. The lot existed before adoption of zoning, and was created in 1978. He is asking for 50 foot side setbacks. The lot meets the minimum water frontage of 300 feet, having 380 feet. It conforms to the neighborhood lot size. The property is composed of lots 7 and 10. Bruce noted that the property was surveyed as one parcel, and this is how he received it in his deed. The existing cabin on the property near the shore is 200 sf. He has revised his request for a new cabin to 800 sf (24' x 32'). Alan Greatorex noted that the tax card gives the existing cabin as 260 sf and asked when it was built. Wayne Pike, who built the cabin, guessed that it was built in 1979-81, before zoning.

Alan noted that the board could approve an encroachment of up to 1000 sf into a conservation district. Jim said that lot size is irrelevant because the lot is grandfathered. Ross pointed out that the board usually considers encroachment in terms of enlargement of existing structures, but it would be difficult to enlarge the existing 260sf cabin because of its proximity to the water, which might set a precedent the board would regret. He thought that under these circumstances, the board could defend a decision to allow a separate structure.

Alan pointed out that the proposed location is on a different lot separated by Dorchester Road. Bruce said he did not know where the lot division came from. Jane Fant observed that the portion of the lot east of the Dorchester Rd. is a good birding area and is very wet. George Hartmann asked about the conservation easement on the property. Bruce read the easement and gave a copy to the board. The Town of Lyme holds the easement, which prevents "parcels 2 and 3" from being subdivided. Its purpose is to retain the natural scenic state of the property. Frank Bowles noted that parcel 3 is in Dorchester.

Alan appointed Frank as a voting member for this hearing. Jane asked if the house would have a septic system. Bruce said he has approached a septic designer about it, who advised not proceeding until the board had determined that it is a buildable lot. Alan asked for public comment, and there was none.

Deliberations: Ross said that section 8.20 refers to expansion of existing structures. This new building would be an accessory structure or secondary to the existing camp. He said that the proposed location is better than as an addition to the existing camp. While the project doesn't strictly meet the definition of accessory building, he advised that it be considered as such. He suggested that a variance is needed. Alan asked if it should be considered a non-conforming lot under section 8.31. George said that this section refers to vacant lots, and would require meeting the larger side setback requirements of the East Lyme District. He asked if the lot should be declared vacant. Alan said that this would require removing the cabin unless the lots could be regarded as separate.

Ross moved to grant a variance for construction of the proposed 800 sf cabin on Map 421 Lot 10, with the following findings of fact:

- The lot is an existing non-conforming lot in the East Lyme District.
- The site chosen for the building meets the 200 foot setback in the Shoreland Conservation District.
- The site meets the 100 foot setback from a seasonal stream.
- The applicant would be permitted to add on to an existing structure or build an accessory structure up to 1000 sf within the side setback (at the proposed location).
- The applicant has stated that he would seek a state approved septic design.
- There were no complaints from abutters.
- Because the ordinance does not contemplate the creation of a primary structure as the applicant proposes and because the applicant, given incentive, could move the camp, the applicant could build 1000sf where he desires, but it would create unnecessary expense to move the existing camp.
- Because of the technicality of the definition of accessory structure, the board has decided to grant a variance so that the structure contemplated does not have to meet the accessory definition of the ordinance. The board believes that the building can be constructed on the proposed site and that this is allowable under the circumstances.
- Conditions are that the applicant procures a state approved septic design, receives a Shoreland permit from the state, and uses best practices to prevent erosion and other ecological damage.

The board reviewed and agreed upon each condition in section 10.50A required for a variance. George seconded the motion and it passed unanimously.

Michael O'Donnell, Applicant, Permit Application 2008 – ZB – 002, Map 407 Lot 15

Project: remove existing structures, replace with new structures at 55 Post Pond Lane in the Rural District.

Michael O'Donnell has requested a building and zoning permit to remove an existing house, deck and shed and replace it with a new 2 bedroom house, deck and garage on his 50.65 acre lot. The hearing is an administrative appeal of the decision of the Planning and Zoning Administrator to deny the project because it does not meet the setback requirements prescribed for the Rural District in Table 5.1 in Article V, entitled Dimensional Controls. The project will reduce the lot coverage by 296 sf. The applicant is also requesting a special exception under section 4.6 of the zoning ordinance, the Shoreland Protection District.

George asked about the large lot size, and Michael O'Donnell explained that there are two parcels across Post Pond Lane that are considered one lot with the pond side lot. He has talked with the Conservation Commission to arrange a site visit. Alan noted that the CC must consider the proposal before a decision can be made. Michael said he does not have a tight timeline for the project and can accommodate this. Ross pointed out that the existing structure is a camp and old shed that have more setback issues than the proposed structures and would be smaller, and asked why the CC needed to be consulted. Alan advised that the ordinance requires it and a site visit would be useful since the board will not make one.

Michael said he planned to reroute the septic pipe and may need a secondary casing for it because of proximity to the well. Alan advised consulting the state and asked where the new septic line would go. Michael said he wants to protect a large maple tree. The foundation will be a heated slab. Alan invited public comments, and there were none. Jim Poage moved to table the hearing until the next regular meeting on March 20 at 7:40 pm. Ross seconded the motion and it passed unanimously. Frank noted that a state Shoreland Protection permit will also be needed.

Randy Mudge, Applicant for Jane Kitchel & Peter McLaughlin, Permit Application 2008-ZB-003, Map 402, Lot 104

Project: raise house, relocate barn, renovate guest house at 261 River Road in the Rural District.

