

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – June 10, 2015

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

Alternate Members: Present- Michael Woodard, Dan Brand

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

Public: David Roby, Rich Brown, Robin Taylor, Thomas Morrissey, Tim Cook, Liz Ryan Cole, John Stadler, Barbara Woodard, Rob Wolfe, Jim Hughes, Gillian Tyler, Simon Carr, Meg Russell

Chairman Frank Bowles called the meeting to order at 7:30 pm. Minutes of the meeting of June 2 were amended by Walter and unanimously approved as amended, on a motion by Rob seconded by Walter.

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. Chairman Bowles announced that he had assigned preliminary drafting of findings to individual members of the board, and that this procedure had been approved by Town Counsel. Members have drafted findings in parallel without discussion, and no members of the board have seen the drafts until this moment, when they were distributed by David Robbins.

Deliberations: The board reviewed the various drafts that had been presented, beginning with versions to address the first variance request, which had been independently drafted by Frank and by Rob. The board agreed to begin with Rob's draft and look for differences with Frank's. They agreed upon the following edited version.

Based upon the most recent material filed by Applicant dated June 1, 2015, several variances are requested, as follows:

1. (a) A variance from Zoning Ordinance Table 4.1 to permit a multi-family development in the Rural District, consisting of seven structures.
- 1(b) A variance to permit the six residential structures in the proposed development to have a density consistent with that permitted to existing structures under Zoning Ordinance Section 4.46A, i.e., up to 6 units each, immediately upon construction.
- 1(c) A variance from Zoning Ordinance 4.46G to permit two of the aforesaid residential buildings to have more than six units, to wit, eleven and seven units, respectively.

Public hearings on the application were held by the Board on February 19, March 19, April 15, April 23 (site visit), May 6, and May 19, 2015. Deliberations by the Board included May 19, June 2 and June 10, 2015. *(Note: The numbers in parentheses following each of the following findings of fact identify possible relevance to the five criteria specified in NH RSA 674:33 as follows: (1) public interest; (2) spirit of ordinance observed; (3) substantial justice; (4) effect on property values; and (5) unnecessary hardship.*

Findings of Fact:

1. Citation of relevant sections of the ordinance re rural district: Section 3.23:
“... The objectives of the Rural District are to protect the existing pattern of rural land uses in the Town to maintain and foster traditional agricultural pursuits, to encourage the most appropriate use of land, and to facilitate the adequate provision of community services. 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 and to minimize demands placed on Town services. (1, 2, 3)
2. Citation of relevant sections of the Lyme master plan: Page 1-7& 1-8: “Maintenance of Lyme’s Rural Character: Preservation of Lyme’s rural character is dependent on successfully integrating new development into the fabric of the community. Open space should not be turned into housing developments or industrial/commercial complexes. Vistas from roads and public places should be protected. The rate of development should be paced

so that people still know and care about their neighbors. Development should only occur in areas with adequate supporting infrastructure and should be in harmony with the character of the existing neighborhood.” (1, 2, 3, 4, 5)

