

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

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

Alternate Members: Present - Michael Woodard, Dan Brand

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

Public: Jim Kennedy, Liz Ryan Cole, Rich Brown, Charlie Hirshberg, Attorney Mark Bowdoin, Doug Holler

Frank Bowles called the meeting to order at 7:30 pm. He designated Mike Woodard to serve as a regular member.

Minutes: Minutes of July 19 were approved on a motion by Mike seconded by Alan.

Application #2012-ZB-47, James Kennedy for Stan Rosenberg (Tax Map 402 Lot 96) 139 River Road in the Rural District.

James Kennedy proposes a bank stabilization project on the Connecticut River on the Rosenberg property. The work is within the Town's Shoreland Conservation District and will need a special exception under section 4.63 B.4. Jim explained that the lot has 200' of shoreline and stabilization is proposed on 170 feet; the property lies between two other projects he has previously done. He proposes large stone at the toe of the slope where wave action causes erosion. At a small cove, already eroded, the slope will be cut back and stone steps installed. A state wetlands permit has been received with no outstanding conditions. The Conservation Commission has visited the site, and David distributed a letter from the CC. No rare, threatened, or endangered species were noted. A seasonal dock is existing and no work will be done in this area. Walter asked about the width of the river and causes of erosion. Adair referred to the findings of the Connecticut River Management Plan, noting that causes included natural scour, water level fluctuations behind Wilder Dam, and boat wakes and wave action.

Deliberations: Alan moved to grant a special exception for bank stabilization under section 4.63B4 with the following findings of fact:

- The Conservation Commission has no objection
- Erosion here is caused by natural and man-made influences
- The project does not threaten rare or endangered species
- A dredge and fill permit has been approved by NH DES
- The use is in harmony with the intent of the Zoning Ordinance
- The site is appropriate
- The project meets the conditions of section 10.40
- Conditions: the project will be built as described in the application; best management practices will be followed if they are not in the material presented

Walter wished to discuss whether a special exception under 8.24 was needed because the stabilization could be construed as a structure.

Out of Deliberations: David noted that section 4.63B4 specifically references bank stabilization. Jim noted that the work will be done up to 2 feet toward the river from the high water mark, the boundary line.

Deliberations: Walter's proposed amendment, to note that the proposed work meets the requirements of section 8.24 involving construction of an accessory structure within the Shoreland Conservation District, was withdrawn in the face of discussion about footprint. Bill seconded Alan's original motion and it passed unanimously.

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. The Lodge has returned with a new revision of the plan for the Teed Lot. This project will require various special exceptions. David distributed a new letter from the Conservation Commission. Charlie displayed new maps revised 8/13/12 and reviewed the history of the project. He now proposes a house site in agricultural soils but not within the wetland setback, and requests a

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special exception to access the house site. At the ZBA's request, he has met with the CC. Forester Ben Hudson has viewed the black ash stand on the site and believes it is unique. Therefore Charlie has revised the driveway route to avoid the black ash and wetter areas. He believes that the deeded ROW from the Balsam Lot is a safer way to enter the lot. He proposes to place a culvert based in stone to move groundwater toward the pond. The house site is not in the wetland buffer or in the side setback. Black ash will not be cut for the 10' wide access. He will strip 1 foot of soil off and may put down filter fabric. The soils are not hydric by delineation but are wet. The steepest grade is 9%. Stormwater will sheet off toward the pond, and he will also install a level spreader and infiltration area. Augur probes have been used for the house site. There are 24" to the seasonal water table. The house size is calculated based on conservation district constraints. The leach field will be mounded but feathered in toward the house; the Enviro septic system can be sloped.

Frank asked what prevents a future landowner from cutting the ash. Charlie said that the state Shoreland Protection District controls this. Liz said that Ben said the house site has white pine and sugar maple, which could be cut, and thinning of lower branches could be done. Charlie added that the steep slopes on the lot have not been proposed for work. Frank asked about flow off this slopes. Charlie said it would not be a large contributing area.

