

**Lyme Zoning Board of Adjustment  
Minutes: March 20, 2008**

**Board members:** Present - Alan Greatorex, Chair; George Hartmann, Jim Poage, Walter Swift

Absent - Ross McIntyre

**Alternate members:** Present - Frank Bowles, Margot Maddock

Absent - Jane Fant

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

**Public:** Michael O'Donnell, John Quimby, Jay and Elena Marshall, John and Mary Billings

Minutes of the March 12 meeting were amended by George and approved on a motion by George, seconded by Frank.

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

**Project: remove house, deck, shed and build new 2 bedroom house, deck, garage at 55 Post Pond Lane.**

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 in the Rural District. 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 248 sf. The applicant will also be requesting a special exception under section 4.6 of the zoning ordinance, the Shoreland Protection District. A state shoreland protection permit may be required. The Conservation Commission recommends this project.

Alan Greatorex opened the continuation of this hearing from February 21, appointed Frank Bowles to sit on the case as a regular member, and referred to the CC's letter. Michael O'Donnell updated the board on his recent conversation with Darlene Forst at NH DES regarding shoreland permitting, which is currently postponed until at least July 1 due to a delay in enacting administrative rules for the permitting program. George Hartmann asked about the distance between the septic tank and the well. Michael said it is 35 feet and should be 75 feet unless a sewer pipe is rated with SDR 26, in which case it can be 50 feet. George noted this is a non-conforming, pre-ordinance well and septic system, but he was concerned that it was risky. Alan reminded that the Movelie well on the neighboring property also exists. Frank said it is an unremediable situation without drilling a new well. Walter asked if the septic system would be changed. Michael said it would not and is approved for a two bedroom home, which is what is proposed. Francesca said that the state only requires an upgrade if a bedroom is to be added. Walter advised citing state rules.

Deliberations: Alan said that the project would result in a less non-conforming situation. George noted that the CC had recommended it after a site visit, and he was concerned only about the septic distance. Walter asked for clarification on the state's shoreland protection law. Adair explained that the proposed project conforms with the law as it is currently in force, and that discussions in the legislature indicate that the new permitting program will not be put in place as soon as was anticipated (April 1), but that applicants who had made some investment in their projects before it eventually goes into effect will be given leeway.

Frank moved to grant a special exception under section 8.22 to allow the project to move forward based on the following findings of fact:

- The proposed structure is less non-conforming than the existing one.
- The basic goals of New Hampshire's Comprehensive Shoreland Protection Act have been met.
- The project will result in decreased lot coverage of 248 sf.
- Conditions of section 10.40 have been met.
- The project is in the Rural District.

Conditions include:

- A letter from the state clarifying that the septic system is acceptable.
- Best construction practices will be used, especially to prevent runoff from entering Post Pond.
- Design will conform to the Conservation Commission's recommendation that gutters not focus water runoff and that drainage is designed to diffuse away from the pond.

Jim seconded the motion and it passed unanimously.

**Jay and Elena Marshall, Applicants, Permit Application 2008 – ZB –005, Map 401 Lot 34**

**Project: build 4 bedroom home with attached garage at 148 Goose Pond Road in the Rural District.**

According to the meeting warning, the applicants are requesting a variance from the dimensional controls prescribed for the Rural District in Table 5.1 in Article V to build a 2,000 s.f. 4 bedroom home with an attached garage and U-shaped driveway on the above referenced 1.9 acre lot, which they do not yet own.

Alan appointed Margot Maddock to serve as a regular member. Jay Marshall presented information about other home footprints in the neighborhood, and indicated that he had applied for a special exception, not a variance. The septic design which was previously approved for the property was for a 3 bedroom home, so he plans to get a new design for a 4 bedroom home. He said that the only structure on the property is an unused septic tank which will be removed. George asked for a drawing of the home. Jim noted that the calculation presented is for a 1760 sf “addition” but that the proposed house is 2000 sf. Jay clarified that the total footprint of the house is 1760sf, which with an upper floor will provide 2000 sf of living space. Walter noted that the house footprint is 1,040 sf, the attached deck 240 sf, and the attached garage 480 sf, for a total of 1,760 sf.

Jay continued that the setback from the road is 90 feet, more than 100 feet on each side, and 74-84 feet from the rear property line. Walter asked for a sketch to show dimensions. Jay said that he did not have it with him. George said that the Zoning Administrator should always give the board such a drawing in advance as part of the application.

