

**Town of Lyme**  
**LYME ZONING BOARD OF ADJUSTMENT**  
**Minutes – May 15, 2014**

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

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

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

**Public:** Brian Cook, Donald Graham, Colin Robinson, Bob Green, Bob Thebodo, George and Dorothy Miscally, Don Metz, Tami Dowd, Darryl Torrey

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

**Minutes:** Minutes of the April 17, 2014 meeting were approved as amended on a motion by Alan seconded by Walter.

Minutes of the April 19, 2014 meeting were approved as amended on a motion by Alan seconded by Bill.

**Elections:** Frank Bowles was re-elected chair on a motion by Mike seconded by Alan. Rob Titus was re-elected vice-chair on a motion by Frank seconded by Bill.

**Application #2014-ZB-11, Dale and Patricia Hill (Tax Map 408 Lot 42) 11 Horton Lane in the Rural District.**

Dale and Patricia Hill have applied for a Special Exception under Section 4.66B to construct a new four bedroom, 2500 square foot dwelling with 400 square feet of porches and a 625 square foot attached garage within the Ridgeline and Hillside District on their property. The Board made a site visit on April 19. Frank appointed Mike and Dan to participate in the discussion as sitting alternates. David reported that the Hills have asked for a continuance to the June meeting.

Deliberations: Mike confirmed that the question of the road was dismissed because the court had deemed Horton Lane a legal subdivision. Frank asked if the lot had been determined to be buildable.

Out of Deliberations: David Robbins said that there is a state approved septic design. Michael asked David to ask the Hills to add the septic system, corners, height of land, and footprint dimensions of the house on the new plan. David observed that the Hills will probably have to re-apply for their septic design if the house location moves.

Deliberations: The board discussed the criteria for the Ridgeline and Hillside District before voting to continue the hearing to the next regular meeting at the latest time available, on a motion by Alan seconded by Mike.

Out of Deliberations: Michael asked the board to discuss how to avoid having hearings start after 10:00pm. Frank moved that any hearings after 10pm will be sent to a special meeting that will then be scheduled at the board's pleasure, likely the next available Thursday. Mike seconded the motion, and it passed unanimously. It was suggested that all interested parties should arrive half an hour before their scheduled time, and that debate could be cut off after half an hour and the hearing continued. Walter advised asking the town's attorney if there is any restriction on posting of hearing times or ability during a meeting to flip applications. The board will consider this issue at the next meeting.

**Application #2014-ZB-13, Brian Cook (Tax Map 201 Lot 57), 29 Union Street in the Lyme Common District.**

Brian Cook has applied to the ZBA for a special exception under section 8.25 to replace a 24sf roof over a set of stairs with a 56sf porch and 15sf of stairs at the side entrance to his home. The roof was destroyed by snow load during the past winter. The proposed porch will be outside all the setbacks and will not cause the lot coverage to exceed the maximum allowed. Abutter Colin Robinson said he supports the application. David Robbins pointed out a discrepancy in the findings of fact when a ZBA permit was issued to build a screened porch in 2001. The findings allowed 779sf of additional footprint, but the figure should have been 297sf per 8.25.B.

Deliberations: Walter moved to grant a special exception to replace a roof and stairs destroyed by snow load with a porch and stairs at the residence, with the following findings of fact:

1. The property is in the Lyme Common District. The dwelling is non-conforming in that it predates the Zoning Ordinance and exceeds the footprint limitations set forth in Table 5.1 for the district.
2. The applicant proposes to replace a 24 sf roof that was destroyed by snow load during the past year with a 71sf set of stairs and roofed porch attached to the dwelling. This results in a net footprint and lot coverage increase of 47sf.
3. The proposed addition lies entirely outside of the setback areas.
4. A prior decision 9/24/2001 concluded that there was a balance of 779sf of additional footprint allowed to the dwelling. This figure should have been 279sf based on the allowance of 500sf total listed in Section 8.25.B.

5. The proposed addition will reduce the balance of allowable footprint to 222sf.
6. The requirements of section 10.40A have been met.
7. Abutter Colin Robinson supports the application.
8. A water body and its buffer zone are outside of the area of construction.

Conditions: Best practices in construction shall be used. Rob seconded the motion and it passed unanimously.

**Application #2014-ZB-16, Carol Barr (Tax Map 403 Lot 16), 301 River Road in the Rural District.**

Carol Barr has applied for special exceptions under section 4.63 B 4 (Shoreland Conservation District) and section 4.65 B 6 (Flood Prone Conservation district) to add additional stone on top of 48 linear feet of existing rip rap to prevent the Connecticut River from eroding the bank. The new stone will be placed by hand, No machinery will be used to access the site. Donald Graham, her husband, displayed photos and corrected the application to read 38 feet rather than 48. Jim Kennedy has sent a letter (5/15/2014) advising that larger stone be used, that vegetation not be disturbed, and that the project appears to qualify for a Permit by Notification under NH DES rules. Donald said he did not disagree. He would use a cement trough to move stone without disturbing the soil. He will add plantings. Bill advised using filter fabric in the cavity. Walter noted that the Conservation Commission has sent a letter advising that the project go ahead as long as existing vegetation is not greatly disturbed, recommending further plantings, and not extending stone beyond the state's two-foot limit.