3. Citation of relevant sections of the master plan: Page 1-9: “New multi-family buildings are not favored. Conversion of existing large buildings to dwelling units and single family homes are the preferred form of residential development. Single family homes and the conversion of existing large buildings have been favored by residents of the town. Condominiums, co-ops and new apartment buildings were opposed. Ensuring a mix of families by accommodating housing for people of all incomes is a concern shared by many residents. (1,2, 3, 5)
4. Planned developments: The proposed project, a cohousing condominium development, resembles a planned development but lacks the commercial component noted in the planned development definition in the Ordinance. As specified in table 4.1 of the Ordinance, planned developments are permitted in the Lyme Commons and Commercial Districts. Cohousing developments are not a listed use under the Ordinance and would be permitted only in connection with single residential units. (1, 2, 3)
5. Agricultural Soils conservation district provisions: Section 4.64B applies to this application. It requires that a use of agricultural soils be calculated based on 25% of the area of the parent lot, i.e. original lot area, of any lot that has been subdivided in the last ten years.
6. History of applications relevant to this proposed project: A petition was submitted in 2010 to redraw the boundaries of the Lyme Common District to extend to include the properties of Loch Lyme Inn and the recreation area on Post Pond. That proposal was voted down at the annual Town Meeting. In 2013, a proposed Conservation Neighborhoods District was petitioned as a change to the Zoning Ordinance. That petition was opposed by Planning Board, and voted down 280 to 174 at town meeting. (1, 2, 3)
7. Section 4.46 (conversions): Section 4.46 does not speak to any age other than five years of existence. The Section subsequently was amended to allow conversion of a structure to accommodate up to six units. (1, 3, 5)
8. Relevance of section 5.11.D (lot size averaging): Attorney Hantz for Pinnacle Project: “We are not utilizing Lot Size Averaging per se except to show the potential for a clustered single-family development under the existing ordinance.”
Actual application of the concept requires submission to and approval by planning board approval. (2, 5)
9. Subdivision of the property: The 110 Acre parent lot owned by Loch Lyme Lodge, Inc. was subdivided into two lots in January 2015: the 98-acre lot that is the subject of the present application and a remaining 12 acre +/- lot for the Loch Lyme Lodge operations. (5)
10. Structure of the proposed project: The Pinnacle Project is a for-profit condominium development with limited workforce housing (four units). The development is intended to be a cohousing community in which participants have shared responsibilities and benefits.
11. Cohousing: The Zoning Ordinance does not include cohousing as a defined term. Cohousing, as defined by the applicant, can be structured either with the clustering of single family residences or with multifamily dwellings. (1, 2, 3)
12. Proposed structures: Construction is stated to include one eleven-unit structure, one seven-unit structure, two five unit structures, two four unit structures and a common house connected via walkways to the seven and eleven unit structures. The connected structures are designed to allow wheelchair access to the common house, which would house a common dining area and other common-use facilities. In addition to the residential structures there are four covered carports, a patio area, four fire cisterns and a septic tank array and its associated pumping and control structure. (1, 2, 3, 4, 5)

13. Occupancy: The applicant has stated in the original application that there would be a total of 84 bedrooms in the project with a projected population of 59 adults and between 9 and 12 students in the Lyme School. (1, 3)
14. Construction phasing: As noted in the June 2 pro forma submission, the project is to be completed in phases. Phase 1 would construct the common house and two structures including sixteen units. Phase 2 would involve construction of two structures including eleven units and then Phase 3 would see construction of the final four and five unit structures. Phasing would depend on the Applicant’s ability to pre-sell and otherwise finance the planned units. (1, 3)
15. Project finances: The Applicant’s most recent filing states that the total project will cost approximately \$14.2 million and that the first phase will cost about \$7.7 million. Applicant states that they will not utilize conventional developer financing, but rather rely upon individual members financing construction via pre-sold property sales and capital contributions. (1, 3)
16. Workforce statement: Applicant submitted a statement of intent to build workforce housing’ as part of its application package. Construction of the workforce housing would be in phases, with two units in phase one and an additional unit in each of phases two and three. Subsidization of the workforce housing units are intended to come from the market price units sold to other members. (1, 3)
17. Workforce housing analysis: In 2014 the Lyme Planning Board developed a workforce housing inventory and report. The analysis states that the workforce ownership threshold is \$244,000 for purchase or \$940 a month including utilities for rental. Lyme was found to have approximately 24% of its housing stock with a valuation that would put it in the workforce housing category. (3)
18. Driveway vs. private road: Loch Lyme Lodge’s cabins and hospitality business will share a curb cut with the proposed project. The applicant has stated that “We believe that the drive serving the co-housing units qualifies as a driveway under the Lyme zoning ordinance as it connects the buildings to the main road and does not serve more than one lot.” The board finds that the proposed access road does not qualify as a driveway due to length (1375’) and number of principal and accessory structures served.
19. Well: No well location is shown on the plans. The well would most likely require a special exception.
20. Septic system: The project would be served by a community septic system with a forcemain of approximately 750’ leading to a remote leaching field at the toe of the steep slopes area of the site. No state approval has been submitted for this design.
21. Areas of constructed structures: The built area of the project is to be approximately four acres, excluding the leaching field. (1, 2, 3)
22. Site conservation district areas: The total conservation district area is greater than the lot area due to conservation area overlap.

