

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – June 2, 2015

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

Alternate Members: Present- Michael Woodard

Absent: Dan Brand

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

Public: David Roby, Rich Brown, Bobbie Hantz, Robin Taylor, Thomas Morrissey, Tim Cook, Liz Ryan Cole, Roy Tilsley, John Stadler, Jonathan Edwards, Barbara Woodard

Chairman Frank Bowles called the meeting to order at 7:30 pm. He noted that Michael Woodard would be asked to express opinions but would not vote. Minutes of the meeting of May 21 were amended by Walter and Alan and unanimously approved as amended, on a motion by Rob 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, 87-bedroom multi-family housing development.

Deliberations: Walter questioned whether the latest version of the variance request is consistent with past versions, since they read differently. Alan noted that the use and area variances are merged although the applicants make a distinction.

Out of Deliberations: Bobbie Hantz said that the new document is consistent with the original request but is a distillation. She asked that it be disregarded if it seems confusing. She listed the recent submittals. Walter pointed out that the number of units to be built in each phase is inconsistent when the chart and the new memo are compared. Liz Ryan Cole said that the chart is correct, and 36 units are proposed. Frank determined that the June 1 memo would be used to describe the application.

Deliberations: The board agreed with Bill's suggestion about reviewing the multifamily issue first but that all variance questions should be addressed in fairness to the applicant notwithstanding the result of discussion on the first. The board proceeded to discuss each of the five criteria for issuing a variance.

1. **Public Interest** – Alan cited the NH Board of Adjustment Manual and said he believes that the project fails to meet sections D, E, and F. The Master Plan recommends pushing the Lyme Common District into this area, but Alan believes that soil conditions do not warrant it. Frank cited the Master Plan's statements that conversion of existing buildings to multifamily use is preferred, not new construction. His literal interpretation of the five-year waiting period for conversion is that a building is built with one unit and then left alone for five years before further units are added. He noted that the board must deal with what is on the books right now: the current Master Plan and the current Zoning Ordinance. Rob said that while the applicant's intent does not seem contrary to the public interest, the project as proposed would significantly alter the character of the area and would therefore not be in the public interest. Alan noted that 26 buildings already exist on the Loch Lyme Lodge property that could be converted to year-round use. Walter observed that this conversion would require a process. He reminded that the Zoning Ordinance is intended to reflect the Master Plan, however – it is voted on and reaffirmed by town vote – reflecting (and defining) the public interest, and while there has been some public support, the most prominent expression of public opinion was the rejection of a similar but less intensive proposal (ZO amendment) aimed at allowing such development in the Rural District. By granting a variance in this case, one might expect equivalent development on other similar neighboring properties – the cumulative effect would be in opposition to the intent of the ZO, and certainly not in the public interest. He concluded that Table 4.1 says that a multifamily development could not be put in the Rural District and asked by what criterion the board could grant more than one principal building per lot. Frank said he thought that "co-housing" is not a relevant concept when interpreting the ordinance, and Bill offered that this project would always consist of several buildings with several families living in

each building. Frank concluded that the sense of the meeting is that the project would be contrary to the public interest.

2. **Spirit of the Ordinance** – Frank referred the ordinance’s statement defining “Rural District” which cites less intensive land uses. Alan said he thought the character of the locale could be significantly altered by the project. Michael pointed out the 26 buildings present at the Loch Lyme Lodge resort. Frank said that if this project were proposed in another open area, it would be against the spirit of the ordinance. Rob noted the applicant’s comments about the restrictive conservation districts, and said he thought that they are appropriately established in Lyme and consistent with local zoning practices. He held that the purpose of the ordinance is to protect sensitive areas. Walter said that if the property is developed as proposed, concentrated on 3-4 acres, it would represent a great increase in density that is not seen anywhere else in town, viewed as number of people per acre, and believes that it flies in the face of the Master Plan, which aims at keeping the population low in the rural area to limit extensive services outside the village centers. He added that it would represent a significant increase in the school population. He believes that safety hazards were under-represented in testimony, and that the crossing is a hazard area there. He added that the project would have significant impact on rural features and wetlands and is therefore contrary to the ordinance. Alan observed that agricultural use would have continued there if the soils were productive. Frank cited the Conservation Commission’s letter and said he thought the other conservation districts were more pertinent.
3. **Substantial Justice** – Frank offered his opinion that the justice done to the Pinnacle Project would be outweighed by harm to the community if the Rural District is opened up to intensive use. Walter said he thought no substantial justice would be done to the applicant in granting the variance, but that substantial injustice to the Town would result, since the Town has clearly defined the intent of and limitations on use in the Rural District. Moreover, he said, granting a variance would rely on a finding that the land is unique. If it is not unique, then the board could not avoid granting similar variances to owners of similar properties. Bill viewed this question as one of extraordinary circumstances, and said he did not find any. Rob noted that the applicant raised the issue of workforce housing but said he did not feel the applicants showed that this aspect is valuable or a substantial part of the project.
4. **Property Values** – Frank said he did not think the board was given data to show an impact. Rob suggested that some issues could be dealt with by screening or other means. Walter agreed that the information received in this area is of dubious quality. He believes there would be an impact to property values, especially for some Route 10 abutters and also across Post Pond, but that some other large landowners could see their property values skyrocket. Bill observed that the board had received testimony that property values would go down from those owning property that is already inhabited, but not from places where values would go up, because those properties are largely undeveloped. Frank concluded that the variance does not rise or fall on this criterion and that the board has had testimony to both effects.
5. **Unnecessary Hardship** - Frank cited the recent case of Garrison v. Henniker, in which an applicant’s claim that a property was just right for the proposed use was denied because the proposed use was not right for the ordinance. He asked if there is anything different about the Pinnacle property, noting maps of other parcels had been submitted. Alan said he thought all looked similar. Frank said he did not believe that proximity to Loch Lyme Lodge made the property special, because that is a created condition of the land, not an inherited condition. Walter found no special conditions on the property, and described most properties along Route 10 throughout Lyme as having the following “characteristic features: mixes of agricultural soils, wetlands, steep slopes, and low population density. The ZO has specifically delineated such properties as part of the Rural District to preserve and protect those features, and to regulate development in this district to minimize excessive growth and to maintain those features consistent with a rural setting.” Rob noted that the property can be developed, and less intrusively. Bill agreed that the property could be used in strict conformance with the zoning ordinance.

Next steps – Walter advised assigning one board member to distill findings based on the minutes, develop wording for a motion, and discuss it at the next meeting in preparation for a vote. It was agreed that Rob and Frank will separately draft a motion for the first variance, without communicating with each other in the process. Walter agreed to formulate a motion for the second variance, and Alan for the third.

Out of Deliberations: The board voted unanimously, on a motion by Rob seconded by Alan, to continue the hearing to June 10 at 7:30pm for a final edit of statements on each variance and a vote.

Meeting adjourned 9:08pm

Respectfully submitted,
Adair Mulligan, Recorder