

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes –April 16, 2009

Board Members: Present - Alan Greatorex, Chair; Ross McIntyre, Vice Chair; George Hartmann, Frank Bowles

Absent: Walter Swift

Alternate Members: Present – Margot Maddock, Jane Fant

Staff: Dave Robbins, Planning & Zoning Administrator; Adair Mulligan, recorder

Public: Scott and Elizabeth Bailey, Ben Kilham, Simon Carr, Rod Finley, Mike McCrory, Paul Merguerian, Charlie Hirshberg, Erin Neilson

Minutes: The minutes of March 19, 2009 were amended and approved on a motion by Ross McIntyre, seconded by Alan Greatorex. The minutes of the April 11 site visit were approved on a motion by Frank, seconded by Margot, with the addition of soils information provided by David Robbins.

Application #2009-ZB-07, Scott Bailey (Tax Map 402, Lot 49) 16 Shoestrap Road in the Rural District.

Hearing on appeal of administrative decision to deny a building permit to build a 28 X 36 single family dwelling on the edge of the Steep Slopes Conservation District and the Agricultural Soils Conservation district. Request Variance under Section 10.50 of the Zoning Ordinance. Alan appointed Margot to sit as a regular member for this hearing.

Frank said that the soils looked more dry and cobbly than he had expected. Alan read Walter Swift's observations that had been addressed to the Zoning Board, as follows:

Dwelling: Several measurements were taken during the site visit, including inclinometer readings down the slope from the location of the proposed dwelling. The inclinometer reading over a distance of 100' was between 15% and 20%. This indicates that the location of the dwelling cannot be in the steep slopes district and is also not in the Agricultural Soils district. Supporting evidence was given by the measured depth of an auger at the dwelling site that indicated 23" soil depth at a location where 6" – 12" of soil had been removed. This measurement places the soil type outside the definition of 360C Cardigan-Kearsarge Complex. While I believe that it is inappropriate for the ZBA to act in determination of soils (displacing the qualifications of a certified soil scientist), in this case, I believe the evidence to be so clear that I recommend that the ZBA find as a Fact that the house location is outside the Agricultural Soils Conservation District. In my opinion, neither a variance nor a special exception is required for a building permit for the house.

Driveway: Testimony was given that the proposed drive is an existing fire road that predates zoning. It has also been used to provide access to the adjacent farmed field. Section 4.64.B.7. permits access ways by Special Exception if they meet the requirements of 4.53 (my visual observation indicates that these requirements are met: <1000', <11%). Treating the proposed dwelling (after completion) as an existing building would allow the driveway by Special Exception under this article. Section 8.24 allows construction of accessory structures within the conservation districts if they cannot be reasonably located outside this district. It seems clear to me that the driveway crosses agricultural soils, briefly, and that it cannot be reasonably located elsewhere – so by either criterion, the test of the Zoning Ordinance is met, and the drive should be granted as a special exception.

Leach Field: The proposed location of the leach field should be considered as being within the bounds of the definition of the Agricultural Soils Conservation District (because the slope is less than 15%). I would argue that where we can be definitive about the dwelling location, we should be uncomfortable extending our "expertise" to the cursory look give to the leach field location. Section 8.24 allows construction of an accessory structure (the leach field) within conservation districts if they cannot be reasonably located outside the district. In my judgment, there is no reasonable alternative to the proposed location, and

therefore it meets the test of the Zoning Ordinance for granting a special exception. (end of Walter's observations).

Ross reported that he had visited the site separately, and asked about possible fill. Scott Bailey said that Morty had used the site to dump fill, and that he has dumped ditch cleanings there. He said he agreed with Walter Swift and that there is enough extra fill on the site so that it is no longer agricultural soil. Margot asked whether a special exception is needed for a fire road that was installed before zoning. Alan said he thought a driveway would be somewhat wider.

Deliberations: Ross said he thought it prudent to give a special exception for the driveway even if it is not absolutely necessary. Members agreed with Walter's conclusions on the building location given what they now know. Frank said that, after discussion, the board concurred with Walter's assessment that neither a variance nor a special exception is needed for the building because the site investigation provided additional data. He moved to grant a special exception for the driveway crossing under section 4.64, and to grant a special exception under section 8.24 for the leach field, with the following findings of fact:

- The house location is outside the Agricultural Soils Conservation District due to the steeper slope than that specified for the Cardigan-Kearsarge Complex and the depth to bedrock is significantly greater than that depth listed for the Cardigan-Kearsarge Complex. Thus the Board finds that there would be no need grant either a special exception or a variance for the house.
- The driveway will follow an existing fire road in an area heavily impacted by the addition of spoils over the years.
- The road greatly pre-dates zoning.
- The road does cross an area of agricultural soils, so a special exception is required.
- The leach field requires a special exception due to its location as an accessory structure in the agricultural soils conservation district.
- The leach field is associated with the building and there is no reasonable alternative to the proposed location.
- The soils overlay indicates that the area is agricultural soil but site inspection indicates that the soil types are not actually those indicated on the overlay. Observations include that the soil depth and slope do not conform to the definitions of a soil of local agricultural importance.
- Abutters support the project.

