

**LYME ZONING BOARD OF ADJUSTMENT
MAY 15, 2008 - Minutes**

Board members: Present - Alan Greatorex, Chair; Ross McIntyre, George Hartmann, Walter Swift

Alternate members: Present - Frank Bowles, Margot Maddock, Jane Fant

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

Public: Arend Tensen, Susan MacKenzie, Donna Fisk, Donald Fisk, Jeff Valence, Rod Finley, Dwight Lahr, Beatriz Pastor, Michael Hinsley

Minutes of the April 17 meeting were approved on a motion by Ross, seconded by Frank.

Arend and Paula Tensen, Applicants, Permit Application 2008 – ZB – 007, Map 402, Lot 85

Project: erect a farm stand at 100 River Road in the Rural District.

Administrative appeal of a decision by the Planning and Zoning Administrator to deny a zoning permit for a farm stand because the application does not meet the setback requirements prescribed for the Rural District in Table 5.1 of Article V of the zoning ordinance. The applicants request a variance for a setback of 30 feet so that the farm stand can be located partially on an existing foundation. Alan appointed Margot as a voting member for this project.

Arend explained that a farm stand has always been part of the plan for the property, and that the initial cleanup has now been done. He said he found buildings he did not know existed at the historic former town poor farm, until he started the cleanup. He has taken down a number of buildings that could not be saved, with much more square footage (over 2000 sf) than he proposes to replace. This includes a 768 sf heifer barn, a pig pen, a sugar house, and a 120 sf chicken house. A trench silo will also be removed. He has already received a permit to remove a trailer home and replace it farther back with a doublewide to provide housing for farm employees, screened with trees. He displayed photos of the trailer and other buildings at the site. Arend said that he is swapping the locations of the trailer and barns that he has taken down. When the trailer was removed from its site some 30 feet from River Road, he discovered a partial foundation under it that he would like to use for the farm stand. He said that it would cost \$15,000-20,000 to replace it, since it also has buried electric and water supplies. He wishes to have the farm stand close to the road so that it will be accessible to customers. The cellar hole is 14' x 22' with a 4'x6' stairwell, totaling 332 sf. The farm stand will be built to fit it.

George asked if the site is within the 200 foot building zone, and Walter asked if there is a lot coverage issue. Alan said that the only problem is the setback from the road. He invited public comment. Donna Fisk said that the project is a good idea. Susan MacKenzie said she is fully supportive. Asked about parking, Arend said that the intent is to use the side of a very wide drive that loops from the trailer to the barn. The stand will be open 12 months/year. Frank concurred that there is ample room for parking and turning around.

Deliberations: Alan asked about agricultural soils. Walter pointed out that because there is an existing cellar hole, it can be built upon. Ross said that the project is covered under section 8.23.

Walter moved to grant a special exception under section 8.26, with the following findings of fact:

- There is an existing 332sf foundation located approximately 20-30 feet from the property line.
- The foundation was in place before zoning.
- Because the structure was a non-conforming building and the proposed farm stand is not a new or increased violation, it is covered under section 8.26 and section 8.23 does not apply.
- The applicant retains his right to encroach 1000sf into the setback.
- There is no change in use because the property is a farm.
- Two members of the public expressed their support.
- The requirements of section 10.40 have been met.
- The applicant provided information stating that the drive and parking area already exist, and there will be no major changes.
- Conditions: the farm stand must be the same size as the cellar hole.

George seconded the motion and it passed unanimously.

Pathways Consulting, Applicant, Permit Application 2008 – ZB – 006, Map 201, Lot 134

Project: construct a driveway through the Steep Slopes District from Dorchester Rd. to a future building site in the Rural District.

Dwight Lahr and Beatriz Pastor, represented by Pathways Consulting, request a special exception to construct a driveway through the Steep Slopes District from Dorchester Road to a future building site. A house and septic system

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are also proposed. Planning Board comments have been offered for consideration. Alan appointed Frank to sit as a voting member.

Rod Finley of Pathways described the proposed drive and house site. After ledge was removed at the base of the drive, much improved sight distance has increased safety of the High Street-Dorchester Road intersection. The land is part of the Grays' former property. In 2006 the Grays reestablished the subdivision of their land through the planning board, and the board deemed lot 134 as a buildable lot. Dwight Lahr, current owner of the lot, explained that he lives on Rocky Hill Lane, abutting this lot. There are three houses on the lane, with a fourth unoccupied lot. He said that he asked his neighbors to agree to allow access to lot 134 from Rocky Hill Lane, and while the residents agreed, the one non-resident owner did not. The road is governed by a covenant. When this access was found not to be an option, Rod looked at other access options, and discovered that building a drive with 11% slopes would create more disturbance than a drive with 14% slopes. Test pits have shown presence of ledge. Rod said that the present pile of blasted ledge near Dorchester Road will be moved to the house site or used to fill dips in the road. The first 300 feet of the drive cross the Steep Slopes District.

