

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – November 17, 2011

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

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

Public: Marty Bowles, John Stanhope, Lois Stanhope, Don Metz, Sara Day, Robb Day, Ray Brewster, Rich Menge, Julia Rabig, Geneva Menge, Joe Longacre, Rich Brown, Will Davis, Charlie Hirshberg, Liz Ryan Cole

Chairman Ross McIntyre called the meeting to order at 7:35 pm.

Minutes of the meeting of October 20, 2011 were amended to note that the flag at the proposed Treadwell house was not free flying during the site visit, and approved on a motion by Rob seconded by Frank.

Application #2011-ZB-83, Don Metz on behalf of Peter and Janice Treadwell (Tax Map 408, Lot 47.2) 18 Horton Lane in the Rural District. The application is for a special exception to build a single family dwelling on the Treadwell property. The proposed location is within the Hillside and Ridgeline zoning district and therefore requires a special exception under section 4.66B of the zoning ordinance.

David Robbins said he had received letters from three abutters (the Sanderses, Brands, and Keanes) all of whom support the project. Marty Bowles spoke in favor of the proposal, saying it fits her sense of the neighborhood and that the house would be less visible than others nearby. David displayed an overlay he had created showing ag soils, steep slopes, and the proposed building site. Don Metz said that the Ridgeline District lacks a standard to measure “visually unobtrusive.” Frank asked for more data on utilities, which Don provided in a plan. Alan asked whether the building could be moved 20 feet west; Don showed potential driveway routes.

Deliberations: Ross noted that under section 4.66B a special exception is possible subject to the requirement that the proposed use, to the maximum extent possible, will not degrade visual features.

Out of Deliberations: Rob asked if there is flexibility to move the house. Don said there is. Walter said that when on site, the board judged that if the house was moved 30’ west it would be acceptable. He asked if it is impractical to move the house 30’ west. Don said no. Frank moved to grant a special exception under section 4.66B to permit construction of a residence with the following findings of fact:

- Public testimony of abutters is in favor
- The board has reviewed the Ridgeline and Hillside District zoning
- This location, if moved 30’ west, is in substantial conformance with the regulations
- The house will be located according to the plan submitted by Don Metz on 11/17/11, subject to a lateral movement 30’ to the west, subject to site conditions
- Conditions: best construction practices will be used, with an effort to minimize visibility.

Rob seconded the motion and it passed unanimously.

Application #2011-ZB-99, Jan-Roberta Tarjan (Tax map 409 Lot 69) 48 Isaac Perkins Road in the Rural District.

Application for a special exception under section 8.22 to build a wood shed within the road setback. The family started construction of a wood shed without realizing they needed a Zoning Permit. David noticed the construction before it was complete and requested that they stop and apply for the permit. Because the partially constructed wood shed is within the road setback, a special exception under 8.22 is required. The entire property is on agricultural soils but the house was built well before zoning, qualifying it for a 200’ building zone excluded from the agricultural soils conservation district. The proposed location is in this building zone. Lot size calculations show that after the agricultural soils reduction the allowable lot coverage would be 5315 ft² (1800 ft² currently used) and the max building footprint would be 870 ft² (proposed shed 174 ft²). These numbers do not include the 200 foot building envelope; therefore the actual allowed values would be higher.

David explained that the purpose of the open structure is to store wood to deliver to the house. There was previously a garage on the site. Ray Brewster noted that the house is 18’-23’ from the road and has been there since the 1840s-50s. The land behind slopes downward. The woodshed is a foot farther from the road than the house. The free-standing garage was 10’6” x 18’. The shed would be about 100’ from the south property line.

