

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes –June 18th, 2009

Board Members: Present - Alan Greatorex, Chair; George Hartmann, Frank Bowles, Walter Swift

Absent: Ross McIntyre, Vice Chair;

Alternate Members: Present – Jane Fant

Absent: Margot Maddock

Staff: David Robbins, Planning & Zoning Administrator

Public: Randy Mudge, Pat Hill, John Stadler, Harriet Rosenberg, Stanley Rosenberg, Frank Blanford, Roberta Blanford, Mellisa Bermast, Glenn Gurman, Tillman Gerngross.

Chairman Greatorex called the meeting to order at 7:02pm

Chairman Greatorex appointed Jane Fant to serve as a regular member for all three hearings.

Minutes:

The board reviewed the minutes from board meeting from May 21, 2009. George Hartman made a motion to approve the minutes. Frank Bowles seconded the motion. Chairman Greatorex asked if there were was any discussion, being none he called for a vote. The board voted unanimously to approve the minutes.

Application 2009-ZB-30 (Map 402 Lot 104) Jane Kitchel and Peter McLaughlin have requested an amendment to their special exception. They wish to change the location of the building labeled #2- Guest House on the plans previously submitted to the Zoning Board. Randy Mudge and Pat Hill presented the plans to change the location of the guest house on the Kitchel/McLaughlin property.

George noted that the proposed new structure was larger then the existing structure. Randy stated that the increase in size had already been approved; the applicants were only asking to be able to change the location of the building.

Jane asked if this would be a new structure. Pat answered that the existing building would be removed and a new structure would be taking its place. Randy added that the old frame would most likely be saved then sold so that it could be reused, but it would not be used in this project.

Walt asked how the permeable driveway would be created and if it was an addition to the previously approved plans. Randy stated that it was new to the plans and that they were looking at several ways to make the driveway permeable. He has a landscape architect who has been working with New Hampshire Department of Environmental Services to ensure that it met their standards. Several of the options were paving stones, pea stone and permeable asphalt.

Frank felt that the options were limited and that the permeable asphalt was not a good option because over time it would loose its permeability because of road debris such as mud and sand that would be brought in stuck in tire treads.

Randy assured that board that whatever was used would be approved by New Hampshire Department of Environmental Services.

Alan then asked about the slope of the driveway. Pat Hill answered that the driveway would follow the contours of the existing terrain and that property is relatively flat.

Walt inquired as to the reason for moving the building location. Randy stated that there were two reasons; the first was because of concerns over the septic system leach field which is directly in front of the building's present location. The second reason was to improve the views of the river to the north of the house.

Alan then turned the discussion to the existing septic system, asking if there was a separate septic tank for the guest house. Randy answered that there was not, that it fed into the main tank from the house. Frank then asked if the leach field had been investigated and if it was permitted to handle the guest house. Randy said that it had been investigated

using a video camera by separate contractor but not by him. Alan then brought up that due to new State of New Hampshire Department of Environmental Services rules a new septic approval would be required.

Jane asked what the new structure would look like. Pat answered that it would look similar to a barn with storage on the first floor and guest accommodations on the second.

Alan noted that the plans showed a set of concrete stairs to a dock on the river and asked if this was an approved dock. Randy stated that the dock was pre-existing.

Alan then asked if the public had any questions or comments. John Stadler, an abutter, asked if the new structure would be larger than the previous one. Randy said that it was larger. Pat stated that it would be about 10 feet taller. (*I believe that*) Mr. Stadler then said that he had no objections to the proposal.

Alan stated that in Randy's presentation he had indicated that there was the possibility of solar panels on the roofs. He (Alan) was curious if there would be a problem with glare from these panels. Randy answered that this was still in the discussion phase but felt that if there was any glare it would not be seen from any houses in the area.

Alan then asked if there was a motion to move into deliberations. Frank made the motion and George seconded it. The Board voted unanimously to enter deliberations.

