

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – April 19, 2012

Board Members: Present - Frank Bowles, Alan Greatorex, Rob Titus, Walter Swift, Bill Malcolm

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

Public: Dan O'Hara, Jay Smith, Carola Lea, Sue Mackenzie, John and Lois Stanhope, Rich Menge, Geneva Menge, Bernie Waugh, Dan Brand, Sara Day, Anne Baird, Nancy Allison, Stephen Campbell, Bob Thebodo, Jennifer Cooke, Nora Gould, Joe and Margo Longacre, Margot and Steve Maddock, Margaret Bowles, Will Davis, Liz Ryan Cole, Rich Brown

Frank Bowles called the meeting to order at 7:30 pm.

Minutes: Minutes of the meeting of February 16 were approved on a motion by Alan Greatorex seconded by Walter Swift after correction of a typo. Minutes of the meeting of March 15 were approved on a motion by Alan seconded by Walter.

Elections: Frank Bowles was unanimously elected chair on a motion by Rob Titus seconded by Alan. Rob was elected vice-chair on a motion by Frank seconded by Walter. Board members introduced themselves to the public. Frank welcomed new member Bill Malcolm, who is returning to the board after service in the past.

Petition for rehearing of the Stanhope decision to locate a farm stand/garden center on his property at 60 Dartmouth College Highway (Tax Map 401 Lot 17). Frank clarified that the hearing is about the Menges' attorney's claim that the board decision is in error, and said that those making comments must speak to this question. He noted that the board has received Attorney Waugh's brief and has consulted town counsel, both in the course of making the original decision and after receiving Atty. Waugh's brief. Rob Titus asked Atty. Waugh if he would like to add to his brief. Bernie Waugh said he did not substantially, but observed that he was the chief legal counsel for the NH Municipal Association on bills for statutes at play here, including the definition of agriculture and RSA 21. He said he believes his arguments are historically accurate in that the legislature did not intend the RSA to be preemptive of more stringent local action.

Deliberations: Rob commented that Atty. Waugh has challenged the board's decision but he is not persuaded. Rob said he believes the board has reasonably interpreted the absent language, and moved to deny a rehearing. Frank agreed. Bill Malcolm said he had read all material pertinent to the case, and did not see anything in the petition that warrants a rehearing. Walter Swift said he had formulated a response and agreed with town counsel. He moved to deny the petition for rehearing. Rob seconded the motion and four members voted in favor, with Bill abstaining because he had not been a member of the board during the previous hearings. Frank observed that the board had been unanimous in its opinion that the proposed use was a legitimate agricultural use. Rob urged the parties to talk about the matter and deal with it in summary judgment if it comes to court. The Town, as defendant, could ask for this. Walter noted the enormous amount of time and effort invested in this case due to the Zoning Ordinance's broad scope regarding agricultural uses in Lyme. If the ordinance lacks specificity, this is important. He urged the Planning Board to address agricultural definitions in a timely fashion in order to allow townspeople to express their sentiment. Frank added that finding against the board's decision in this case could affect the operation of other farm stands in town. Bernie Waugh objected to this, saying that other farm stands were grandfathered. Members of the board disagreed with this but did not pursue the question. Steve Campbell asked how the public could see the petition. David Robbins said he would post it on the town's website, as it is a public document.

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 construct a new dwelling and accessory structure on lot 19, Tax map 408. Will Davis of CLD engineering reviewed the project to date. The current proposal includes a more conventional lot line. The group has eliminated all development on the Balsam Lot except a drive to the Teed lot. There would be significant use of Low Impact Development (LID) techniques to control stormwater. The leach field for the Teed lot is proposed to be under the driveway and further from Post

Pond. All development is to be outside the wetland buffer but is still within the 200' Shoreland buffer. Frank asked about the number of bathrooms. Will said there will be three, and the "Clean Solution" denitrifying septic design includes pretreatment which allows a smaller leach field. Alan asked why not pump the septic effluent toward the road. Will said that they have done test augurs, which reveal boulders but not ledge. A significant amount of fill is proposed in the leachfield area. Bill asked if the leach field is in the side setback. Will confirmed that it is. David Robbins noted that the shift in the lot line puts the Balsam cabin into the side setback, and that the board cannot take an action that creates a non-conforming lot. He clarified that unless the lot sizes stay the same, a boundary line adjustment will be required. Because the deeds do not give a clear indication of where the boundary is and the line is unknown, the board must go by the acreage in the deeds. If the line changes, acreage then changes, prompting a lot line adjustment.

