

Town of Lyme
ZONING BOARD OF ADJUSTMENT
Lyme Town Office Conference Room
Minutes-January 19, 2012

Board Members: Present- Ross McIntyre, Frank Bowles, Alan Greateorex, Robert Titus, Walter Swift

Staff: David Robbins, Zoning Administrator, Patty Jenks, Recorder

Public: John Stanhope, Lois Stanhope, Sara Stanhope Day, Robb Day, Ivan Stanhope, James Kennedy, Wayne Bates, Margaret Bates, David Roby Sr., Geneva Menge, Rich Menge, Scott Nichols, Joe Longacre, Margo Longacre, David Kotz

Chairman Ross McIntyre called the meeting to order at 7:30 pm.

Minutes of December 15, 2011 were viewed for approval. A point of clarification:

Ross McIntyre pointed out that on page 2, when quoted; he was speaking as a member of the public—not as a ZBA member. The minutes of December 15, 2011 were approved as clarified.

Joe Longacre asked to be recognized concerning the minutes of November 17, 2011. He was erroneously listed as John Longacre and asked that the name be corrected. The Board thanked him for his concern and approved the correction.

Continuance Hearing of Application #2011-ZB-102, John Stanhope (Tax Map 401 Lot 17) 60 Dartmouth College Highway in the Rural District to locate a farm stand center at this location.

Ross made the suggestion that the hearing pick up at the point in which it finished at the previous meeting. At that point there were 3 issues in question:

1-is the leach field OK to be developed in the wetland setback?

2-could the proposed structures in the wetland setback be placed elsewhere?

3-where are the Agricultural soils on the lot? Request was made with the understanding that this is an agricultural use; this issue may not be as important as it would be if the project was a residential plan.

Frank Bowles reviewed the agricultural usage. David Robbins had circulated Agricultural use information and Frank reviewed the state statutes.

Walt Swift suggested that these issues be dealt with in deliberations unless more information was available for the open meeting. The soils issues would be discussed in public session.

Frank Bowles invited John Stanhope to present any changes made to the proposal since the last meeting. Mr. Stanhope, referencing the December 15, 2011 minutes had a written document which addressed the questions brought forward including: 1) Drainage, 2) Septic system site, 3) Potential effluents, 4) Landscape plans, 5) Signage and 6) Access (see attached item #1-1/19/12). Also included was a detailed Landscape Plan provided by Sara Stanhope Day (see attachment #2-1/19/12).

James Kennedy, project Designer had provided updated maps and plans delineating the proposed changes for the Board to review. Frank Bowles asked Mr. Kennedy what the green pipes were in the wetland area at the site. Mr. Kennedy wasn't sure. They were not part of the site prep/planning.

Alan Greatorex and Walt Swift asked about herbicide/pesticide usage and how to mediate any unnecessary contamination of soils. Robb Day, addressed this issue, detailing steps taken to assure quantity and quality control. He estimates that the usage for their operation equals less activity than the average homeowner. Mr. Day is licensed by the State of New Hampshire to administer commercial pesticides and makes every effort to minimize the need for application by making sure the areas in question remain clean, organized and well-kept. As part of the license requirements Mr. Day is subject to State inspections and therefore must keep accurate records of the chemicals he applies.

Ross McIntyre asked about the storage of the chemicals. Mr. Day said they were kept in sealed cabinets and/or covered plastic containers.

Frank Bowles asked if there was a way to easily monitor effluent. Mr. Stanhope responded that what little drainage might come from the drainage trays under the greenhouses would filter through the gravel surface. There is very little slope for any hazardous waste to compromise the wetland area. Vegetative buffers would be maintained in accordance with the State recommended Best Management Practices to aid the containment of any runoff.

Richard Menge asked for clarification that there had been changes made to the original plan. Mr. Stanhope and Mrs. Day responded that there had been revisions to the location of the septic system but the locations of the main building and the greenhouses remained the same.

Walt Swift, addressing Mr. Kennedy asked specifically about the long term impact of the greenhouses in a wetland buffer zone. For instance, if the Stanhope family moved their operations off-site, removing the buildings, what would the impact be on the residual soils around the wetland? Mr. Kennedy responded that the materials used under the greenhouses-mostly crushed stone and hardpak would not be directly impacted. The areas in question would fill up with dead leaves and decayinig matter, a normal evolution. Consider it to be similar to an abandoned leach field. He did not feel it would affect the function of a wetland. Mr. Swift asked about the impact to the Agricultural soils. Mr. Kennedy responded that would be an issue if someone wanted to grow crops.

