

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – October 16, 2008

Board members: Present - Ross McIntyre, Vice Chair; Walter Swift.

Absent: Alan Greatorex, Chair; George Hartmann, Frank Bowles

Alternate members: Present - Margot Maddock, Jane Fant

Staff: Francesca Latawiec, Planning and Zoning Administrator, Adair Mulligan, Recorder

Public: Rich Brown, Charlie Hirshberg, Lize Ryan Cole, Carola Lea, Faith Catlin, J. Kelly, Patrick Barr, Brian Rich, Jodie Rich, Tyler Rich, Jamie Taylor, Wayne Pike

Minutes of September 18, 2008 were amended with several clarifications and approved on a motion by Walt seconded by Jane.

Ross appointed Margot and Jane to sit as regular members. Jane noted that she planned to recuse herself from discussion of the Rich application.

Application # 2008-ZB-017, Loch Lyme Lodge (Tax Map 408, Lot 22) 70 Orford Road. Appeal of administrative decision to deny a zoning permit to do the following on a 121.3 acre lot in the Rural District as shown on the plan, entitled Loch Lyme Lodge – Pond Side dated September, 2008:

1. construct a 890 sf perched beach along Post Pond;
2. repair existing retaining walls along 200' of shoreline;
3. construct a grassed swale to divert stormwater;
4. construct a vegetated berm along Route 10 to block road noise to the beach area;
5. replace a 6' x 30' (180 sf) seasonal dock;
6. construct a 20' x 24' (480 sf) post and beam structure near the beach area; and
7. repair the existing cabin foundation piers.

A special exception under Section 4.63, the shoreland conservation district, of the zoning ordinance is requested for the replacement of cabin foundation piers and construction of the perched beach. Variances under Section 4.63 and the 75' road setback under Section 5.10 are requested for the perched beach, post structure, seasonal dock and retaining wall repairs.

A Minimum Impact Expedited Application and a Shoreland Permit Application have been filed with the Wetlands Bureau of the NH Department of Environmental Services for this project. Copies of these applications are available in the Town Offices for inspection. Receipt of valid copies of approvals for these permits should be a condition of any approval granted by the ZBA. The Conservation Commission has visited the site and finds no impediment to approving the permit application, provided all mitigating procedures are followed during the construction phase.

Charlie Hirshberg explained that the existing retaining wall had deteriorated partly as a result of water level changes. The perched beach will not be in the water but dug into the existing soil above it, with an edge of stone to prevent the sand from reaching the water. A sloped wall will be built that will allow plantings in the interstices, with stone paths to the water. Drainage stone and filter fabric will be used behind the boulder wall. There will be no change in the area of the wall. The seasonal dock will replace one that was there before. A rain garden with mixed plantings will accept stormwater runoff. A pole structure is proposed for shelter from the sun and storms, and will have no walls other than a possible trellis for plantings. A stone drip edge will convey runoff to the rain garden. A two foot berm will be built to reduce vehicle noise from Route 10. It will be about 5 feet wide with low plantings to avoid interfering with sight distance and views of the pond from the road. There will be no change in the footprint of the cabin.

Walter said that his main question is whether the proposed changes will exceed the 1000sf allowable expansion in a conservation district. He estimated the changes at 1440 sf. Ross recalled a prior case involving the lodge that dealt with increased lot coverage, which was an issue due to the wetlands and other conservation district overlays on the site. Francesca attempted to find records of such a previous decision and was unable to. Liz Cole called Judy Barker, who recalled a much earlier decision regarding a fire escape, which she said they did not build because of aesthetic concerns.

