

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – September 20, 2012

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

Alternate Members: Present - Michael Woodard, Dan Brand

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

Public: Dave Cullenberg, Liz Ryan Cole, Attorney Mark Bowdoin, Will Davis, Jonathan Sisson, Ben Barrowes, Leia Barrowes

Frank Bowles called the meeting to order at 7:30 pm. He designated Mike Woodard to serve as a regular member as Bill had not yet arrived.

Minutes: Minutes of August 16 were amended and approved on a motion by Alan seconded by Mike.

Application #2012-ZB-54, David Cullenberg (Tax Map 404 Lot 45) 100 North Thetford Road in the Rural District. David Cullenberg has applied for a special exception to build a 280sf addition to his house. The current house is already over the maximum allowed footprint. The current lot calculations are as follows:

- The lot is 4 acres (174,240 ft²) with no reductions from agricultural soils. (letter from Michael Dannehy)
- Maximum foot print is 2% or 3485 sf².
- The current house is 4068 ft², 583 sf² over the maximum footprint.

In 1999 Mr. Cullenberg applied to the Zoning Board for a special exception to construct a garage and a connector that would exceed the maximum footprint allowed under the ordinance. The 1999 addition added 1856 ft² to an existing 2212 ft² totaling 4068 ft². The 1999 special exception used 583 ft² leaving 417 ft² for future expansion. The current application is requesting 280 ft². David said that he wishes to expand a small family room and that there are no setback issues. The house was built in 1977 and enlarged in 1985.

Deliberations: Alan moved to grant a special exception under section 8.25 to increase the building footprint with the following findings of fact:

- In 1999 an addition to the building footprint consumed only 583 ft² of the allowable 1000sf expansion, leaving 417 ft² for future expansion
- The proposal is to expand by 280 ft².
- This leaves 137 ft² of allowable expansion of the footprint in the future
- The minutes of prior meetings indicate that a soil scientist had examined the property for agricultural soils and there are none on the lot
- No abutters provided comment
- The proposal meets the requirements of section 10.40.
- The application was approved with the condition that best construction practices will be followed.

Michael seconded the 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 driveway on lot 19, Tax map 408. Voted to take the application off the table on a motion by Mike seconded by Walter. Frank reminded everyone that the board had asked to have a soil scientist evaluate the least impacting route for the driveway to the house. Walter added that this was because the plans had changed since the Conservation Commission had viewed them. Frank read the Conservation Commission's August 15 letter into the record:

"At the last regular meeting on 7 August, the Lyme Conservation Commission heard a revised proposal from Loch Lyme Lodge for construction of a drive and house as presented by CLD Consulting Engineers. All members present agree with the comments provided herein.

“ Lot 19 (the Teed Lot): The project involves construction of a dwelling, a septic system and a gravel driveway. The proposed building and associated septic system fall almost entirely outside the Shoreland zoning area and the 100 ft wetlands setback. The Commission anticipates impacts from this portion of the project related mostly to removal of large trees, increased impervious surfaces and soil disturbance from the construction process. The proposed driveway (approx. 1000sf) crosses jurisdictional wetland and falls almost entirely within the 100ft wetland setback. The area across which the proposed driveway would be laid also contains various agricultural and hydric soils and appears to be underlain with a restrictive soil layer. There are species of ash (*Fraxinus*) associated with wet growing sites present throughout this portion of the parcel. The revised proposal appears to represent the most plausible approach practical and clearly demonstrates a commitment to minimize impacts within the context of the proposed construction. However, the Commission anticipates that any construction through the associated wet areas will create some impact on hydrologic dynamics and may affect the overall function therein. The Commission also has concerns about potential removal of forest trees to accommodate a view to Post Pond from the proposed dwelling and suggests that any such cutting be eliminated, or, at the very least, be extremely limited. If you have any questions, feel free to contact me anytime. Sincerely, Matt Stevens, Chair.”

Bill noted that the drawing upon which the Conservation Commission based its letter was the 7/30/2012 drawing; the applicant later submitted a drawing revised on 8/13/2012. Jonathan Sisson, the applicant’s certified soil scientist and certified wetland scientist, confirmed that he had used the 8/13/2012 drawing. Frank then read Mr. Sisson’s September 10 letter into the record:

“I was asked by CLD Engineers, Inc to walk the driveway route for the above referenced lot and give you my comments. I walked the route yesterday, September 9, 2012. My comments are:

1. The route is the least impacting area for wetland impacts. It goes between two wetlands, then crosses a stream at a narrow point. The stream crossing has scoured a channel and has high banks. This valley will have to be filled to make the driveway somewhat level for passage. The culvert will fit nicely in this area for the driveway.
2. The proposed driveway is as far away as possible from Post Pond because of the wetland avoidance. This gives the best protection of the pond from sediment and nutrients which could affect water quality.
3. The driveway will be constructed on gently sloping areas. Some of the driveway is on a terrace with steeper slopes on both sides. The choice of gentle slopes reduces the erosive forces of surface runoff, thus reduces sediment washing off the gravel driveway.

