

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – June 21, 2012

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

Alternate Members: Dan Brand, Michael Woodard

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

Public: Tami Dowd, Darryl Torrey, Colin Robinson, Russell Hirschler

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

Minutes: Minutes of May 17 were approved on a motion by Rob seconded by Mike, with a minor amendment. Frank said he would like to circulate draft minutes to all members as soon as they are written up, and then make changes at the following meeting.

Frank appointed Dan and Mike to sit as regular members, resulting in a full board of five.

Application #2012-ZB-21, Dowd's Inn (Tax Map 201 Lot 75) 9 Main Street in the Lyme Common District.

Dowd's Inn has applied for variances to construct an addition to be used as a restaurant and tavern. The tavern will serve food and beverage to both the public and guests at the inn. The existing inn already exceeds the maximum building footprint for the Lyme Common District. Colin Robinson noted that four variances are requested: one to Table 4.1 and others for dimensional controls, to sections 5.14, 5.15, and 5.16. He reviewed a list of additional submittals. The proposed structure of 28' x 50' exceeds the maximum allowable footprint, lot coverage, and gross floor area for the Lyme Common District. He referred to a spreadsheet indicating how this and other properties in the district already exceed these limits. He did not discount for conservation districts. David Robbins noted that the lot is large enough so that all the maximum limits are reached even when the conservation districts are not considered.

Colin continued on the subject of parking, noting that this is a site plan review matter. Gravel on-site parking is proposed. He supplied a letter of support from abutters Martha Diebold and Richard Pippin. Colin noted that following the decision by the NH Supreme Court, the Legislature revised RSA 674:33 for variance criteria. The five criteria now in use are discussed in the application; Colin reviewed the response to each criterion. The applicant believes the proposal is compatible with the neighborhood and with proposed amendments to the Master Plan.

Frank asked how the kitchen would be modified to deal with increased fire danger, noting that the possible danger to abutters is a public interest concern. Darryl Torrey confirmed that the new space would need a sprinkler system, and Tami Dowd said that Fire Chief Michael Hinsley has provided a letter of approval. Dan said it would be helpful to have a parking layout. Walter noted that the number of spaces is a question for the Planning Board rather than the ZBA. Walter asked for a display of conservation overlays, which David produced. The proposed parking area was then identified on this aerial photo and Walter marked it to give a general idea of its location. Mike observed that, given nearby conservation areas, a report from a soil scientist would be useful. Walter asked if wetlands had been delineated on the property in a previous application, but no indication of this could be found in the file, other than when a septic system had been updated by Robert Pantel. Dan said it would be helpful to sketch where the parking is and the dimensions, since it is, as Frank indicated, in the public interest. Colin indicated 18 spaces along the fence, 12 spaces in paved areas, and additional parking to accommodate new and existing use. He added that Tami has agreements with her parents to use the Mascoma Bank parking lot for her employees during a large event, and with Hank Flickinger to use the parking at Lyme Computer.

David noted that the pond on the property requires a 100' Shoreland Conservation District setback. Colin said this has been accommodated. Walter asked why the banquet area cannot be used for the restaurant. Tami said she has many events there, sometimes three to four a week, that bring in room use. Colin said that the banquet space and restaurant function are mutually exclusive. The size of the addition is due in large extent to expansion of the kitchen and addition of a bar

service area. Tami added that she has 20 rooms, and when there is a banquet in progress, those guests not attending it need a place to eat.

Deliberations: Walter said he is generally in favor of granting all the variances necessary to allow the applicant to go to the Planning Board. He thinks that the public survey for the Master Plan reflects a strong public interest in adding restaurants to the Lyme Common District, and abutters' opinions also influenced his reasoning. He believes the proposal is consistent with the general nature of the area, including the store, Stella's, and the Lyme Inn, and he did not think that the proposal goes against the intent of the public or of the ordinance. He believes there is a financial hardship in not being able to serve guests when they want to be served. Granting the variances will allow a closer look at how the proposal complies with the zoning ordinance. Frank asked if it would result in changing the ordinance. Mike said it would not.

Out of Deliberations: Colin referred to the Supreme Court finding that mere conflict with the ordinance is insufficient grounds for denial.

Deliberations: Mike said he concurs with Walter, adding that the Lyme Common District is the designated commercial district for the town, and this is the largest lot in the district. He said the intensity of use requested is not unusual for this district. Rob was concerned about problems in the area but thought the applicant had done what is necessary. Dan agreed.

Out of Deliberations: Colin noted that the conversion is for an existing single building. He asked whether the Lyme Inn received a variance for Table 4.1, since he believed the food service was out of action for two years. Walter said this would have to be researched. Rob noted that this proposal is distinct from a separate, free-standing restaurant.

