

**Town of Lyme**  
**LYME ZONING BOARD OF ADJUSTMENT**  
**Minutes – January 15, 2009**

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

**Alternate members:** Jane Fant **Absent:**, Margot Maddock

**Staff:** Adair Mulligan, Acting Planning and Zoning Administrator

**Public:** Simon Carr, selectman; Nancy Papademos, Tim Odell, Charlie Hirshberg, Wilbur Clark, Joan Clark, Marion Cass, Jim Doig, Joan Doig, Shawn Harlow, Vera Carter, Carl Carter, Julia Elder

Chairman Greatorex called the meeting to order at 7:30 PM

**Minutes** of December 18, 2008 were approved on a motion by Ross seconded by Frank.

Simon Carr advised the board that the Board of Selectmen has made a staff change, and that Adair Mulligan would serve temporarily as Acting Planning and Zoning Administrator until a replacement could be found. The selectmen are working on this now, and Simon has handled the applications that have come before the board at this meeting.

**Application # 2008-ZB-020, Nancy Papademos (Tax Map 409, Lot 83) 14 Baker Hill Road.**

Hearing on appeal of administrative decision to deny a zoning permit to install a new well and septic system in the Shoreland Conservation District and within front setback. A Special Exception is requested under Section 4.63:B 4 of the zoning ordinance. The Conservation Commission has sent a letter recommending that the application be approved. Charlie Hirshberg reported that the existing septic system is antiquated and that the dug well has water quality problems. The system he proposes for the septic treatment is a "Clean Solution" pretreatment system that is designed for such narrow sites near water, because the septic tank has an aeration chamber that produces a high quality effluent before the water goes to the leach field. This pretreatment reduces suspended solids and biological oxygen demand. Walter asked if the system is approved by the state for residential use. Charlie said that it is, especially near streams. Alan said that a septic system can be shoehorned into such a lot with extreme limits if the water treatment process is improved. He asked about the current system. Charlie said that an "Enviroseptic" system is being used now. Frank said that this is a good system but cannot handle any grease. Ross asked if the applicant intends to change the number of bedrooms in the house. Nancy Papademos said no.

Deliberations: George commented that Section 4.63A permits wells and water lines but that the septic system would need a Special Exception. Ross said that given the dimensions of the lot and its pre-zoning origins, he believes the applicant has represented a satisfactory plan to deal with the issues the site raises. He saw no problem with the application. Alan moved to grant a Special Exception under Section 8.22 based on the following findings of fact and subject to the following conditions:

- The proposed replacement septic system and well are on property located in the Rural District.
- The rear property line follows the east bank of an unnamed brook flowing north to Grant Brook along Baker Hill Road.
- The property and residential buildings pre-date adoption of the zoning ordinance.
- The maximum depth of the lot (front to rear property lines) is only 90 feet from the edge of the pavement to the brook bank.
- As the front property line is not definite, the front setback is measured from a line 25 feet from the edge of Baker Hill Road.
- The existing well and gray water line and dry well are as shown on the plan of the Papademos/Odell property provided by CLD Consulting Engineers.
- The proposed septic tank location and leach field locations as shown on the same plan are within the road setback required in Table 5.1. They are also within the 100' setback from the shore of the unnamed brook as required by 3.27.3.
- The proposed locations of the septic system and well are less of a violation than the current locations.
- Section 8.22A allows the proposed construction within the road setback as a Special Exception. (Section 8.22B does not apply.)
- Section 4.63B allows special exceptions through Section 8.24 A,B & D. (8.24 C & D do not apply).
- The Conservation Commission has responded favorably to the proposal.
- The provisions of Section 10.40 A have been met.

Conditions:

- Best construction practices shall be followed to avoid erosion into the unnamed brook, onto abutter's property or down the road.

- DES approval of septic system design shall be received prior to issuance of the zoning permit.

George observed that the Conservation Commission had advised that drill tailings be removed immediately. Frank recommended that the engineer's plan be followed instead because it would be very difficult to get equipment to remove the tailings. Alan said he was also not concerned about it. Frank seconded the motion and it was passed unanimously. Alan noted that no variance is needed.

