

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – December 15, 2011

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

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

Public: Gregory Lange, Charlie Hirshberg, Will Davis, Liz Ryan Cole
 Chairman Ross McIntyre called the meeting to order at 7:35 pm.

Minutes of the meeting of November 17, 2011 – Walter noted that the minutes did not refer to John Stanhope’s reading of the terms of the Menge easement and its allowed activities, which he noted were the same as those requested by the applicant. He asked David to get a copy of the easement. No more action was taken on minutes of this meeting or those of December 1.

Application #2011-ZB-106, Gregory Lange (Tax Map 407 Lot 109) 112 Highbridge Road in the Rural District.

The Langes recently placed a new shed on their property at 112 Highbridge Road. The shed was located within the 75’ Road setback area and requires a special exception under section 8.23. If the special exception is approved the permit will be issued as an after the fact permit. The shed is 8’ X 20’ (160 ft²) and is located entirely in the road setback of Pinnacle Road, where wood can be unloaded without impacting the nearby wet area. David Robbins noted that the house was built before zoning and the shed is within its 200’ building envelope. It is outside the buffer of the stream that flows on the south side of the lot. There was previously a shed in this location that was removed. Gregory Lange confirmed that the house is the only other structure on the property, although an old stone foundation is apparent at a site where the tax map shows another structure.

In August 2006, the previous owners of the property applied for and were granted a special exception to build an addition to the house. David used the lot calculations established at that time. The board reviewed the minutes from that hearing.

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| Lot size after reductions | 56,731 (FT ²) |
| Max Lot Coverage | 6,807 (FT ²) |
| Max Building Footprint | 1,135 (FT ²) |

Item 7 of the Findings of Facts in the decision from 2006 states that 4,588 FT² remains for future expansion. The new shed is 8’ X 20’ for a total footprint of 160 FT². This would leave 4,428 FT² for future expansion.

Deliberations: Ross noted that the previous owner had 34sf of unclaimed intrusion into the conservation district when he added on to the house. The board agreed that the new shed is an accessory structure. Alan moved to grant a special exception under section 8.23 with the following findings of fact:

- The structure cannot be reasonably located elsewhere because of wetlands, a drainage swale, the location of the driveway, and the only useful level land on the lot.
- The structure is an accessory structure, which is permitted within the road, side, and rear setbacks with up to 1000sf in the rural district
- The initial structure on the lot predates zoning.
- The accessory building cannot reasonably be located outside of the setbacks.
- There is no intrusion into conservation districts
- The accessory building will not exceed the maximum building footprint of 106sf
- The allowable remaining lot coverage after the 2006 project is 4,588 sf. This project leaves 4,428sf of lot coverage
- Prior additions in 2006 were additions to the main structure so they did not affect allowable expansion for the accessory structure.
- No abutters presented testimony, nor was any negative testimony received
- Conditions: best practices will be used.

Walt seconded the motion. Rob Titus abstained, as he could not be present for the entire hearing. Ross, Walt, Alan, and Frank voted in the affirmative and the motion carried.

Application #2011-ZB-103, Loch Lyme Lodge (Tax Map 408 Lots 19 and 20) 59 and 60 Orford Road in the Rural District. The two-part project is 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.

Ross noted that while he is not a direct abutter, he owns property close enough to prompt him to recuse himself. He asked Frank to serve as chair. Walter noted that the previous hearing was continued in order to allow the conservation commission to respond. He asked if plans had changed. Will Davis said that the Teed septic system would need to be moved outside the wetland setback. He displayed new plans showing that the building had rotated slightly. The field is 10' from the building, which is allowable by state standards. The system previously was to be 40' x 11' but is now 30' x 13'. Frank expressed grave concerns about placing a structure there because he thought that vegetation indicated wet soils. He asked about depth to groundwater. Will showed stormwater management plans for both structure and proposed a slight vegetated swale along the road leading to the wetland to filter road sediment. Walter said that the board needed to rely on expert testimony, especially that of the conservation commission. He suggested working with the CC to satisfy their concerns.

Alan asked about percolation tests. Charlie Hirschberg said they had been done with soil probes but not machines. He said these could only go 40" and that there is a shallow water table but it is adequate for the state's criteria. He is showing a conventional field for the state. Limits for the Enviro Septic fields are 30" to "refusal" (ledge) or seasonal high water, which was found at 18". Based on what was found, Charlie said the field would meet state standards. Frank said he thought there was a lot of sheet flow through there and advised that ponding should be avoided. He asked about a steep bank and large trees. Liz Ryan Cole said that Ben Hudson is planning to harvest those trees.

David said he is still concerned with boundary lines, because without knowing the exact line, no lot calculations are possible and all are now estimates. He urged that the board formally resolve this. Steps would be: 1. Boundary line declaration; 2. Do calculations; 3. Present Conservation Commission with more detailed construction plan and get more input.

Deliberations: Walter echoed this last set of steps and noted that the board leans heavily on the Conservation Commission's assessment especially in such a sensitive area. He advised working with the CC to come up with a plan that the CC was comfortable with. He added that there are no issues with the Balsam lot except the boundary line. Frank moved to continue the hearing to the February meeting so the applicant can complete the application and confer with the CC. Rob seconded and the motion passed unanimously. Ross said he agreed with Walt's comments and noted that the CC has given the most adverse report he could recollect, so he felt it essential to satisfy the CC's concerns before the board acts. Charlie said the surveyor would work on it. Alan moved to change the date of continuance to January 18 at 8:05. Walter seconded and the motion passed unanimously. Liz said that her group does not want to create long term impacts, and asked where in the zoning ordinance the CC's opinion is specified. Walter cited section 4.61B and its reference to comments from the Lyme Conservation Commission when a conservation district is involved.