George stated that he felt that it was a reasonable request and that the amended special exception should be granted with the condition that the septic system is approved by New Hampshire Department of Environmental Services. He then made a motion to approve an amendment to the previously granted special exception to allow the guest house to be moved from its current location to a new location to the north and east as shown on the plans submitted to the Zoning Board of Adjustment by Randal T. Mudge & Associates dated 26 May 09 with the following finding of facts:

- All the requirements of Article 10.40 of the Lyme Zoning Ordinance have been met.
- The one abutter present had no objections.
- The property is located in the rural zoning district.

The following conditions will be imposed:

- The approval is to move the location of the building only.
- All previously approved conditions remain in full force.
- Approval is conditional on having septic approval from New Hampshire Department of Environmental Services.
- Best construction practices will be used.

Frank seconded the motion and it passed unanimously.

Application 2009-ZB-28 (Map 402 Lot 104) Franklin Blanford has requested a Special Exception to replace an existing garage with a new structure in the same location. The existing structure is within the road and site setback areas and in the Wetlands Conservation District.

The Planning and Zoning Administrator presented the application to the board. He had visited the site with Mr. Blanford and found an existing concrete pad that had the same square footage as the proposed new garage. Over the last few years parts of the existing structure has fallen down and had been removed.

The Planning and Zoning Administrator also found that the square footage that was shown on the tax cards did not match the existing concrete pad on the property. He also found that the entire property south of Hewes Brook to Goose Pond Road is entirely in the Wetlands Conservation District and that there would be no other suitable location to place the garage.

Alan asked if the board had any questions, Jane asked if Mr. Blanford was currently parking in the existing garage. Mr. Blanford stated that he is unable to park his cars in the remaining portion of the garage but he does use it to store items such as his four-wheeler and lawn mower. With no other questions from the board or the public Frank made a motion to go into deliberations, George seconded the motion. The board then voted unanimously to move into deliberations. Alan made the following motion to grant Mr. Blanford a special exception under Article 8.27 of the Lyme Zoning Ordinance:

I move that we grant a Special Exception under Article 8.27 which permits replacement of a non-conforming structure, in order to allow the re-construction of an accessory structure (specifically a garage) that has been collapsing in stages over the last several years. The re-construction of the garage does not change the original footprint area and does not change either the front or side set backs.

Finding of facts:

- The structure existed prior to March 14 1989.
- The structure is located in the rural district, and the portion of the property south of Hewes Brook is in the Wetlands Conservation District.
- The front and side setbacks will not change from their present non-conforming location.
- The footprint area of the proposed structure will be no different from the area described by the remains of the accessory structure.
- We did find that the area discrepancy is a result of measurement or calculation errors.
- No abutters were present to provide comments.

The conditions are:

- Best construction practices to be used to prevent erosion and pollution will be followed.
- The project will be built as described in testimony at this meeting,

Frank seconded the motion. Alan called for a vote and it passed unanimously.

Application 2009-ZB-31 (Map 402 Lot 80) Tillman Gerngross has requested a special exception to be able to replace the existing trailer and garage, at 136 River Road with a new barn like structure.

Mr. Gerngross presented an overview of his project. Mr. Gerngross would like to purchase the property at 136 River Road but prior to purchasing the property he is requesting Zoning Board approval for replacing the structures that are currently on the property with a new structure. Mr. Gerngross presented plans that showed the location of the new structure and several pictures of structures that were typical of the type of building that he wanted to build. The new structure would have total square footage of 1728 square feet. The property has two existing structures: a mobile home having 784 square feet; and a detached garage having 384 square feet. Mr. Gerngross asked for an expansion of 560 square feet based on replacing both existing structures.

Alan opened the discussions asking if Mr. Gerngross was acting as an agent for the owners. The property owner (Glenn Gurman) was present and accepted that Mr. Gerngross was acting with his knowledge and his (Mr. Gerngross's) actions were to the benefit of both parties (the sale of the property from Mr. Gurman to Mr. Gerngross) The board briefly discussed the agent issue and agreed that there was no problem in this situation but that they would like some guidance from town's counsel so that when the situation arises again it could be handled correctly.