Liz Ryan Cole explained that Loch Lyme Lodge may need to sell a lot on the pond side of the road, and they want to create a usable lot. Walter said it is not the ZBA's role to give recommendations on how to do this. He asked if the Planning Board has seen the latest design. He explained that the Planning Board can have an informal dialogue with an applicant, but the ZBA cannot. Walter added that the ZBA deals with creation of non-conforming lots. Bill clarified that the question hinges on whether the lot line proposed is an adjustment, which is not the ZBA's discretion, or a lot line agreement, which is within the provenance of the ZBA.

Will observed that there are two parcels, but he cannot make two full lots with the conservation district restrictions. Asked about acreage, Liz said that there is a total of 11.3 acres on the pond side of Route 10, and one of the lots is 6 acres, plus or minus. Will said that the currently described Teed lot is about 8 acres, and added that the deed gives no distances. Liz suggested bending the lot line so one lot has 6 acres and the other has 5 acres. Will reported that Ray Lobdell has confirmed the wetland delineations and agricultural soils.

Frank suggested that the ZBA should not vote on the current proposal, but rather that the applicants should ask the Planning Board for an informal discussion. David noted that section 5.13 requires that the minimum setback shall be 200' from the pond for both development and sewage disposal. Bill noted that the board cannot grant a variance that creates a nonconforming lot, and that such a variance would be for area, not use.

Deliberations: Walter pointed out that section 8.31 allows a single dwelling to be built in a vacant non-conforming lot as long as all other requirements of the ordinance are met. He said that this project is out of conformance with the ordinance in too many ways, so a variance cannot be granted for it. Therefore, the applicant must put the development outside the 200' Shoreland buffer. Alan pointed to section 5.13E3, noting that a special exception cannot be given for a new septic system in the side setback and that the proposed leaching field is in the side setback

Out of deliberations: Rob asked where else the building could be built. Will said there are only two locations to build on this property: the one currently proposed and the original proposed site on the south edge of the property with a long driveway crossing wetlands. Liz said that the septic system for the location in the original proposal might be combined with the community system across the road.

Deliberations: Rob observed that this is a tough situation, and the applicant may not be able to put a house on the Teed lot. Frank pointed to septic and setback issues. Walter said he did not know if a special exception could be granted. Walter checked the restriction on agricultural soils and confirmed that if there is no other developable place on a property besides agricultural soils, and they are under three acres, it can be approved. The board turned to the Conservation Commission's letter which anticipated long-term impacts within the Setback area. Bill noted that a special exception could be granted under section 4.53B3 only if there is no feasible alternative. He also noted that an accessory dwelling of 750 sf is also proposed.

Out of deliberations: Frank observed that there may be ways to grant a special exception to allow construction near the south property line but the wetland delineation makes construction questionable. He advised going back to the Conservation Commission with an engineered plan that demonstrates ways to mitigate the drive across the wetland. He noted that the CC had preferred the location presented at this meeting due to its lesser wetland impact, but which Walter has pointed out the ZBA probably cannot approve because it would create a non-conforming lot. He noted he has not seen a detailed plan for stormwater management on this lot. He cautioned that bringing a sewage line across the wetland would require careful engineering. Bill confirmed for the applicant that the Conservation Commission is advisory only; Walter reminded that the ordinance requires the ZBA to consult the CC.

Rich Brown read the CC's email of February 7. Walter said that the CC and board need detailed construction plans for the roadway that include mitigation, and that the applicant should find a way to have the CC be more comfortable with the proposal. Frank noted that Lyme does not have a building department, which, if present, would require detailed engineering plans for a driveway and utilities that crossed a wetland area. He then asked how many trees would be cut in the black ash swamp in the area to create landscaping and pond view lines for this project.

Bill moved to continue the hearing until May 17th at 7:35pm. Alan seconded the motion and it passed unanimously. Alan added that the CC's communications must be on letterhead, and not via informal email.

David informed the board that town counsel is concerned about the listserv and Ross McIntyre's reference to it in the previous hearing on the Stanhope case. Counsel discourages reading or referencing any issues on the listserv, but agrees that in this particular case, it was acceptable because Ross printed the listserv messages and brought them to the meeting so they could be entered as testimony.

Meeting adjourned 9:50 pm
Respectfully submitted,
Adair Mulligan, Recorder