

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes –May 21, 2009

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

Absent: Walter Swift

Alternate Members: Present – Margot Maddock

Absent: Jane Fant

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

Public: Rod Finley, Mike McCrory, Paul Merguerian, Dorothy Syme, Duncan Syme, Roy Hewes, Elsie McCarthy, Jonathan and Monica Masland, Tom Goodrich

Chairman Greatorex appointed Margot Maddock to serve as a regular member.

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

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

Alan Greatorex noted that at the last meeting, which had not been properly noticed, the board had asked questions of the applicant but had not proceeded with any negotiation or decisions, so the current meeting is not considered a continuance.

Rod Finley displayed the March 25 plan for the project and related the history of the various board appearances. He had met with the Hanover Conservation Commission for a site visit and meeting, and the Hanover CC supports the project. He met with the Lyme Conservation Commission for a site visit; the Lyme CC has provided a letter of support with recommended conditions. He noted that the Hanover lot line adjustment was not properly noticed since Lyme landowners were not alerted, and went back to the Hanover Planning Board for a rehearing on May 5. David Robbins noted that by state law, the Lyme Planning Board has to approve this lot line adjustment, and it will be heard later in the month. The application will then go back to the Hanover Planning Board. The lot line adjustment affected only the Hanover part of the property.

Rod continued that the applicant is requesting two special exceptions, to cross agricultural soils and to work within the wetlands conservation district. A residence, stable for horses for personal use, and a compost facility are proposed. A tributary of Hewes Brook passes along the property. Wetlands have been identified by a soil scientist. The proposed drive is located at a high spot on Goose Pond Road for sight distance, and the neighbor is satisfied. The first 100-125' of the drive are in Lyme. The drive will be slightly elevated. Rod said that an application is being filed with NH DES for the wetland crossing and that the drive will be designed to provide hydrologic connectivity on both sides of the wetland. Rod noted that the property along Rennie Road is much steeper, and any access from the Hanover side would require crossing the brook. Alternative entries were examined and both conservation commissions agreed that the proposed access is the best. Alan noted that frost will penetrate deeper under the drive and asked if this is likely to affect hydrology. Rod said that crushed stone will be used. He will see if a geotextile is needed when site work begins.

Elsie McCarthy asked what the property address would be for this Hanover house accessed from Lyme. David said that services would be provided by Hanover. Elsie said she has watched the two brooks for 43 years, living at their confluence, and said that development has an affect on their flow. Rod said that most of the development will be outside the 125' buffer. A condition of Hanover approval is to leave wetland buffers undisturbed and unmowed.

Roy Hewes said that there is a dry brook bed near the house site that is wet at high water. He has seen it this way four times in his lifetime. Frank said this will increase with climate change. Duncan Syme asked what vegetation is planned west of the structures. Rod said that the open field will be left for the horses. Dr. Merguerian said that he plans gardens and some lawn but no trees. Duncan Syme said that the area is fragile and that the project will have significant impact on the flat fields that could affect water

movement. He displayed a photo of water standing outside the 100 year floodplain. Alan noted that the part of the drive located in Lyme is located in the wetland buffer, but not in a wetland. Duncan Syme said that a frost dam could create a backflow and threaten Goose Pond Road. He said he opposes the project. Frank said that a professional engineer could design a good road underpinning to handle the situation.

Alan noted that all the issues covered in the minutes of April 16 had been covered in the discussion. Ross confirmed that at the last meeting, the board sought information but had intended to take no action. The minutes of April 16, 2009 were approved on a motion by Ross McIntyre, seconded by Frank Bowles.

- Deliberations: Margot read the Lyme Conservation Commission's letter regarding the riparian buffer of the brook. George noted that all the major issues are located on the Hanover side of the property, and that Hanover should take the lead in addressing issues raised by an abutter. Alan read the Hanover ZBA decision that approved the project. Ross observed that if the issues on the land south of the Lyme town line are ignored, the decision is simple, but that in case of a future flood, neighbors will attribute it to this development. He noted that Hanover has approved the project and that Lyme should not veto it by denying a special exception. George and Frank agreed. He advised including the Lyme Conservation Commission's conditions. Frank advised care on engineering to be sure that water is not diverted.