Walt asked what year the mobile home currently on the site was built. The Planning and Zoning Administrator stated that the tax card listed the actual year built was 1969. The board noted that due to the depth of the lot (100feet) that it is impossible to place a structure that would not fall inside the front and rear setbacks. They also noted that the entire lot was in the agricultural soils conservation district. Alan stated that the entire lot was within the building envelope so the soils were not an issue. Alan also felt that the board could not combine the footprints of a primary structure with the footprint of an accessory structure. He also stated that the difference between the area of the existing mobile home and the area requested for the new structure was under the 1000 square foot expansion allowed under article 8.23

Walt stated that the new building would be closer to the rear of the property and within the rear setback and wanted to know if the property owner to the rear was aware of this. Glenn Gurman stated that he has a letter from the property owner to the rear, stating that he has no issues because he is well screened by trees and steep slopes.

George moved that the board move into deliberations.

Frank seconded the motion.

The board voted unanimously to enter deliberations.

Walt felt that this was a foot print issue and felt it could be resolved under sections 8.22, 8.24, 8.25, and 8.27 by swapping the location of the primary structure with the accessory structure, then expanding the primary structure. Walt then made the following motion:

I move to grant special exception (under sections 8.22, 8.24, 8.25, 8.27, and 10.40) for the removal of two non-conforming structures at 136 River Road (M402, L80) and replacement thereof with a single residential structure.

Findings of Fact:

- The lot is in the Rural District. The primary use on the lot is residential. A single existing dwelling on the lot has a footprint of 784 sq. ft. A garage on the lot has a footprint of 384 sq. ft. Both buildings pre-date the passage of the Zoning Ordinance. Both buildings are non-conforming with respect to front setback and lot coverage. The dwelling is non-conforming with respect to allowed footprint. The lot is non-conforming with respect to lot size and road frontage.
- Both existing buildings lie within the 75' front setback. The garage partially intrudes into the rear setback. Neither building lies within side setbacks. The lot depth is 100' and is therefore entirely within the front and rear setbacks
- Neither existing building is within steep slopes, wetlands, nor shoreland conservation districts, nor within the floodplain. However, both buildings are within the agricultural soils district, and deductions in lot size for ag soils coverage results in a violation of lot coverage requirements. The dwelling exceeds the maximum footprint limit (2%) for the rural district.
- Both existing structures are to be removed.
- The proposed replacement structure is a single family residence with a footprint of 1728 sq. ft. and no net increase in use. It is to be located as shown on drawing SK-1 (Rev 1 date - 6/1/09) submitted with the application (approximately at the location of the existing garage). The new structure will result in an increase of 560 sq. ft. in lot coverage, and an increase in footprint of 944 sq. ft. The new structure will result in an increased intrusion into the rear setback, but will be located about 8 ft. further from River Road than the existing dwelling. Considering all restricting factors on the lot, the governing restriction is on the increase in footprint and lot coverage.

- Testimony was provided by the property owner that he had a letter from the owner of lot 44 expressing the acceptance of construction within the rear setback of lot 80. Testimony of support for the project was also provided by another abutter.
- The Board finds that under section 8.27, the applicant would have the right to remove the non-conforming dwelling and replace it (identically) at the location of the garage because there would be no new or increased violation. Therefore the basis for the increase in footprint for the new dwelling is the existing dwelling even though the new dwelling is not co-located with the existing dwelling.
- The Increase of 944 sq. ft. in footprint is permitted under sections 8.22, 8.24 and 8.25. Based on the plans submitted, the remaining balance for increased footprint of the dwelling is 56 sq. ft., and the remaining balance for increased in lot coverage is 440 sq. ft.
- Requirements of section 10.40 have been met.

Granting of the permit is conditional upon the following:

- Receipt of approval from the New Hampshire Department of Environmental Services subsurface systems bureau, under the New Hampshire Code of Administrative Rules Section ENV-1004.15 Relocation or Expansion of Existing Buildings, Replacement of Demolished or Burned buildings.
 - Receipt of a copy of the letter from the owner of Map 402 Lot 44 expressing no objection to construction into the rear setback of lot 80.
 - Best construction practices will be used, including best management practices for sedimentation and erosion control.
- Frank seconded the motion and it passed unanimously.

Meeting adjourned 9:42 pm

Respectfully submitted

David A Robbins
Planning and Zoning Administrator
Town of Lyme