

Town of Lyme
ZONING BOARD OF ADJUSTMENT
Minutes – May 20, 2010

Board Members: Present - Alan Greatorex, Chair, Frank Bowles, Robert Titus

Absent: Ross McIntyre, Walter Swift

Alternate Members: Margot Maddock

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

Public: Wayne Pike, Bob and Sally Barnum, Charlie Hirshberg, Philip Kinsler, Margaret Johnson

The meeting came to order at 7:30 pm. Minutes of the April 15 meeting were approved on a motion by Frank seconded by Rob. Alan appointed Margot to sit as a regular member for all three cases.

Application #2010-ZB-11, Wayne Pike (Tax Map 421 Lot 7) 651 Dorchester Road in the East Lyme Zoning District. Wayne has applied for a special exception under Section 8.24 and a special exception under section 8.22 to add a second floor to the cabin at his property at 651 Dorchester Road. The cabin lies inside the Shoreland and Flood Prone Conservation Districts at Reservoir Pond and within the 150 foot setback required by the East Lyme Zoning District. David distributed a letter from the Conservation Commission that indicated no adverse impact. Wayne built the log cabin on the site in 1966. He noted that a septic system is currently being designed that will pump wastewater across Dorchester Road away from the pond. The current arrangement is an outhouse with a 55 gallon drum. Frank noted that a septic system would be a major improvement. Wayne also plans to install a fire hydrant because there is currently no access to water for fire fighting in the neighborhood. Wayne explained that he had purchased the lot across the road to give Tyler Rich access to his land, and would soon conclude a land swap with Tyler that would expand the property to 15 acres.

David reported that the parcel in question is currently in the floodplain of Reservoir Pond, as shown on flood hazard maps, but no elevation is given to which the town can regulate activity, so there is no way to enforce the Flood Prone Conservation District part of the ordinance. Members noted that Reservoir Pond is a headwater pond with a dam. Wayne added that the cabin is set up on two-foot piers. The project will not expand footprint or lot coverage, since he is adding only 7'6" of logs vertically. Discussion ensued about whether this constituted an expansion under the ordinance. Frank noted that the structure existed before zoning. Wayne said that because the distance between the road and the pond is less than 150 feet, it is not possible to expand outside of the Shoreland setback. He explained that he hopes to begin construction soon, while the state processes the septic plans. Alan noted that no abutters were present.

Deliberations: Alan advised considering whether the project requires a special exception under 8.22 or 8.24, and noted uncertainty about whether "expansion" includes vertical expansion. Robert said he thought adding a floor constituted expansion. It was agreed that clarification is needed from the Planning Board. David noted that no state Shoreland permit is needed at this time. Frank asked about a well, and Wayne explained that there is no well on this property, but that overflow water from a well on an abutting property will be used.

Robert moved to approve the application for a special exception under section 8.22 with the condition that the town not issue a building permit until a state approved septic system is designed. Margot seconded the motion. Frank moved to amend the condition, that a stamped, certified septic system plan be submitted to the state and the applicant provide a letter to the town stating that no occupancy will occur until a formal septic system is constructed, to give the applicant time to complete construction before weather and road conditions worsen. Robert seconded this amendment, noting that it puts the applicant in a more difficult position. Wayne said that he was willing to accept the condition. Findings of fact: there is no other location for the expansion outside the Shoreland district; the Conservation Commission finds there will be no adverse impact; no abutters commented; the floodplain delineation is unenforceable and is therefore not an issue. Best construction practices will be used. The motion passed unanimously.

Application #2010-ZB-26, Robert Barnum (Tax Map 402 Lot 100) 155 River Road in the Rural Zoning District. Robert Barnum has applied for a variance to section 5.1 of the zoning ordinance. Mr. Barnum has requested the board to grant an additional 100 square feet of footprint to a variance approved on July 21st

2005. He explained that this is a small change, and that when he appeared before the board in 2005, he did not yet have floor plans or a site plan prepared. He has found that he needs a utility room and needs to move the septic tank. The board reviewed the minutes of the 2005 meeting. Charlie Hirshberg noted that the roof overhang puts the project over the permitted amount on lot coverage. Bob noted he had cut the roof overhang back to 1 foot. The total project is 3149sf, of which 253 is roof overhang. David noted that the definition of building footprint includes roofed-over areas. Bob added that Charlie has designed drainage features for handling runoff. He reminded that if the roof overhang is not included, the building footprint is within the previously permitted area.

