

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – April 21, 2011

Board Members: Present - Alan Greatorex, Ross McIntyre, Frank Bowles, Rob Titus
Absent: Walter Swift

Alternate Members: Absent: Paul Mayo

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

Public: Paul Munn, Stephanie Carney, Gary Webb, Colin Robinson, Cynthia Bognolo, Julia Elder, Dana Avey, Kim Butler, Alex Rapinien, John Griesemer

Chairman Alan Greatorex called the meeting to order at 7:30 pm.

Elections: Ross was elected Chair on a motion by Frank seconded by Rob. Ross noted that his term on the board expires next spring and he does not intend to renew. Frank was elected Vice Chair on a motion by Rob seconded by Alan.

Minutes of the meeting of December 16, 2010 were approved, on a motion by Rob, seconded by Frank.

Zoning amendments: There was a brief discussion about whether the ZBA should establish a relationship with the Planning Board to air questions about zoning amendments. Frank proposed a special meeting. Alan suggested that a ZBA member attend the appropriate Planning Board meeting.

Application #2011-ZB-15, Paul Munn (Tax Map 409, Lot 26) 34 Acorn Hill Road in the Rural District.

Paul Munn has applied for a special exception to build a shed in the property line setback between his property (Tax Map 409 Lot 26) and a lot owned by Don and Julia Elder (Tax map 409 Lot 25). The lot is located in the Rural District requiring a 35 foot setback. The proposed location is approximately 20 feet from the property line. Don and Julia Elder have submitted a letter stating that they have no problems with the location of the shed as long as there is a minimum of 5 feet between the shed and their property line.

The Agricultural Soils Conservation District extends into the property from the north. The proposed shed location is within the district but the house was built in 1988, prior to zoning, so there is a 200 foot building zone around the house that is excluded from the district. All of the Agricultural Soils Conservation District within this lot falls inside the excluded building zone. Please refer to the map for the locations of the soils and the exclusion zone. There are no other conservation districts on the property and there were no other applications to the Zoning Board in the property record folder.

Paul said that the shed would be 15' x 16' and that a five foot area would be maintained between the shed and the property line by mowing. Rob asked if there is a reason it could not be located elsewhere. Stephanie explained that this site allows access to the driveway near the house and is a level site on their otherwise ledgy, rocky property. Locating the shed out of the setback would put it in the driveway. The garage and house were built at the same time, a year before zoning was enacted. Paul noted that he has a right of way across the Elder land to put a drive.

Deliberations: Alan asked that Don Elder's letter be included in the file. Rob recommended that applicants in situations like this be advised to state why they cannot build outside the setback. Alan moved to grant a special exception under section 8.23 for construction of an accessory structure within the property line setback, with the following findings of fact:

- The structure will be 15' x 16', or 240 sf
- Abutters most affected have submitted a letter to the zoning administrator stating they have no objection as long as the shed is a minimum of 5 feet from their property line
- The shed will be within the building zone exclusion around the house; otherwise, the site would be in the agricultural soils conservation district.

- There is a utility easement on the back of the lot
- No abutters were present
- A small stream crossing the property limits site use
- The house, drive, and garage predate zoning by one year and are existing, conforming structures
- The setback in the Rural District is a minimum of 35 feet
- The proposed structure is 240 sf and less than the maximum allowable of 1000 sf for accessory structures
- The project meets the requirements of section 10.40a.

Alan specified the following condition:

- Best construction practices will be used, especially to prevent erosion and runoff into streams and onto abutters' property.

Rob seconded the motion and it passed unanimously.

Application #2011-ZB-17, PETSU (Tax Map 201, Lot 11) 1 Market Street in the Lyme Common District.

PETSU, LLC d/b/a the Lyme Inn has applied to the Lyme Zoning Board of Adjustment for a Special Exception or Variance to:

- 1) Drill a new well along the edge of the parking area. The proposed location is within the Wetlands Conservation District. (Section 4.61.B)
- 2) Remove an 8' X 12' concrete pad for trash and recycling containers and build a new 8' X 14' one at the rear of the property. The new location will be within the Wetlands Conservation District (Section 8.24).
- 3) Add two air conditioner condensers adjacent to the Inn building on the Dorchester Road side within the road setback area. (Section 8.23)
- 4) Add a 4 X 10 concrete pad for an emergency generator adjacent to the Inn building on the Dorchester Road side within the road setback area. (Section 8.23)