Conditions include:

- Best construction practices will be used, including management practices for sedimentation and erosion control.
- Spoils will be carefully used and will not be placed in the ravine.

Ross seconded the motion and it passed unanimously. George abstained, explaining that he had not visited the site.

Application #2009-ZB-09, Paul Merguerian and Christine Mielke (Tax Map 401, Lot 40) Goose Pond Road in the Rural District.

Application for special exception. The applicants are proposing to build a driveway that would cross both an area in the Wetlands Conservation District and Agricultural Soils Conservation District. The property is located on Goose Pond Road just east of the intersection of Goose Pond Road and Rennie Road.

David Robbins explained that Hanover abutters had not been notified of the present meeting, and that when the Hanover Planning Board issued permission for a lot line adjustment, it did not notify Lyme residents, so that decision is considered null, and no action can be taken at the present Lyme meeting. He does not believe that the two towns' planning boards need to hold a joint meeting, and suggested that Hanover should send Lyme a letter when the project is reconsidered, and that he will ask the Lyme Planning Board to respond. He will check with counsel on this approach. Alan added that for the next ZBA hearing on the project, the town will re-notify all abutters. He said he could not find on-line the minutes for the Hanover meeting where the lot line adjustment was described, and hoped they would be available. Alan said he appreciated the Conservation Commission's opinion that the proposed drive location is the least impacting alternative. Rod said that Hanover can consider the Lyme CC's comments. Ross said that the Lyme ZBA can decide on the project at the next meeting, and will make it conditional on Planning Board approval.

Ross asked for a description of the project so that any potential problems could be identified in advance. Dr. Merguerian asked for an expedited treatment of the project. Rod Finley presented a color site plan and reported that he had met with an abutter across Goose Pond Road, who was pleased with the location. The drive would cross both agricultural soil and the wetland buffer. A special exception is requested for both. The lot in question is currently owned by Michael and Donna Lawless. Their abutting home lot, fronting on Rennie Road, is proposed to be increased from 2.3 to 3.3 acres in order to conform to Hanover's requirement for a minimum lot size of 3 acres. Alan asked whether horse trailers would use the drive and advised that the radius of the drive be designed to accommodate them. Rod said he would design it that way. It is a 14' wide drive. Dr. Merguerian said that the horses would be for personal use and would be towed in a two-horse trailer behind an SUV.

Ross asked if the applicant is aware of the Conservation Commission's letter and its advice regarding management of horses in wet areas and near the stream. Rod said he is. Ross said that there was an Arabian horse farm in Lyme that had a very significant impact on water quality in Post Pond. Dr. Merguerian said that he would manage the pasture with real fencing around the stream. George noted that the stream is on the Hanover side of the property, and that the project is well documented.

Application #2009-ZB-10, Loch Lyme Lodge (Tax Map 408, Lot 22), 70 Orford Road in the Rural District.

Application for Special Exception and or Variance for septic reconstruction and building 6'X6' bathhouse. Proposed construction would impact the Shoreland Conservation District, Flood Prone Conservation District, Agricultural Soils Conservation District, Wetlands Conservation District and the Steep Slopes Conservation District. The proposed construction will also necessitate a special exception from the property line setback requirements. Alan asked Jane Fant to serve as a regular member.

Charlie Hirshberg described the project with a full sized, colored plan. Based on DES calculations, he anticipates that the whole facility will generate 9,110 gallons per day requiring treatment. The Lodge ultimately wants to replace the entire system, since presently some of the cabins are served only by dry wells and cesspools, some of which are located in the water table. The present system would not pass inspection today. These are pumped out often, especially in a wet year. The Lodge proposes replacing all septic facilities. The main house functions as a restaurant, and there are 22 cabins, 8 without kitchens and 14 with them. The project would likely be done in two phases, beginning with a system to serve the inn, staff cabin, barn, and three cabins near Post Pond. This system would be for 3900 gpd, with a 1500 foot feed up the slope to one leach field. Charlie noted that the inn is having trouble with a grease trap, and wishes to cease pumping tanks by cabins near the pond. The phasing is also to avoid cash flow problems. There will be two approvals from DES, one for each phase, because of the way DES' inspection program is set up.