David raised several issues of concern. The driveway and parking area have a 100 foot setback in section 5.13 A. David pointed out that the ordinance does not specifically address the section under which the special exception is given. Part of the driveway and parking area falls inside the side setback, but only by a few feet. David recalled that this driveway route was in use when he visited the property in the 1990s. Charlie suggested moving the driveway out of the setback, but abutters present (Johnson and Kinsler) indicated that this would require removal of a large tree that they and the Barnums want to keep. The abutters said that they do not mind encroachment in the side setback. Charlie noted that there is no feasible alternative for the drive that would put it outside the Connecticut River setback.

David continued that Section 5.13 (Setbacks), requires a 200 foot setback from the Connecticut River for building and sewage disposal systems. It will allow a reduction in the setback in accordance with the provisions of section 8.20. Both the relocated septic tank and the house are within the 200 foot setback. David noted that section 8.20 does not appear to address the Connecticut River setback. Section 8.23 is limited to the setbacks established in table 5.1. Table 5.10 does not address the Connecticut River setback. Alan noted that the previous meeting's minutes referred to the town's Connecticut River setback.

The last issue is an underground propane storage tank that is not shown on the plans. Section 4.63 C 2 states "No underground fuel storage tanks are permitted." Last September the Board gave a variance to bury a propane tank in the wetlands conservation district on a property on Baker Hill Road, and David suggested a similar finding. David has spoken with a DES Shoreland inspector who confirmed there are no Shoreland rules regulating underground propane tanks and therefore are allowed in the State Shoreland District. The only caveat is that when a tank reaches a certain size it must be registered with the DES Oil and Remediation Program.

Deliberations: Frank noted that the septic tank and 200' setback were covered in the initial decision, and that most issues presented here were implicit in the board's earlier findings. The roof overhang is not an issue. Remaining questions are the fuel tank and side setback.

Out of Deliberations: Robert asked about the septic system, and Bob explained that he replaced an outdated and inadequate system. Charlie added that the previous tank location was not identified when the variance was issued because the plans had not yet gone to the state. Alan noted that the setback from the Connecticut River for a septic system is 200 feet.

Deliberations: Frank said that the 200' setback, house construction in the floodplain, and septic system were all addressed in the previous variance. Alan observed that the fuel tank requires a variance, and that this is justified because the applicant proposes using propane, a gaseous fuel that does not pose groundwater contamination issues. Frank noted that the drive is a structure that existed before zoning and so does not need to be addressed.

Frank moved to grant a variance from section 4.63C2 for the buried propane fuel tank, finding that the zoning ordinance's prohibition on buried fuel tanks is intended to avoid groundwater contamination, and that propane is not a contamination hazard. Other findings include: the proposed use will not 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; granting the variance will allow substantial justice to be done; and denial of the variance would result in unnecessary hardship to the owner. Margot seconded the motion and it passed unanimously.

Application #2010-ZB-03, Charles Hirshberg on behalf of Carol Barr (**Tax Map 403 Lot 16**) **301 River Road in the Rural Zoning District**. Continuation of hearing from April 15th. Applicant has requested Special Exceptions from section 4.63 (Shoreland Conservation District) and 4.65 (Flood Prone Area Conservation District) and a Variance to sections 5.10c,d,e (Property setbacks) and 5.13Ea (Sewage Disposal System Setbacks) to allow the owner of the property to install a replacement septic system at 301 River Road.

Charlie Hirshberg requested a continuation to the next meeting. David noted that this project is on the Planning Board's agenda next week and that he has worked with Charlie on it. Charlie assured the board that the proposed project will be substantially different.

Frank moved to continue the hearing to the next regular meeting on June 17. Robert seconded the motion and it passed unanimously.

David asked for a clearer indication in the notices of what was covered in the decisions.

Meeting adjourned 9:25 pm.

Respectfully submitted,
Adair Mulligan, Recorder