Kim Butler introduced herself as PETSU's attorney and reported that PETSU has received a well permit from NH DES and the state has asked for protective bollards by the wellhead. The state did not approve the previously permitted well site close to the road. The proposed well site is outside the wetland area but within the buffer, and the siting is driven by state requirements to keep it on the property and 125 feet from septic systems. This forced the relocation of the trash and recycling area to an accessible place. Dana Avey said that the existing well in the basement is 60 feet from the septic system and the new location is best. He also looked for an offsite supply and evaluated the village water system, but concluded it could not meet the inn's demands. He said that area wells are 200-400' deep and yield 10-40 gallons/minute. He said that the inn needs 55 gallons/minute (in later questioning he clarified this. Fifty-five gallons per minute is the maximum flow rate, the actual daily water consumption, limited by the septic design, can be no more than about 1.6 gallons per minute). Alex Rapinien said that the dumpster pad would be larger to accommodate both recycling and trash, which will be picked up once a week in a process that takes 10 minutes. The pad location will be screened with a vegetative screen in back and a fence in front. The inn has a compost policy. Dana added that the generator is propane and quieter than diesel generators. The estimated noise is 59 decibels at a distance of 20 feet.

Frank asked about clearances and whether acoustic housing had been considered. He noted that the existing generator has been modified and is not in acoustic housing. Dana said he did not know. Frank said that the proposed location does not allow servicing, and that the generator needs proper mufflers with different housing so it does not affect the neighbors. He thought that the unit should have hospital grade quietness. Alex noted that it had been on line for two months so far and that the pipes have quieted the unit. He hopes to move the generator because it is designed for open air operation, and the manufacturer would not certify the warranty in its present setting. Frank recommended keeping the unit in place with its existing wiring, taking the roof off it, and bringing it up to ground level. This way there would be no danger of a car hitting it. Kim said that this could be done, but moving it would put it farther from the neighbors. Frank said he measured clearances, and that it is within five feet of two openings, which does not comply with the code for outdoor engine installations. He noted that the

manufacturer's instructions may impose restrictions beyond the code. She said that the generator site modifications could be made, but can't speak to site decisions. Rob asked why these issues were not flagged earlier. Kim said that they were not properly addressed at the time by the previous designer, and that they were unable to obtain the protective easements from abutters required by the state for the permitted well site.

Alan asked about the location of the air conditioner condensers and how they work. Dana said he did not know, but they have an updraft fan. Alan asked if the designer considered a ground coupled heat pump. Kim said that all alternatives were examined. Rob asked if the pads can be reasonably located elsewhere. Kim said that they need to be near the inn for operations and not in the wetland buffer, and that the engineer would not recommend that the air conditioning units be placed elsewhere. Ross asked about the right of way along Dorchester Road. It appears that all of the planned improvements are not being put in this right of way.

Ross asked for comments from abutters. Cynthia Bognolo said she has owned property next door since 1987: two buildings listed on the National Register of Historic Places. She wanted to know why the well needed to go in the proposed location, and expressed concern about her own well, which she had to replace. She asked for conditions that a neutral engineer do a test flow of her well before the inn's new well is drilled, and a quality test at PETSU's expense. She noted that after a neighbor used hydro-fracking, there were significant impacts to her own well. She also had concerns about moving the dumpster closer to her rental property and disturbing her tenants. John Griesemer noted that under previous inn ownership, trash pickup was sporadic and a problem for the neighbors. He said that the current pickup is sometimes earlier than 7am, and that guests at the inn may complain about the noise. He asked what the new high demand well do to neighboring water supplies. Cynthia's tenant said that he has young children, and he does not want the dumpster nearby.

Colin Robinson, speaking on behalf of the Lyme Village water association, said that the association had been required to test the Chaffee well (at present Munger property) for a sustained output over 24 hours, and were required to identify all wells within 1000 feet. This well produced 12-12.5 gallons/minute and had no discernable impact for three nearby landowners. He thought that the inn is overly optimistic about the yield and is concerned that it may affect the village's water supply. He thought that monitoring at the applicant's expense is reasonable. Frank asked about the buffer storage capacity at the inn. Dana said it is 1200 gallons of atmospheric storage. Alex said there may not be space for more. Rob asked if any other approvals are required. Kim said that a revised site approval from the Planning Board is needed. Ross noted that the inn is looking for an instantaneous peak flow rate of 55 gallons/minute and that the average daily flow is limited by the septic system approval, which is 1.6 gallons/minute.