**Application # 2008-ZB-001, Wilbur G. Clark, Trustee (Tax Map 414, Lot 11.11) 75 Flint Hill Road.**

Hearing on appeal of administrative decision to deny a zoning permit to tear down existing buildings and construct a new house and garage/workshop in the Agricultural Soils Conservation District. Request Special Exception under Section 4:64:B. Marion Cass said that she and her husband are under contract to purchase the Clark property and would like to build a new home and garage/workshop in the northwest corner of the lot after tearing down some of the more dilapidated buildings. They plan to keep the front part of the historic farmhouse. Alan asked about the soils and whether soil scientist Peter Schauer had presented a case for considering the soils on the center portion of the lot as Sunapee soils rather than Berkshire loam, as shown on the town's map. He noted that the Sunapee soil series is not included in the list of soils in the Lyme ordinance and that the ordinance requires a determination of agricultural significance by the Natural Resources Conservation Service or other agency. Schauer's letter says that the Sunapee soil "should be considered at best" a soil of local agricultural importance.

Marion said that she intends to restore the orchards and stone walls. Walter asked about plans for the farmhouse and asked if it would be used as a guesthouse. Marion said she will keep it for historic purposes and for a home office, but it will not be used for additional living space. It has a septic system. Wilbur Clark said that this system is nearly new, and that the kitchen will be removed once the new home is built, so the house will not have a functioning kitchen. Walter asked if Marion would oppose a condition that no other living space be allowed on the property. Marion said she would not.

Walter noted that the location of the new house is shown in various places on the various plans, and asked if it would be a hardship to avoid building on the Tunbridge agricultural soil identified as 90B. Marion said she thought there would be room outside the area covered by this soil as long as the solar exposure is good. Ross asked about the space over the workshop and whether it would be occupied and feasible to connect it to the house, noting the ordinance requires that an accessory living space be within 100 feet of the main dwelling or share a connection to the same leach field. Marion said she does not plan this as living quarters but that a sink for washing and a toilet would be desired close to the workshop. It would be close enough to use the same septic system. Walter said that if it has water and septic service, it would be presumed to be an accessory dwelling, and must be less than 700 sf in area. Marion said she is not planning to have this as an apartment and does not contemplate an accessory dwelling. She said that she and her husband will live in the farmhouse until the shop is built, then the house, then will remove the kitchen ell from the farmhouse.

Alan noted that there is no problem with the maximum allowable footprint on the lot, even if all the soils are deemed to be agricultural and 50% are reserved. The maximum allowable footprint in that case would be 4800 sf, and less is proposed. The application is also not approaching the limit on gross floor area. Marion said she hopes most of the ground floor of the garage will be workshop. The footprint of the new house will be 1200 sf.

Deliberations: Walter said that the main question is whether the 168B soil is to be considered agriculturally important. The board reviewed the information provided for the Sunapee soil, which says that it is considered useful only for hay or pasture. Ross said that to grow hay, the stones must be removed, and guessed that it is not prime agricultural soil. Walter said he preferred to have a soil scientist's opinion on how important this soil is in relation to others that are listed, in order for the board to interpret the ordinance fairly and evenly with respect to all applicants.

Out of deliberations: Walter asked Marion how much burden it would be to get a soil scientist to give a determination. Marion offered to ask. George suggested setting it as a condition. Simon Carr noted that if it is not agricultural soil, the applicant needs no decision from the ZBA. Wilbur Clark said that when he lived on the farm, the area proposed for construction was never cut for hay and was only pasture that offered poor enough forage that it would not support seven sheep. The area was never planted. Frank said he felt that this was good evidence that it is not good agricultural soil.

Deliberations: Ross said that even if it is assumed that all 12.8 acres are agricultural soils of national significance, the lot could be occupied by building on the 25% (4 acres) that could be reserved, with a conservation easement on the rest. Walter said that because there is an existing dwelling, the applicant would have to build there and would be required to tear down all the buildings first. Ross said that if all structures were removed, it would then be a vacant lot, and construction could proceed on any 25% of the lot. Walter suggested that hardship could be argued. Frank said that there is evidence from the landowner that the land is not tillable. Alan suggested continuing the hearing until the opinion of a soil scientist could be sought, citing section 3.27.4.