Deliberations: Margot asked if all the proposed items should be considered separately. Walter reviewed them. He thought the piers could be addressed by special exception because they offered no change in footprint. The dock is a replacement in kind, and there are no area implications. The board should have no interest in the berm if the state accepts the proposal. The swale has no area implications and the Conservation Commission has looked at and agreed with the plans. The wall can be ignored because it is a replacement in kind. Walter concluded that the pole structure and beach were the only major issues. Jane said she thought it would be unfair to count the new beach as a structure when the previous beach was made unusable by town actions regarding the water level. Walter said it could not be ignored. Ross said that the sand is permeable and that the wall at the pond edge didn't need to be counted because it is a replacement. He recommended exempting the beach, observing that the situation is clearly a hardship to people trying to run a vacation spot. He added that the lot coverage calculations are not available to the board, nor is information that would allow the board to make that calculation. He suggested counting only the 480 sf of the pole structure as the intrusion into the shoreland conservation district. Walter suggested tabling the decision and searching the files. Ross said that he thought the plan made sense for the area in question, especially because 480sf is insignificant compared to the number of structures on the property. If the applicant comes back for more construction, the issue could come up again, however.

Walter moved to grant a special exception for construction of an open air structure on the location indicated in the Proposed Conditions Site Plan provided by CLD Consulting Engineers dated September 2008 submitted with the application, with the following:

FINDINGS OF FACT:

- The current request is for repair of existing piers with no net increase in footprint, replacement of a 6 x 30' foot dock with no increase in footprint, construction of a grassed swale, repair of existing retaining walls on 200 feet of shoreline, and an 890 sf perched beach along the shore.
- The repair of piers, replacement of dock, construction of berm and swale, and repair of existing retaining walls all result in no net change in lot coverage or footprint and are permitted under the zoning ordinance section 4.63B4.
- The 480sf building is allowed by special exception under section 8.23, which allows up to 1000 sf of additional lot coverage to pre-zoning conditions in a conservation district.
- The board discussed the 890 sf beach along Post Pond and grants a special exception under 4.63B4 because it is an alteration of the natural surface by excavation and fill.
- The entire area west of Route 10 is in the Shoreland Conservation District. All property changes here require a special exception.
- The board reviewed the issue of whether the beach is a structure and determined that because the beach will result in increased permeability compared to soil, it should not be considered a structure.
- No abutters raised objections.
- The applicant has made the necessary applications to the state.
- A balance of 520sf remains for future expansion in the Shoreland Conservation District.
- Future changes in lot coverage would require detailed review of lot coverage on the property especially with regard to conservation districts.

CONDITIONS

- All state approvals will be received.
- Best management practices will be used in accordance with the drawings.
- The applicant will follow all mitigating procedures during construction, as recommended by the Conservation Commission.

Margot seconded the motion and it passed unanimously.

8:20, Application # 2008-ZB-069, Tyler Rich (Tax Map 421, Lot 18) 50 Old Dorchester Road. Appeal of an administrative decision to deny a zoning permit for construction of a house and driveway on a Class VI road. The applicant is requesting a special exception as a Vacant Lot under Section 8.31 of the zoning ordinance, for the lot to be used for a single dwelling. The applicant is obtaining an easement for access to a Class V road through Tax Map 421 Lots 7 and 10.

Three letters have been received from abutters, two in support of the project and one expressing traffic and noise concerns. The following will be required in order to issue a building permit:

1. A curb cut permit for the driveway;

2. Detailed plans for the house and any accessory structures, including dimensions and location, setbacks and square footage of the building footprint, gross floor area, lot coverage and the location of any conservation districts;
3. A plan showing location, length and a construction sequence for the driveway; and
4. Copies of recorded deeds showing ownership of Lot 18 and the access easement to Dorchester Road through Lot 10.

Jane recused herself, noting she is an abutter to an abutter of this property. Ross explained that Tyler is entitled to a five member board, and that only three members are present. Tyler said he wished to go ahead, and distributed copies of a description of the house. Walter asked about a garage. Tyler said he hoped to have one eventually but that would depend upon the board's decision. Walter asked about the setback if the property is not on a Class V or better road, and concluded that there wasn't one, and that because the proposed house site is 200 feet from Old Dorchester Road, it was irrelevant. Ross asked about wetlands. Tyler said there are some, but not near the house. Wayne Pike said that there are some about 1000 feet away near the snowmobile trail. Walter asked about other conservation districts, including agricultural soils. Francesca did not know.

Brian Rich indicated the proposed location of the house. He said he had called the author of the letter expressing concern about truck traffic, and assured him that Tyler has arranged for a shop closer to town where he will store equipment. He later confirmed for Jane Fant, who inquired as a member of the public, that Tyler has rented space from Wayne Pike on lower Pinnacle Road.

