

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – May 6, 2015

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

Alternate Members: Present- Michael Woodard, Dan Brand

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

Public: David Roby, Stuart White, Rich Brown, Michael Bruss, Bobbie Hantz, Brian Pratt, Robin Taylor, Thomas Morrissey, Tim Cook, Liz Ryan Cole, Pat and Tony Pippin, John Griesemer, Faith Catlin, Ida Griesemer, J. J. Pippin, Karl and Charlotte Furstenburg, Wilkes McClane, Michael and Virginia Beahan, Katie Little, Roy Tilsley, Meg Russell, Bill Waste, John Stadler, Ray and Tina Clark, Ben and Patty Hudson, Barbara Newton, Michael O'Donnell, Paul and Marya Klee, J. Kelly, Lin Brown, Carola Lea, Michael and Sharyn Amberger

Chairman Frank Bowles called the meeting to order at 7:30 pm. He noted that the goal of the evening was to get through the commentary and develop findings of fact that the board will use. Unresolved items include the Conservation Commission opinion and whether the proposed location of the septic system would mean encroachment on the steep slopes district which could require another variance. It was noted that information regarding special exceptions will be important even if they are not addressed immediately. Frank noted that all regular members of the board were present.

Minutes of the Meeting of April 15 were amended by Walter to clarify zoning ordinance sections and approved on a motion by Rob seconded by Alan, with Bill Malcolm abstaining. Minutes of the April 23 site visit were amended by Rob and approved on his motion seconded by Alan.

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

CLD Consulting Engineers, on behalf of their client, 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, 87-bedroom multi-family housing development.

Frank noted that two letters from Tom Morrissey had been received, one of which expressed concern about the potential for a conflict of interest by Mike Woodard's participation in the decision process because he had been the broker assisting in the purchase of the land ten years ago. Frank noted that there are five regular members and two alternates, who are always given voice but have no vote if all regular members are present. Mike said he would not participate if he felt he had a conflict. Frank noted that NH RSA 673:14 allows a board to vote to expel a member who has a conflict. The board voted unanimously on a motion by Rob, seconded by Frank, that the board appreciates the concern expressed but has determined that Michael Woodard is not in conflict by sitting on the case. Frank asked Tom Morrissey if he would accept having his attorney speak to the concerns in Tom's May 6 letter. Tom assented. Frank gave both attorneys a chance to go first, and Bobbie Hantz deferred to Roy Tilsley.

Attorney Roy Tilsley noted that he represents Post Pond Lane residents and asked that his brief become part of the record. Concerns include noise, traffic, loss of views, threat to the condition of the pond, and change in the character of the neighborhood. He said that the property must meet all five tests for a variance, and that a variance should not be issued just because a property is suitable for a use. A variance does not provide a zoning board with an opportunity to re-zone a particular property because the board supports a project or disagrees with the ordinance. The proposed development violates the spirit and the intent of the ordinance and that the owners were aware of the issues when the property was purchased. He said that the owners purchased it in 2005 and tried to get the ordinance changed several times, but the townspeople voted against it and the ZBA should not second-guess the voters. Regarding the five-year requirement for conversion, he said that the ordinance allows only existing buildings to be converted to multi-family units, yet there are no buildings on the site, so he considers that this part of the ordinance is not applicable. Conversion in buildings less than five years old is allowed only to single family units, not multi-family units. He warned that if a variance to the conversion waiting period is granted, it will expose other properties to conversion by developers. He said that the five-year window is designed to prevent multi-family development in new buildings.

Regarding workforce housing, Roy said that Article 11 of the ordinance allows for affordable housing. This article provides a way to create workforce housing under Lyme's zoning thus meeting the requirements of the Workforce Housing statute. He suggested that 11% of the units is not sufficient to allow the protection of the workforce housing statute. He then reviewed the five parts of the test for a variance. He noted that voters had recently chosen not to amend the ordinance, confirming, he said, that the rural zone should remain mostly single family use. He said that there is no unnecessary hardship, and that the property condition is not unique. Moreover, he said that if there is a hardship, it was created by the applicant by subdividing the lot from the Loch Lyme Lodge lot, and a self-created hardship cannot be relied upon for a variance. He said that the multi-family restriction does not interfere with reasonable use of the property because it can be developed as single family homes. No substantial justice would result from a variance being granted as a large multi-family development is inconsistent with the neighborhood's present use. He suggested that a variance would increase the year-round population around the pond by 200% and would diminish property values. The applicants letter from a realtor stating that the proposed development would not negatively impact property values neglects to provide any references to the properties used for comparison and fails to account for the fact that the proposed use is not allowed under Lyme's zoning. He concluded that this property is the wrong place for this project and is not consistent with the zoning ordinance, and urged that the request for variance be denied. Tom Morrissey confirmed that Roy had addressed his concerns. Walter Swift asked if Roy had any data on the density of other parts of town. Roy said no.

Bobbie Hantz distributed her written response to Roy's letter and summarized her points. She said that there is not a "neighborhood" of Post Pond residents objecting to the project, as none are abutters and some of their properties are greater in density (less land/unit) than the proposed project. She said that the zoning board is authorized to give relief to strict enforcement of the ordinance with respect to site and project-specific conditions. She added that the town had not voted down this particular project. She explained that she believes the proposed use of the property is reasonable because it mirrors provisions of the ordinance; the project is less dense than what is allowed by the ordinance. She held that the property is unique because there are many overlapping conservation districts that greatly reduce the developable area. She added that the right to reasonable use remains with the subdivided property.