If you have any question, please call me at 603-313-4925 or email me at beavertrackslc@yahoo.com. Sincerely, Jonathan Sisson. “

Mr. Sisson confirmed that the route chosen is ideal topography for a crossing. Mike asked if he is comfortable with other stormwater-related aspects of the proposal, and he said yes, that the soil is sandy on top, and runoff should percolate right in. Alan asked if there is an impervious layer creating the nearby wetlands. Jonathan said that he dug test pits and went 40” without encountering an impervious layer. He saw no clays, but observed an unusual combination of wetland and upland plants. There is some ledge on the back side. Bill asked about steeper slopes on both sides. Jonathan said that there is ledge on the left, then a flat area, then a drop to the lake. Bill asked if there are any conditions the board should require. Jonathan recommended raising the drive so the water hits a trough and sinks in. Farther into the property, there is a wetter area. David asked about de-icing materials. Jonathan advised against putting salt on a gravel road. Mike advised that the road be restricted to gravel to remove the temptation to add salt. Walter pointed out that sand used in winter has some salt added to keep it from freezing. Michael said he thought it was a minor amount.

Rob recused himself from the decision because he had not become familiar with the most recent plan. Frank appointed Mike to serve as a regular member in his place, and reviewed the sections of the ordinance for which special exceptions are requested. He noted that the drawing shows an elevation change of 442 to 460’, or 18 feet of change in over 200 feet, which meets the grade requirements. The driveway is 823 feet long. David pointed out that the conservation easement requirement for agricultural soils does not need to apply because the area of ag soils is 2.9 acres, under the 3 acre limit. Frank noted that the house is sitting in ag soils but all other soils are wetland soils.

Frank asked if the lot is non-conforming. Alan confirmed that because so much is wetland, the calculated lot size is less than three acres. Mike asked about road frontage. David said he believed both lots will have more than 300 feet. The board reviewed the dimensional controls in Table 5.1, and found the application met dimensional requirements. Will Davis said

that the adjusted area leaves a maximum building footprint of 963 sf and 5,775 maximum lot coverage. Attorney Bowdoin said that the applicant proposes a 24'x 40' structure, and he believes that if this is denied, it would be an unconstitutional taking of property. Alan said that since it is a defined lot, the applicant has a reasonable right to build something, provided it meets the requirements of the ordinance.

Deliberations: Walter asked about the status of the property lines and asked what the board should require: a deed or a letter of intent from the applicant. He suggested asking the attorney's opinion. Bill said the board could vote conditionally subject to receipt of a recordable survey and deed that meets the dimensional requirements before issuing a building permit.

Out of Deliberations: David described the types of subdivisions and said that a boundary line agreement is appropriate here. Attorney Bowdoin agreed and said that he would represent now that the line will be the same. Bill reminded that no permit will be issued until a recordable mylar of the lot line is received.

Deliberations: Walter said he was satisfied with this. The board made a small amount of progress in framing a motion and then went back out of deliberations to ask a question.

Out of Deliberations: Bill asked where the utilities will go, noting that they are not shown on the plan. Will Davis said that they would run within the right of way of the drive and it has not yet been settled whether they will go above or below ground. David said that when they decide, it could be a condition that a new permit would be needed. Frank said that if they are run from Route 10, it would result in cutting a 35' wide swath through a sensitive area of forest. He cited the zoning ordinance. Mike advised running power along the drive, and if not, require a new application.

Deliberations: Alan moved to grant a special exception to section 4.61B3 (access ways), with the following findings of fact:

- Requirements of section 4.53 have been met because the drive will be less than 1000 feet
- Testimony has been received from Jonathan Sisson, certified soil scientist and certified wetland scientist, that the proposed route of the driveway will have the minimum impact of any route, based on the drawing of CLD 090339 revised 8/13/2012
- The Conservation Commission's letter of August 15 identified significant impacts on a prior plan; the plan was revised based on the Commission's review, and subsequent testimony from a soil scientist has been received to the effect that the new proposed route of the access will have the least impact
- The project meets the requirements of section 4.53A3

Conditions are as follows:

- The driveway will be built as described on the drawing of CLD 090339 revised 8/13/2012
- A boundary line agreement will be recorded
- Utilities will follow the driveway location as shown on the reference drawing and not involve significant additional cutting that results in a secondary powerline right of way
- Best construction practices will be used including for sedimentation control as set forth in the drawing of CLD 090339 revised 8/13/2012

Mike seconded the motion and it passed unanimously.

Out of Deliberations: David reminded that because there are 2.9 acres of agricultural soils, less than the minimum threshold of 3 acres, the requirement for a conservation easement can be waived.

