

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – February 16, 2012

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

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

Public: Peg Merrens, Charlie Hirshberg, Liz Ryan Cole, Carola Lea, Philip Hastings, Rich Brown, Will Davis
Chairman Ross McIntyre called the meeting to order at 7:35 pm.

Minutes of the meeting of January 25, 2012 were amended and approved unanimously on a motion by Frank, seconded by Alan.

Application #2012-ZB-03, Upper Valley Land Trust (Tax map 402 Lot 59) 183 Dartmouth College Highway in the Rural District. Upper Valley Land Trust seeks a special exception under section 4.64 B 7 (Agricultural soil conservation districts) of the Lyme Zoning Ordinance to build a driveway and parking area on their property. Jim Kennedy has supplied a site plan map that includes the zoning district calculations, a map to show the location of the lot and an aerial photograph that shows the disturbed soil indicated on the site plan map. The Upper Valley Land Trust has asked the Board to waive the requirement for an easement because there is less than three acres of agricultural soils on the property.

Ross noted that his daughter is president of the Upper Valley Land Trust, and offered to step aside if other board members felt it appropriate. The other members agreed he should remain. Peg Merrens explained that the drive and parking area would provide safe off-road access to trails and other land owned by UVLT. There are an approved state curb cut, paved apron, and good sight lines on Route 10 north and south. The gravel drive and a foundation for a building were in place when zoning was adopted, and the area around them has already been disturbed. The parking area will be located where the foundation is now. UVLT is creating a curriculum for local schools and expects that buses will use the parking area. UVLT's board has committed the area to conservation use and the management plan for the land calls for conservation. UVLT has already done some eradication of invasive species there. The property has been hayed in the past. Discussion ensued about whether the use was institutional, and it was determined to be public recreation. Walter expressed concern that the parking area might be tempting for commuters or become a party place. Peg responded that the land trust could erect a sign about use. Ross noted that the land trust has volunteers who could be called upon to monitor the use, but advised that the Lyme police visit it on weekend nights.

Alan asked about plantings along the drive. Peg said that small pines will be removed to improve sight lines. There are no planting plans now, and a grant would be needed to cover cost. If any are planted, they would be for wildlife. Alan asked about the sinkholes shown on the drawing and wondered if they could be old test pit holes. Peg did not know. Alan noted that if they are truly sink holes, they could be a liability.

Deliberations: Ross noted that no abutters were present. David said he'd had two calls from neighbors with questions but no complaints.

Out of deliberations: Discussion ensued about whether an easement on the 3.0 acres of agricultural soils would be required. David reminded that the foundation and driveway existed prior to passage of the zoning ordinance.

Deliberations: Walter reminded that the building zone is excluded from the conservation area requirement, which reduces the acreage of the agricultural soils. Therefore, no easement is required and no special exception is needed. The driveway already exists. All agreed with his analysis. Walter moved to direct David to issue a building permit for a parking lot as depicted on the map drawn by Jim Kennedy on January 3, 2012. Findings of fact are:

- The parking lot is to be built on the site of a foundation that existed on March 14, 1989

- There is a 200' building footprint exclusion from the agricultural soil conservation district calculation so no special exception is required, and no easement is required.
- Net agricultural soils on the property are less than three acres.

Alan seconded the motion and it passed unanimously.

Application #2011-ZB-103, Loch Lyme Lodge (Tax Map 408 Lots 19 and 20) 59 and 60 Orford Road in the Rural District. This is a continuance of the hearing to expand the footprint of the Balsam Cabin on lot 20, Tax map 408 and to construct a new dwelling and accessory structure on lot 19, Tax map 408. Loch Lyme Lodge has re-designed the layout for construction on the Teed lot, moving the buildings closer to the existing cabin on the Balsam lot. This new plan also has significantly changed the lot lines. The new lot configuration will require a Lot Line Adjustment and therefore will require Planning Board approval. A previously permitted pavilion on the Balsam lot was not built, and the applicant wishes to use that area for construction related to this project.

Charlie Hirshberg said that he had revised the configuration of the three buildings based on Conservation Commission comment, and wants to cluster the units for co-housing. The drive across the wetlands has been eliminated and instead the drive to the Balsams cabin has been extended by 60'. There is a suitable septic area. He said that the design meets all setbacks except the sideline setback, which is a previously disturbed area. There will be stormwater management features built next to the units. Two buildings are 35' apart to address CC concerns. The accessory building for the Balsams unit is to be a garage or barn with no plumbing or heating. On the Teed lot, there will be a dwelling unit and an accessory dwelling unit, which is allowed by zoning up to 750sf. Frank asked if these would be for the same family and noted that other cabins there are for lodging purposes. Liz said that the Balsam cabin will become a house.