Jim said that the footprint is 767 sf over the allowable figure. Walter asked about proximity of the well to the neighbor’s septic system. Jay said he did not know, but it is not close. George asked about tabling the application until a complete application is provided. Jay said that his purchase and sale agreement expires on April 15. He offered to deliver the drawing to the Zoning Administrator the next day. Alan said that the lot is 415 feet long and 200 feet deep. He invited comment from abutters.

John Billings said he lives across the road at 149 Goose Pond Road. He has reviewed the application and said he did not think a special exception would have a negative impact on his property, that of others, traffic, or other features. He supports it. Mary Billings said that this proposal is not much more than what the ZBA approved previously for this property. Alan pointed out that the zoning rules and administration might not have been as clear at that time. John said that section 8.31D seems to be the operative section of the ordinance. He added that the process to apply for a special exception or variance seems to be very complicated for applicants, and he welcomed a joint meeting of the Planning Board, of which he is a member, and the ZBA to see how to make this easier. Several members of the board agreed.

Walter pointed out that in 1991 there was a trailer on the property and a septic system to serve it. A letter to prior owners from Vickie Davis, ZA, said that the special exception granted earlier would run with the land. However, all structures have been removed from the lot for at least two years, so the lot is now considered vacant. Jay said that the current owner wanted to build, and filed for a permit in 2004. That owner has done much work to prepare the property for a home. The proposed deck is not to be covered. Walter noted that the definition of footprint refers to roofed over areas.

Deliberations: Jim said that the ordinance does not say that the building footprint limit can be exceeded, but nearby buildings are big enough to support a larger building. He said he would rather grant a variance. Margot referred to the definition of Rural District, and thought that this project is consistent with the rest of the houses in the area. Walter said that 8.31D is very clear and seems intended to deal with this kind of application. Jim advised stating future expansion limits. Walter said that the structure could not expand in footprint since it was not in place when the ordinance was enacted, although lot coverage could be expanded.

Out of Deliberations: George inquired about the agricultural soils conservation district, noting that since the lot is under 3 acres, no easement is required. John explained that the Planning Board’s computer has an overlay that shows that the whole lot is in locally important agricultural soils, so the Planning Board applied this to the whole lot. He believes the map is a fair and reasonable determination of soils, without consulting a soil scientist. He noted that there was a primary residence on the lot when zoning went in, and referred to the definition of building zone. Walter pointed out that the conservation district reduction is therefore less, so a larger footprint could be permitted, by taking the area of the previous home and a 200 foot radius around it.

Deliberations: George noted that with the exclusion of the deck, since it is uncovered, the size of the house footprint is down to 1520sf. Walter moved to grant a special exception to construct a four bedroom dwelling with attached garage on this 1.9 acre lot, with the following findings of fact:

- There was a residence on the lot when the Zoning Ordinance was passed, but its dimensions were not presented.
- All structures were removed from the lot before 2005.
- For the purposes of section 8.33, the lot is vacant.
- The size of the proposed residence totals 1520 sf, and an attached 240 sf uncovered deck.
- The maximum permitted footprint on the lot, according to data in the application, is 993 sf.
- Under section 8.31, the applicant provided building sizes for nearby lots that show a range of 1100sf to 2600 sf.
- Section 8.31 allows residential use of this lot and all conditions A, B and C are met.
- The setback requirements are met.
- Section 8.31D notes that a special exception is required for construction of a residence on a vacant lot, and that the ZBA shall determine reasonable dimensions.
- The ZBA finds that a residence of 1520 sf is reasonable and practicable for this lot in consideration of the topography and neighboring lots.
- Testimony from the nearest abutter supports the application, and there has been no dissent.
- The allowable footprint is based upon a conservative estimate of the Agricultural Soil Conservation District on the lot. The footprint may be expanded in the future upon determination and clarification of the actual Agricultural Soil Conservation District on the lot. This determination should include the accurate dimensions of the building zone that existed in 1989 which would be excluded from the total agricultural soils calculated for the lot.
- Requirements of section 10.40 have been met.

Conditions:

- The applicant will provide a confirmation of the setbacks identified in the application in a sketch delivered to the Zoning Administrator.
- The home shall be built in accordance with the sketch provided by the applicant.
- Before a building permit can be issued, the applicant will receive a state approval for the septic system.

George seconded the motion, and it passed unanimously.

**Elections:** Jim, who will leave the board permanently after the next meeting, stepped off the board for this election. Alan was unanimously re-elected chair on a motion by Frank, seconded by Walter. Ross was unanimously re-elected vice-chair on a motion by George seconded by Margot.

The board asked Francesca to update the ZBA brochure and post it on the town website.

Meeting adjourned 9:25 pm.

Respectfully submitted,

*Adair Mulligan, Recorder*