

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – June 18, 2015

Board Members: Present - Rob Titus, Alan Greatorex, Walter Swift,

Absent: Frank Bowles, Bill Malcolm

Alternate Members: Present- Michael Woodard, Dan Brand

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

Public: Rich Brown, Robin Taylor, Jeanie McIntyre, Geoff Little, Darryl Hotchkiss, Richard Vidal, Dale Vidal, Vicki Smith, Andy Stadheim, Cynthia Bognolo

Vice Chairman Rob Titus called the meeting to order at 7:30 pm. He appointed Michael Woodard and Dan Brand to sit as regular members. Minutes of the meeting of May 21 were unanimously approved on a motion by Mike seconded by Walter, with the condition that the Zoning Administrator will add calculations to the decision regarding the Putnam Blodgett application. Minutes of the May 23 site visit to the Little/McIntyre property were unanimously approved as amended, on a motion by Dan seconded by Walter. Minutes of the meeting of June 10 were unanimously approved as amended, on a motion by Mike seconded by Alan.

Application #2015-ZB-06, Pinnacle Project, LLC (Tax Map 408 Lot 22.1) 70 Orford Road in the Rural District.

Pinnacle Project LLC has applied to the Lyme Zoning Board of Adjustment for a combination of variances and special exceptions to allow the Pinnacle Project to construct a 36-unit, 84-bedroom multi-family housing development. Action on the first set of variances had been taken at the June 10 meeting. Vice Chairman Titus reminded that preliminary drafting of findings for Variances #2 and #3 had been assigned to two individual members of the Board. Drafts were then distributed by David Robbins.

Deliberations: The Board reviewed the drafts presented, beginning with the version to address the second variance request, which had been drafted by Walter. The applicant requests an area variance from Zoning ordinance 5.15C to permit lot coverage of 58,913 sq. ft. (105, 151 with driveways) on the one 98 acre lot where (the applicant contends that) a total of 130,000 square feet of lot coverage would be permitted in a five lot subdivision or 156,000 in a six lot size averaged development. They agreed upon the following edited version.

On June 10, the Zoning Board deliberated on the basic parameters of this project and specifically on a three-part request for variances to the Zoning Ordinance. The Board established 34 Findings of Fact related to those requests and deliberations. Findings 1., 2., 6., 8., 12., 14., 15., 18., 20., 21., 22., 23., 25., 26., 27., 30., 31., 32., 33., 34. from that group are incorporated herein by reference as they apply to the present request as are the list of exhibits and documents cited with those Findings. Additional findings listed below specifically relate to the lot coverage issue. Numbered references follow the List of Findings.

Findings relating to Lot Coverage

1. The request for the variance from the limits of §5.15C is specifically tied to the applicant's proposed multi-family, multi-dwelling development, and such variance is requested in order to meet the dimensional features of that proposed development. Applicant's plans show lot coverage of 47,340 sq. ft. (ref. 1), 58,749 sq. ft. (ref. 2), 58,913 sq. ft. (3), or 105,151 sq. ft. (4). The building development is concentrated in a contiguous triangular area of agricultural soils bounded by driveways and the wetlands conservation district covering about 140,000 sq. ft. (3.2 acres) as shown on their Overview Plan (ref. 1).
2. The lot coverage request is based on figures derived from the applicant's expectation that such lot coverage is justified and/or would be granted under Lyme Subdivision Regulations through either a five-lot subdivision or Lot Size Averaging provisions.
3. Regulations and provisions for subdivisions and lot size averaging are governed by Lyme's Planning Board (§5.11.B and 5.11.D.) and through Site Plan Review procedures. Zoning Ordinance §5.11.D.8. explicitly limits

waivers to dimensional requirements (of the Zoning Ordinance and Subdivision Regulations) to those that might be approved by the Planning Board under Lot Size Averaging provisions in §5.11.D.

4. A Preliminary Site Plan Review of the proposed development Jan 22, 2015 resulted in opinions by the Planning Board that the applicant's proposed development disregarded the objectives of the Rural District and presented potential problems with respect to the objectives of various conservation districts. Further, the Planning Board concluded that the proposed development was based on a misunderstanding of the Lot Size Averaging provisions in the Zoning Ordinance, ignoring the discretionary power of the Planning Board to approve reduced lot sizes in accordance with the Master Plan, thus defining the allowable lot coverage. These opinions were not formally presented as decisions, just as informational input to the applicant relating to the plans that were presented.

Notes/Refs.