Deliberations: Ross considered this project a replacement of the garage and that the applicant should not be charged against the allowable 1000sf expansion. He noted that the woodshed is smaller than the previous garage. Alan moved to grant a special exception under section 8.26 with the following findings of fact:

- The house predates adoption of the zoning ordinance, as did the garage
- The current proposal does not encroach into the road setback as much as the house or the former garage, where the proposed woodshed will be built
- The proposed shed is an accessory structure to the principal structure on the lot
- The woodshed is proposed to be built within the building zone.
- The footprint of the woodshed will be 174sf, which is well under the maximum allowable building footprint of 870sf.
- The allowable lot coverage, after the exclusion of the appropriate percentage of agricultural soils from the total lot area, is 5315sf, and the proposed project raises the lot coverage to 1800 sf.
- 1000 sf of expansion capacity and additional footprint for future expansion remain.
- Conditions: shed is to be built essentially as shown on the application and accompanying map and descriptions; best construction practices will be followed to avoid erosion during construction. Hereafter, the replaced structure will be considered an existing building.

Frank seconded the motion and it passed unanimously.

Application #2011-ZB-102, John Stanhope (Tax map 401 Lot 17) 60 Dartmouth College Highway in the Rural District. David introduced the project. The proposed farm stand will sell gardening supplies not produced on site and plants and trees grown on site. The Zoning Ordinance does not allow "Retail Use" within the rural district, but it does allow "Agricultural Use." The first question before the board is to determine if the proposed farm stand and greenhouse operations is an agricultural use or a mixed agricultural and retail use. The Zoning Ordinance is not clear where this use falls in table 4.1. Under the Zoning Ordinance definition of Agriculture, greenhouse operations are an agricultural use and would be allowed but the retail sales at a farm stand are not specifically included as a use incidental to or in conjunction with farming operations.

The second issue is the location of the septic system. Hewes Brook and a guardrail along Route 10 prohibit access to all but a small area at the north end of the lot. The location of the septic system is restricted by the property line and road setbacks and by an area of wetlands. Section 5.13 E 1a requires that septic systems have a minimum setback from wetlands of 100 feet. This leaves two possible locations of the septic system. The first is shown on the map, in the front of the farm stand, inside the road setback. The second location would be north of the farm stand building in the side property setback. The applicant requests that the Board allow the option to use either location based on which is more suitable for a state approved septic system. Because it is not a replacement system it does not qualify for a special exception under section 5.13 E 3. It also does not qualify for a special exception under Article VIII because this is new construction.

John Stanhope explained that the buildings are proposed for specific locations that avoid agricultural soils. He plans operations similar in size and scope to those at his former site on River Road in Hanover, but with a smaller footprint here. His business is growing and selling plants. In terms of total sales, 90% of items sold would be produced on the property, and 52% of the production will be in plant material. The state has given a 25' ROQ permit. The property was the site of two homes into the 1980s before Route 10 was rebuilt. There is much cleanup to be done on the site.

Frank asked about the narrowness of the entrance drive as shown on the plan. John said that the state will allow him to fan out the driveway, and that there is space for that. Rob asked for comparison with the Hanover operation. John said that in Hanover he had a 30'x60' store with 12'x30' canopy, and five greenhouses. He proposes a 40'x50' store with 10' overhang and four greenhouses at this site. There is a pipe protruding from the ground, and he does not know what it is. There has never been a water well on the property. He will use an artesian well, and employs best management practices such as a drip system with water recaptured and stored in tanks. A septic system is needed for employees and business use. Frank asked about tightly controlling fertilizer runoff. John said it would be done, adding that soil testing on his Hanover property showed no problems.

Rob asked for information on production. John said that excluding lawn and garden products, 79%. Nursery stock locally produced was 52% in 2009 and 49% in 2010. He hopes also to sell others' locally produced maple syrup and vegetables. Most activity would be from the end of April through June. Rob asked about parking. John said there would be 50' between the greenhouse and farm stand; he does not expect more than 12 cars at a time. David noted that the town parking standards do not address this situation, and that if the greenhouses are not included in the business floor space, about 10 spaces would be required for 2500sf of space. Walter asked about the number of employees. John said that it would be the four family members, sometimes with two others. Operations will be 7 days/week from 8am-6pm in spring through July, then 6 days/week with same hours otherwise, with greenhouses shut down and less activity in January and February. Walter asked about sales volume. John said that in 2009-10, 50% of sales in dollars were produced on the property. If extended to other products, 92%. The rest is items like shovels, other hardware, and delivery.

