

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – May 19, 2011

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

Absent: Ross McIntyre

Alternate Members: Absent: Paul Mayo

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

Public: David Celone, Bret Ryan, Rita Murdoch, Doug Vogt, Jenny Tiralongo

Vice Chairman Frank Bowles called the meeting to order at 7:30 pm.

Minutes of the meeting of April 21, 2011 were amended and approved on a motion by Rob, seconded by Alan.

Application #2011-ZB-14, David Celone (Tax Map 201, Lot 67) 6 East Thetford Road in the Lyme Common District.

David Celone has applied for a special exception under section 8.25 to add a 80 square foot (8' X 10') shed to his property. The property is located in the Lyme Common Zoning District and is already over the maximum allowed lot coverage. In 2003 the owner applied to the Zoning Board for expansion an expansion to build a deck. Item 6 of the Findings of Fact show a remainder of 82 square feet for future expansion. The principal structure on the property was built in 1928 and therefore complies with section 8.25 C. The site is an appropriate location (Section 10.40.A.3) because the lot is narrow and has wetlands at the rear. The proposed location will not be visible from the road and is out of the setbacks and not in the wetlands buffer.

David Celone agreed to accept a four-person board. He noted that an abutter has suggested that he place the shed closer to the property line, in the side setback, but he is flexible. He decided not to change his request. Walter noted that an old decision memo says that only 62 sf of lot coverage is left, not 82 sf. David observed that the actual deck measurement is less than what appears on the tax card, and that there was an addition to the house not recorded by the Zoning Administrator. David Robbins offered to help him measure the property, and David agreed. Alan moved to continue the hearing on this application to the next regular meeting. Rob seconded the motion and it passed unanimously.

Application #2011-ZB-31, Brett Ryan (Tax Map 201, Lot 91) 12 & 14 East Pleasant Street, Lyme Common District.

R. Brett Ryan has applied to the Lyme Zoning Board of Adjustment for: 1) A special exception under section 8.11 for an expansion of use; 2) a special exception under section 8.25 to exceed the maximum building footprint; and 3) a variance to replace the two existing dwelling units with a single structure containing both units. This lot is unique in that it has two dwelling units in separate structures on one lot. If the variance request is granted, then the proposed building would be over the maximum allowable footprint in the Lyme Common District. The owner also wishes to add a bedroom to the five that are currently in the dwelling units on the lot.

Bret said that the buildings are derelict and non-conforming, close to the road. He would like to remove them and build anew, set back from the road and close to the toe of the slope. He asks to join the two buildings to free up green space. The proposed accessory structure would replace the garage, would be smaller, and would house landlord space and a boiler to heat the building or buildings. The fuel could be propane, corn, or oil; he has not chosen yet. Walter noted that the ordinance does not deal easily with situations like this. He asked about rental use. Bret said it would be single family housing and that the property has been rented for years. David Robbins said he talked to Patty Jenks, the previous owner, who rented the property for years to students. It was rental property when zoning was enacted. Previous to that, the owners occupied it. Walter concluded that there was to be no change in use for either structure, and that the non-conforming use would continue.

Walter inquired about steep slopes at the back end of the lot. David referred to section 3.31 and said that because he could not accurately locate the measurement area, asked the Board to identify the steep slopes. Abutter Jenny Tiralongo said that the septic system is better located where it is proposed because of water coming through the hill. The current septic system is built on the property line. David noted that the dimensions of existing buildings are correct. The permit for the garage has lapsed, but can be renewed without issues. The large house was occupied until April and the small one was vacated last summer. Rob asked why the application map shows

two separate buildings. Bret said he prefers to build one building. Frank asked if there are any other single structures in the Lyme Common District that hold two or more dwelling units. David said there are. Alan said he didn't see anything in the ordinance that allowed a duplex.

Deliberations: Walter referred to section 3.27.2 to figure the adjusted lot size. He and Alan measured from the 126' contour on the south side to the 133 foot contour on the north side, concluding that an area of 58' x 130' should be considered steep slopes, or 7540 sf. The actual lot size is 34,924sf, so the reduced lot size is 28,892sf. (34924-(7540*.8) There are no other conservation districts on the property. Therefore, the maximum allowable building footprint is 1,733 sf and maximum allowable lot coverage is 3,467sf. The proposed large building is 2,880 sf.

