

**Town of Lyme**  
**LYME ZONING BOARD OF ADJUSTMENT**  
**Minutes – April 15, 2010**

**Board Members:** Present - Alan Greateorex, Chair, Ross McIntyre, Walter Swift, Frank Bowles, Robert Titus

**Alternate Members:** Margot Maddock

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

**Public:** Tim and Pru Fisher, Colin Robinson, Rob Meyer, David Rayment, Michael Mundy

The meeting came to order at 7:30 pm. Minutes of the January 21 meeting were approved on a motion by Ross, seconded by Walter. Minutes of the March 18 meeting were approved on a motion by Frank seconded by Ross.

**Application #2010-ZB-12, Timothy and Prudence Fisher (Tax Map 407, Lots 72 and 86.2) 89 Whipple Hill Road in the Rural District.** David explained that the application was to demerge a homestead lot from a lot across the road. David's opinion was that it did not qualify for demerging under section 4.57 adopted by the town at the 2008 town meeting because the situation was created by a lot line adjustment and not by an automatic merging of the lots by the town. Colin Robinson, representing the applicants, explained that in 2000, the Fishers annexed 15.93 acres owned by Bret Ryan to their homestead lot, in an action approved by the Planning Board. Colin said the intent of the Planning Board was to allow the demerger, and that the result of a subdivision would be the same. Colin added that it would be of considerable assistance to those doing title searches and certifications if demergers could have a Memorandum of Municipal Action filed at the Registry of Deeds; otherwise such actions might be misused. He concluded that the Fishers have fulfilled the three conditions of section 4.57.

Ross observed that there are two lots: the augmented Fisher lot and the Ryan lot, and asked if the applicant is trying to create three lots. Colin confirmed this and indicated on the lot map where test pits were dug on the lot. The Ryan lot was never approved as a subdivided lot of record. Tim added that at the time, he was told that his only choice was to annex the land. Frank asked if the ZBA has the authority to do this given that the Planning board did the lot line adjustment.

David distributed a letter from Mr. and Mrs. Warrington Skelly, abutters, who have no objection to the demerger. Blake Allison, abutter at Lot 73 that surrounds the Fishers' homestead lot, said he has no objection to the demerging. His wife Nancy is Nancy Itkin Allison, who said she purchased this lot from Bret Ryan.

Colin displayed NRCs soil maps indicating some agricultural soil, steep slopes, and wetlands. After discounting these, he thought that a 5 acre area could be proved for a lot. Ross asked the date of the house. Tim said it was built in the mid 19<sup>th</sup> century and the homestead lot of 3.5 acres is a non-conforming lot. David referred to section 4.57 and read the lot definition, concluding that this situation is not included, since 4.57 addresses only lots that were merged by the town without action by the owner.

Deliberations: Frank noted that the board cannot act to create a non-conforming lot. Ross agreed that the Planning Board creates new lots, and that in this case the record shows that the board took action that ensured the resulting lot was one lot. Therefore the ZBA cannot create a new lot. He offered that the Planning Board may be able to do a minor subdivision given the history. He moved to confirm the Zoning Administrator's decision, based on section 8.34, and recommend that the applicant go back to the Planning Board to get relief. Frank Bowles seconded the motion and it passed unanimously.

**Application #2010-ZB-07, Bayne Stevenson (Tax Map 405, Lot 36) 729 River Road in the Rural District.** Rob Meyer explained that the Stevensons want to build an entrance and connector between two existing buildings on the 15 acre parcel. The addition would be 850 sf. The purpose is to allow movement between the two buildings in winter and to provide a safer covered access down a slope. The plan includes a place where a lift might eventually be installed. The owner has suffered a knee injury and is having difficulty moving between the buildings. The structure would not be visible from abutting properties or the river. David Robbins confirmed that the new construction is not in the floodplain, although half of the guesthouse is in the floodplain. A shoreland permit from DES is required, along with a review of the septic system.

David Rayment noted that a special exception was issued in 2004 for a structure in the barn, and that a conservation easement on the property was donated in 1986. He has applied for both a special exception and a variance because the proposal exceeds the 7000 sf size allowed by the ordinance. He reviewed his client's responses to the conditions for a variance, noting that the project is consistent with the conditions of the easement for the

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reserved area, that reserved the right to add to dwellings, that the character of the use is not changing, and that the addition will be architecturally compatible with existing structures. He added that the property is unique, and that the granting of a variance would accommodate a disability and reward someone who had granted a conservation easement.