Alan moved to grant a special exception under section 4.61 to permit an access way that meets the conditions of Section 4.53, Driveways. The driveway must be constructed as currently represented in the overall site plan prepared by Pathways Consulting dated 3/25/09 in order to meet the provisions of 4.53 (ie, for driveways over 1000' long, there must be a provision for allowing emergency vehicles to pass at 1000' intervals.) Under section 4.64, Agricultural Soils Conservation District, the ZBA can grant a special exception to permit an access way that meets the conditions of Section 4.53, Driveways. Under section 4.61, a special exception can only be permitted after the Lyme Conservation Commission has reviewed and commented on the application specifics. The Lyme CC concurs that the proposed location is the most logical given that the two other options included crossing another lot, for which permission was not granted, and crossing a major tributary of Hewes Brook, which would create much greater wetland impacts. The Hanover ZBA has approved the project. Members of the public came to the Lyme ZBA with concerns about the possibility of future flooding, two from Hanover and two from Lyme.

Conditions include: best construction practices to prevent pollution and sedimentation will be followed. A curb cut will be obtained from the Road Agent that is the best point along that part of Goose Pond Road with the best lines of sight for the safest entrance. No other development may occur on the Lyme portion of the lot. The project must incorporate the Lyme Conservation Commission's request that the fencing be relocated to a distance of at least 25 if not 50 feet from the top of the bank, to allow a buffer of native woody vegetation to grow back along the banks on both sides of the brook. Frank seconded the motion and it was unanimously approved.

Application #2009-ZB-22, Jonathan Masland (Tax Map 414, Lot 6) 39 Pout Pond Lane in the Rural District.

Mr. Masland is requesting a variance to section 4.64 of the Lyme Zoning Ordinance, Agricultural Soils Conservation District. Mr. Masland proposes to build a house on his property on Pout Pond Lane. The proposed house and septic site as well as part of the driveway are located in the Agricultural Soils Conservation District.

David Robbins said that when the Maslands purchased the property in 2006, they came to Zoning Administrator Vickie Davis to ask about restrictions on the property, and were told only about wetlands issues. They then went to the ZBA and got a special exception for the driveway. When they returned to speak with David, they learned there were agricultural soils on the property. A septic system was permitted in 2006. David noted that the system must be built within the next 1 ½ years before the permit expires. The special exception limits the drive to 1000 feet, terminating it on the part of the lot covered by agricultural soils. Tom Goodrich, an abutter, said he supports the project.

Deliberations: George said that with the previous approvals, the prior board has essentially said that the lot is buildable and directs where. He said that the current board would do the right thing if it approves a variance. Ross noted that the apparent location of the development would result in impairing the minimum amount of agricultural use. David noted that if a special exception were to

be considered, reducing the lot by 75% would result in a developable lot of under 1 acre, under the legal minimum size. Ross noted that the lot cannot be subdivided and that there are limits on the building size, so he would accept a variance because of the unique circumstance of the lot and the location of the agricultural soils. Alan agreed the situation is unique.

Ross moved to grant a variance to construct a residence on Lot 6, Map 414 on a 6.4 acre property in the Rural District. Findings of fact include:

Previously, the applicant received ZBA approval for a drive in the access corridor, and met the requirements to cross wetlands. That approval was for a drive under 1000' long. Subsequently, the applicant was informed that the property had agricultural soils of local importance that encompassed the house site and test pit areas. Because it is impossible to construct a dwelling on a 1000' drive on the non-agricultural soils portion, it is appropriate given the satisfaction of the necessary requirements for a variance that the house be built on agricultural soils, located to do the least disruption (at the south end of the main lot) to agricultural soils. The lot is part of an approved subdivision of the Planning Board so it does not require the minimum amount of road frontage. The board has considered the possibility of granting a special exception so the applicant could build on agricultural soils but this would require no more than 25 % of such soils developed, but calculations on that basis reveal that the lot coverage is too small for a house, drive, and septic system in this location so it is not appropriate to grant a special exception. Therefore the board has chosen to issue a variance to result in adequate lot size. The variance is issued under section 10.50. The project is supported by an abutter, and no other public comment was received. A curb cut permit and septic permit have been received. 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. By granting the variance, substantial justice will be done, since the applicant purchased the lot with the understanding that it was a buildable lot. Denial of the variance would result in unnecessary hardship to the owner.

Conditions: best construction management practices will be used. The septic system and house will be located as indicated on the application. The drive will be located on the west side of the road frontage.

George seconded the motion and it passed unanimously.

Meeting adjourned 9:10 pm

Respectfully submitted,
Adair Mulligan, Recorder