Deliberations: Alan moved to grant a special exception under section 8.24 to add to existing riprap along the riverbank, with the following findings of fact:

1. Special exceptions may be allowed for any alteration of the natural surface configuration or by the addition of fill or excavation by dredging including bank stabilization.
2. The request includes the addition of "...7 minus erosion stone, to be placed by hand, stone to be slid down a chute to the shore, or carried in sheetrock buckets."
3. A hand-drawn plan was attached to the application.
4. Photographic evidence has been submitted showing the need for bank stabilization.
5. The Conservation Commission has no real objection, but recommends conditions.
6. A letter submitted by Jim Kennedy describes conditions and suggests an approach similar to the Conservation Commission's.

Conditions:

1. The placement will be according to the techniques described in the application.
2. The delivery and storage of the stone at the top of the bank shall not impede the flow of traffic along River Road.
3. Any change from these conditions will be brought to the Zoning Administrator for review and possible resubmission to the board.
4. The recommendations of the Conservation Commission shall be followed to the best of the applicant's ability.

Bill seconded the motion and it passed unanimously.

**Application #2014-ZB-15, Robert Thebodo (Tax Map 201 Lot 118), 13 Creamery Lane in Lyme Common & Rural Districts.**

Robert Thebodo has applied for a zoning permit to install a 20' X 13' (260 ft<sup>2</sup>) ground mounted solar photo voltaic system on his property. Currently the maximum lot coverage is exceeded by the existing buildings on the lot. The optimum location for the solar array is located in a wetlands buffer and in the property line setback. The property is split by the Lyme Common and Rural Zoning Districts. The proposed site of the solar array is in the Rural District. Mr. Thebodo has requested special exceptions under section 8.25 for the exceeded lot coverage, 8.24 for the encroachment into the Wetlands Conservation District and 8.23 for the encroachment into the property line setback. He has determined that the proposed location is approximately 20' from the rear property line. In 2000 Mr. Thebodo applied for and received a special exception to construct a 14' X 18' (432 Ft<sup>2</sup>) addition to his house in the setback area. This leaves 568 ft<sup>2</sup> available for future development.

Bob Thebodo explained that the solar array will consist of panels on a 16" diameter pole that will move as they track the sun. At night, the panels become vertical and will shed snow. He will have to remove a few pines. The board discussed how to assess the dimensions of such a moving structure that will occupy a swept, not static, circle 20' in diameter. Walter asked if it could be located outside the wetland buffer. Bob said that the location identified is the best on his property, according to test measurements made in several locations. The site is on a small hill. Bob said that it would not be worth it to install the array if less solar gain would be realized at a different location. David noted that the Conservation Commission has

written to say they had no objection. The house, built in 1968, is 1998sf. Sheds measuring 14' x 18' and 14' x 14' were built before zoning. After zoning was enacted, a 14' x 18' addition was made to the house.

Deliberations: Walter noted that the only issue is lot coverage, and cautioned that this application will set a precedent for other such projects. He raised the question of glare and reflection off the panels that might disturb others. Alan moved to grant special exceptions under sections 8.25, 8.24, and 8.23 to construct an accessory structure of a ground mounted solar photo voltaic system covering 200sf, with the following findings of fact:

1. The maximum lot coverage is exceeded by the current buildings and so requires a special exception under 8.25.
2. The proposed (optimum) location is located in a wetlands buffer, which requires a special exception under 8.24.
3. The location is in the property line setback, requiring a special exception under 8.23.
4. A prior special exception was granted for an addition to the house, leaving 568 ft<sup>2</sup> available for future development.
5. The Conservation Commission has no objection to the project.
6. All locations identified on the siting survey of the property by the installer would need the same approvals, with the exception of the property line setback.
7. Encroachment into the property setback, wetland buffer, and allowable lot coverage is 260sf, leaving a balance of 308sf for future development.
8. The net balance of allowable square footage of lot coverage may be increased if the applicant provides new figures regarding the maximum projected area of the array below 200sf.
9. The project cannot reasonably be located outside the Wetlands Conservation District. The actual site is on a dry hilltop.

Conditions:

1. The proposed solar array will be located essentially as presented in the application.
2. Best construction practices will be used to prevent erosion and sedimentation of streams.

Rob seconded the motion and it passed unanimously.

**Application #2014-ZB-17, George Miscally (Tax Map 407 Lot 75), 18 North Thetford Road in the Rural District.**

George Miscally has applied for a special exception under section 8.23 to construct a 24' X 24' two car garage partially within the property line setback area (480 sf will be in the side setback, 96 sf will be outside). The proposed location does not fall within any conservation districts and the footprint is under that maximum allowed for the lot, and the lot coverage will not be exceeded. In 2000 the Zoning Board approved the addition of a 9' x 18' greenhouse to the residence. This greenhouse was located entirely within the road setback. This used 162 square feet of the 1,000 square feet allowed under section 8.23. The residence on the lot was built in 1985 and therefore qualifies for the building zone and the proposed location of the garage is within the Building Zone.