Rod continued that he met with the Planning Board in April, and asked for their interpretation of section 4.53B1. The board approved the project but submitted a letter of comment listing six concerns. Rod said the drive will be constructed with culverts and crowning to prevent water from flowing over High Street and freezing in winter. The drive will be 9" thick hardpack. Frank said that this material needs maintenance. Dwight says he does this each year. Rod said that snow can be stored on the emergency pulloff and also near Dorchester Road. The drive will be 1000 feet long. The Planning Board had concern about the grade of the drive and Rod's interpretation of 4.53B1. Rod said that there is no 100-foot section over 14% grade. He observed that a change in membership of the Planning Board seemed to result in a change in the board's interpretation of 4.53B1. The new board believes that the drive would be limited to 100 feet of 14% grades and then must have a changed grade, but did not want to interpret the zoning ordinance. Rod said he designed the drive for a maximum grade of 14%. The turns are 5% grades.

Continuing to address the Planning Board's concerns, he said that the fire chief had been asked to comment, and that the drive meets all the requirements of the Fire Department. Regarding stormwater retention, the project will adhere to the principle of on-site retention, using Low Impact Development concepts and designs. Frank asked if a cistern for fire flows had been considered. Rod said it had not. Rod noted that the property had had two dug wells that fed Lyme village, but that the water rights had been relinquished, as listed in Book 487 page 177, and Book 3239 pp. 514-5. Since the rights were to the Lyme Aqueduct Company, which no longer exists, Ross said that it would be hard to claim that the water rights still exist.

Rod said he had been concerned about the initial ledge cut, and so looked at many options, but this will create the least disturbance. He expects that the drive will have to be built through ledge. Alan asked about proximity of a retaining wall near a property line, and Rod said that the wall will be cut in rock and that there will be enough room. The ledge cut slopes will be one on eight. Michael Hinsley indicated that the changes at the road intersection greatly improved safety and that the driveway is fine from his perspective.

Deliberations: Ross said, in response to written comment provided by former abutter Jim Poage, that it is within the board's authority to eliminate the possibility of designing future lots to the Lyme Common District lot size. Alan noted that the application was made in the Rural District, and that it is a pre-existing approved lot within the Rural District. George expressed concern about the Planning Board's comment on excavation, and Frank said that given the site, there is no other option. Ross said that it is permissible because it is within the regulations. Walter asked about driveway standards mentioned in the ordinance, and Francesca said she thought they referred to an appendix that no longer exists.

Ross moved to grant a special exception under section 4.53 to build the driveway on an existing lot to service one residence as shown on the plan of February 27, 2008, as provided by Pathways Consulting, with the following findings of fact:

- Access across lot 132 was prevented by a covenant holder of Rocky Hill Road.
- The board has considered a letter from the Planning Board addressing issues, and considered responses from the engineer and the Lyme Fire Chief.
- A runoff issue on the drive raised by the Planning Board has been addressed by design.
- Construction has already relieved a line of sight problem.
- The drive does not exceed 14% slope in any 100 foot segment, so it meets the ordinance requirement for a special exception.
- An abutter provided a letter of support.
- The Lyme Fire Department, an abutter to the project, has no concerns and has provided a letter dated May 14, 2008 to the Zoning Board of Adjustment.

- Engineering design assures that the driveway will not become a nuisance.
 - Requirements of section 10.40 have been met.
- George seconded the motion and it passed unanimously.

Jeff Valence, Applicant, Permit Application 2008 – ZB – 008, Map 413, Lot 29

Project: construct a two car garage at 2 Canaan Ledge Lane in the East Lyme District.

Administrative appeal of a decision by the Planning and Zoning Administrator to deny a zoning permit for a two car garage because the application does not meet the setback requirements prescribed for the East Lyme District in Table 5.1 of Article V of the zoning ordinance. The applicant requests a variance for a setback of 13 feet from the adjacent lot line. Alan appointed Jane Fant to sit as a voting member.

Alan noted that no abutters were present, but that a letter of support had been sent to the board by one abutter. Jeff said that he had visited with the Planning Board, but that they had no comment. The site has not been surveyed but Francesca has made a site visit. He looked at three variations on placement, and determined the best choice as being on the shallowest area of the property. He will make room for snow, and will not put windows in the back of the garage, at the abutter's request. Walter noted that the previous footprint before 1989 was 1472 sf, and that the garage will add 815 sf. Alan noted that the side setback is 35 feet, and a special exception is needed for encroachment, not a variance. Jeff said that his entire house is within the setback. The two acre lot is a non-conforming lot that existed before zoning.

Deliberations: Walter moved to grant a special exception under section 8.25, with the following findings of fact:

- The project is to build an 815 sf garage in the Steep Slopes District and side setback
- The garage cannot be reasonably located elsewhere.
- There will be no windows in the back of the garage, and the height will not be above the house roofline.
- An abutter has written in support, with these conditions.
- The expansion will exceed lot coverage limits and building footprint allowance.
- The applicant is allowed 1000sf of expansion, and is proposing 815 sf.
- Special exceptions are also granted under sections 8.23 and 8.24.
- The project meets the test in all three articles.
- The Planning Board reviewed the project on May 8, 2008, and offered no objection.
- Conditions: the project will be built with best construction practices.

Ross seconded the motion and it passed unanimously.

Adjourned 9:35 pm.

Respectfully submitted,

Adair Mulligan, Recorder