Discussion turned to the septic system location. John noted that there is ledge confining possibilities. Ross asked about heat. John will use propane. The farm stand will be wood frame, and the greenhouses are tubular frames with a polycarbonate covering. They will be moved from Hanover. Grow lights will be used in the farm stand but not in the greenhouses. There will not be security lights, and the yard will be gated. Lois Stanhope noted that she does not like light pollution. David noted that underground propane storage tanks are not permitted in the wetlands conservation district. Ross asked if there are plans for a residence. John said no, and that the rest of the property will stay as it is. There are extensive logging trails that go to the top of the hill. Ross asked about decayed drums near the leach field site. John said he did not know what they were for, and guessed scrap wood storage.

Rob asked about security, and John said that while there will be alarm systems on the greenhouses to monitor for temperature, there should be no other security issues, since no money will be kept on site. He added that he doesn't think the proposal is out of character for the area and that there are others like it in Lyme that sell products they do not make. He said he could not see the house across the road, as it is behind trees and a ledge. He shared a copy of the conservation easement on the abutting Menge land; uses are limited but allow production, processing, and sale of plant and animal products on the property.

Ross asked for comments from the public. Rich Menge asked about the review process. Ross said that the first issue to be determined is whether the farm stand is allowable under the definition of agriculture, since the ordinance does not specifically refer to farm stands. He noted there are others in town, including one operating year-round, that were approved by the board. David added that agricultural use in the Rural District is not subject to site plan review by the Planning Board, so the ZBA would be the only review.

Geneva Menge noted that the conservation easement deeded on both sides of Route 10 near the intersection with Goose Pond Road was granted for scenic open space protection. She feels that a large retail operation is inappropriate there, across from her daughter's house. John Stanhope offered that the view of the operation from the Maxfields would be an improvement over previous conditions. Julia Rabig, who rents the Menge house across from the site, asked if there are plans to remove trees. John said that there is invasive brush along the brook, including honeysuckle, Japanese knotweed, buckthorn, and two large dying trees that will be removed. Sarah Day said that she does not see a security concern, and that the soil at the building site is better suited to that than the back land. She added that Route 10 is not peaceful, and the area is not likely to remain residential in nature. She noted that her family works hard to maintain a clean, attractive operation that is well contained. Rich Menge said that he is producing a crop and managing 40 acres of tillable fields on his mother's land nearby. His concern is size and potential impact. He noted that the Maxfield business pre-dates zoning and the use of that property would likely return to residential. He asked for limits on lighting and noise and that stormwater runoff to Hewes Brook be addressed.

John Longacre, who has had business experience with the Stanhopes in the past, said that the Stanhopes run a very clean operation and that it would not be an eyesore. He felt it would be a good use of the property. Geneva agreed that the Hanover operation is attractive, but is concerned about the size of the buildings. Julia asked who would step in if traffic problems arose. Alan said that the police or town would report problems to the state.

Deliberations: Ross noted that there has been *other* development along Route 10, including the Lyme Nursery School, Crossroads School, and the DHMC clinic, among others. He asked that the board begin with focus on the definition of agriculture. Frank noted that all proposed activities fall under the definition of agriculture in the NH RSAs and the Lyme ordinance, especially with the percentage of legitimate agricultural use. He added that at the Bailey Farm on Route 10, other products can be purchased, as well as on River Road. Other members of the board agreed.

Discussion turned to the septic system. Ross expressed concern about setting a precedent for other commercial structures on Route 10, but agreed that since more than 50% of sales consisting of agricultural products on the site, the proposal meets the definition of agricultural use. Therefore the issue becomes one of taste and view. Ross pointed out that this site had been disturbed in the past, and he does not see violence done by addition of greenhouses. He said that the only remaining issue is the septic system location. It must be located outside the wetland and wetland buffer, and also outside the front and side setbacks. Walter recommended placing it under the parking lot.

