

**Town of Lyme**  
**LYME ZONING BOARD OF ADJUSTMENT**  
**Minutes – March 21, 2013**

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

**Alternate Members:** Michael Woodard, Dan Brand

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

**Public:** Don and Julia Elder, Nora Gould, Charlie Hirshberg, Wayne and Faith Pushee

Frank Bowles called the meeting to order at 7:30 pm. He noted that a chair must be elected at the next meeting, when he will not be able to attend.

**Minutes:** Minutes of the November, 2012 meeting were approved on a motion by Rob seconded by Walter.

**Application #2013-ZB-06, Don and Julia Elder (Tax Map 409 Lot 46) 202 Dorchester Road in the Rural District.** The Elders propose to demolish their existing house and replace it with a new log cabin-style house. The lot is 1.49 acres. The edge of new structure will be located 16 feet from the western property line; the current structure is 25' from the property line. The front of the new house will be located the same distance (45') from the road as the existing house. David views this project as a new construction, not a replacement because the size and footprint of the new structure are different than the current house. Because Section 8.20 does not apply to new construction, he believes the project requires a variance to the setback and building footprint requirements. The Elders are also requesting a special exception to replace the septic system in the setback area. The intent is to keep the new leach field as close to the house as possible.

Don Elder said he would like to remove the old house, put in a new foundation, and install a new log home. He said the new house would be located closer to the side property line to allow room to use the driveway and have the ridgepole run east-west. The current septic system seems to be functioning. Abutter Nora Gould said she had no problem with the plan. Walter asked about current buildings on the site and David clarified that all were used to calculate lot coverage. Don added that he will meet with the Planning Board to add one acre to the rear of the lot up the hill because his spring is up there. The shed will be moved behind the garage.

Michael Woodard asked Adair Mulligan about the letter from the Lyme Heritage Commission. The Commission's letter outlined the historic significance of the c. 1900 home, based on a professional architectural historian's opinion, and offered assistance to the Elders to find ways to rehabilitate rather than demolish it. Frank said he thought the Commission's conclusion was inappropriate in the absence of an offer to provide a substantial sum to cover costs. Adair replied that the Heritage Commission believed major renovations can often be accomplished at less cost than demolition and total replacement. Bill Malcolm agreed. Don shared his extensive knowledge of the house's origins and Julia Elder said she planned to save the banister. David said that the removal of the old house is not under consideration as part of the hearing but that the Select Board had instructed that the Heritage Commission's comment be considered. Bill asked if the Zoning Ordinance instructs the Board to consider historical issues. Walter Swift said that Section 10.40 A3 requires the board to consider significant historic features or sites, and that it should be discussed later.

Deliberations: Frank asked whether the approval could be granted as a special exception and not a variance. Walter noted that while the intrusion into the side setback would increase, both the total footprint and the total area of the setback intrusion would decrease, and therefore it would be more conforming on an area basis. Bill Malcolm said that the house will still be closer to the abutter, and saw it as a substantive issue. Rob agreed with Bill. Bill asked about the cause of the hardship, noting that there is no testimony that the current house is not habitable or functional, such as following a fire.

Out of deliberations: David said hardship could arise if the ordinance does not allow an applicant to do on their lot what his neighbor would be allowed to do. Don said that the walls have fire stops every 6" that make insulation difficult, the sills are bad, the wiring is original, and the house is too expensive to fix. Julia added that they want to orient the roof so it will not shed snow on the driveway, but that their choice of log house can only be built 26' wide and can be longer along the ridgepole, but cannot be made deeper, so that it ends up intruding more into the setback.

Deliberations: Bill moved to grant a variance for the replacement of the existing house with a new house under section 10.50, based on the following findings of fact:

- The proposed use will not diminish surrounding property values
- Granting the variance will not be contrary to the public interest, except as noted by the Lyme Heritage Commission
- The use will not be contrary to the spirit and intent of the ordinance
- Denial of the variance would result in unnecessary hardship to the owner. The hardship is created by the unusual circumstances of the lot.

Conditions include: the building must be built substantially in conformance with the plan submitted, and best construction management practices followed. Rob seconded the motion and it passed unanimously.

