

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – December 1, 2011

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

Absent: Walter Swift

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

Public: John Stanhope, Lois Stanhope, Sara Stanhope Day, Rich Menge, Geneva Menge, David Roby, Ellen Knights, Roy Knights, Jim Shea, Tyler Rich, Jennifer Cooke, Susan MacKenzie, Dan Brand, Jackie Glass

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

Minutes of the meeting of November 17, 2011 that referred to the Treadwell application were approved as written on a motion by Alan seconded by Frank. Minutes referring to the Tarjan application were approved as written on a motion by Frank, seconded by Rob. The rest of the minutes were set aside until the hearings are complete.

Application #2011-ZB-102, John Stanhope (Tax map 401 Lot 17) 60 Dartmouth College Highway in the Rural District. Ross noted that a four-member board was present and noted that the applicant could request a five-member board. John Stanhope accepted the four-member board. Ross reviewed the status of the hearing, noting that the board had previously determined the use to be agricultural based on the amount of income expected to be generated by the future operation, given experience at the current operation on River Road. He noted that the applicant had furnished a table showing the percentage of income derived from each activity, and a high percentage of sales are to be generated from activity on the site. Therefore, the board had unanimously determined that the business was agricultural, not a retail operation. He said that the board then looked at conditions to set, and noted that because the leach field is a new system, it could not be placed in the setback.

Ross noted that much discussion had taken place during the week about this application, and he has read all of the Lyme List email postings. Other members indicated they also had read them. Ross indicated that the board could choose to take up the issue of agricultural use but discouraged repetition of points already made. Frank agreed and suggested reviewing other similar decisions. Ross noted that in 2008, the ZBA issued a special exception for a year round farm stand to be built in the front setback of a farm property on River Road, because there was an existing foundation, and the board at the time observed that there would be no change in use because the property "was already a farm" The board relied on the town's definition of agriculture that included "any practices as an incident to or in conjunction with such farming." Ross then invited public comments.

David Roby said that the vote on agricultural use does not appear in the minutes. Adair read the draft minutes of the last meeting indicating that there was agreement by the entire board that the use was agricultural, a formal motion and vote on this topic was not taken. Rob Titus said that the Lyme ordinance does not describe farmstands, so the board turned to the state statute. Frank noted that there are a number of other farmstands in Lyme, and that it is clear that the Stanhope operation is primarily a growing operation, with sales of other items a smaller proportion. David said he thought the board had made an error, and if a vote had taken place, he would come back with a petition for a rehearing. John Stanhope said that the face of agriculture today is different, and it is not practical for people to practice agriculture without the opportunity to sell their products. He reminded that Lyme has a Right to Farm ordinance, and suggested that a better definition would be helpful.

Rich Menge said he did not get a copy of the table defining the percentage of locally produced sales, and pointed out that the definition of agriculture in the Lyme ordinance avoids "farmstands" and "retail centers." He believes that the Tensens' farm stand does not meet the definition in the ordinance because the products sold there are largely produced by others. He asked to see the data and complete application. David Roby said that the state statute's definition of agriculture does not pre-empt the Lyme definition, but would apply to Lyme if the town did not have its own ordinance. He quoted from RSA 674:32 A: farming "includes selling at retail on site where permitted by local regulations." Alan asked where it stated clearly that the state definition does not apply. David referred to section 1.34 of the Lyme Zoning Ordinance, that the provision that imposes the greater restriction applies. John Stanhope asked for a definition of "market," noting that the definition of farming in the

Lyme ordinance lists "preparation for market" as an allowed activity. David continued that if the Lyme zoning ordinance had intended to provide for farmstands, it would have. Rob Titus said that "including but not necessarily restricted to" in the Lyme Ordinance would allow farm stands unless they were specifically prohibited in the regulations, and asked how David interpreted all the other sales-oriented structures in town. David said that none of them had come to the ZBA and that they are minor to the farm operation. He contended that this use is different, and that the curb cut is to serve a retail garden center. He thought that the zoning ordinance should reflect Lyme people's wishes, and that they should have a chance to voice their opinion by amending the ordinance. David said he thinks this is the wrong operation in the wrong place.

Dan Brand said he had no position on the application, but said it is important to property values in Lyme that Route 10 remain a safe, high speed access to the regional core at Hanover. He would like to see commercial enterprises in areas where travel speeds are slower, and suggested that a tipping point of development along Route 10 might come that would compromise the effectiveness of Route 10 as a high speed artery. The expansion of Crossroads School required a turning lane. Here, most of the traffic using the garden center would be during off-peak commuter hours, and is well spaced with good sight distance except from the northbound lane. He advised a right turn lane. There is good sight distance at the Goose Pond Road intersection. John noted that there is a large breakdown lane.

Jim Shea asked whether the board could influence placement of buildings and design elements. Ross said that the board has no control over architectural review, but could specify conditions such as requiring a berm to reduce road noise, lighting, and other features. Jim asked if the view would be shielded so the greenhouse structures are not imposing. He cited Brown's Nursery in Thetford as a good example. David suggested that the board could specify that the project be reviewed under site plan review regulations. He added that the state statute required only 35% of sales to be attributed to products of the site, but that the board should require 100% be produced on site.

Rich Menge said he has walked the site and observed a knob of ledge. He asked if the application is complete. Ross read a note from absent board member Walt Swift, who suggested limiting exterior nighttime lighting and types, and limiting interior lighting of greenhouses. He advised restricting operations to times indicated in the applicant's earlier testimony, and ensuring that future uses of the property have the same percentage of products produced on site.