The board viewed the mylar map of conservation districts and determined that there are ag soils on the property. Ross noted that the board does not have a breakdown of the quality (national, state, local significance) of the ag soils, and that the applicant is allowed to work within a 200 foot radius if a building exists, but none yet does. Because there are over 100 acres on the lot, the building footprint is legal, but the ordinance requires a special exception for a single dwelling on agricultural soils and a zoning easement on 75% of the remaining agricultural soils for the whole lot. He explained that the idea behind this is to set aside good productive soils should the town need it for agriculture in the future. Adair noted that the updated NRCS soil surveys for Grafton County are now available. Francesca said that there is a problem of scale. Ross said that if the applicant accepts the NRCS maps, this information can be used, or he can hire a soil scientist to map them on the property. Walter noted that the easement becomes a requirement if Tyler plans to build a house on ag soils or cross them with a driveway. Jodie Rich pointed out that there is a pre-existing roadway there, which Ross said could be grandfathered if the new drive is put in the same location. He observed that the lot is vacant and was created long before zoning. Jodie said that Everett Rich purchased it from the town in a tax sale in 1946.

Ross added that if the road was a Class V road, the lot would have extensive road frontage, but a Class VI road does not qualify as a road so the lot has no road frontage as described by the regulations. He consulted section 8.31 which says that a vacant lot can be used for a single dwelling but must have road frontage or a driveway that is shown on a subdivision plan approved by the Planning Board prior to 1989. He said that this part of the ordinance is intended to make it hard to develop back lots. Wayne pointed out that the Old Dorchester Road was abandoned in 1938 when loggers built the new road to get hurricane lumber out to the pond, and the town liked it better than the old route. Walter said that the property as defined in 1938 was on a Class V road if the property is the same as it was then. He thought this opened up the possibility of an equitable waiver. Ross asked if the Old Dorchester Road had ever been thrown up to gates and bars. Jodie said she had consulted Dick Jones' book and said no. Ross said he thought that unless the town voted to throw up this Class V road and make it subject to gates and bars, it might still be legally considered a Class V road, but thought that advice from the town attorney was warranted.

Wayne noted that there are 7-8 other lots on this road that also have no access. Jane, asking as a member of the public, asked whether the lot could be further developed in the future if it is determined to have road frontage. Walter said the board must be careful not to establish such precedent for other such roads in town.

Deliberations: Ross said that the applicant needs to get ag soil information and discuss easement possibilities with the town or other parties. He thought the board should indicate its intent to proceed with an equitable waiver or variance and should also consult the town attorney. Walter agreed and asked if the board could do a waiver or variance without taking a position on the road. He reviewed variance criteria and suggested that one could be issued. Ross said that especially since the substantial agricultural soils likely to be found on the property will lead to an easement that will essentially tie up the property, that this will guarantee that further development will be in keeping with the intent of the ordinance. He advised tabling the application until the soil information can be obtained, and advised Tyler that he should return with a plan for the property that includes the siting of the driveway and house and the design, elevation, and length of the drive. He should also bring a draft of a conservation easement.

Out of Deliberations: Jodie asked if a right of way off new Dorchester Road was still needed. Francesca said she cannot issue a building permit unless a drive is off a Class V road or the selectmen hold a public hearing and it is agreed that the town will provide no services to the property. Wayne asked whether there would still be a problem if the town didn't vote to throw up the old road. Ross said that it would depend upon the attorney's advice, and added that if there is a driveway easement on the property, problems are eliminated. Brian said that he thought it would be better for the neighbors if a new drive is put in. Ross observed that it would be best if Lot 10 does not have agricultural soils, and advised that the plan show distances to lot lines. Wayne asked if the design for the driveway requires an engineer. Ross said no, that it could be paced off, or better yet, measured with GPS. The board voted to table the discussion to the next meeting on November 20 at 8:40 pm, on a motion by Ross seconded by Margot.

Meeting adjourned 9:55 pm.
Respectfully submitted,
Adair Mulligan, Recorder