Ross noted that the buildings have been moved 100' further from the cabin he owns at Post Pond, and so he thought he could remain on the board for this hearing, but offered to step down if either the other board members or the applicant wished. There was no objection to Ross remaining. Frank asked about linkage to Loch Lyme Lodge's larger septic system on the east side of Route 10. Charlie said this could be done but for the application purposes, he must be able to demonstrate that the septic system could be built on site. Frank asked if the intent is demolition of the Balsams cabin and asked for a clear statement of what is proposed. He noted that community septic systems are not addressed by the zoning ordinance and their maintenance is a big concern. Charlie said there would be a maintenance covenant. Alan asked about an alternative septic system location. Charlie said it is not needed because he has approval to tie into the larger system.

Ross observed that it is not the Zoning Board's responsibility to look at the shape of lots or lot line changes, but to look at locating structures on the lots. He asked about the rest of the site, and where else the structures could go, given the new lot lines. Charlie indicated that the area shown is outside the wetland buffer, that there is safe access to the Teed lot, no buildings have been placed on agricultural soils, and the project can meet the septic setback to wetlands and Post Pond. Groundwater impacts are minimized. However, it is not possible to place the units outside the pond's shoreland conservation district. He added that less than 10% of the area would be disturbed, and that this is a relatively small impact compared to other lots on the pond. Most have structures closer to the water and older septic systems. This project will handle stormwater close to where it is generated with roof infiltration areas so stormwater will not reach the pond. The upper layers of the soil here are sandy. The rain gardens will pipe stormwater into stone filled basins. Frank asked about snow storage. Charlie described it and said the right to plow snow past the Balsams cabin will be provided in the easement for Teed. Philip Hastings, attorney for the applicant, said that easements will provide each owner the right to plow, and so lots can stand alone.

Frank asked if these dwellings are not then a guaranteed part of a co-housing unit. He believes that the request to add 182sf to the Balsams cabin indicates that the building will be rebuilt and there would be little control over what could be built in its place. Walter suggested putting a condition restricting size and height to fit with the character of the neighborhood. The area currently has a 35' height limit. He noted that the board does not have information on the other buildings and asked where the Balsams leach field is. Charlie said that the cabin has an

existing system but will be connected to the community system. Liz said it is her first choice to connect both cabins to the community system. David Robbins asked if the septic system for Balsams is in failure. A clear answer was not provided. Charlie said that the community system can accommodate waste from the Teed property but he needs to demonstrate room for a replacement system. He said that tanks could be clustered if necessary. He repeated that the project meets the state's requirement (75' setback) from the pond but not Lyme's (200').

Deliberations: Ross observed that the board is confronted with the issue of whether, having looked at the plans, it can consider granting approval so the applicant can go to the Planning Board and ask that board to consider redrawing the lot lines to allow the Teed lot, especially with the variance required. A variance is necessary to allow three structures and a septic system in the Shoreland setback because there is no other place on any lot to put them, except on the site described at a previous board meeting which required a long driveway across wetlands and the wetland setback. He thinks this is the purview of the Planning Board, since lot line changes will have considerable impact on growth and development in a sensitive area. Ross concluded that any development here is problematic, and that the Zoning Ordinance is designed to prevent development in similar situations. Walter asked if the Conservation Commission has seen the alternate plan. David said that they have, and while they feel it addresses all their issues, their preference would be to have no development there.

Out of Deliberations: Alan observed that the email correspondence from Matt Stevens was not formal enough and asked if other CC members had seen it. David said he had spoken to Matt and will ask for a formal letter.

Deliberations: Ross noted that the definition of accessory building includes the word "customarily" which gives wiggle room. Most such dwelling units are mother in law apartments or student apartments. He advised that the board confirm if these are to be two separate residences.

Out of Deliberations: Ross said that the reason conditions were attached when the regulations were written is to be sure that the owner does not anticipate a major subdivision to separate the dwelling from the accessory dwelling, and so it remains subordinate to the main structure. David suggested a zoning easement so there is no subdivision.