Deliberations: Walter moved to grant a variance to Table 4.1 for the construction of a restaurant at Dowd's Inn (Tax Map 201 Lot 75) at 9 Main Street in the Lyme Common District, with the following findings of fact:

- The board votes and agrees that the application meets the criteria for a variance under section 10.50:
- Section A - that the proposed use will not diminish surrounding property values: the board believes the project will not diminish property values; no evidence of property value effects was submitted, and there is also no evidence that other restaurants in the village have affected values
- Section B – that granting the variance will not be contrary to the public interest: there is no evidence that granting the variance would be contrary to the public interest, and indeed the results of a public survey indicated that the majority of those responding to a public survey support adding restaurants in the Lyme Common District.
- Section C – that the use will not be contrary to the spirit and intent of the ordinance: the board believes the use is not contrary to the intent of the ordinance, and finds that the district as described in section 3.21 supports businesses in the neighborhood. There are already restaurants in the village, one operating as a separate entity (Stella's) and the other as a contingent business (Lyme Inn) and also the deli counter at the Lyme Country Store.
- Section D – that by granting the variance substantial justice will be done: the applicant has testified that patrons must seek dinner elsewhere during scheduled events, and granting a variance will provide substantial justice.
- Section E – that denial of the variance would result in unnecessary hardship to the owner: the applicant has testified that there is substantial demand for the proposed service, and that the applicant cannot reasonably convert a part of the existing building to accommodate the proposed use.
- The board further supports the variance by noting that the application is for an expansion of services related to lodging and accommodations, not for a stand-alone restaurant activity.
- The board finds that the applicant has provided information indicating that there is sufficient parking either on the property or at other properties in the area to meet parking requirements for the requested use in this establishment.

Rob seconded the motion and it passed unanimously.

Walter moved to grant a variance to section 5.14, building footprint, for the construction of a restaurant at Dowd's Inn (Tax Map 201 Lot 75) at 9 Main Street in the Lyme Common District, with the following findings of fact:

- The existing building is 11,091sf, exceeding the maximum building footprint of 4,500sf as specified for the Lyme Common District.
- The proposed addition is 1,400 sf.

- Even after expansion, the total footprint is a smaller proportion of the total land area than other comparable properties in the district.
- The board votes and agrees that the application meets the criteria for a variance under section 10.50:
- Section A - that the proposed use will not diminish surrounding property values: the board believes the project will not diminish property values; no evidence of property value effects was submitted, and there is also no evidence that other restaurants in the village have affected values
- Section B – that granting the variance will not be contrary to the public interest: there is no evidence that granting the variance would be contrary to the public interest, and indeed the results of a public survey indicated that the majority of those responding to a public survey support adding restaurants in the Lyme Common District.
- Section C – that the use will not be contrary to the spirit and intent of the ordinance: the board believes the use is not contrary to the intent of the ordinance, and finds that the district as described in section 3.21 supports businesses in the neighborhood. There are already restaurants in the village, one operating as a separate entity (Stella’s) and the other as a contingent business (Lyme Inn) and also the deli counter at the Lyme Country Store.
- Section D – that by granting the variance substantial justice will be done: the applicant has testified that patrons must seek dinner elsewhere during scheduled events, and granting a variance will provide substantial justice.
- Section E – that denial of the variance would result in unnecessary hardship to the owner: the applicant has testified that there is substantial demand for the proposed service, and that the applicant cannot reasonably convert a part of the existing building to accommodate the proposed use.
- The board further supports the variance by noting that the application is for an expansion of services related to lodging and accommodations, not for a stand-alone restaurant activity.
- The board finds that the applicant has provided information indicating that there is sufficient parking either on the property or at other properties in the area to meet parking requirements for the requested use in this establishment.
- Rob seconded the motion and it passed unanimously.

Walter moved to grant a variance to section 5.15, lot coverage, for the construction of a restaurant at Dowd’s Inn (Tax Map 201 Lot 75) at 9 Main Street in the Lyme Common District, with the following findings of fact:

- The proposed addition exceeds the maximum lot coverage of 6,000sf permitted in the Lyme Common District.
- The existing lot coverage is 11,523sf, and the expansion will bring it to 12,923sf.
- Even after expansion, the total lot coverage is a smaller proportion of the total land area than other comparable properties in the district.
- The board votes and agrees that the application meets the criteria for a variance under section 10.50:
- Section A - that the proposed use will not diminish surrounding property values: the board believes the project will not diminish property values; no evidence of property value effects was submitted, and there is also no evidence that other restaurants in the village have affected values
- Section B – that granting the variance will not be contrary to the public interest: there is no evidence that granting the variance would be contrary to the public interest, and indeed the results of a public survey indicated that the majority of those responding to a public survey support adding restaurants in the Lyme Common District.
- Section C – that the use will not be contrary to the spirit and intent of the ordinance: the board believes the use is not contrary to the intent of the ordinance, and finds that the district as described in section 3.21 supports businesses in the neighborhood. There are already restaurants in the village, one operating as a separate entity (Stella’s) and the other as a contingent business (Lyme Inn) and also the deli counter at the Lyme Country Store.
- Section D – that by granting the variance substantial justice will be done: the applicant has testified that patrons must seek dinner elsewhere during scheduled events, and granting a variance will provide substantial justice.
- Section E – that denial of the variance would result in unnecessary hardship to the owner: the applicant has testified that there is substantial demand for the proposed service, and that the applicant cannot reasonably convert a part of the existing building to accommodate the proposed use.
- The board further supports the variance by noting that the application is for an expansion of services related to lodging and accommodations, not for a stand-alone restaurant activity.
- The board finds that the applicant has provided information indicating that there is sufficient parking either on the property or at other properties in the area to meet parking requirements for the requested use in this establishment.