Deliberations: Mike moved to grant a special exception to section 4.64B7, (access ways in the Agricultural Soil Conservation District) with the following findings of fact:

- there are 2.9 acres of agricultural soils, less than the minimum threshold of 3 acres, so the board chooses to waive the requirement for a conservation easement under section 4.64B
- Testimony has been received from Jonathan Sisson, certified soil scientist and certified wetland scientist, that the proposed route of the driveway will have the minimum impact of any route, based on the drawing of CLD 090339 revised 8/13/2012

- The Conservation Commission's letter of August 15 identified significant impacts on a prior plan; the plan was revised based on the Commission's review, and subsequent testimony from a soil scientist has been received to the effect that the new proposed route of the access will have the least impact
- The access way meets the requirements of section 4.53A3

Conditions are as follows:

- The driveway shall meet the standards of Section 4.53 of the Lyme zoning regulations.
- The driveway will be located and built as described on the drawing of CLD 090339 revised 8/13/2012
- A boundary line agreement shall be recorded prior to the issuance of a building permit and shall be in conformance with the boundary line shown on CLD drawing 090339, revised 8/13/12
- Utilities will follow the driveway location as shown on the reference drawing and not involve significant additional cutting that results in a secondary powerline right of way
- Best construction practices will be used including for sedimentation control as set forth in the drawing of CLD 090339 revised 8/13/2012

Alan seconded the motion and it passed unanimously.

Mike moved to grant a special exception to section 4.63B3, (access ways in the Shoreland Conservation District) with the following findings of fact:

- Testimony has been received from Jonathan Sisson, certified soil scientist and certified wetland scientist, that the no other feasible route for the driveway exists that would not have a greater impact
- The Conservation Commission's letter of August 15 identified significant impacts on a prior plan; the plan was revised based on the Commission's review, and subsequent testimony from a soil scientist has been received to the effect that the new proposed route of the access will have the least impact
- The access way meets the requirements of section 4.53A3

Conditions are as follows:

- The driveway shall meet the standards of section 4.53 of the Lyme zoning regulations
- The driveway will be built as described on the drawing of CLD 090339 revised 8/13/2012
- A boundary line agreement shall be recorded prior to the issuance of a building permit and shall be in conformance with the boundary line shown on CLD drawing 090339, revised 8/13/12
- Utilities will follow the driveway location as shown on the reference drawing and not involve significant additional cutting that results in a secondary powerline right of way
- Best construction practices will be used including for sedimentation control as set forth in the drawing of CLD 090339 revised 8/13/2012

Alan seconded the motion and it passed unanimously.

Mike moved to grant a special exception to section 4.64B1, (single dwelling in the Agricultural Soil Conservation District) with the following findings of fact:

- Development in the Agricultural Soil Conservation District will include a 960sf home
- there are 2.9 acres of agricultural soils, less than the minimum threshold of 3 acres, so the board chooses to waive the requirement for a conservation easement under section 4.64B
- conditions of section 10.40 are met

Conditions are as follows:

- The house will be built as described on the drawing of CLD 090339 revised 8/13/2012
- A boundary line agreement shall be recorded prior to the issuance of a building permit and shall be in conformance with the boundary line shown on CLD drawing 090339, revised 8/13/12
- Utilities will follow the driveway location as shown on the reference drawing and not involve significant additional cutting that results in a secondary powerline right of way
- Best construction practices will be used including for sedimentation control as set forth in the drawing of CLD 090339 revised 8/13/2012

Alan seconded the motion and it passed unanimously.

The board determined that a special exception to section 4.61B5 is not required.

Frank moved to grant a special exception to section 8.31D, (dimensional requirements for construction on a vacant non-conforming lot) with the following findings of fact:

- Dimensional requirements are met
- The vacant lot is non-conforming because of the requirements of Table 5.1 (lot size) due to the presence of wetlands and agricultural soils
- conditions of section 10.40 are met

Conditions are as follows:

- The project will be built as described on the drawing of CLD 090339 revised 8/13/2012
- A state-approved septic design will be provided to the Zoning Administrator
- A boundary line agreement shall be recorded prior to the issuance of a building permit and shall be in conformance with the boundary line shown on CLD drawing 090339, revised 8/13/12
- Utilities will follow the driveway location as shown on the reference drawing and not involve significant additional cutting that results in a secondary powerline right of way
- Best construction practices will be used including for sedimentation control as set forth in the drawing of CLD 090339 revised 8/13/2012

Mike seconded the motion and it passed unanimously.

Out of Deliberations: Frank asked the applicant if any more decisions are needed. Attorney Bowdoin said that the applicant now has all that is required.

Meeting adjourned 9:35 pm
Respectfully submitted,
Adair Mulligan, Recorder