- 1 CLD Dwg. C1, Dec. 2014, Pinnacle Co Housing Orford Road, Overview Plan
- 2 Undated spreadsheet table, applicant's original submittal package
3. Clarification of Variance Requests, Pinnacle Project, LLC, June 1, 2015 (w/o driveways)
4. Clarification of Variance Requests, Pinnacle Project, LLC, June 1, 2015 (with driveways).

Considering these findings and those determined on June 10, the Board makes the following conclusions regarding the requested variance.

- A. "The variance will not be contrary to the public interest" finding

The proposed scale and density of the project on the proposed site is inconsistent with the purposes and objectives of the Rural District and would significantly alter the essential character of this locality in the Rural District. The lot coverage shown in the plans and requested by the applicant is nearly twice to four times that permitted for a single lot in the Rural District, depending on whether or not the driveways shown in the plans are to be classified as public roads.

The property is comprised of a mixture of forested steep slopes to the east, and open lands covered by wetlands and agricultural soils. Because of the mix of agricultural soils within and nearby the wetlands conservation districts, the practical use of the agricultural soils area is limited to the contiguous area where buildings and drives are proposed – the area where the lot coverage relief is requested. And as a result of the arrangements of the buildings, enclosing an open area between them, any use of the remaining agricultural soils is severely constrained. Basically, the 3-4 acres of contiguous agricultural soils would be eliminated – permanently altering the essential character of the property.

Section 3.27.4 of the Zoning Ordinance specifically addresses the importance of preserving agricultural soils: *"The primary objective of the Agricultural Soils Conservation District is to preserve and protect the Town's agricultural soils by permitting only those uses which can be accommodated without destroying the usefulness of such soils for agricultural production."*

The proposal for such extensive lot coverage in the limited area of agricultural soils on the property clearly violates what is considered to be the public interest as expressed in the description and objectives of the agricultural soils district. The Zoning Ordinance as currently enacted represents the public interest in what is permitted or not and under what circumstances or restrictions. Granting the variance will be contrary to the public interest because it would violate basic zoning objectives. For the foregoing reasons, the variance requesting relief from the lot coverage limitation in §5.15C is found to be contrary to the public interest.

- B. "The spirit of the ordinance is observed" finding

The proposed development and requested lot coverage covers a substantial portion of agricultural soils and the wetlands conservation district. These districts "... are established in order to protect Lyme's natural heritage and agricultural soils and to ensure that land is developed only according to its natural capability." (§3.27). The proposed development is located in the Rural District, among whose objectives is "...to protect the existing pattern of rural land uses in town ...". Further, "...Less intensive land uses are permitted in the Rural District to ensure that uses complement each other and are consistent with the existing character of the District ...". The limitation on lot coverage set forth in §5.15.C. is consistent with these definitions and objectives.

The requested relief from the lot coverage criterion set in §5.15.C. is clearly in contrast with these objectives. As noted above, the requested coverage as shown in the plans would eliminate the agricultural use of the only viable contiguous area of agricultural soils on the lot, in violation of the objectives of §3.27. Furthermore, the Conservation Commission and others have noted that the project would have significant impact upon wetlands and other rural features. The intent of the limitation on lot coverage is to assure that properties are not developed for uses beyond those that are specifically permitted in the Districts defined in the Zoning Ordinance and do not significantly impact those features that Conservation Districts are designed to protect. For the foregoing reasons, granting the variance requesting relief from the lot coverage limitation in §5.15C is found to be contrary to the spirit and intent of the ordinance.

C. "Substantial justice is done" finding

The value to the public in denying the requested variance far outweighs any perceived justice to the applicant. The requested relief from lot coverage standards would seriously impact the agricultural soils and wetlands on the property, damaging areas that are specifically set aside in the Ordinance for preservation and protection. The damage would be irreparable, replacing sensitive areas with buildings and roads. By denying the variance, the existing features on this property are preserved and remain consistent with the objectives of the Zoning Ordinance and other properties in the Rural District. The property may still be developed within the existing constraints of the Ordinance, satisfying the objectives of the Rural District and the Conservation Districts on the property, thus resulting in a significant gain to the general public. For the foregoing reasons, granting the variance requesting relief from the lot coverage limitation in §5.15C does not result in substantial justice to the applicant.

D. "The values of surrounding properties are not diminished" finding

There is insufficient definitive testimony to support a determination that granting the variance will diminish surrounding property values.