- Rob seconded the motion and it passed unanimously.

Walter moved to grant a variance to section 5.16, gross floor area, for the construction of a restaurant at Dowd's Inn (Tax Map 201 Lot 75) at 9 Main Street in the Lyme Common District, with the following findings of fact:

- The maximum allowable gross floor area is 6,000sf permitted in the Lyme Common District by Table 5.1.
- The existing gross floor area is 16,617sf, and the expansion of 1,400sf will bring it to 18,017sf.
- Even after expansion, the total gross floor area is a smaller proportion of the total land area than other comparable properties in the district.
- The board votes and agrees that the application meets the criteria for a variance under section 10.50:
- Section A - that the proposed use will not diminish surrounding property values: the board believes the project will not diminish property values; no evidence of property value effects was submitted, and there is also no evidence that other restaurants in the village have affected values
- Section B – that granting the variance will not be contrary to the public interest: there is no evidence that granting the variance would be contrary to the public interest, and indeed the results of a public survey indicated that the majority of those responding to a public survey support adding restaurants in the Lyme Common District.
- Section C – that the use will not be contrary to the spirit and intent of the ordinance: the board believes the use is not contrary to the intent of the ordinance, and finds that the district as described in section 3.21 supports businesses in the neighborhood. There are already restaurants in the village, one operating as a separate entity (Stella's) and the other as a contingent business (Lyme Inn) and also the deli counter at the Lyme Country Store.
- Section D – that by granting the variance substantial justice will be done: the applicant has testified that patrons must seek dinner elsewhere during scheduled events, and granting a variance will provide substantial justice.
- Section E – that denial of the variance would result in unnecessary hardship to the owner: the applicant has testified that there is substantial demand for the proposed service, and that the applicant cannot reasonably convert a part of the existing building to accommodate the proposed use.
- The board further supports the variance by noting that the application is for an expansion of services related to lodging and accommodations, not for a stand-alone restaurant activity.
- Rob seconded the motion and it passed unanimously.

Application #2012-ZB-23, Russell Hirschler (Tax Map 405 Lot 27) 609 River Road in the Rural District. Russell has applied for a special exception under Section 8.24 (Expansion of Existing Structures and Construction of Accessory Buildings or Accessory Structures Within or Into the Conservation Districts) to build a 14' x 20' deck on the rear of his house. The proposed deck would fall entirely within the Shoreland Conservation District. Just north of the house is a stream that meets the requirements for the Shoreland District, and possibly also wetlands. David provided an aerial photo with an overlay of the wetland buffer. He said that he had asked the Conservation Commission for an opinion, and chair Matt Stevens agreed he thought it was wetlands as well. Russ noted that all possible locations for the deck are also within the Shoreland Conservation District.

David asked for a site visit by the CC before scheduling the hearing, but reported that it has not yet taken place. Frank said that the board could not proceed without an opinion from the Conservation Commission. Russ, who himself is a current member of the CC, noted that the CC's obligation to the ZBA has been a topic of discussion in recent meetings. Walter referred to section 8.24 which covers review by the CC. Frank will write to the CC with a copy to the Select Board, and said that the board directs the Zoning Administrator to put notice to the Conservation Commission that it is a requirement to have the CC response in hand before the board can consider an application. Rob and Frank agreed that they would go to the Conservation Commission to talk about it.

Walter asked for information about prior expansions since 1986 and whether the deck could be reasonably located outside the conservation district without getting into the road setback. David reported on his careful review of the incomplete records in the file, which indicated that the garage was expanded into the front setback in 1996, but not within the conservation district. The tax card says the house was built in 1770 and that there are confusing entries about the length of the ell. David concludes that he believes that while remodeling was done in 1998, the existing footprint was used. Rob reminded that any other location would be in the conservation district. Rob moved to continue the hearing to the July 19

meeting, pending receipt of the required letter from the Conservation Commission. Mike seconded this motion and it passed unanimously. He extended his apologies to the applicant.

Application #2011-ZB-103, Loch Lyme Lodge (Tax Map 408 Lot 19) 59 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. Frank moved to continue this hearing at the request of the applicant, and to ask the Zoning Administrator to determine whether the application should be withdrawn pending consultation with the applicant. Mike seconded the motion and it was unanimously approved.

Frank said that he would put together a suggested list of materials for applicants to help them prepare for their hearings. He will circulate the draft and ask for comment at the next meeting.

Meeting adjourned 10:00 pm
Respectfully submitted,
Adair Mulligan, Recorder