Walter moved to grant a special exception under section 5.13E3 to replace the septic system. He noted that

- at the time of the application, the design of the septic system had not yet been approved, but the intent of the applicant is to apply for and receive approval for a septic system, in roughly the same location as the current system, with an increase in size of the leach field as necessary.
- Conditions of section 10.40 are met.
- Condition: state approval of the septic system will be received before a permit is issued. Bill seconded the motion and it passed unanimously.

Alan Greatorex excused himself to leave, and Frank appointed Mike Woodard to sit as a regular member.

**Application #2013-ZB-11, Charles Hirshberg (Tax Map 407 Lot 11) 47 Post Pond Lane in the Rural District.** Wayne and Faith Pushee propose to demolish their existing 800 sf , camp, built in 1947, and replace it with a new and slightly larger structure to accommodate a bathroom. Charlie Hirshberg said that the 17,000sf waterfront lot on Post Pond has wetlands delineated by a wetlands scientist. The water supply is an overflow from the abutter's well. There is currently a composting toilet and outhouse on the site. The current dry well for gray water disposal is located within the wetland. The applicants propose a Clean Solution denitrifying septic system up by the road. There is limited parking on the lot and it will be by the drive on top of the leach area. An Enviro-Septic unit will be used for the leach field.

Charlie continued that the current building is up on blocks; the Pushees propose to take the building down and extend the new one on the side away from the water. There will be a foundation but no basement. Ledge is nearby, and the frost wall may pin to the ledge. Stormwater runoff from the drive will be picked up and directed to a rain garden. Roof runoff from most of the roof will be sent to the dry well, but it cannot be done on the wetland side. There will be a drilled well. David noted that the entire lot is within the Wetlands Conservation District. Charlie calculated the wetlands on the property as 2,274sf, noting that the wetland extends off the property. The zoning ordinance requires consideration of the entire wetland, not just that on the lot.

Deliberations: Frank recalled that the abutting Lewicki proposal was very similar and was approved because it promised a substantial improvement in water quality protection. Walter inquired where the wells and leach fields are located on abutting properties.

Out of Deliberations: David consulted the files for these properties and it was determined that there would be no conflicts with the Lewicki leach field and proposed Pushee well, or the proposed Pushee septic system and Lewicki well. The location of the Compton well on the other side was unknown and there is no approval for the septic system in the file. Faith Pushee said she had talked with her abutter and said the well is on the far side of his garage. Wayne Pushee said their leach field appears to be up by the road.

Deliberations: Bill initially moved to approve the application for a list of special exceptions until it was determined that because the building is being replaced, a variance is required. He asked if the hearing could continue because it had not been warned for a variance. Frank determined that it could go ahead. Bill moved to grant a variance to sections 8.23, 8.24

and 8.25 for construction and a special exception under sections 5.13.1a and 5.13E for a replacement septic system to replace a graywater system, outhouse, and composting toilet, with the following findings of fact:

- The existing building will be demolished and replaced by a new structure on the same footprint with an increase of 20-30%
- The increase in footprint is not above the allowable increase, and the majority of the existing footprint is being re-used
- The leach field cannot be reasonably located outside the Wetlands Conservation District because the entire lot is located in this district
- The leach field cannot be reasonably located outside the side setback areas because the entire lot is located in this setback
- The project will reduce sewage loading
- The proposed use will not diminish surrounding property values, and in fact will enhance them through better environmental protection
- Granting the variance will not be contrary to the public interest
- The use will not be contrary to the spirit and intent of the ordinance; the increased violation is due to the project's ability to reduce environmental impact
- Denial of the variance would result in unnecessary hardship to the owner. The hardship is created by the unusual circumstances of the lot.

Conditions:

- Best construction management practices will be used, especially during demolition, recognizing the project's proximity to the wetland and to the shoreline of Post Pond.
- A state permit will be received for the well and septic system
- The project will conform to the plan submitted, dated February, 2013.

Mike seconded the motion and it was unanimously approved.

David Robbins reported that a new application has been received to expand a structure by adding a second story, and asked if this would require a special exception. He noted that Town Meeting had not elected to change the definition of "expansion." Mike noted that such expansions often add bedrooms and therefore result in increased septic loading. Walter asked David to take this question to the Planning Board, adding that such expansion may trigger a need for state septic approval. The sense of the board was that upward expansions should be subject to ZBA review.

Meeting adjourned 9:28 pm  
Respectfully submitted,  
Adair Mulligan, Recorder