

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – November 19, 2015

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

Alternate Members: Present- Dan Brand

Absent: Michael Woodard

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

Public: Rod Finley, Dan O'Hara, Liz Ryan Cole, Bobbie Hanz, Rich Brown, Megan Carrier, Liz Pippin, Sue Hewitt, Dawson Wilson, Avery Sargent, Nancy Wray

Chairman Bowles called the meeting to order at 7:30 pm and. The minutes of the meeting of September 17 were approved on a motion by Rob seconded by Alan.

Application #2015-ZB-66, Susan Hewitt (Tax Map 407 Lot 91)

Susan Hewitt has proposed to attach an accessory dwelling unit to her garage at 11 Pinnacle Road in the Rural District. Based on a Subdivision Plat by Pantel Associates dated April 8, 1985, the southwest corner of the garage is 35 feet from the property line and the northwest corner is 40 feet from the property line. Because the garage is shown on the 1985 plat, it existed before the adoption of zoning in 1989. David Robbins calculates that 45 sf of the addition will be in the property line setback, so the applicant has applied for a special exception under section 8.23. The entire addition will be in the Shoreland conservation district and so will require a special exception under section 8.24. There are no issues with the lot coverage or building footprint.

Sue explained that the proposed location is the most logical as it is attached to the garage. Rob asked about the contents of the unit. Sue said it would include a bedroom, bath, living room, and kitchen. She plans to redo her septic system, which is 50 years old, and tie the new unit into it. David displayed the plan for the new system and confirmed that it accommodates the additional unit. Walter asked if the garage would be rebuilt. Sue said she planned to do this on the same footprint but needs to replace the cracked foundation.

Deliberations: Alan said that the small stream that creates the Shoreland conservation district here carries spring runoff to Post Pond, and that his study of maps did not reveal the stream. The Conservation Commission has reviewed the proposal and said that because the area has been so long occupied, there is little concern about further impact to the conservation district. Alan moved to grant a special exception for the construction of an accessory dwelling of 744sf with the following findings of fact:

- Section 4.63 B 6 allows a special exception
- Section 8.24 a,b,c,and d allow a special exception for up to 1000sf of increase within the Shoreland conservation district
- The request is for 744sf
- The board finds that the conditions of section 8.24 a, b,c, and d are met
- The project is allowable in the Rural District according to Table 5.1
- The project will intrude 45sf within the property line setback, where up to 1000sf of intrusion is allowed
- This is an expansion of a structure built before 1989
- Conditions of section 8.23 are met
- The addition cannot reasonably be located outside the Shoreland conservation district, as it must be attached to the garage and moving it north would impede improvement of the septic system
- A plan for a new septic system was displayed and indicates that sewage loading will not be significant within the Shoreland district.
- The Conservation Commission found no additional adverse impact relative to section 10.40.
- Conditions of section 10.40 are met for each of the two special exceptions.
- Conditions of approval are that work will proceed as proposed, and that best management practices will be used to control erosion and to prevent siltation into the seasonal stream.

Rob seconded the motion and it passed unanimously. The board moved out of deliberations.

Application #2015-ZB-67, Richard Pippin (Tax Map 201 Lot 76)

The Lyme Country Store's septic system is in failure at 13 Main Street in the Lyme Common District. Tony Pippin has applied for a special exception under section 5.13 E 3 to construct a replacement septic system within the property line setback. Liz Pippin said that the two septic tanks are in good shape but the leach field needs to be replaced. The second tank functions as a grease trap. Asked about the water supply, Liz said that water comes from the neighboring basement of the Lyme Historians' building, where there is a shared well.

Deliberations: Rob said he sees no other options. Alan said that the old leach field measures 320 sf and the new one 312sf. He moved to grant a special exception under section 5.13 E 3 to construct a replacement septic system of up to 400 sf within the property line setback with the following findings of fact:

- There is no alternative location
- Section 5.13 E 3 permits replacement of such a system
- The criteria of section 10.40 are met
- No testimony from abutters was received
- Conditions:
 - if complaints of odor from the vents are received, the applicant shall install odor control filters on vents
 - work will not begin until the state approves the septic design

Frank seconded the motion and it passed unanimously. The board moved out of deliberations.

Application #2015-ZB-44, Rodrick Finley for Dartmouth College (Tax Map 414 Lot 61.1)

Rod Finley of Pathways Consulting, on behalf of the Trustees of Dartmouth College, has applied for special exceptions under sections 8.24 and 4.66B to construct a wood deck attached to the Nunnemacher Cabin located on the Skiway property at 40 Grafton Turnpike. The cabin falls within the Steep Slopes and Ridgeline District. The Planning Board has reviewed the project for the Steep Slope intrusion and provided a letter stating that it has no objections.