Out of deliberations: Walter asked if the landlord space is to be heated. Bret said he plans to heat it, but this could be discussed. Discussion ensued about whether an unfinished basement can be considered living space, and it was concluded that it would not. Frank asked how much would not be living space, and Bret said his design is flexible to meet the square footage the lot can support.

Deliberations: Walter noted that existing lot coverage is 2,092sf, with up to 3,467 permitted, leaving 1,375sf. Gross floor area and lot coverage are therefore not issues. The maximum allowable footprint is 1,733sf, and the proposed buildings are 2,880sf. Walter said that the proposed lot coverage is too large and requires a variance. However, two buildings, each of 1,440sf, would be under the ordinance's limit because each could have a 500sf addition.

Out of deliberations: Walter asked about whether one could be viewed as an accessory dwelling. David said that the use must be non-conforming and there are two separate dwellings on one lot. There is no easement as required by section 4.42.

Deliberations: Walter noted that at the time zoning was enacted, there was already an accessory building on the lot, although it was over the size limit. Rob said he did not think that the proposal fit the ordinance and that such a large building cannot be built. He said he believes the Zoning Ordinance tries to permit non-conforming uses, but not to this extent. He said he did not think that the application meets the criteria for a variance. Walter agreed that a special exception would not suffice. He then wondered whether a variance for two 1440sf houses, similar to others on the street, could be granted, although he understood that putting the two together made practical sense from a builder's point of view. He said that a 2,880sf building could not be granted because the ordinance gives a maximum footprint size. He added that a big building should not be built in this area since it would look out of place.

Out of deliberations: Jenny said that she had not seen the plans until now, and offered her opinion that a large duplex would be out of the ordinary for Lyme Common. She was concerned about the increase in footprint, because these buildings are larger than the existing ones, although it would be nice to have more green space. Walter thought that two houses on the lot is a reasonable use. He noted that given the condition of the current buildings, any change on the lot would probably increase local property values. Rob thought that the proposal would significantly expand a non-conforming use and that building two separate buildings would not necessarily result in hardship to the owner.

Deliberations: Walter reviewed variance issues, consulting the most up to date RSAs, since the Lyme Zoning Ordinance in its current form does not include the most up to date criteria for a variance, and the RSAs have changed. He said that the variance question does not concern a use variance. Rob said the project does not fit the criteria for a variance. Alan said he could not see unnecessary hardship.

Out of deliberations: Bret said that given his investment in the land, he cannot make the project worth it unless he adds a bedroom. If they are two buildings, they will always be rental space, he believes. He added that he does not care if the building is one or two. The property has an artesian well and an outdated septic system. The best location for the septic system is where the house currently sits.

Deliberations: Walter said that he does not think undue hardship would exist. Walter moved to continue the hearing until the next regular meeting. Alan seconded the motion and it passed unanimously. He asked Bret to provide more information on the septic system and well.

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

Continuation of hearing from April 21, 2011. PETSU, LLC d/b/a the Lyme Inn had previously applied to the Lyme

Zoning Board of Adjustment for a Special Exception or Variance to 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). Frank reviewed the facts of the case for the audience. The applicant has decided to keep the generator where it is, and has sent a letter withdrawing the application. Frank moved to close this hearing. Rob seconded it and the motion was unanimously approved.

PETSU has also requested a re-hearing of the previous application. Frank asked for statements from the public in attendance. Doug Vogt, an abutter to the inn, said that he had been unable to attend the previous hearing. He had learned that the applicant hopes to confine well testing to those abutters present at the last hearing. He has not been contacted about testing his well. Nor was Rita Murdoch.

Deliberations: Walter said that the request for a re-hearing is reasonable since it asked for clarification. He moved to re-hear the case. Rob seconded the motion, and it passed unanimously. David noted that Cynthia Bognolo's related request for a hearing could also be accommodated per section 10.82 of the zoning regulations.

Meeting adjourned 10:05 pm

Respectfully submitted,
Adair Mulligan, Recorder