

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – July 18, 2019

Board Members: Present - Frank Bowles, chair; Michael Woodard, Bill Malcolm, Alan Greateorex, Sue Ryan
Absent -

Alternate Members: Absent - Lynne Parshall

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

Public: Donald Graham, Carol Barr, Jennifer Bellows, Wesley Benbow, Rod Finley, Sarah Phillips, Kyle LaCroix, Gary Spaulding, Megan Cooney? (21 N. Thetford Rd), Eugenia Braasch, Joan Pakenham, John Gartner, Julia Gartner, Jay Boren

Chair Frank Bowles called the meeting to order at 7:32 pm.

The minutes of the meeting of June 20 were approved on a motion by Mike seconded by Alan.

Application #2019-ZB-40– Sarah Phillips (Tax Map 404 Lot 1) 23 Storrs Hill Lane

Sarah Phillips, Trustee of the Frederick C. Phillips Living Trust has applied to the Lyme Zoning Board of Adjustment for a Special Exception under section 8.23 to construct a replacement waste water disposal system within the road setback on the property in the Rural District. The proposed location is within the road setback of Storrs Hill Lane. As the structure is entirely underground it should not have a footprint or add to the lot coverage. Rod Finley of Pathways Consulting explained that there is a four-bedroom house and well on the property. He has filed a well release required by NH DES because the protective radius of the well includes the neighbor's land. This has been recorded at Grafton County. The septic system has failed. Fred Phillips had replaced the tank in 1994. The proposed system is an Enviro Septic System, all within the roadway setback, as is the entire house. Rod located it here to avoid the wetland setback and he marked this area on the map. There was no comment from the public present, but David noted that he had talked with an abutter who supports the project.

Deliberations: Alan noted that the system existed before 1994. Frank moved to grant a special exception to sections 8.22A and 8.23 A and C with the following findings of fact:

- The system will be a subsurface system
- Testimony has been received that it cannot be located outside the road setback because of a stream, wetlands, and the road
- This location will keep the system out of the conservation district buffer, which the board deems most important
- The project meets the requirements of section 10.40A where applicable
- Conditions: subject to all legal requirements including a state permit; the project will follow the Pathways plan submitted, best construction practices will be used
- Mike seconded the motion and it was approved unanimously. Out of deliberations.

Application #2019-ZB-51– John Gartner (Tax Map 407 Lot 88) 144 Orford Road

John Gartner has applied to the Lyme Zoning Board of Adjustment for a special exception under section 4.61 B 7 (referencing section 8.24) to replace a failed septic system within the Wetlands Conservation District buffer area at his property in the Rural District. The Gartners explained that the system is exuding septage and needs immediate repair. Gary Spaulding, designer of the proposed system, explained that the house is in the road setback and after meeting with the Conservation Commission on June 1, decided to move the system farther back from Clay Brook into an already disturbed area, behind the existing leach field. Gary confirmed that the new system will be a pump system, as is the existing one. Sue noted she is related to an abutter and offered to recuse herself. Frank noted Sue's offer and suggested that she continue to participate in this hearing. Julia Gartner said that they had contacted all their abutters and had received no concerns. David said he had talked to Bret Ryan, who had no concerns. Jennifer Bellows and Wesley Benbow, abutters across Orford Road, spoke in support of the project. Frank asked if there would be an alarm system. Gary replied that there will be a Simplex pump set to allow a half day's storage above, so that there is a capacity to address a problem if one arises.

Deliberations: Frank moved to grant a special exception as an index to section 4.61B7 in reference to sections 8.24 A, B, and D with the following findings of fact:

- Abutters have testified in favor of the project

- Designer Gary Spaulding has outlined the rationale for locating the system and indicated that this location is the best trade-off with respect to the conservation districts
- The Conservation Commission supports the project
- The project meets the requirements of section 10.40A where applicable
- Conditions: subject to all legal requirements including a state permit; the project will follow the Spaulding plan submitted, best construction practices will be used
- Mike seconded the motion and it was approved unanimously. Out of deliberations.