David noted that while the cabin is located within the Skiway District, its operations are not subject to that district's provisions because it is administered by the Outdoor Programs office at Dartmouth, which is distinct from the Skiway's operations. The cabin has been in place for many years and its use is grandfathered. Bill Malcolm recused himself as he is on the board of the Skiway. Frank appointed Dan Brand to sit as a regular member. Bill said the Skiway is operated under the Auxiliary Facilities division of the college, similar to the Hopkins Center and Hanover Inn. David noted that there has been no comment from abutters. Rod displayed photos showing that the cabin cannot be seen from any point. Rob noted that recreational use is permitted in the Ridgeline District.

Deliberations: Walter moved to grant a special exception for a deck and stairs of 320sf in the Steep Slopes and Ridgeline Districts as permitted under section 8.24, with the following findings of fact:

- the board finds this is a permitted use under section 4.66
- the building is used for rental and is managed by the Dartmouth Outing Club
- the deck will consist of 288sf and stairs will be 32sf
- the addition of the deck does not increase visibility in this district and will not cause additional traffic
- conditions of section 10.40 are met
- Conditions: best management practices for construction will be used

Frank seconded the motion and it was approved unanimously. The board moved out of deliberations and Frank released Dan from service as a regular member.

Application #2015-ZB-06, Pinnacle Project (Tax Map 408 Lot 22.1)

Frank convened the re-hearing of the Pinnacle Project's requests for variances to construct a co-housing development on their property at 70 Orford Road. He asked if the weighty binder distributed to each member of the board was a summary resubmission packet. Attorney Bobbie Hanz confirmed that it is. Rob inquired whether previous testimony on the project is part of the record. Bobbie said that the board can refer to old information but if it is not resubmitted it may not be part of the hearing. She does not object if the board wishes to bring forth prior testimony but the board must be clear on what is being considered. Rob pointed out that a very lengthy finding of facts occurred in the first hearing.

Bill asked if the plan has changed, and Bobbie said that it has not, and this is a re-hearing of the old application. Frank noted that the large set of plans would need to be brought to the next meeting. Walter moved to require that all prior information be part of the re-hearing, and that when it diverges from the current application, Bobbie should identify what is relevant. This motion was not acted upon. Bobbie said that the present submission reflects a much condensed version of the previous one, and provides information she believes is most relevant.

Deliberations: Walter said he expects to ask for more data on some aspects. Frank said the alternatives are to review the original decision with specific attention to the reasons posed for the re-hearing, or to review the application from scratch. Walter advised giving the package to the town's attorney, and ask how the board is bound to conduct the re-hearing and what information is the board bound to consider; in the meantime, the board needs to review the material submitted. Frank said that he wants to bring in the full plans and comment from the Conservation Commission and the public, and get agreement on what is public comment. Walter asked that the applicant identify information in the new submission that was not previously submitted. Rob said it will be a burden to identify what other evidence needs to be included again, and that it is necessary to be sure all is in the record in expectation of a possible appeal.

Frank asked that at the next meeting, the members will have reviewed the submission and the advice of legal counsel. He offered to bring materials. He asked for advice in how to do this in a way that does not violate the public meeting law. A method is needed to get information to David without inappropriate communication. Bill advised saying that all information used previously is to become part of the record of the re-hearing, so there is freedom to use all of it. Rob moved that all prior documentation be incorporated into the current record. Walter seconded the motion and it passed unanimously.

Out of Deliberations: Frank asked Bobbie why she contends that the board did not abide by the open meeting law. Bobbie said that this is not fair or reasonable to discuss at a re-hearing but said that she felt there were pre-conceived notions brought to the table. Rob remarked that there were never any other meetings that took place other than the public meetings recorded at the town office, and that those who drafted findings did not consult with one another. Bobbie commented that when the applicant met with the Planning Board, they were met with inflexibility. Rob requested that the videos of previous hearings be retained. Frank stated that the Zoning Board is not hostile to the applicant. Bobbie said that the appearance was that the requests for information were biased and seemed to be targeted to an effort to set up a reason to deny the request.

Frank observed that the application refers to workforce housing and asked whether those occupants would be required to accept the idea of an intentional community. This question was not answered. Bill asked if Bobbie could agree that all of the prior record would be brought forward as part of the re-hearing. Bobbie said she could not agree to a wholesale reintroduction of the entire record because some of the participants are not present, but that it is not for her to agree to the procedure.

Rob asked about scheduling. Bobbie said the new binder is a consolidation of the project and she does not anticipate a long process. Rob said that because the board has been challenged on many points of its original decision, he believes the process will be long. Asked about progress in working with the Planning Board, Bobbie said that not much guidance had been offered, and the applicants are putting together a proposal for town meeting. Liz Ryan Cole said it would be submitted on Dec. 10. The deadline for petitioned warrant articles is Dec. 9. Bobbie confirmed that they will likely put in such a petition. Frank said that the board would try to treat this project at regular meetings. Bobbie offered to make herself available to the town's counsel if needed. Frank moved to continue the re-hearing to Dec. 17. Bill seconded the motion and it passed unanimously.

Meeting adjourned 9:38pm
Respectfully submitted,
Adair Mulligan, Recorder