Bill asked about the property line. Charlie reviewed the problem of the unclear deeds which imply only acreage and road frontage. He has talked to David about a subdivision application. David said that the lots were formally separated even though the landowner is the same. He wants the north line to be formalized as part of the approval. Charlie said he had a surveyor look at it, although he does not have a letter from him. A final plan could be developed that could be recorded. David said that the Planning Board needs to sign off that it is not a subdivision or lot line adjustment. Attorney Bowdoin said that a boundary line agreement should be recorded.

Bill noted that the letter from the CC does not indicate which plan they viewed. Walter said it looks like extensive work in the wetlands area. Charlie noted that the town's wetlands scientist, Ray Lobdell, checked the applicant's scientist's work. Frank advised that based on the questions raised, the board should seek a boundary line adjustment to set the property lines that meet the survey. Walter asked if this had the same legal standing as a deed. David said that if the boundary line is changed to result in a lot with less than 6 acres more/less, it would change the lot. Attorney Bowdoin said that his clients can agree to put the boundary where it is shown on the drawing, and suggested making the approval contingent on a boundary line adjustment done in this way. David said he agrees with the applicant's calculations as long as the line is formally set as a condition of approval in the location shown on the plan. Liz Ryan Cole noted that there was no survey available when her group bought the property.

David confirmed that the town's wetlands scientist has checked the wetlands on the property; Alan added that he produced the site map provided to the board in November. Walter asked what state permits are needed. Charlie said that only a permit to cross wetlands with the driveway is needed. Walter said he would like more affirmation from a wetland scientist. Discussion ensued. Mike Woodard recommended a letter from a wetland scientist evaluating the road layout for its impact on wetlands. Frank noted that the CC has in the past expressed severe reservations about this project and the board wants to be able to question an expert on whether the currently proposed project is the minimum impact approach.

Following a short break for consultation on both sides, Frank spoke for the board saying that the board would like a letter in advance of the next meeting from a wetlands scientist and then an expert to question at the meeting, in addition to more progress on defining the boundary. The applicant can hire the consultant of their choice. Michael moved to continue the hearing until the September 20 meeting. Alan seconded the motion and it passed unanimously.

Application #2012-ZB-XXX, Dartmouth Skiway (Tax Map 414 Lot 58) 39 Grafton Turnpike in the Skiway District.

The Dartmouth Skiway's wastewater lagoon needs to have some repairs done to the berm, as identified by the NH DES Dam Bureau. The repairs will require filling and grading the berm. The lagoon is within the Wetland Conservation District and will need a special exception from section 4.61 B 5. Bill stepped aside, noting he serves on the advisory council for the Skiway. Frank appointed Dan Brand to sit as a regular member. Doug Holler reported that the lagoon was built in 1967 and he does not have plans for it. In the last decade, dam regulations changed and after he had it inspected, repairs were required. The berm will be made 7' wide for ease of mowing, although only 6' is required. Last year a septic tank was installed, and this is pumped annually. Three monitoring wells check quality of water. He explained why trees were not permitted to grow on

top of the berm, and noted that NH DES will not approve the work until the ZBA does. Walter asked if all abutters were notified, and David said that they were. He distributed a letter from the Conservation Commission.

Deliberations: Alan moved to grant a special exception under section 4.54 for work required by the NH DES Dam Bureau, with the following findings of fact:

- Section 4.54 does not apply to the Skiway District
- The Conservation Commission has sent a letter expressing no reservations about the proposal
- NH DES has issued a letter of deficiency to Dartmouth College regarding the sewage lagoon and indicates that the dam requires reshaping to ensure that side slopes are less than one foot/rise/fall in elevation for every three feet of horizontal distance and that the eastern and southern berms must be re-graded so that their crests have a constant elevation
- The concrete outlet structure must be stabilized
- Trees and vegetation must be removed out to 15' beyond the footprint of the berms on all sides
- No abutters were present or provided comment
- A 6' berm is required; the applicant will build a 7' berm.
- The proposal meets the requirements of sections 10.40 and 4.61.B.5.
- Conditions: the work will be conducted as shown on the plans presented to the board. Best management practices will be used.

Michael seconded the motion and it passed unanimously.

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