

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – January 17, 2019

Board Members: Present - Bill Malcolm, Alan Greatorex; Absent - Frank Bowles, Michael Woodard

Alternate Members: Present - Sue Ryan; Absent - Lynne Parshall, Dan Brand

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

Public: David Kahn, John Vansant, Rod Finley, Phil Harrison, Brad Choyt, Wende Beck, Tim Beck

Chairman Pro Tem Bill Malcolm called the meeting to order at 7:35 pm.

The minutes of the meeting of December 20 were approved on a motion by Sue seconded by Alan. Bill appointed Sue to sit as a regular member and advised the applicants that they had the right to defer their hearing or accept a three-person board. All agreed to continue with the hearings under those conditions.

Application #2019-ZB-01, Wendi and Tim Beck (Tax Map 403 Lot 44)

Wendi and Tim Beck have applied for a special exception under section 4.66 B to construct a house, garage and barn in the Ridgeline and Hillside Conservation District on the property at 106 East Thetford Road. Tim displayed the steep slopes map he provided with his application and indicated that a bench on the upper part of the property is the only developable area of the lot. He said that the proposed house would not be seen from the East Thetford Road and could be seen from only a small part of River Road. It would be visible from the Connecticut River at a point about a mile downstream. The Becks plan a one-story house with a low profile, set back on the bench, painted in unobtrusive colors. A garage with a peaked roof will be placed behind the house. The land had been logged several years ago, with some large trees left standing. The Becks do not plan to cut further. Sue, who had not been present at the previous hearing on the driveway, suggested a second pullout and asked how large the turnaround would be for vehicles at the top. Tim estimated 3,000sf. Alan asked if the house would be visible from Route 10, and Tim said no.

Deliberations: Bill observed that he did not recall a Ridgeline and Hillside District application with such a detailed graphic presentation. Others agreed. Bill continued that the board could agree that the project is within this district, and read the Zoning Ordinance rationale for the district. Sue said she thought the house was practically obscured and that there would be no other place for the house on the site.

Out of deliberations: Sue pointed out that the Wildlife Habitat Map in the Zoning Ordinance has no legend and that the Planning Board should update the map with the new location of habitat zones. Adair Mulligan referred to NH Fish and Game Department's 2015 Wildlife Action Plan maps. David reviewed the approval and inspection process. Alan asked about exterior lighting, and David confirmed that the Planning Board addresses this area, recommending "downcast" or "sharp cut-off" lighting with fixtures that direct lighting down. Tim Beck confirmed that he plans to use downcast lighting.

Deliberations: Bill moved to grant a Special Exception to Section 4.66B for the construction of a house, garage and barn in the Ridgeline and Hillside Conservation District, with the following findings of fact:

- The proposed construction is within this district
- The buildings will not be visible from the East Thetford Road; they will be visible from only a small portion of the River Road and will be visible from the Connecticut River only at a point about a mile downstream
- The slope map indicates that the construction is to be located to the greatest extent possible on the most reasonably practical site while still allowing the owners to make use of their property
- The project will not result in significant disturbance to wildlife habitat
- The project meets all the conditions of section 10.40A

Conditions

- The construction will proceed substantially as shown in the documentation provided with the application
- Best building practices will be used to prevent erosion
- Downcast lighting fixtures will be used to control light pollution
- Natural colors will be used for the exterior materials

Sue seconded the motion and it passed unanimously.

Out of deliberations: Bill reminded the applicants that the approval is good for two years.

Application #2019-ZB-02, Crossroads Academy (Tax Map 401 Lot 55)

Crossroads Academy, on behalf of owners of the property at 85 and 95 Dartmouth College Highway, has applied for a Variance to section 5.13 (Property Line Setbacks) in order to subdivide the lot into two lots. The school is located on one part of the lot and the residential condo units are on the other. The proposed lot line will result in several buildings being within the required 50 foot setback of the district.