Out of deliberations: Walter asked how quickly the Stanhopes wish to proceed. John said he could wait until Dec. 1. Frank moved to continue the hearing until December 1, and the motion was seconded by Rob and passed unanimously.

Application #2011-ZB-79, Tami Dowd (Tax Map 201, Lot75) 9 Main Street in the Lyme Common District.

The application has been withdrawn by the applicant.

Application #2011-ZB-103, Loch Lyme Lodge (Tax Map 408 Lots 19 and 20) 59 and 60 Orford Road in the Rural District. David introduced the two-part project, an application for a special exception to expand an existing building and construct an accessory structure at 60 Orford Road and an application for a special exception to construct a new primary structure, detached accessory dwelling unit and accessory building at 59 Orford Road. The two lots shown on the maps are significantly different than what is shown on the tax map. On both sets of plans provided by the applicants, the boundary between the lots is described as approximate. The location of this line affects the dimensional calculations of both lots, in particular agricultural soils. Using the "approximate boundary line," the total acreage of agricultural soils on the property is 2.9 acres. Using the boundary from the tax map the total would be approximately 3.5 acres. Under Section 4.64, "The Zoning Board may waive the requirement of an easement on lots which have less than 3 acres of agricultural soils." David suggested a boundary line agreement to fix the boundary. He said this does not need to go to the Planning Board. He noted that the lots had previously been merged by the town, but were de-merged (the legislature has extended the window for de-merging until 2016).

Agricultural soils on this property have been mapped for the Planning Board by Ray Lobdell. A shoreland permit will be required for the driveway and a wetlands permit will be required for the wetlands crossing. The expansion of the Balsam cabin and the driveway to lot 19 both require review and comment by the Conservation Commission, which has not yet been received but which David characterized as likely to be negative.

Will Davis provided copies of deeds for both lots, showing that both have frontage on Route 10 and Post Pond. The citation of six acre area for one of the lots allowed him to determine where the boundary might be, and he recommended a simple boundary line declaration since both lots are owned by the same entity. The proposed drive across the Teed lot runs where the right of way likely was, according to the deed. David said he is not totally confident that the tax map is correct. Ross and Frank agreed that both lots do have road frontage.

For the Balsam cabin, David noted that parking areas were not included in the lot coverage calculation. In the definition of lot coverage the ordinance requires commercial parking areas to be counted. The October 16th, 2008 finding is "Future changes in lot coverage would require detailed review of lot coverage on the property especially with regard to conservation districts." It was noted that if Balsam became a private residence the driveway would not be for commercial purposes and would then be exempt from the lot coverage calculation. Docks are listed as

structures but no dimensions are shown. The cabin expansion, the accessory building, and the new driveway all must receive State Shoreland approval. A previously approved gazebo and bath house are located on this lot. David said that he is comfortable with the applicant's numbers.

The Balsam cabin is proposed to become the principal structure on the lot, while the Lakeview cabin will remain as an accessory structure to it. Ross noted that all three cabins on the site predate zoning, and that the ordinance does not deal with seasonal structures or conversion to year-round structures. He asked if the use is to be changed. Liz Ryan Cole said she is not sure how the buildings will be owned or what is possible. She sees the cabins as guest cabins for property owners. Her group could sell these two cabins or continue to use them. There is no master agreement yet and she is not sure of the future of the property. A mixed use is now proposed for the lot. Frank asked about the septic system. Liz said it is to be a community system and is not yet built.

On the Teed lot (Lot 19), David said that he is also comfortable with the applicant's calculations and that the proposed work is outside setbacks. Ross noted that construction on ag soils would be permissible without a conservation easement on the remaining soils. Alan asked about abutters. Liz said that they had been approached. Walter noted that the proposed leach field extends into the wetland conservation district. Ross reminded that the wetland buffer cannot be invaded for new construction. Charlie Hirschberg said that a small footprint system could be built.

Voted unanimously to continue the hearing until the next regularly scheduled meeting on December 15, on a motion by Frank seconded by Alan.

Meeting adjourned 10:52 pm
Respectfully submitted,
Adair Mulligan, Recorder