

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – December 18, 2008

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

Alternate members: Absent: Jane Fant, Margot Maddock

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

Public: Rod Finley, Brian Rich, Jodie Rich, Tyler Rich, Jamie Taylor, Wayne Pike

Chairman Greatorex called the meeting to order at 7:54 PM

Application # 2008-ZB-069, Tyler Rich (Tax Map 421, Lot 18) 50 Old Dorchester Road.

This is a continued hearing on an 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 ZBA has requested additional information on agricultural soils on the site. Rod Finley, the applicant's agent, has provided a letter and test pit information describing the site investigation of soils done by Tim McCormick, NH Certified Soil Scientist, at Tyler Rich's proposed house site. It states that "This investigation confirmed that the soils mapped as Becket-Skerry association 701 B in the vicinity of the proposed house site are as depicted on the Grafton County Soils Maps by Natural Resources Conservation Service County Soils Maps, considered 'local agricultural soils' according to the Lyme Zoning Ordinance." The applicant is requesting a variance from the provisions of Section 4.64:B in accordance with Section 10.50 of the Zoning Ordinance, to allow the house and driveway to be located within the Lyme Agricultural Soils Conservation District without a permanent conservation easement over the remaining agricultural soils outside the building and driveway footprint. In the event that the ZBA does not grant this variance request, the applicant requests consideration of a special exception under section 4.64 to allow the proposed development.

Rod described the findings on the site. There is a small strip about 100-200 feet wide that is not agricultural soil but is the rough transition between steep and gentler slopes that has some inclusions of agricultural soil. He concludes that building there would cause more disturbance of conservation districts than elsewhere. Test pits at the house site have turned up agricultural soils of local importance, as portrayed on the town's map. Rod contended that he considers the requirement for a conservation easement here to be a hardship because of the expense involved. He said that the deed would have to be revised, and a survey map developed that would be of sufficient quality to be recordable at Grafton County. The lot is not part of a subdivision but only one lot, and is also not subdividable under the Zoning Ordinance. The extent of agricultural soils is about 50 acres, which would require an easement on 37 acres, leaving the rest developable under the ordinance but the ordinance already restricts the development to a much smaller area. Therefore, the applicant is asking for a variance, believing it does not make sense to place a conservation easement on an area that is already restricted.

Ross asked if the current deed uses a description from previous deeds, and whether there was a survey. Brian Rich said that it is old deed language, and that there is no survey, although an abutter has surveyed his land and the location of Old Dorchester Road is known. Ross asked for a ballpark cost of a survey. Rod said it would be several thousand dollars because it is a large lot (105 acres), and that there is no way to develop the lot further. Ross said that the issue is that the ordinance calls for a conservation easement to protect 75% of agricultural soil, and asked if only part of the lot is this soil, whether an easement is needed. The issue is describing the current agricultural soil. An overlay, sketch, and statement of a soil scientist are all now available but are not site specific. The town's goal is to ensure agricultural soil protection, and the issue is that the quality and accuracy of the description would not be settled by a boundary line survey.

Deliberations: Walter said that the ordinance allows development in agricultural soils within a 200 foot radius of a building site. He suggested that the way to develop is to have a survey identify this 200 foot radius and say that all the rest is in a conservation easement, which does not require surveying the whole lot. Ross said that the board cannot anticipate how regulations might change in the future that would allow the property to be subdivided. He said the goal should be to adhere to the intent of the ordinance. He agreed with Walter's suggested compromise. Frank asked where the septic field would go.

Exit Deliberations: Alan asked if it would be possible to do a survey of a boundary line and locate a building footprint within 100 feet or less, putting the rest in a conservation easement, once allowance is made for a well, septic system, and house. Rod said that he was not sure whether this would be allowable as a recordable survey.

Walter asked if it would be an acceptable solution to the applicant. Brian and Tyler said it would, since there is no other intended purpose for the land. Rod said that the soils look good for a septic system close to the house, and he sees no constraints. Jodie asked if there would be room to expand a garage. Frank said that if five acres are excluded from the easement, there should be plenty of room. Alan asked whether the property would be used for Tyler's business. Tyler said no. Frank noted that in Mud Season and other times of soft conditions, it would be very difficult for Tyler to bring his trucks up the long unpaved section of Dorchester Road. Rod thought that the whole property would have to be surveyed. Frank said that based on his experience it would cost about \$5000, which he considered a hardship.