Charlie continued that on site investigation, he found a bench of granular material along the hillside, so the leach fields can be in the ground, rather than raised systems. A sloped Enviro Septic system would be used. He wants to get firmer data on flow, and may not need the full second phase. The Lodge is looking at installing low flow devices. He added that plans for a future structure on the property are not part of this project, and that it is to serve only what is on the property now. Lines from the seasonal cabins to septic tanks will not be buried below frost. The lines to the three lakeside cabins will be set up to be blown out at the end of the season. The Lodge hopes to extend its season into October.

Charlie noted that the plan includes all state and local setbacks. The leach beds are in Lyme's Steep Slopes District. The project is also in the 100' wetland setback area because most of the property is in this area. He said he filed for both a special exception and a variance because the septic tanks are to be considered structures, and collectively they add up to over 1000sf. Ross pointed out that they do not count toward lot coverage. Frank asked if the pump chamber would be accessible in winter. Charlie said it would, and that it would be a large chamber. A portable generator would be available to supply power in case of an outage.

Ross referred to the previous permit approval for the property that indicates 520 sf remaining for expansion in the shoreland conservation district. The project proposes using 36 sf for the bathhouse.

Deliberations: Ross recommended regarding the septic project as a replacement of a partially or fully failed system, especially in the context of higher water levels in Post Pond that have caused the wetland to expand, further compromising the leach fields. George, Alan, and Frank said they thought the system should be considered in complete failure. While improved sanitation might result in increased use of the

buildings over time, this is not necessarily a ZBA issue. Ross said that the project is a necessary improvement. Section 8.26 allows replacement of failed septic systems. He agreed that adding a bathhouse toilet near the pond is a good practice and suggested it should be bigger to accommodate ADA access. Charlie said it might be added to an existing storage shed. Alan said that the proposed location of the leach fields is on the best soil for such use.

Ross moved to grant a variance to Loch Lyme Lodge, Inc. with the following findings of fact:

- The Lodge has applied for replacement of a sanitary sewer, 1500' pump system, and leach field to serve the buildings on the property.
- The leach fields are located outside the conservation districts, remote from the streams and Post Pond.
- Despite the leach fields' location in the steep slopes, they are in soils that are ideal for the purpose.
- The applicant proposes to use Enviro Septic systems designed for such slopes and function satisfactorily.
- The siting of the leach field is not allowed by special exception, and a variance is appropriate for this purpose.
- The site chosen is the best site on the property for leach fields, and any other portions of the property would be less satisfactory for the life span and function of the system, and would create an economic hardship if other methods were applied.
- There is no evidence that the use will diminish surrounding property values.
- Granting the variance is not contrary to the public interest.
- The use is not contrary to the spirit and intent of the ordinance.
- By granting the variance, substantial justice will be done.
- Denial of the variance would result in unnecessary hardship to the owner.
- The applicant requests a special exception from section 8.24 to build a bathhouse/toilet in a small lakeside building, in the Shoreland Conservation District.
- Evidence indicates that a portajohn has been used in this location, and the bathhouse is viewed as a considerable improvement that will reduce pedestrian traffic across Route 10.
- The square footage of the proposed structure should be adjusted to conform to ADA requirements. The building may or may not be attached to a shed, and is not to exceed 100sf.
- The applicant was allowed an additional 520 sf of intrusion into the Shoreland Conservation district, and if the full 100sf is used, 420 sf will remain for future expansion.
- The applicant has testified that the first phase will serve the three lakeside cabins, the main house, staff house, and barn, and that, as appropriate, the remaining habitable structures on the plan will be connected in a phased manner.
- A revised attachment narrative with changed figures for temporary wetland impacts, dated 4/16/09, has been provided by the applicant.
- No change in use will occur as a result.
- No abutters have commented on the application.

Conditions:

- The applicant should document how much square footage was used for the bathhouse.
- Construction will occur according to the outline presented and the plan of 080281 of CLD Consulting Engineers.
- DES approval must be obtained.
- Best management practices to control siltation and erosion will be used, with special attention to trench lines, and avoiding wetlands wherever possible.
- DOT approval for boring under Route 10, if necessary, must be obtained.

Frank seconded the motion, and it was unanimously approved. Simon Carr noted that if the entire project is not built within the one year period allowed by the building permit, the permit may be extended annually for a cost of \$15 for an unlimited number of times to accommodate future construction, provided that the permit is renewed within the period covered by the permit.

Alan asked how many buildings can be built on one parcel. Ross said that one dwelling, an accessory structure, and if a farm, farm buildings can be built. He added that Loch Lyme Lodge's arrangement could not be built under the Zoning Ordinance.

Meeting adjourned 9:50 pm

Respectfully submitted,
Adair Mulligan, Recorder