Brad Choyt, Head of School for Crossroads, said that the school desires to replace a temporary trailer with a better building, and that it would pose a significant hardship for the school if this is not possible due to lot restrictions, both financially for the school and for the students. Phil Harrison, former member of the board, reviewed the plans, explaining that Lot 55 is already divided into two formal areas, with Area 1 owned and controlled by the condominium association and Area 2 owned and controlled by Crossroads Academy. The abutting Lot 56 is also owned by Crossroads. The boundary between the areas was set by the developer. The school proposes to add Area 2 to Lot 56 in order to remove the setback area that would prevent replacement of the middle school's trailer. The school representatives met with the Planning Board in the fall and were advised that a variance would be required to proceed. While the school has approval to build on Lot 56, this is less desirable as the school has invested in its buildings on Lot 55 Area 2 and does not want to abandon them. The school proposes a lot line adjustment that would bring the property line very close to a garage belonging to the condominium association. The current lot coverage was approved in 2001 for Area 2, allocated between the two lots.

Phil described the complex process that had been followed to date, reporting that 100% of the condominium owners had signed a Power of Authority to allow separation of Area 2 from Area 1. The association would voluntarily cede this land to Crossroads Academy, which would in turn create easements to allow the condo owners to access the garage for maintenance and to access the trail system. David explained that the variance is being requested because the Planning Board cannot allow a subdivision to create a non-conforming lot, which would happen since the garage, Klee building, and the building closest to the condos would be within the new setback.

Bill pointed out that this is a pre-existing situation because the two areas have always been operationally distinct, and agreed that the situation is murky. Phil referred to the definition of lot size in the Zoning Ordinance, but David disagreed that this had bearing, and the board agreed with David. Phil continued that the school needs a new deed to satisfy the condo association. Alan asked if the line could be moved away from the garage. Phil said that this area is currently used for school parking, and that a variance would still be needed for the building between Klee and the closest condominium.

Phil summarized the applications' responses to the variance criteria. If a variance is not granted, the school would build new buildings on Lot 56 and sell its buildings on Area 2 of Lot 55, which would go to a commercial enterprise such as a restaurant that might not be welcomed by the condo association residents. This would result in more buildings, more disturbance, and no guaranteed access to the trail system for condo residents. The Planning Board has approved separate uses and lot coverage for Areas 1 and 2. The school and condo association both agree that the school use nearby is better than an unknown commercial use. Crossroads might also be forced to demolish a building to create a setback for the Klee building.

Phil noted that he had given a list of 14-15 abutters to David for notice, but none of the abutters is present. Brad Choyt added that the school has good relations with the condominium owners and residents, and it benefits the school to have them walking on the property after hours or on the trails. He emphasized that the school values this warm relationship and intends to keep it. Alan asked about the proposed well locations indicated on the plans on Area 1. No one present knew whether they were built or were reserved for future use.

Deliberations: The board reviewed the terms of section 10.50. Alan moved to grant a variance to Section 5.13 (Property Line Setbacks) in order to create a non-conforming lot by subdividing Lot 55 into two lots as described in the application, with the following findings of fact:

- The variance will not be contrary to the public interest: the board agrees that Crossroads Academy is a good neighbor now and is a benefit to the Town of Lyme

- The spirit of the ordinance is observed: the board notes that the applicants will need the approval of the neighboring condominium association
- Substantial justice will be done by granting the variance: the lot line division already exists operationally, and granting a variance will eliminate issues without creating a large problem
- The values of surrounding properties will not be diminished: operationally, there will be no change to surrounding properties
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, owing to special conditions of the property that distinguish it from other properties in the area, namely the existing joint use of Lot 55 by residential and educational entities, which are two unique and distinctive uses
- It is clear that the division between the two areas has existed operationally for a long time
- No objection from the public has been expressed and there has been an evolving relationship between the school and members of the condominium association, neither of which has complained about the other
- Testimony has been received that the positive relationship will continue, including access to trails
- Access for maintenance to the garage and other areas will be required for the owners of Area 1

Conditions:

- The applicant will arrange for the condominium association to have formal access for maintenance to the garage and other areas close to the new boundary line

Sue seconded the motion and it passed unanimously.

Out of Deliberations

Meeting adjourned 9:12pm

Respectfully submitted,

Adair Mulligan, Recorder