E. "Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship" finding

The Board finds that the Lot is neither unique nor distinguishable from other similar properties in the Rural District. The property is similar to other properties along the Route 10 corridor in the Rural District in topography, size, soils, wetlands, slopes, forested areas, and proximity to Route 10. Several such properties are also close to water bodies, including Post Pond. The Ordinance specifically addresses properties of this type and limitations on the dimensional requirements that must be adhered to. Such provisions are intended specifically to recognize and preserve those features that characterize the Rural District.

The applicant has shown that reasonable use of the property can be made in accordance with the provisions of the Ordinance through a subdivision process that might result in five lots of single-family residences without a need for the excessive lot coverage relief being sought. Thus a fair and substantial relationship does exist between the general public purpose of the ordinance and the circumstances of this lot. For the foregoing reasons, relief from the lot coverage limitation in §5.15C does not result in unnecessary hardship to the applicant and the variance should be denied.

Rob noted that while Variances #2 and #3 are being considered separately, they are derivative of the Board's findings on Variance #1. The Board then voted unanimously to approve each of the five findings. Voting on a motion by Alan seconded by Mike, the Board found that the variance requesting relief from the lot coverage limitation in §5.15C is contrary to the public interest. Voting on a motion by Walter seconded by Alan, the Board found that the variance relief requested is contrary to the spirit of the ordinance and should be denied. Voting on a motion by Mike seconded by Dan, the Board found that granting the variance would not result in substantial justice. Voting on a motion by Mike seconded by Alan, the Board found that there was insufficient evidence to show that granting the variance would diminish surrounding property values. Voting on a motion by Walter seconded by Dan, the Board found that relief from the lot coverage limitation in §5.15C does not result in unnecessary hardship to the applicant and the variance should be denied.

The Board then reviewed the draft to address the third variance request, which had been drafted by Alan. He noted that he used the numbers in the most recent submittal by Attorney Hanz. The applicant has requested a variance to the building footprint limit of Table 5.1, which is 7,000 square feet (sq. ft.) for the Rural District, to permit bridges to connect the Crest and Vale buildings to the Common House. In testimony, the applicant has said that one of the reasons for this request is to allow easy access from both Crest and Vale buildings to the Common House. The Board discussed whether a waiver for disability is appropriate to the situation, and decided that there is no proof that any person occupying the buildings has a disability, although a need could be demonstrated later if necessary.

Facts pertinent to this request for variance.

1. The Board has regularly considered structural connections between buildings as merging those buildings into one building for purposes of footprint calculations.
2. The maximum building footprint allowed in the Rural District is 7000 square feet, per Section 5.14.B.
3. The zoning ordinance allows, under section 10.62, a waiver to that limit to accommodate disabilities.
4. The applicant has stated that they wish to connect Vale and Crest to the Common House for disability reasons.
5. The Board has, in at least one earlier application, granted such a waiver under section 10.62. That waiver involved a minor increase over the maximum allowed for that lot based upon the conditions of that lot.
6. The applicant has requested a variance to allow a footprint of one structure to cover 13,517 square feet. Based on the most recent numbers provided for the buildings involved, the Crest building has a footprint of 3,892 sq. ft.; the Vale building has a footprint of 6,798 sq. ft., and the Common House has a footprint of 2,827 sq. ft. The total footprint of the combined structures will be 13,517 sq. ft., well over the 7,000 sq. ft. allowed. This total is only a few hundred sq. ft. feet less than two times the maximum footprint allowed for one structure.

Findings re Variance Criteria under Section 10.50 of Zoning Ordinance and NH RSA 674:33

A. "The variance will not be contrary to the public interest" finding

The Board finds as follows: The proposed scale and density of the project on the proposed site is inconsistent with the purposes and objectives of the Rural District and would significantly alter the essential character of this locality in the Rural District. The proposed single structure footprint well in excess of the 7,000 sq. ft. limit set in Section 5.14.B is not permitted in the Rural District. Since numerous other properties in the Rural District share similar characteristics with this Lot, other property owners could request comparable variance relief and the cumulative effect of equivalent development would be totally inconsistent with the less intrusive uses intended in the Rural District. The prior expression of the Town's residents in rejecting a similar but even less intrusive proposed zoning amendment is indicative of sentiment that such development is not in the public interest. The Zoning Ordinance as currently enacted represents the public interest in what is permitted or not and under what circumstances or restrictions. For the foregoing reasons, the variance identified in Request 3 above is contrary to the public interest.