Mr. Swift asked about the possibility of relocating the greenhouses further back. Ross McIntyre pointed out that under Lyme's definition (contrary to the State of NH definition) greenhouses are structures. A variance could be granted and permission given for greenhouses if the board found that there's no other site for them to be located. Mr. Stanhope responded that to relocate the greenhouses would involve more construction, thereby more soil disruption and more costs. Other issues of concern would include relocation of the septic, well and slope limitations. Mr. Swift asked if the greenhouses could be located on the "plateau area", as described by Mr. Stanhope. Both Mr. Stanhope and Mr. Kennedy felt that was quite a distance away and would involve more disruption to the undisturbed areas of the property. The roadway would need to be widened for two way traffic, additional parking areas would need to be created, heated transportation to move the delicate seedlings around the property would need to be purchased, and additional employees would need to be added to serve customers while the greenhouse operations are being performed. The increase in the cost of production would be significant.

Rich Menge felt that there was a definition of use issue: retail business vs. Agricultural use. Ross McIntyre told Mr. Menge that this issue would be addressed in deliberations.

David Roby felt that there had not been a careful enough evaluation of places to put the greenhouses. He stated that the Board could hire their own consultant to evaluate the site for other potential greenhouse locations. He felt that this is actually a retail business and therefore the greenhouses did not qualify for consideration as agricultural structures. Ross McIntyre responded that if the board felt it was necessary that the entire board could have a site visit and the siting issue could be better addressed.

Sara Day indicated that she had met with the Conservation Commission. David Robbins has a memo from Commission Chairman, Matt Stevens (see attached #3-1/19/12).

Scott Nichols asked how large is greenhouse intrusion into the wetland buffer compared to the total area of the wetlands? Answer: Jim Kennedy responded that the wetland area in question was 2.36 acres or just over 102,000 square feet. The total intrusion would be approximately 5000 square feet. Joe felt this should be considered in the Board's deliberations for a variance.

Scott Nichols asked about the impact of the greenhouses. John Stanhope read a detailed description and reference to the Lyme Zoning Ordinance addressing this and many other issues of concern which he had prepared. (See attached #4-1/19/12). Included in this was a list of previous and current commercial entities on that stretch of road.

In response, Mr. Nichols commented that the abutters should "be careful" what they wished for. A different proposal for agricultural use might require no Zoning Board Review and could have a much worse impact upon the abutters.

At this point, Zoning Administrator, David Robbins indicated he had received three letters of support from 2 Lyme community members and 1 from Hanover residents, copies of which he presented to the board and record keeper. (see attachment #5-1/19/12). These letters were accepted and acknowledged by the Chairman of the ZBA.

Walter Swift made the motion and it was seconded to enter deliberative session. Motion was approved.

In deliberative session, Ross McIntyre asked the board to consider the term "farm stands" which is not defined in the Lyme Zoning Ordinance. He feels they are allowed because they are not specifically prohibited nor are they mentioned in the Regulations. He mentioned several other farm stands representing a continuum ranging in size and structures from *Kaleb's Korn* stand to *Bailey's Turkey processing facility*. He feels this proposal stands a step beyond Bailey's farm in terms of development in the continuing evolution of the concept: informal to formal. He also noted that the board previously had granted a special exception for the construction of a year round farm stand in the setback from River Road (Arend Tensen Farm.) Because of the lack of specific instruction on this point in the Regulations he feels that in such instances it becomes necessary to make its decision in a manner consistent with the intent of the regulation

Ross also called attention to remarks made by Rob Titus at the last ZBA meeting in which he stated that when the Board found no definition of farm stand in the regulations that it turned to that given in the NH Statutes for guidance.

Reading from notes he had compiled (see attachment #6-1/19/12) Frank Bowles attempted to clarify the definition of Agriculture, farm stands and how they may be applied to the Lyme Zoning Ordinance in

respect to the relevant New Hampshire statutes. He felt it was clear that the Stanhope project is supported by New Hampshire state law.

Mr. Swift wondered if a waiver could be used, but felt there was no provision for this. Mr. Titus felt the variance would be preferable.

Ross McIntyre made the motion to exit deliberations to allow input from the Zoning Administrator. Motion was seconded and motion was granted.

David Robbins pointed out that the Lyme Zoning Ordinance does allow for a waiver—10:63 “Waiver for Agricultural Structures” refers to section 5.15F which in turn refers to RSA 674:32 A-C., one of the statutes cited by Mr. Bowles.

Alan Greateorex made the motion to reenter deliberations. Motion was seconded and granted.

Walt Swift was concerned about granting a waiver consistent with language given in RSA 674:32 A-C whereas a Section 5 waiver only deals with maximum lot coverage.

Ross McIntyre pointed out that some of the public concern arises because some view the proposed farm stand as a retail establishment which is disallowed in the rural district. However, he also pointed to examples of this—example the Tensen Farm Stand on River Road which had been approved by the Board. He felt that this sort of retail, the sale of products grown or made and sold from the same site was different than that ordinarily referred to as “retail” and that fact was what had led to the previous approval. He feels the term “retail “ needs to be addressed in the definition section of the Regulations. It’s his opinion that farm stands have a retail flavor to them by default. They are designed to sell products. However, the ordinance presumably contemplates sales from “home businesses” which are allowed in the Rural Zone. These informal practices have been traditionally allowed and the Board appears to have exempted them from the full meaning of the word “retail”.