Total Lot Area	98 acres
Agricultural Soils	12.5 acres
Wetlands Buffers(includes wetlands)	26 acres
Steep Slopes	65 acres

23. Agricultural conservation district encroachment: Substantially all of the core of the project is proposed to be built on agricultural soils (4 AC +/-). A significant area of the soils in the proposed building area, while agricultural by classification, could not be used for agricultural purposes due to boulders and terrain relief. (1, 3, 5)

24. Area not in a conservation district: Testimony from the applicant's engineer indicates that approximately 4.7 acres of the Lot are not in a conservation district. Most of these areas are located in flatter areas within the steep slopes district. (1, 3, 5)
25. Site conditions noted during ZBA site visit: The Board held a site visit on April 23, 2015. The Board noted that the driveway is laid out in an area that is clearly a drainage, even though it might not be technically a wetland. This area was also noted to be rugged and boulder-strewn. It was also noted that significant portions of the area proposed for development is rugged and has very large boulders and, again, that it looks as if the area where the 'Vale' and 'Common House' structures are located might be a drainage area. Clarifications regarding the wetland status of these areas and where the lot line is actually located subsequently were received. Other concerns were related to the viewshed, height of buildings and the need to cut large numbers of trees that now shield the site from view from Route 10 and Post Pond. (1, 2, 3, 4)
26. Conservation Commission comments: The Conservation Commission undertook a site visit on May 15, 2015. Their June 1 letter noted that the project intruded on wetland buffers at seven points. The Commission was "unanimous in its concern about the cumulative impact on the abutting wetlands of the project's construction and its subsequent habitation." (1, 2, 3)
27. Regional planning commission comments: In a letter dated April 15, 2015, the Upper Valley and Lake Sunapee Regional Planning Commission noted that the project would not cause significant impact on regional traffic volumes and congestion, that a road safety audit was recommended due to a fatal accident in the area, that care should be given to design for elderly access and transportation and that area lighting and storm water management were issues that need to be addressed in project design. It was also noted that the stated goal of providing workforce housing was consistent with the regional plan, but that the proposed number of units would only have a minimal impact. (1, 3)
28. Traffic: CLD engineers has performed a traffic impact assessment (file 14-0315) and concluded that "The expected traffic generation does not meet the NHDOT criterion of 100 peak hour trips to warrant a detailed study, nor does it require any off-site roadway improvements to accommodate the site's anticipated traffic. It is our opinion that this level of traffic generation can easily be accommodated by the existing street network with the same driveway layout that now serves the site." (1, 3)
29. Impact on value of nearby properties: A letter submitted from Sally Rutter of Coldwell Banker realtors concludes that there would be no negative impact. All of the properties used in this comparison are a significant distance, i.e. several miles, from the Pinnacle Project site. Opponents to the project residing on Post Pond Lane have stated that they believe that the project will have a negative impact on property values, but no data are provided to support this conclusion. (4)
30. Planning board preliminary review: The Lyme Planning Board held a preliminary review of the Pinnacle Project plan on January 22, 2015. The planning board's conclusion was that the project is inappropriate for the Rural District for a variety of reasons.
31. Statements in favor of the project: Twenty individuals or couples have urged approval of the project. Many of the affirmative statements are in favor of the concept of a multi-age community, but are not location specific.
32. Statements in opposition to the project: Sixteen individuals have expressed opposition to the project, either by letter or by joining in a group represented by the law firm of Bernstein Shur. Roy W. Tisley, Jr., of that firm submitted a detailed brief as to why the requested variances should not be granted.
33. Special conditions of the property: The Board has visited the site, is familiar with surrounding properties and has reviewed maps of the properties that show natural features and conservation zones. The Board concludes that this property lacks special conditions that distinguish it from the adjacent properties. (5)