John Stanhope said he had not explored other possible layouts, but that he believes it is possible to build a septic system in the area near the greenhouses opposite the farmstand.

David Roby said that there is no delineation of agricultural soils on the plan or its impact on lot size. He noted that the greenhouses are shown within the wetlands conservation district, which is not allowed by the zoning ordinance. He said he believes that the site plan does not give the information needed, and suggested asking the applicant to ask his soil scientist to prepare a plan showing what is needed for approval. David added that he cares a lot about the Lyme Zoning Ordinance, and that if the board makes a mistake, it will end up in Superior Court. David Robbins said that he prepared calculations of lot coverage that he provided to the board before the first hearing.

Deliberations: Ross said that the wording used in the definition of agriculture in the Zoning Ordinance indicates to him that the board is allowed to make a judgment to deal with issues that don't have a black and white answer. He finds that the ordinance has places that were deliberately left vague that need to be addressed in each particular instance. He added that although there are some greenhouses that are limited to wholesale only most greenhouses have a farm stand activity and that if greenhouses are permitted by Lyme's definition of agriculture there must be a reasonable opportunity for someone managing a greenhouse to sell on site what they grow. Frank said he thinks that the operation is clearly agricultural by the intent of both the Lyme ordinance and the state statute. Rob and Alan agreed. Alan said that because the Lyme ordinance reads "but not necessarily restricted to," the board had to turn to the state RSA. Since 40-50% of the income received at the greenhouse will be from materials produced on site, he has no problem calling it agricultural use. The board then voted unanimously to approve the following motion by Frank, seconded by Alan, that the board had reviewed the Lyme Zoning Ordinance, and being guided by the state RSAs and by research and comments from the public, had deemed that the proposed use by the Stanhope application is agricultural use.

Ross noted that the greenhouses are proposed to be located in the wetland buffer, and concluded that the greenhouses are agricultural structures and therefore exempt, although he said it could be argued that a greenhouse presents an impervious surface. Close reading of the Zoning Ordinance section 4.61A indicated that

while agricultural uses are permitted in the wetland conservation district, erection of structures is not. Ross asked if the greenhouse should be considered a temporary structure. Frank said he thought what is proposed is a structure, and that a revised plan is needed that puts the greenhouses out of the wetland buffer. Rob suggested a variance for the greenhouses. Frank pointed to the need to know more about options for placing the greenhouses elsewhere. Ross said that a use variance could be granted if there is no other alternative. Frank noted that good middle ground should be sought, especially in light of all the positive commentary from the public during the day. He noted that there is an existing driveway to the proposed building site, and that a new curb cut has not been requested.

Ross asked how to ensure that future use of the site will remain within the definition of agriculture in terms of percentage of sales of products produced on site. Rob said that any use should be agriculturally related, and an annual accounting should be furnished. Ross asked what if a future buyer wants a different use. He suggested that conditions should be placed on use of the site for future owners, not the current applicant. He advised that the applicant could look at the feasibility of moving the greenhouses out of the wetland buffer and address visibility from the highway, the location of the septic system, and give specific details in writing about security, lighting, and gate operations.

Out of deliberations: John Stanhope said that the state considers his type of greenhouse “de-mountable” temporary structures since they are easily dismantled and moved. There would be pavers, gravel, or other porous material below them. He said he chose the proposed location because it would present minimum impact; moving them elsewhere on the property would require more infrastructure and greater impact. It is important to locate the greenhouses near the farmstand. David Roby said that the greenhouse meets the definition of building and structure, even if it is portable, so it cannot be built in the wetland buffer. He repeated that until a map of agricultural soils is prepared, the board cannot know the lot size. He urged that a map showing all overlay districts be prepared. Ross said that the board was working with calculations based on agricultural soils. Frank observed that in this case, an agricultural use is being proposed for agricultural soils. Several members of the board commented that since the entire operation is agricultural (no residence is proposed), consideration of agricultural soils for calculating lot coverage is redundant.

Frank reminded that this form of agriculture relies on bringing in seedlings, growing them, and then selling them. Rich Menge said that he visited Mill Gardens earlier in the day and observed potted trees for sale, and wondered if they had been imported from another location. He hoped that the board would explore the definition of on-site versus off-site production. Sara Day said that she pots up most of what they grow, and that the trees Rich observed were not purchased elsewhere. She tracks all the plant growth and offered to provide information.

Deliberations: Ross said that there must be a compelling reason to grant a variance, and he feels that he does not have enough information. The board has heard from the applicant why the project was laid out as it was, and asked whether the applicant would look for other locations. Frank said he would like to know more about drainage. Ross noted that this piece of land has been badly abused in the past, and is not a pristine site.

Frank offered the following motion: the board finds that the proposed use is an agricultural, but review of permitting the uses on the site requires alternate locations for the greenhouses outside the wetland buffer to be considered. If that cannot be done, proof of hardship is needed. The board requires additional data on

- Drainage and provisions to minimize impact on wetlands
- Septic system siting
- Potential effluents
- Suggested landscape plan for screening from the road
- Signage
- Thorough delineation of the proposed land use and percentage of land use
- Careful review of the criteria for a variance.

The board considers the project to be an agricultural use of agricultural soils, and section 4.64A allows structures on agricultural soils. Alan seconded the motion and it passed unanimously.

Out of deliberations: Voted unanimously to continue the hearing until January 19 at 7:35, on a motion by Rob seconded by Alan.

Meeting adjourned 9:12 pm
Respectfully submitted,
Adair Mulligan, Recorder