Walt Swift asked about the definition of RSA 21:34-A III which reads: “A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.” Ross McIntyre felt that because Lyme does not define farm stand in the ordinance, the ZBA would be required to under RSA674:32-a to deem the use as permitted. Walt Swift agreed, and expressed concern about a previous threat of suit. Consequently he felt the motion for a variance and the resulting decision should be written very carefully to be clear about the intent. Mr. Swift felt that additional time was necessary for the ZBA to research and craft the motion and decision carefully and suggested that this issue be voted at the next meeting of the ZBA. He also still had questions about the location of the greenhouses. Ross McIntyre indicated he was comfortable with the proposed site for them on the basis of walking the property as had Rob and Frank, and making observations on the impact necessary to develop an alternative site for the greenhouses. Mr. Swift asked to hear from the soil scientist about the long term impact that the green houses would have on the wetland. Jim Kennedy responded that in his opinion impact would be negligible.

It remained the sense of the Board that the next meeting would be the time to address the decision about a variance. The board did feel they owed the applicant the courtesy of expressing if this presents a timing issue. Mr. Stanhope appreciated the concern and while was willing to wait, did hope to get the

project lined up as the construction season is not that far off. To eliminate an unnecessarily long delay in a decision, the Board decided to continue the hearing to Wednesday January 25th, 2012 at 7:30 pm for the purpose of providing a final decision on the variance issue. It was noted that David Robbins will be away, but that for this particular meeting that would be manageable. Walt Swift made the motion and Alan Greateorex seconded that this hearing be continued to January 25, 2012. The motion was approved.

Mr. Titus commented that he felt there had been very little evidence as to any adverse impact on property values. The rest of the Board concurred.

Walt Swift feels that the Town needs to clarify its intent with regard to Agricultural activity in the Zoning Ordinance. This clarification should be of considerable help in the future. As a point of interest he handed out a document titled: "1.7 Agricultural Incentive Zoning", a Handbook for Sustainable Development provided by the State of New Hampshire Department of Environmental Services. (see attached #7-1/19/12).

Frank Bowles volunteered to draft a motion and a decision document before January 25th, 2012. He asked the Planning and Zoning Administrator to how best to handle receiving input from other Board members without risking having an "un-warned meeting". The Planning and Zoning Administrator recommended that the other Board members send all communications directly to him and he would then forward them to Mr. Bowles.

Mr. Bowles made the motion to end deliberations and move to Public Hearing. Motion was seconded and approved.

Scott Nichols noted that the threat of suit loomed and wondered if the person who had made the concern was present and willing to comment. David Roby Sr. stood and commented that he didn't remember the issue being quite that stern, but did have reservations about the precedent this action would create. He indicated that much of the support for this project comes from knowing the Stanhope family and knowing that they will provide a good and honorable presence in the area. But he also felt, that perhaps it might not always be the Stanhope family there, and that may well present an issue in the future. The issue is really regulation conditions. The regulations should be drafted in such a way to assume that approval be based on general criteria, not because the applicant is a known factor. It's his opinion that the definitions do not apply to this issue. Is this really an agricultural use? He feels it's a clear retail use. The Zoning Ordinance does not address farm stands. Generally, in this area farm stands are relatively small. This project is a much larger project. This is a contentious issue which remains unclear. The Town of Lyme needs to figure out what it wants regarding the use of agricultural lands. This should be a part of the Master Plan, which is nearing completion, so this issue should be addressed very soon.

Regarding the Menge family, they are simply concerned about the impact of this project on their property and the possible loss of property value although they did not offer any testimony to support a loss of value.

Joe Longacre commented that in reading the previous minutes regarding this issue, it appeared the ZBA was spending a lot of time going back and forth, but he's now hearing that they might be reaching a decision of support. He mentioned that he had spent time discussing this and similar issues with Steve Taylor, former NH Dept. of Agriculture Commissioner, who actually was instrumental in crafting many of

the New Hampshire laws which address the agricultural issues. Considerable effort was made for the laws to be “all inclusive” regarding farm stands with the intent to grow and distribute product.

Mr. Longacre’s comment wrapped up the Stanhope discussion until the January 25th continuance.

David Robbins informed the Board that Loch Lyme Lodge representatives had requested a continuance scheduled for February 2012. Robert Titus made the motion that the Loch Lyme Lodge issue be continued until the next regular meeting. The motion was seconded and passed.

Ross McIntyre shared with the board that in February he will celebrate his 80th birthday. He noted his long service on Town Boards and Committees and said that he planned to retire from the ZBA when his term is up this March. He encouraged the Board to actively seek people interested and willing serve on the ZBA in his place.

This meeting was adjourned at 9:15 pm.

Respectfully Submitted,

Patty Jenks, recorder--Temporary