Application #2011-ZB-111, Roy Lewicki (Tax Map 407 Lot 12) 49 Post Pond Lane in the Rural District.

CLD Engineers on behalf of Roy Lewicki have applied for several special exceptions to install a replacement septic system on his property. The proposed septic system is within the property line and road setbacks as well as within the shoreland conservation district. This project requires Conservation Commission review.

Charlie Hirschberg said that the house on Post Pond was once a cabin that was rebuilt about 1992. It has two septic holding tanks and a grey water collection system located 55' from the shore. Septic waste goes into a pump chamber to the holding tanks, which have leakage issues and have been repaired once. There is a horizontal joint and the tanks may be cracked. They are pumped out. He is not sure that there is an alarm. David noted that there is an easement requiring alerts to the town each time the tanks are pumped. Charlie said that DES prefers a true septic system over holding tanks, and that the original 1974 plan for the property was not useful. The tanks were not placed where intended. He proposes a Clean Solutions system, which has a smaller footprint. He reported that he went to the Conservation Commission early with two alternatives. He knows there are wetland soils adjacent. The lot to the south has a system installed a few years ago. The well is down gradient and is a true

artesian well. The tanks are 53.4' from Post Pond. The field would be 157' back, placed in a more open area to avoid disturbing vegetation. The lot appears to have been filled earlier, based on soil types found on site. Charlie said they would remove this and replace it with granular material to a depth of about 3 feet.

Charlie has met with NH DES about the project, and points out that the tax card identifies a three bedroom situation. He must demonstrate that the cabin was a three bedroom home before 1967. If it was converted after, DES will not accept the design. The landowner is being taxed for a three bedroom home, but he is concerned that the property will not qualify for a three bedroom septic system. Ross recalled that the garage and bedroom above it were not there in 1967 when he moved to the area. Charlie continued that he is designing a two bedroom-sized system and that the bedroom above the garage will no longer be used for that purpose. DES has said that it can be an office but not a bedroom. Walter asked how this could be enforced. Charlie said that DES says the toilet can remain but the room must not be a bedroom and the house cannot be sold as a three bedroom house. There is no shower, just a sink and toilet. He added that the Enviro septic design would require a larger field.

Ross suggested that the applicant explore pumping to a nearby area secured by an easement. Charlie said that the area across the road is ledgy. Rob asked the CC's opinion, since the letter received referred only to an opinion by one member who was able to visit the site in time to prepare a letter. Charlie said that the CC believed the project would be an improvement, but left the choice of system up to him. Ross asked about the capabilities of septic pumping trucks. Charlie said they can pump 28' vertically without a booster, and usually have 100' of hose available. He plans fiberglass and poly tanks and will site them in an already disturbed area. David reviewed the CC minutes from the September 9, 2012 meeting.

Deliberations: Walter noted that the leach field is within the state Shoreland Protection District. He noted the tension between keeping the pine trees and maximizing distance.

Out of Deliberations: David referred to section 5.13B & E. Ross pointed to section 8.24 A, B & D.

Deliberations: Walter asked about overall loading, and what conditions could be placed to assume that the system is treated like a two bedroom system. Ross said that the applicant could be informed that the board would only allow a two bedroom system to serve the property. He asked if the tax write-up could be changed.

Out of Deliberations: David said that the tax assessor has her own criteria for bedrooms and did not think she would change her assessment. Frank advised not using the room as a rental or residential bedroom.

Deliberations: Walter moved to grant a special exception for the replacement of a septic system that has leaked in the past and is subject to failure, including the installation of new tanks, pipe, and leach field in accordance with the site plan dated November, 2011. Findings of fact include:

- The proposed leach field is in the Shoreland Conservation District for Post Pond and in the road setback.
- Section 5.13E specifies minimum distances, including 200' from Post Pond.
- Section 5.13 E (1) (b) permits a reduction in this distance.
- Section 8.24 A, B and D permit a reduction in the setback
- Based on testimony and the minutes of the Conservation Commission, the board concludes that the septic system as proposed is an improvement, and that the applicant should minimize changes to the vegetation on the property.
- A tree line borders the road, at the proposed location of the septic system; the board finds that the tree line should be preserved, and thus allows a reduction in the 200' distance.
- The leach field will accept effluent pre-treated by the main tanks.
- The leach field will be located in the road setback, which is allowed in section 8.23A.
- The board finds that the proposed location is the optimum for conditions on the lot.
- No abutters gave testimony.
- The space over the garage has a toilet and sink but not shower or bathtub.
- Conditions:
 - Best construction practices will be used and address the sensitive nature of the vegetation and soils
 - State approval for a two bedroom system from the subsurface bureau
 - Use of the garage is restricted; it may not be rented or used as a residential bedroom
 - No additional plumbing may be installed in the garage
 - A state Shoreland permit is required

- The applicant shall demonstrate to the zoning administrator that the leach field lies outside 75' of any well radius located on Lot 11.

Alan seconded the motion and it passed unanimously.

Meeting adjourned 9:46 pm

Respectfully submitted,

Adair Mulligan, Recorder