

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – February 18, 2016

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

Absent: Walter Swift

Alternate Members: Dan Brand, Michael Woodard

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

Public: Rich Brown, Brian Rich, Jodie Rich, Aaron Rich, Tyler Rich, Jamie Rich, Tami Dowd, Darryl Torrey, Jason Crance, Patty Jenks, Susan MacKenzie, Katie Little, Wayne Pike

Chairman Bowles called the meeting to order at 7:30 pm and the minutes of the meeting of January 21 were approved on a motion by Rob seconded by Bill. David Robbins announced that Susan Hewitt had withdrawn her application (#2016-ZB-02). A continuation of that hearing was to occur at this meeting.

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

The applicant has requested that this hearing be continued to the regular August meeting in order to allow time to work with the Planning Board on language to bring to the 2017 Town Meeting. Rob Titus asked Rich Brown whether the Pinnacle group has a schedule for meeting with the Planning Board. Rich said they have not yet done so, and anticipate coming back to the Zoning Board only if there is no agreed-upon language. Rob advised that in that event, the group may want to reconsider what request they will make to the Zoning Board, and submit a new application. Frank added that the board would put engineering questions to them at that time, particularly with respect to septic design. David Robbins reported that town counsel recommends that the applicant pay for re-noticing an August hearing because of the time lapse, and the board agreed. Frank asked that the group submit a letter describing progress to the Zoning Administrator. Rich agreed to accept a four-member board vote. The board voted unanimously to continue the hearing to August 18 on a motion by Alan seconded by Rob.

Application #2016-ZB-06, Tyler Rich (Tax Map 421 Lot 18)

Tyler Rich has applied to the Lyme Zoning Board of Adjustment to amend a variance granted on December 18, 2008. Mr. Rich seeks to changes the location of the access required under the easement to his property at 50 Old Dorchester Road from an easement area across the property at 651 Dorchester Rd (Tax Map 421 Lot 7) to what is known as the "Old Dorchester Rd." Alan asked if other road residents have rights of notice for the hearing, and David replied that notice is sent only to abutters. He distributed an email from Attorney Colin Robinson on behalf of Roberta Pike dated Feb. 18, 2016, a copy of a portion of the hand-written minutes of the March, 1906 Town Meeting, a copy of RSA 231:43 and :50 (Discontinuance of Class IV, V and VI Highways), and text on effect of a complete discontinuance from the 2015 edition of A Hard Road to Travel by Susan Slack.

Attorney Jason Crance explained that in 2008, the Zoning Board had instructed Tyler to get an easement for access to a Class V road for his planned home. Tyler arranged this easement with Wayne Pike and conveyed 23 acres of land in exchange. The drive through this easement is roughed out and occasionally used, but is very steep at the beginning. Therefore, Tyler still uses Old Dorchester Road and has done so until December, when a complaint was lodged that the drive over the easement did not meet the layout requirements of the zoning ordinance. He has been given an estimate of \$8000 to bring it into compliance. The Board of Selectmen wrote Tyler that it believed an error in material fact had been made in the 2008 ZBA meetings regarding the assumption that the Old Dorchester Road was a Class VI Highway. The Selectmen had determined that the Town of Lyme, in accordance with RSA 231:43I, voted to discontinue the Old Dorchester Road in 1906. On the opinion of Town Counsel, the Selectmen believe that a right-of-way right remains for properties abutting Old Dorchester Road, including Tyler's property. The Select Board recommended that Tyler apply to the ZBA for an amendment to the variance issued in December 2008.

Frank Bowles asked If Tyler would abandon the other drive. Atty. Crance said that this is a private matter between Tyler and the Pikes, and that it has not yet been discussed. The board reviewed Atty. Robinson's letter. Frank appointed Mike Woodard to act as the fifth member of the board, and asked for public comment. Jane Fant, a neighbor, asked about the status of Old Dorchester Road and whether it would count as frontage for a building lot. David Robbins confirmed that it

would not, but that abutters have a right to use it. Frank then reviewed Atty. Robinson's 9/17/2015 letter. Mike reiterated that the information used by the ZBA in reaching its 2008 decision was incorrect. Rob asked if this would relieve Tyler of the requirement to maintain the drive on the easement. David said that the Town would have to ask Tyler to fix the drive or impose a fine by March 1, unless he received the modified variance. Alan asked if there is an agreement between Pike and Rich. Atty. Crance read the recorded easement, noting that there are no conditions on driveway improvement. He added that the driveway standards would then apply to Old Dorchester Road. He elaborated on the fine points of road discontinuance, which were amended in 1945 (after the Town Meeting 1906 vote), distinguishing full discontinuance or discontinuance with gates and bars, noting that the 1906 minutes reflect this distinction.