B. "The spirit of the ordinance is observed" finding

The Board finds as follows: The objectives of the Rural District include the protection of the existing pattern of rural land uses and thus less intensive uses are permitted. The project as proposed, creating a single structure

footprint nearly double that allowed in the Rural District, would represent a substantially larger structure than anywhere else in town, with the exception of the Skiway and Commercial Districts. This would violate the objectives underlying the purpose of the Rural District. For the foregoing reasons, the variance identified in Request 3 above does not observe the spirit of the Zoning Ordinance.

C. "Substantial justice is done" finding

The Board finds as follows: Opening up the Rural District to such large structures as proposed for this project results in an injustice to the Town and its residents that outweighs any benefit that would be received by the Applicant. For the foregoing reasons, the variance identified in Request 3 above is not required in order that substantial justice is done.

D. "The values of surrounding properties are not diminished" finding

The Board concludes that there is insufficient evidence to reach a definitive conclusion as to this criterion. It is probable that there would be some impact upon property values were the variances to be granted, i.e., some existing properties might see reduction in value, while others, particularly undeveloped land, might increase in value.

E. "Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship" finding

The Board finds as follows: The Board finds that the Lot is neither unique nor distinguishable from other similar properties in the Rural District. Many properties along Route 10 in Town have the characteristics of agricultural soil mixes, wetlands and steep slopes, and low population densities. The Ordinance has delineated such properties as part of the Rural District to preserve and protect such features and to regulate development to minimize excessive growth and maintain features consistent with a rural setting. The magnitude of the proposed use is not reasonable, particularly in light of the site conditions that characterize this and similar properties. The proximity of the Lot to the property and hospitality business of Loch Lyme Lodge does not alter the developable status of the Lot. Since the owner may pursue other, albeit less intrusive, residential development under the current terms of the Ordinance, a fair and substantial relationship does exist between the general public purposes of the Ordinance and their application to this Lot. For the foregoing reasons, literal enforcement of the provisions of the Ordinance does not result in an unnecessary hardship and the variance set forth in Request 3 is not approved.

The Board then voted unanimously to approve each of the five findings. Voting on a motion by Alan seconded by Dan, the Board found that the variance requesting relief from the building footprint limit of Table 5.1 is contrary to the public interest. Voting on a motion by Walter seconded by Dan, the Board found that the variance relief requested is contrary to the spirit of the ordinance and should be denied. Voting on a motion by Dan seconded by Mike, the Board found that granting the variance would not result in substantial justice. Voting on a motion by Walt seconded by Dan, the Board found that there was insufficient evidence to show that granting the variance would diminish surrounding property values. Voting on a motion by Alan seconded by Dan, the Board found that relief from the building footprint limit of Table 5.1 does not result in unnecessary hardship to the applicant and the variance should be denied.

Alan moved to deny the request for Variance #2 (relief from the lot coverage limitation in §5.15C). Walter seconded the motion and it passed unanimously, 5-0. Alan moved to deny the request for Variance # 3 (relief from the building footprint limit of Table 5.1). Dan seconded the motion and it passed unanimously, 5-0. Rob reminded that while the Board considered and voted on Variances #2 and #3 separately, they are derivative in large part to Variance #1a,b, and c.

Rob noted that a number of special exceptions were requested, but they were germane only if the variances were approved. Walter moved to table the consideration of the special exceptions until town counsel could be consulted relative to the necessity of deciding upon them. Alan seconded the motion and it passed unanimously.

Out of Deliberations: Rob reported that the Board would issue a complete finding.

Application #2015-ZB-26, Geoffrey Little (Tax Map 407 Lot 111) 92 Highbridge Road in the Rural District.

Geoffrey Little and Jeanie McIntyre have applied to the Lyme Zoning Board of Adjustment for a special exception under section 8.24 to install a 431 square foot ground mounted solar array on their property. Rob noted that the Board had made a site visit. David presented a letter from Attorney Hotchkiss addressed to the applicants and a letter and soils map from soil scientist Ray Lobdell. Lobdell's letter indicated that the soil type of the proposed location is not agricultural soil. David called attention to the table of soil types in the ordinance and explained that the soil's identification letter indicates a slope range. Rob then asked about steep slopes, and David assured him that this area is not in a steep slopes district. Rob asked for public comment. Darryl Hotchkiss asked if the applicant had looked for other sites, and said the panels would be 40 feet from the property line. Jeanie corrected him saying that they would be 49.3 feet from the line. Darryl suggested that the installation should be considered commercial activity since an energy subsidy would be involved. He said that the Board should consider an adverse impact on the neighborhood and the public using the land behind the installation, although there is no public trail there. He reported that he has spoken to Elmer Brown, who suggested planting seven 14' high ash trees as a visual screen, with proper fertilization. Dan asked if the trees could interfere with solar collection. Darryl said that the project does not need to be so large to serve the agricultural purposes of the property. Geoff Little said that the array will not cover 75% of the needs of the barn and shop. Dale Vidal said she is concerned about excavation disturbing water flow. Richard Vidal asked why an extension could not be built on the barn to hold the array. Geoff said they had asked the solar array consultant to look at alternative sites and had paid a soils engineer to determine the soil type.