Deliberations: Ross said he could see granting an easement to the town for all but five acres, but was not sure that the town would accept this as evidence that the land is conserved, or whether such a situation would be recordable. He said that the proper way to do it would be to get the lot surveyed, identify a house location, and get the survey stamped. He said this is expensive, but may be the best route. The agricultural soils would not need to be surveyed. Walter suggested stipulating a condition on the building permit that it loosely meets the requirement of the ordinance. Ross said that a conservation easement that is not monitored is not worth the name. Monitors need to know where the bounds are, although he suggested that the town might be less insistent upon detail than a conservation organization. Frank suggested that the survey cover only the easy place, the square of land for the development, and that pins be set.

Exit Deliberations: Francesca said that she has looked at agricultural easements and has learned from Lee Larson, who does much of the conservation easement monitoring in Lyme, that only the conservation easements are monitored, not the town's agricultural soil easements. There is also language in those easements that allows modification if zoning changes. Ross said that when an easement is put on a property in perpetuity, it can change the value of the property depending upon the market and other factors, and may result in a tax benefit that could more than outweigh the cost of a survey. Adair noted that a conservation organization also requires cash to supply a stewardship fund and cover appraisal and other costs, which can be significant.

Frank said that the deed's metes and bounds would suffice for the boundary description, with a survey around the house site that is tied to a known point on the perimeter, such as Old Dorchester Road. Alan said that there is a question whether the town would accept it and whether a surveyor would stamp it. George said that the selectmen would have to accept the easement on behalf of the town.

Deliberations: Ross said he is against issuing a variance for the conservation easement because the town has significant large tracts of agricultural soils near main roads that are subject to development, and he believes the board must enforce this provision so that there will not be a question when these properties are proposed for development. Walter agreed.

Ross moved to approve a special exception under section 4.64B and a variance under section 8.31C with the following findings of fact:

- Tyler Rich is the owner of the vacant lot defined under section 8.31
- He wishes to build a single dwelling on the lot of about 105 acres.
- The applicant has obtained an easement for access to a Class V road through Lots 7 and 10, Map 421.
- The current drive passes over agricultural soils on these lots.
- A special exception under section 4.64B7 is required to use agricultural soils for a drive.
- Because access is to a Class V town road only via easement, this requires a variance to complete the drive to the Class V road because it does not meet the requirements of section 8.31C.
- The applicant proposes building a dwelling on agricultural soils of local importance, which are estimated to cover approximately 50 acres on the property.
- The applicant is required by section 4.64B to set aside 75% of these agricultural soils and protect them with a zoning easement prohibiting all but agriculture using best management practices, forestry and tree farming using best management practices, wildlife refuges, parks and outdoor recreation uses, conservation areas and nature trails, structures accessory to these uses, underground utility lines, wells, and waterlines, and fire protection structures approved by the Planning Board. The applicant has indicated acceptance of this provision.
- After considering the expense of defining the location of the agricultural soils and designating specific areas to protect, the Zoning Board of Adjustment grants approval to develop a house site and surrounding five acres to use for a dwelling and accessory buildings, marked with permanent boundary monuments, with the remainder protected under easement.
- A variance is granted to construct the access, since the proposed use will not diminish surrounding property values, granting the variance will not be contrary to the public interest, the use will not be contrary to the spirit and intent of the ordinance, granting the variance will allow substantial justice to be done, and denial of the variance would result in unnecessary hardship to the owner.
- Two abutters have testified in favor of the application, one with concerns about business use which will not occur.

Conditions:

- The easement is accepted by the town or a conservation organization.
- The applicant will not develop the property for business use. The property is inappropriate for this use because of the nature of access from a Class V road.
- Best construction practices will be used.
- An appropriate septic design will be approved.

Frank seconded the motion and it passed unanimously. Frank moved to deny the request for a variance from 4.64B for the conservation easement, in light of the previous motion. Walter seconded this motion and it passed unanimously.

Minutes of November 20, 2008 were approved after minor editing on a motion by George seconded by Frank.

Meeting adjourned 9:15 pm.
Respectfully submitted,
Adair Mulligan, Recorder