David Robbins noted that the property has not been developed for business use. Atty. Crance confirmed that Tyler does not conduct his business there although he drives his equipment home, stores it there, and then drives out again the next day. Tyler added that he does not store business-related materials there. Bill Malcolm asked about the length of the driveway. Tyler said it is less than 1000' from the road. Bill noted that emergency passage accommodation is needed for every 1000 feet of driveway. Tyler said there is a place at the junction of the Nichols drive less than 1000' from the road that is used now as passage, and that the drive continues only about 800 feet more to the house.

Atty. Crance described the situation as "mutual mistake of fact" that relieves all parties of responsibility. Jane Fant asked whether a decision to revise the variance would set a precedent that would open up much of Lyme to make use of thrown up roads. Frank explained that owners of landlocked lots can develop rights of way to their land, adding that Town Counsel has said that a decision by the ZBA does not create a precedent. He cited Horton Lane as an example of a private road.

Deliberations: Rob Titus moved to amend the variance issued on December 18, 2008 with the following findings of fact:

- The variance was initially based upon access over property of Wayne Pike
- The easement was agreed upon between the partners
- There was a complaint in late 2015 by the owner of the property that the easement was not properly constructed
- The Select Board subsequently determined that Old Dorchester Road was discontinued by vote of the Town on March 13, 1906 (Articles 15 and 16)
- NH law provides that abutting owners on a discontinued road retain rights of way
- The applicant desires to access his property by the Old Dorchester Road right of way
- The applicant does not use the property for business use. He stores trucks and equipment used in his business on the property, which business is conducted off-site
- Old Dorchester Road has space within 1000' enabling passage of two vehicles
- Issues raised as to compliance with the prior easement are a matter for private resolution between parties.

Mike Woodard seconded the motion and it passed unanimously. At a later point in the meeting, the board voted to amend the above motion to agree that the application meets the criteria for a variance under section 10:50:

- Section A – that the proposed use will not diminish surrounding property values
- Section B – that granting the variance will not be contrary to the public interest
- Section C – that the use will not be contrary to the spirit and intent of the ordinance
- Section D – that by granting the variance substantial justice will be done.
- Section E – that denial of the variance would result in unnecessary hardship to the owner.

Frank moved to amend the original motion as described; this was seconded by Bill and it passed unanimously.

Application #2016-ZB-08, Dowds' Country Inn, LLC (Tax Map 201 Lot 75)

The Dowd's Inn is applying to the Zoning Board for an amendment to a variance granted on June 21, 2012 then amended on May 15th, 2014. The variance allows for a footprint greater than would be allowed under the Zoning Ordinance. The amendment would be for an additional increase of the footprint to accommodate ADA compliant restrooms and slightly larger walk-in coolers/freezers. The fireplace and chimney (16 square feet of footprint) were not constructed. The applicant would like to apply that unused footprint to the expanded bathrooms.

Frank appointed Dan Brand to sit as a regular member. Tami Dowd explained that Fire Chief Mike Hinsley had originally told her that one ADA bath would be needed, but later told her she needed two. They have moved the chimney to the inside of the building to reduce the requested footprint increase to 8sf. After working with Kittredge consulting on food service and storage, analyzing workflow and storage needs, they realized they needed 144sf more for coolers. Frank asked if

communications with Mike Hinsley had been written or verbal. Tami said it had all been verbal. Bill Malcolm reviewed the sequence of approvals: an initial addition of 1400sf was approved in 2012, which was increased to 1697sf in 2014, and is now proposed to be increased to 1849sf. Tami confirmed that the foundations for the additions, which will be slab on gravel, have not yet been built.

Deliberations: Frank said that these look like good faith changes and recommended approval. He moved to amend the dimensional controls on the variance issued in 2014 with the following findings of fact:

- The Fire Chief and other consultants have advised that these dimensional changes are needed to provide ADA accessibility and sufficient food cooler space.
- The total requested addition is 152sf
- This results in an increased footprint of 152sf with a total of 1,849sf for the addition and total lot coverage of 13,372sf.
- The existing gross floor area is 16, 617sf and the expansion of 1,849sf will bring it to 18, 466sf.
- The board votes and agrees that the application meets the criteria for a variance under section 10:50:
 - Section A – that the proposed use will not diminish surrounding property values
 - Section B – that granting the variance will not be contrary to the public interest; indeed, the board believes that the addition of a second ADA bathroom will benefit the public
 - Section C – that the use will not be contrary to the spirit and intent of the ordinance
 - Section D – that by granting the variance substantial justice will be done.
 - Section E – that denial of the variance would result in unnecessary hardship to the owner.

Bill Malcolm seconded the motion and it passed unanimously.

Meeting adjourned 9:05pm

Respectfully submitted,
Adair Mulligan, Recorder