Deliberations: Mike pointed out that the reason the applicants came to the Board was a perceived need for relief from the agricultural soils conservation district, but based on expert testimony, he believes that the ZBA does not now have jurisdiction. Walter agreed that the application does not violate the ordinance but that the plans showed that one corner is 49.3 feet from the property line. It was determined that in this district the property line setback is 35', so the board has no jurisdiction. Mike asked about disturbance of wetlands.

Out of Deliberations: David said he has not seen anything that is delineated as wetlands and that a soil scientist would be needed. Ray Lobdell did not mention it, and so he will rely on maps of soil types. Alan commented that the soil types listed are not hydric soils.

Deliberations: Rob agreed that the Board did not have jurisdiction. Alan moved that, based on the evidence received, the Board does not have the jurisdiction it thought it did, because the proposed location is not in the agricultural soils conservation district. Mike seconded the motion and it passed unanimously.

Application #2015-ZB-38, Vicki Smith (Tax Map 201 Lot 19) 26 Market Street in the Lyme Common District.

Vicki Smith has applied for special exceptions under sections 8.20, 4.63B.4 and two variances, and/or any other relief the Zoning Board of Adjustment deems necessary in order to perform improvements as per her submitted plans. Vicki explained that at the property she has just purchased on Market Street, she is attempting to reduce intrusion into the Shoreland conservation district near Grant Brook and so hopes to remove the paved driveway and relocate it to the other side of the small lot. She and board members discussed the qualities of paved vs. unpaved driveways and Vicki noted that while unpaved drives are more pervious than pavement, vehicle use will compact hard pack. On a brief review of the proposed changes, the Board surmised that if lot coverage is expanded to 3927 sf, no further expansion would be possible on the lot. While the Shoreland and front setback intrusions would be reduced, there still could be no further expansion.

Vicki noted that the lot is too small for a septic system to serve more than a two-bedroom house. Her project will not increase septic loading because there will be no more than two bedrooms. She discovered that the property has no leach field, just a leach pipe. Her neighbor, Andy Stadheim, said he appreciated Vicki's candor and had reviewed her proposed changes with her. The propane tank is on the property line. He asked how grading of the proposed driveway would occur. Vicki explained that it would be 12-14' wide at the break in the stone wall at Market Street and then will turn and be narrower and crowned. She will leave vegetation for screening. Andy asked what she would do if the leach field fails. Vicki said that she has engaged a septic designer to replace the leach pipe with a leach field and showed the location. An earlier owner had created a leachfield easement area on Andy's property to benefit the former owner of Vicki's lot, but she did not want to use that, so she will try to get an in-ground system on her own property, although will have to cut a few of the

arborvitae hedge for that. She observed, and Alan confirmed, that there are multiple options for a leach field because there is good soil at a distance from the brook.

Abutter Cynthia Bognolo said that the well overflows in winter. Vicki said that it is an artesian well that drains into the brook, and that she intends to change the overflow pipe, which has previously frozen. Cynthia said she is glad that Vicki is removing the driveway close to the brook and suggested that Vicki try to use Gary Thrasher's driveway instead of building a separate new one. Andy said that he has a formal easement allowing him to use Gary's driveway but that when he asked Gary about Vicki's possible use, Gary said he was not interested. Cynthia said she would not object to a new driveway but was very glad that the satellite dish had been removed. She still thinks Vicki should speak directly with Gary Thrasher, and that it would be safer and better to avoid having another driveway in that area, due to traffic coming down from Washburn Hill.

Vicki said she wants to install the drive and the new garage in the fall. Alan noted that the median setback calculation could include any building, and suggested taking the nearest five principal structures, for a median setback of 27 feet.

Deliberations: Walter said he preferred to grant a variance for the whole project but asked if enough information was available, since it is important that the next owner of the property have good records. Rob recommended that the Board continue the hearing and that members make a point of visiting the site. Walter volunteered to prepare a motion for the next meeting and moved to continue the hearing to July 2 at 6pm. Mike seconded the motion and it passed unanimously.

Meeting adjourned 10:26pm
Respectfully submitted,
Adair Mulligan, Recorder