Alan noted that development has been approved in the reserved area, but asked if there would be so much development there that it affects resale value or places a burden upon the town. David Rayment said that the Society for Protection of New Hampshire Forests, which holds the easement, has the first option to look at subdivision for consistency with the easement. He said there is no plan for subdivision, and that the easement would not allow it. He reviewed the list of rights reserved under the terms of the easement.

David Robbins confirmed that the request would create 8371 sf of building footprint, and the maximum allowable under the easement is 7000sf in the Rural District. There is no problem with lot coverage. He agreed that this is a complicated lot. No abutters were present or provided comment.

Deliberations: Walter recalled a previous discussion about the "Hewitt amendment" and did not see the need for a variance. Frank noted that there is limited development, and the project provides access to an existing structure for someone with a disability. Alan noted that the project makes one building out of two, well in excess of limits for building footprint, although he feels it is needed by the applicant. He advised issuing a variance. Walter noted that the town attorney's interpretation of the Hewitt amendment would be useful.

Frank moved to grant a special exception for the connector between two existing buildings in the Shoreland Conservation District, finding that the use is in harmony with the ordinance and master plan and meets the conditions of sections 4.63 (B)5 and 10.40 1-14. SPNHF has no objection to the project. The Lyme Conservation Commission has reviewed the application and finds that it will have no significant impact on the area. Conditions: the construction will conform to current best building practices, and a DES Shoreland permit will be secured and septic review will be confirmed. Ross seconded the motion and it passed unanimously.

Frank moved to grant a variance to section 5.14B, noting that the proposal is merger of two structures that will result in 1371 sf excess of the allowed 7000 sf on the lot, due to the project to link the two buildings with a 900 sf structure. The project is consistent with section 4.63 (B) 5. The linkage improves overall safety of egress for the two buildings and is not a deliberate attempt to create a new, very large structure. Conditions of section 10.50 have been met: the variance will not be contrary to the public interest, the spirit of the ordinance is observed, substantial justice will be done, the values of surrounding properties will not be diminished, and literal enforcement of the ordinance with result in unnecessary hardship to the applicant. Ross seconded the motion, and it passed unanimously.

**Application #2010-ZB-10, Michael Mundy (Tax Map 201, Lot 68) 4 East Thetford Road in the Lyme**

**Common District.** David explained that the project is to remove one of the outbuildings and replace it with a new structure that is 216 square feet larger. Mike Mundy said that the current building is too close to his garage, and he would like to build the new one some 10 feet further back. The existing shed is 16 x 24 feet (384sf) and the proposed new building would be 20 x 30 feet, or 600 sf. He would like to build a timberframe barn with two floors. He added that he had spoken to his neighbors about it, and they have no objections. The downstairs would be used as a workshop/storage area, and the upstairs would be family space. He hopes to put in plumbing and will approach DES for a review of the septic adequacy. He will not add a drive to the new building. David noted that the location of the building was kept near the side setback to preserve as much open area as possible, should DES require a new leach field. Mike said that if DES requires a new septic system, he may not proceed with adding plumbing. He has no records on the septic system, although he suspects its location, and has the tank pumped regularly. The wetlands map was reviewed, and the structure would not intrude on the wetlands buffer.

Deliberations: Walter moved to grant a special exception to replace the existing structure with a building 216 sf larger. Findings of fact include that the existing structure was increased through a prior application to the board, when 247 sf were approved in 2002, leaving 253 sf for future development, given the 500 sf allowance in the Lyme Common District. This leaves another 37 sf for future expansion. The proposed building is entirely within the side setback. No abutters offered comment, although the applicant stated that he consulted his abutters. The applicant intends to apply for DES approval to add plumbing where none currently exists. Requirements of section 10.40 are met, and there will be no significant change in use. Conditions: DES approval for a septic plan for the lot. Best construction practices will be used. Ross seconded the motion and it passed unanimously.

**Application #2010-ZB-03, CLD Engineering on behalf of Carol Barr (Tax Map 403, Lot 16) 301 River Road in the Rural District.**

David reported that the applicant hopes to meet with the Planning Board shortly. Frank noted that two large trees were recently cut down in the riparian buffer, and he wanted to know if a DES shoreland permit had been received for that work. David reported that the applicant now plans to put in a septic tank that would be regularly pumped, rather than an open system. Robert Titus moved to continue the meeting to the next scheduled Zoning Board meeting, on May 20 at 7:35 pm. Ross seconded the motion and it passed unanimously.

**Elections:** Frank nominated Alan as chair and Ross as vice chair. Robert seconded the motion, and it passed unanimously.

Meeting adjourned 9:50 pm

Respectfully submitted,  
Adair Mulligan, Recorder

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