Out of deliberations: Marion called Peter Schauer from the town office telephone, who spoke with Alan. In the meantime, Walter consulted the definition of the Agricultural Soil Conservation District. Frank said that there has

been testimony that the soil is not valuable for agricultural production. Alan reported that Peter said he thinks the NRCS would consider the Sunapee soil a locally important agricultural soil but just barely, because it is wetter and colder than the related Berkshire soil. Alan noted that no definitive statement has yet been given by NRCS. Walter asked where the test pits were dug, and Marion said they were near the house site and farther east.

Deliberations: Frank said that this soil has been shown to be of minimal agricultural importance. Alan said that two sources of testimony have said that this is at best marginally important for agriculture: the former farmer of the land and a soil scientist. Jane noted that the point of the conservation district is not to destroy use for agricultural production, and that the house is small enough that it will do little or nothing to eliminate agricultural use. Members agreed that there is nothing in this situation to prevent issuing a variance.

Out of deliberations: Walter asked the applicant if she would like to apply for a variance. Marion said yes.

Deliberations: Walter moved to grant a variance to construct a dwelling and accessory building defined as a garage/workshop within the bounds shown on the site plan by Barrett Architects dated December 19, 2008. Findings of fact include:

- The property consists of 12.8 acres in the Rural District.
- The Board received the application as a request for a special exception but found it could not convincingly agree that the location for the dwelling and workshop was not in an agricultural soil of local importance.
- Soil scientist Peter Schauer identified the type of soil as Sunapee 168B and C, a soil of marginal local importance, a gravelly fine sandy loam soil that is not listed in Lyme's zoning ordinance.
- Testimony of a prior owner was received that the area of the proposed dwelling is suitable only for pasture and could not adequately support seven sheep.
- The Board, upon consideration of the facts under section 3.27.4, decided that the soil had such little agricultural importance that it would seek to consider the application under section 10.50.
- The applicant indicated that the kitchen of the existing house would be removed and the house converted to a non-residential purpose and under this application no new additional dwelling will be created.
- The information submitted with the application identify the buildings to be removed or partially removed, resulting in no net increased footprint of buildings after the new dwelling and garage/workshop are completed, so there will be no net change in intrusion into agricultural soils.
- The Board considered that the applicant could tear down all buildings and then be granted the right to build within a 200 foot radius in agricultural soils. The Board determined that requiring the applicant to tear all of the buildings down would place unnecessary hardship on the owner, in view of the facts and data presented.
- Because the soil is of marginal local importance given public testimony, the Board has chosen not to require a conservation easement.
- The Board considered the provisions of section 10.50 and finds that
  - The state of the modified lot plan should have no effect upon surrounding properties or may increase their value.
  - Since there will be no net change, and given the quality of the soil in the location of the house and garage, the Board finds that a variance is not contrary to the public interest.
  - While it is the intent of the ordinance to preserve agricultural soils, the present plan is not contrary to this intent.
  - By issuing a variance, the Board will allow the applicant to proceed without the undue burden of having to tear down all the buildings.
  - Denial of the variance would result in substantial hardship to the applicant.

Conditions:

- Elimination and removal of the buildings and construction of the new dwelling will follow the site plan by Barrett Architects dated December 19, 2008.
- Best construction practices will be used.
- No additional residential dwelling shall be created.

Out of deliberations: Alan asked for public comment. Wilbur Clark said that he had made his comments. Joan Clark said that she agrees, based on her experience with the land. Scott Harlow said he visited the property several times and observed that it has a lot of rocks. Alan noted that this is further testimony that it would be difficult to make agricultural use of the soils.

Deliberations: George seconded the motion and it passed unanimously.

Meeting adjourned 9:35 pm.

Respectfully submitted,

Adair Mulligan, Acting Planning and Zoning Administrator