Bobbie turned to a summary of her proposal for a variance, noting that the board had asked her to propose one route. This will be a variance to the single dwelling use provision with a subsidiary variance for lot coverage because the project is limited to 26,000sf. She suggested that an analysis of unnecessary hardship is needed to determine if the welfare of the town is threatened, but that in this case, she said the project is consistent with the ordinance. Walter asked about the town votes. Bobbie said that there were three efforts made to work with the Planning Board; two were withdrawn and one went to town vote to allow conservation neighborhoods on large parcels of land, which would have applied to three or four parcels in town. Rich Brown added that he later talked with voters who were comfortable with the project but did not want to change the ordinance. Walter asked if other similar sized parcels on Route 10 with similar constraints had been examined. Bobbie said no, and that the current site, with its proximity to a hospitality business and the pond, makes it ideal.

Walter asked if Bobbie wished to have the board vote on all three variance requests or just one. Bobbie said she was asked to choose one, but hopes the board will consider both. Rob asked for responses to questions that came up in the site visit. Noting that the ownership will be a condominium arrangement, he asked who the developer would be. Bobbie answered it would be the Pinnacle Project, LLC, who is the option holder, and there will be a transfer of title. Investment will be made by the members, lender, and individual owners who will seek mortgages. She said that the land development and construction can be separately financed. Rob asked if they have prepared pro formas, since the viability of the project is a fair question for the board. Bobbie said that it is premature to share these before a project has approval, but that this group has done more advance legwork than most. Michael Bruss said that he is working on pro formas now. Rob expressed concern about whether workforce housing would be built. Bobbie said that they intend to build one workforce unit in each building and that they intend to build units that will cost half of what new construction in Lyme now costs.

Frank asked why the presence of a hospitality business is an asset. Bobbie said that it is a pre-existing use that is different from single family uses, and that the board can take into account what is present in the area and how people live. Rob asked whether lot size averaging would be used. Bobbie said they are not using it except to borrow the concept of clustering, which reflects the spirit and intent of the ordinance and the master plan. She added that the master plan's stated goal of keeping Lyme's population small is not legitimate. Rob asked about the list of site related questions and Brian Pratt displayed a survey that shows the south property line that follows an old fence line. Elevations are not yet shown on

the plan but Rich said they can be provided. Rob asked about drainage areas. Brian said that a consulting certified wetland scientist has confirmed that the wetlands shown are accurate according to US Army Corps of Engineers criteria. Rob asked if the sewer line main has been staked. Brian said it has not. Frank emphasized that the Conservation Commission cannot make a determination until it is. There is concern that it may intrude on steep slopes, and because it is considered a structure, not simply grading, this must be reviewed. Brian said that that area has a grade change of 14 feet, and that the map should be revised. He believes the septic system will not encroach on steep slopes. Three test pits were done, but the leach field will not be designed until there is a decision from the board.

Rob asked what infrastructure would be built in each phase. Bobbie said that most of the road, the well, and septic system would be built in Phase 1. Michael Bruss said 85% of it would be built. Bobbie noted that there would be much less infrastructure than if an internal road had to be built for a conventional subdivision. Bill Malcolm asked for clarifications on whether information on the criteria for conversion would be provided now. Bobbie said no, as she believes the board has sufficient information to evaluate the criteria because the project meets them. Brian reported that he investigated the role of Route 10's designation as a Scenic Byway, and that there is no effect on the project. Walter asked about a traffic study. Bobbie pointed to Tab 14 of the March notebook and its traffic input assessment memo. Walter noted the recommendation from the regional planning commission for a road safety audit. David Robbins said he has spoken with the commission and noted this is a time consuming project. Walter observed that the safety study would be required for site plan review and that it need not be done now; other members agreed. He asked how many residences are on the other side of the pond and their acreage, how many residents live there, and how many on small lots. Bobbie said such an analysis has not been done, but some lots have less land per unit than the proposal. Rob noted that at the only other planned unit development in town, at 85 Dartmouth College Highway, some 50 bedrooms are located on much more land.

Bobbie noted she has been unable to meet with the fire chief because of his schedule and asked whether an independent fire code review would be acceptable. The board agreed that the fire chief's review was not critical to a variance vote, but that the next meeting would depend upon the Conservation Commission comment. Rich said he would work with the CC.

David Robbins distributed packets of letters and emails he has received on the project, which will be entered into the record. Frank invited comment from the audience. Jackie Glass said that the traffic study is important to her, and expressed concern about the traffic on this part of the road. Frank noted that at the next meeting, the board would develop draft findings of fact. David Roby observed that special exceptions can be included as conditions of a variance vote. The board selected May 19 as the next meeting date for this project. Frank noted that public comment would be accepted through the discussion for the findings of fact. Frank will develop an agenda of proposed items for discussion to create the findings of fact and it will be shared in advance.

Meeting adjourned 9:33pm
Respectfully submitted,
Adair Mulligan, Recorder