Jane Kitchell and Peter McLaughlin propose to raise the lowest level of the original two story house on their +/- 6.4 acre lot above the 100 year floodplain elevation with a new concrete foundation. No new basement. Demolish one story section of the house and rebuild with new configuration to take advantage of solar gain. Relocate existing barn further from backwater and restore for use as a new garage. Renovate existing guest house, adding square footage to make it a more functional building. The proposed increase in living area, combined for the two buildings, will be 1,000 sf from an existing 4,360 existing sf. The applicant is requesting a special exception under section 4.6 of the zoning ordinance, the Shoreland Protection District. This proposal will require a shoreland permit from the Department of Environmental Services under RSA 483-B.

Randy Mudge provided additional information in the form of a site plan. Jim asked if the increase is in gross living area or footprint. Randy said that the existing home was built in 1819 and is in the Rural District, 100 year floodplain, and Shoreland Conservation District. He said that the project fulfills all dimensional controls except for setbacks but with reductions of 80% the lot size is 3 acres. The existing residence is a non-conforming structure.

Alan asked if the proposed lot coverage is allowed after the lot reductions. Ross said that it is in excess of what would be allowable, and that the total lot area is 1.2 acres after lot reductions. Lot coverage is less than 12% (proposed coverage is 5567 sf, or about 10%). Jim asked when the last addition was made to the building, and it was concluded that the building and addition all pre-dated zoning, so the maximum increase allowable would be 1000 sf.

Randy said that the barn is within the state's 50 foot building setback, and will be moved away from the backwater of Grant Brook. He said that the applicant is asking only for a total of 1000 sf addition split between the house and the guest house. Ross checked the figures on the application and noted a discrepancy of 10 sf over 1000 sf. Randy's colleague noted that the footprint might need to expand slightly in order to provide utilities. The house will be raised about 3 feet 8 inches. The property has flooded in the past, and Ross noted that he has paddled his canoe inside the barn. Francesca pointed out that the new floodplain maps went into effect on February 20.

Randy provided responses to each of the criteria in section 10.40A, noting that the property is residential in nature, and that the intent of the project is to preserve the historic character of the area. An existing additional curb cut will be used to provide a linking drive. He said that he has seen the Conservation Commission's letter. Alan read the letter, focusing on the recommendation to cease mowing to the water's edge and plant a riparian buffer to control erosion. He said that the board would need more information on the applicant's intentions in this area. Jane Kitchel said she had no objections but as yet had no concrete plans for landscaping, and would put it in writing.

Randy said that it would be useful to move the barn before April 1 so that a state permit is not needed. Ross suggested that if the applicant revised the application to simply move the barn farther from the shore, it would be easy to approve now, and that the present time, when the ground is frozen, is the best time to move the structure to avoid causing erosion. He added that the applicant has not provided final dimensions, so the board cannot approve the application until they are settled. He advised not approving projects when they are not clearly defined. Randy asked whether he could come back for an adjustment if necessary, and this was agreed. Alan asked for public comment, and John Stadler said that he had no objection and welcomed the McLaughlins to the neighborhood.

Adair Mulligan asked about the provisions of the new Comprehensive Shoreland Protection Act with respect to the riparian buffer. Jane Fant referred to the state's language regarding the first 50 feet from the shore. Frank said that it is in the landowner's best interest to plant the shoreline as much as possible for erosion control, and that grass is not strong enough. Jane Kitchel said that she would submit a statement about planting along the riverbank. Ross asked whether there is a bathroom in the guesthouse, and where the leach field is located. Randy said that there is a bath, and a shared leach field with the house, between the guesthouse and new drive. No changes are contemplated in the leach field or number of bedrooms. Frank said it is a good practice to get good seals on chamber tops in case of flooding. Jane Kitchel said that this has been done. Randy asked that the board consider approving the dimensional figures as submitted.

Asked about surfaces for the additional drive, Randy said that alternatives are being considered. Alan recommended use of permeable surfaces. Frank recommended grass pavers.

Deliberations: Alan reviewed the dimensions and determined a slight decrease in footprint from the existing house to the proposed, although the guesthouse will nearly double. He made a motion to grant a special exception under section 8.24 with the following findings of fact:

- Changes are from the current 4360sf to 4967sf proposed.
- A plan was provided by Randall Mudge & Associates dated January 23, 2008, Job #0718.
- TransCanada Hydro Northeast owns flowage rights on a portion of the land to the 390 foot elevation, conveyed by a prior owner.
- All buildings and their modifications predate zoning.
- The project is located in the Shoreland Conservation District and Flood Prone Area Conservation District.
- Lot coverage will increase 592sf.
- Building footprint will increase 607sf.
- Gross square footage is under the maximum allowed.
- The project will elevate the base of the house to 400.0' elevation, half a foot above the 100 year flood elevation, based on Lyme's Flood Insurance Rate Map dated April 16, 1993, Panel 5.
- The Conservation Commission has visited the site and made recommendations, and the applicant will provide the Zoning Administrator with a landscaping plan.
- Abutters have spoken in support of the project.
- The number of bedrooms will not change, and the septic system will not be altered.
- Conditions of section 10.40A have been met.

- A state Shoreland Protection permit may be needed. RSA 483B has been amended and the rules will take effect on April 1. The board approves the project cognizant that the state regulations may change and any project should meet the state regulations as well as Lyme's.
- If the applicant comes back with minor changes in dimensions before the next meeting, the Zoning Administrator may issue a building permit as long as the changes conform to the 1000sf limitation on expansion.
- Conditions: the project will be carried out using best management practices for controlling erosion and sedimentation. If the flood elevation changes with the new map that went into effect on February 20, the project will be adjusted as necessary. A landscaping plan for the riparian buffer will be provided to the ZA before a building permit may be issued.

Ross seconded the motion and it passed unanimously.

Meeting adjourned 10:02 pm.

Respectfully submitted,
Adair Mulligan, Recorder