Deliberations: Ross noted that the board cannot act as adjudicator between the inn and its neighbors, but that it can set conditions. Rob said his main concern is the location of the condenser and generator. Frank said he would need to be convinced by engineers why it is necessary to move the generator. Alan suggested leaving the dumpster where it is and moving the well. He advised separating the application into parts.

Out of deliberations: Rob asked if more information can be supplied. Kim said there would be no objection to splitting up the application. Dana described the process of selecting the well and dumpster sites, noting that a 125' sanitary protective radius is required by the state. If the well is located closer to Cynthia's property, it would be too close to both the inn's and her property's septic systems. He added that it was necessary to get a waiver from the state for proximity to the road (due to road salting) and that a special technique will be necessary to drill the well near the wetland. Frank noted that because the inn is composting food waste, a major source of odor is not going to the dumpster. Alex confirmed this and added that if the receptacle becomes dirty, he can request a clean box. Frank advised restricting trash disposal times so it does not occur at night. Colin noted that a dumpster cannot be within 125 feet of a wellhead. Cynthia repeated that she did not want the dumpster closer to her property. Alex said he can specify the terms of his contract with the trash hauler, including hours. Dana said that the well will be a bedrock well and he doubts that hydro-fracking would be necessary. Any yield will suffice, given the storage capacity. Cynthia said she did not see how the dumpster could comply with section 10.40 (a) 5, 6, 7, or 8.

Deliberations: Rob advised splitting the air conditioner and generator questions off and addressing these later when more information is available. Alan seconded this motion and it was unanimously approved. Ross agreed that the compactor noise is aggravating, but the handling of the food refuse will diminish previously experienced problems. He noted this has been a long-time problem at the inn. Rob added that a neighbor can bring a claim for nuisance if aggrieved. Ross said that the applicant and abutters should agree on a stress test for neighboring wells.

Out of deliberations: Cynthia reported that the dumpster had always been by Dorchester Road, where the noise was absorbed by traffic. It became a problem when Mickey Dowd moved it to this proposed location. Kim said that her client would agree to a procedure that limits noise-producing activities to certain hours.

Deliberations: Alan moved to grant a special exception to section 8.24, placement of a structure within the Wetland Conservation District, and for construction of a new well and dumpster pad, with the following findings of fact:

- The Zoning Board of Adjustment previously gave an approval for location of the well in the front setback
- A new well location cannot be denied because it is in the spirit of the Zoning Ordinance to preserve the character of the Common, which includes a viably functioning inn
- The intrusion into the Wetlands Conservation District is 16sf over the existing structure
- Food garbage is composted at the inn, and is not put into the dumpster

He recommended the following conditions:

- Approval from the Conservation Commission
- Screening between the dumpster pad and the property lines to the south and northeast
- Since the new well may affect nearby wells, require an agreement on a testing procedure
- The inn will cooperate to control annoying operations around the dumpster
- There will be no dumping at night
- The dumpster pad position will be rotated 45 degrees if feasible, to reduce noise and impact

Rob seconded this motion and it passed unanimously. It was agreed that if either the Conservation Commission does not approve or the agreement on well testing is not reached between the inn and abutters within 1000 feet, the issue will be reconsidered.

Frank proposed issuing a conditional approval for the air conditioners. Ross moved to grant a special exception under section 8.23 to locate two air conditioning condensers within the Dorchester Road setback, with the following findings of fact:

- Such accessory structures are permitted under section 8.23
- The proposed units cannot be reasonably located outside the setback
- The number of square feet is less than the 500sf allowed
- There has been concern about noise from these units.
- Requirements of section 10.40 have been met.

He recommended the following condition: if abutters complain about noise once the units are installed, the applicant must agree to further sound shielding. Frank seconded the motion and it passed unanimously.

Alan moved to continue discussion on item #4, the proposed generator installation, until more information is available. The board must be satisfied that it meets the life safety standards and sound abatement, and be convinced why the existing location is not feasible. Rob seconded this motion and it passed unanimously.

Meeting adjourned 9:52 pm

Respectfully submitted,
Adair Mulligan, Recorder