George Miscally said he would like to build a one-story garage with storage space but no shop above. The driveway to the house is on the neighboring property with a right of access. David reported receiving a message from this neighbor, John Rush, saying he has no objection to the project. Alan asked if the garage could be located elsewhere. Dorothy Miscally explained that there is a steep bank, extensive garden, and a septic pipe where the garage would go if it were moved out of the property setback. This siting would make it difficult to pump the septic tank and deliver hay. The garage is proposed for the site where a horse paddock is now. Walter asked about moving the garage to the other side of the drive. George said that he hopes to put a solar array on the roof and trees would shade the roof if it were moved to this location.

Deliberations: Walter said he thought the garage might be reasonably located elsewhere, although it would cause hardship. Dan noted that the distance from the road to the garage is more than from the property line. Frank advised a site visit, and others agreed. The board voted to hold a site visit on Saturday, May 24 at 8:30pm and continue the hearing to June 19.

**Application #2014-ZB-14, Dowd's Inn, Tax Map 201 Lot 75), 9 Main Street in the Lyme Common District.**

Dowds' Country Inn has applied for a variance under sections 5.14, 5.15, and 5.16 for an additional 297sf in addition to the 1400sf that had been approved on June 21, 2012 to construct a restaurant and tavern to exceed the maximum footprint, exceed the maximum lot coverage, and exceed the maximum gross floor area. Don Metz explained that as he started the

final drawings it came to their attention that they did not ask for enough area in their original application. They are now asking for an additional 297 square feet in order to correct the issue.

The original plans called for the inn entrance to take a small area of the existing kitchen to make a hallway into the tavern. This has now changed, and they would like to create an exit from the inn dining area into a new hallway to the tavern, adding a total of 99 sf (32sf + 67sf). The floor plan for the tavern has expanded by two feet along the length of the south wall (this wall moved two feet south); this will add 100 sf to the tavern. The fire place has been moved back two feet to the east to be partially outside the building. This added 16 square feet. A new egress was needed for the cellar; this was added to the north side of the tavern, adding 82 square feet.

David reported that the full site plan was approved by the Planning Board and that he issued a permit for the project in March, 2014. The applicant will have to go back to the Planning Board for site plan review if an expansion is granted. No construction has occurred. David said that he has been authorized by the Select Board to revoke a building permit if necessary, and so this application can be treated as a new one. There are no substantive changes from the previous application. Tami Dowd confirmed that all the facts are the same. Asked if there were any objections expressed during site plan review, David noted that Bob Coyle had asked if there would be changes in seating that would result in changes in parking needs. Tami said no.

Deliberations: Frank advised going through the original findings and modifying them as necessary. He moved to grant the three variances requested, with the following findings of fact:

1. The Board has been asked to change the originally issued variances to reflect architectural changes to improve circulation and egress from the building.
2. Drawings of reference are
  - a. Drawing by Colin Robinson, 5/17/2012
  - b. Drawing by Don Metz, 4/19/14
  - c. Site plan review documents prepared by Jim Kennedy, 1/31/13
3. Variances are issued to Table 4.1 and sections 5.14 (building footprint), 5.15 (lot coverage), and 5.16 (gross floor area).
4. The existing building is 11,091 sf, exceeding the maximum building footprint of 4,500sf as specified for the Lyme Common District.
5. The proposed addition was 1,400sf and has been changed to 1,697sf.
6. Even after expansion, the total footprint is a smaller proportion of the total land area than other comparable properties in the district.
7. The proposed addition exceeds the maximum lot coverage of 6,000sf permitted in the Lyme Common District.
8. The existing lot coverage is 11,523sf, and the expansion will bring it to 13,220sf.
9. Even after expansion, the total lot coverage is a smaller proportion of the total land area than other comparable properties in the district.
10. The maximum allowable gross floor area is 6,000sf permitted in the Lyme Common District by Table 5.1.
11. The existing gross floor area is 16,617sf, and the expansion of 1,697sf will bring it to 18,314sf.
12. Even after expansion, the total gross floor area is a smaller proportion of the total land area than other comparable properties in the district.
13. The board votes and agrees that the application meets the criteria for each variance under section 10.50:
  - a. 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 adversely affected property values.
  - b. 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. This finding is supported by the results of the town public opinion survey, which found that the majority of those responding to the survey support adding restaurants in the Lyme Common District.
  - c. 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.
- d. 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.
  - e. 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.
14. The board further supports the variances by noting that the application is for an expansion of services related to lodging and accommodations, not for a stand-alone restaurant activity.
  15. The board finds that the applicant has provided information indicating that there is sufficient parking either on the property or through formal arrangements they have made with other properties in the area to meet parking requirements for the requested use in this establishment.

Walter seconded the motion and it passed unanimously.

Meeting adjourned 10:51 pm  
Respectfully submitted,  
Adair Mulligan, Recorder