34. Other uses of the property: Applicant's exhibits included three simple subdivision layouts that confirm the Lot can potentially be subdivided into individual building lots by action of the Planning Board. (5)

Listing of exhibits and documents:

Binders (2) of exhibits from Pinnacle Project prepared by Sheehan Phinney and Bass for Applicant
Brief from Roy Tilsey of Bernstein Shur on behalf of opposition to the project.
Reply to Tilsey Brief from Attorney Hantz on behalf of Pinnacle Project
Maps and area calculations from Brian Pratt, CLD engineering
Responses to April 15 questions provided by Attorney Hantz.
Additional materials submitted by Applicant on June 2
Maps of adjacent properties conservation districts submitted by David Roby.
Letters from Tom Morrissey with data, opposing project
E-mails from community in favor and in opposition to the project

When the findings of fact were agreed to, Frank proceeded to the findings relative to each of the 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. Multifamily units are not a permitted use, except via conversion of existing buildings pursuant to the procedures and criteria set forth in Section 4.46 of the Zoning Ordinance. 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 variances identified in Requests 1(a),(b) and (c) above are contrary to the public interest.

The board voted unanimously (5-0) on a motion by Rob, seconded by Walter, to approve the finding that the variance request 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, concentrated on 3 to 4 acres, would represent a significant increase in density not seen anywhere else in town, including the Lyme Commons and Commercial Districts where planned developments are permitted, and thus violate the objectives underlying the purpose of the Rural District. As noted by the Conservation Commission and others, the project would have significant impact upon wetlands and other rural features. The Steep Slopes, Wetland and Agricultural Soils Conservation Districts overlays – which the Applicant labels as overly restrictive – are consistent with general zoning practices in this State and are appropriately established to ensure that land is developed only according to its natural capability. For the foregoing reasons, the variances identified in Requests 1(a),(b), and (c) above do not observe the spirit of the Zoning Ordinance.

The board voted unanimously (5-0) on a motion by Rob, seconded by Alan, to approve the finding that the variance request is contrary to the spirit of the zoning ordinance.

- C. "Substantial justice is done" finding

The Board finds as follows: Opening up the Rural District to such an intensive use as the proposed project constitutes results in an injustice to the Town and its residents that outweighs any benefit that would be received by the Applicant. The extraordinary scale of the project appears to have been proposed in part to enable construction of up to four workforce housing units. This small percentage of workplace housing units, coupled with uncertainty as to the viability of completing the phased construction and financing in the manner contemplated, undercuts a claim that approval of the variances is required in order to accomplish substantial justice. For the foregoing reasons, the variances identified in Requests 1(a), (b) and (c) above are not required in order that substantial justice is done.

The board voted unanimously (5-0) on a motion by Alan, seconded by Rob, to approve the finding that no substantial justice would be done by granting the variance.

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.

The board voted unanimously (5-0) on a motion by Walter, seconded by Rob, to approve the finding that there is insufficient evidence to conclude that the value of surrounding properties would not be diminished by granting the variance.

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. 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 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 variances set forth in Requests 1(a), (b) and (c) are not approved.

The board voted unanimously (5-0) on a motion by Alan, seconded by Bill, to approve the finding that literal enforcement of the provisions of the ordinance does not result in unnecessary hardship. The board voted unanimously (5-0) on a motion by Alan, seconded by Rob, to deny the variance request for 1 a, b, and c.

Out of Deliberations: The board voted unanimously, on a motion by Rob seconded by Frank, to continue the hearing to June 18 at 7:30pm. Walter and Alan will take their working documents for variance requests 2 and 3 and reduce them based on findings specific to these two variance requests, and bring new drafts to the June 18 meeting. Rob offered his opinion that cohousing is a concept worth pursuing but not by the variance process; he urged the applicant to work with the Planning Board to consider proposing changes that could allow such a project.

Meeting adjourned 9:08pm

Respectfully submitted, Adair Mulligan, Recorder