Deliberations: Frank noted that the Boccia test for a variance has been superceded, and he read the new criteria. Ross said that the application probably means construction of three new buildings and reconstruction of a fourth. He agreed that the applicant would feel hardship if a variance is not granted, and that other properties could be reconstructed on the same footprint that are closer to the pond. He added that there is a year-round house on the pond that has only a pumped tank for a septic system. Frank observed that this application pushes hard at the limits of the ordinance and asked what the public's interest is. Alan said it would set a precedent that would create opportunity for much denser development around other water bodies in town. Ross said that the town clearly wishes Post Pond to remain appealing for swimming and boating, and that the more structures around a water body, the greater threat there is of water quality degradation. Frank said that putting the sewage across the road is an enlightened approach.

Ross asked the Board to consider how much development requiring variances would be tolerated in this area. Walter said he was concerned that the definition of the 200' Shoreland conservation district was intended as protection for water quality. He said that this project does not meet the public interest test or the intent of the conservation districts. He did not see the benefit to the town of issuing a variance. He added that the owners of this property presumably own other property across Route 10 with a large amount of land; considering that, he finds it dissatisfying to see buildings on the shore of a public pond. He asked if the board has the right to prohibit disturbance in the whole area. He was disappointed that the Conservation Commission could not find a better solution. Walter continued that the area is very scenic and that no details have been presented on how big the buildings will be and how they will be used.

Frank said that the lot line remains a problem, and he would prefer to have the Planning Board determine whether this is an acceptable change, then come back to the Zoning Board with a plan based on acceptable boundaries. He reminded that this is a very wet place and not a good place to build, but that the applicant has the right to build

there if it meets the ordinance. Alan said that he was not impressed with the gerrymandering of the lot lines and thought that the previous plan had more potential. Ross concluded that the applicant is in limbo, and has not yet been successful on the other side of the road. He agreed that he would rather have these buildings constructed on the other side of the road and would like to know the applicant's strategy on the rest of the land.

Out of Deliberations: Attorney Hastings said that the property across Route 10 is not relevant to what is before the board. He said that the Board is asked to consider proposals for the development of two independent lots that could be developed even if no property existed on the east side of Route 10. He agreed there had been frustration with the Planning Board, and his client will propose development based on lot size averaging there. The community septic system is approved on the basis of capacity to serve the existing structures, with additional capacity, but not necessarily for the whole co-housing area. He asked the board to consider this application for these two lots alone. The special exception needs, he said, are technical in nature, and he asked that the board keep the Boccia standards in mind when considering a variance. He said that to have any reasonable use of the Teed lot, the applicant has tried to lay out the design in a way that responds to the need for stormwater treatment, and allows protection of the public interest in water quality. He repeated that there are other landowners with larger impact, and said that the property is unique in that it is overlaid with so many protected districts that it is virtually unusable without a variance.

David said that the Planning Board must have a decision on the variance before it could take up the case. Frank asked whether a lot line adjustment is even possible since there are not two different owners. David said that the opinion of town counsel should be sought on this, and that the original boundary line was not much different than what is described in its deed, but because this project would require a change in the deed, it must go to the Planning Board. Attorney Hastings said that this plan clusters the buildings resulting in less impact on the rest of the land. Carola Lea said she did not like the idea of closing the pond to development. Walter said that, regarding reasonable use of the property, Loch Lyme Lodge had existed for many years with its cabins, and had made reasonable use of the property. Now, it appears this use is no longer considered reasonable, and more buildings are required.

Attorney Hastings asked that the board consider the Balsam lot separately, since it does not require a variance, only a special exception. David observed that if both a house and cabin exist, there would be dual use of the lot, which is not allowed. It can be lodging or residential, but not both. Ross recalled that the property had once been used for a sawmill and for an ice house to serve the creamery, then as a scenic area for cottage renters. He objected to the idea that it is the best use of the land to build a house there. Walter noted that to permit conversion, the lot line could be adjusted by 100 feet to the north to put the Balsams cabin on the Teed lot, and continue the rest of the Balsams lot in lodging use. This would result in one accessory structure on the lot but not two more structures.

Liz said that if she has a home there, she believes she can have as many cottages as she wants on the property as long as she does not violate the square footage limit. Will Davis said that these would not be regularly occupied. There was disagreement from the board with Liz's idea, but the question was not resolved. Ross pointed to many issues yet to be resolved with the case and advised that discussion be postponed due to the late hour. He reminded that his service on the board will end after town meeting in March. He has asked the selectboard to increase the size of the zoning board. Neither he nor Rob Titus will be in town next month. Walter moved to continue the hearing to the next regularly scheduled meeting on March 15. Ross added that if the applicant feels that not enough board members will be present then, a special arrangement could be made to meet outside of the regular schedule. Frank seconded the motion and it passed unanimously.

Meeting adjourned 10:27 pm
Respectfully submitted,
Adair Mulligan, Recorder