Application #2019-ZB-50– Kyle LaCroix (Tax Map 410 Lot 70) 216 Goose Pond Road

Kyle LaCroix has applied to the Lyme Zoning Board of Adjustment to amend and re-approve a special exception under section 8.23, approved on April 23rd 2016, to construct a shed in the road and property setbacks at his property in the Rural District. The proposed structure was not constructed within the two year limit set forth by RSA 674:33 III (b). Mr. LaCroix has proposed a smaller building to be located further from the setbacks than the structure approved in the original special exception.

Alan moved to approve the special exception that had been granted in 2016, with the following findings of fact:

- No acceptable alternative site for the structure had been found during a site visit when the project was initially considered
- The building will be reduced in scale as described in the application
- Mike seconded the motion and it was approved unanimously.

Application #2019-ZB-43– Donald Graham on behalf of Carol Barr (Tax Map 401 Lot 16) 301 River Road

Donald Graham on behalf of Carol Barr has applied to the Lyme Zoning Board of Adjustment for a Special exception under section 8.23 and 8.24 to drill a well within the Shoreland Conservation District, road setback and property setback on the Barr property in the Rural District.

The proposed well site is within the road setback, property line setback and Shoreland Conservation District. The Zoning Administrator cannot conclusively place the site within the Steep Slopes Conservation District and is deferring this to the Board as stated in section 3.33 of the Zoning Ordinance. On June 17th, 2010 the Board approved Special Exceptions for the replacement and to add a parking area to the lot. In that decision there was a condition from the Planning Board that stated “The water supply line between the two properties on the surface to ensure that the dwelling remains seasonal.” The Zoning Administrator believes that this new application is in conflict with that condition.

Don said that they hope to drill the well out of the highway right of way which, according to a new town survey, will be a two-rod road. It is to be 13.5 feet from the center line. He explained that they own two properties here that share the entire water system, which is housed in the property next door. This would become a problem if they sell one of the properties. The water is shut off seasonally. A 1” plastic uninsulated pipe running over the ground’s surface across a small stream delivers water to this property and is disconnected each year.

Asked how he responded to the Planning Board’s previous condition regarding a seasonal supply, he responded that he did not see authority in the ordinance to distinguish single family residences from seasonal residences.

Frank noted that the Planning Board had sent a letter to the Zoning Board, which had included it in the 2010 decision. David reported that he had discussed seasonal use with town counsel, who cautioned against discussing “seasonal” structures because the ordinance does not address them. There was no public comment. Frank expressed concern about an exposed surface line. Mike noted that there would be no protective radius. Don reminded that there is no leach field, and the cabin has holding tanks instead. With respect to the well, he expects salt intrusion from the road to diminish.

Deliberations: Bill moved to grant a special exception under sections 8.23A and 8.24 A with the following findings of fact:

- There is no other place to locate the well outside the Shoreland Conservation District
- Section 4.63 allows wells and water lines in the Shoreland Conservation District
- There is no lot coverage issue
- The restriction on the placement of the water line (in decision 2010-ZB-03) is found to be invalid based on town counsel’s advice that reference to seasonal use is not defined in the zoning ordinance

- There has been no abutter testimony
- The project meets the requirements of section 10.40A where applicable
- Conditions:
 - best construction practices will be used
 - the applicant is urged to install a protective shut-off device if the water runs too long (to protect the holding tanks) such as wiring the pump alarm to the holding tank alarm, a condition the applicant accepted
- Alan seconded the motion and it was approved unanimously. Out of deliberations.

Application #2019-ZB-13– Nicholas Hutchins (Tax Map 407 Lot 34) 17 North Thetford Road

Nicholas and Megan Hutchins have applied to the Lyme Zoning Board of Adjustment for a special exception under section 8.23 and section 8.25 to construct a garage and mud room on their property in the Rural District. The proposed construction will be entirely within the property line setback and exceed the maximum building footprint.

Frank observed that the applicants were not present and David confirmed that a notice of the meeting was sent. Frank asked David to present the application to the best of his knowledge. David noted that the lot is narrow and there was not much room to work. In 2002 a previous owner applied to the Zoning Board for a special exception under section 8.25 to construct an addition that was 39 sq feet over the calculated maximum building footprint. The Zoning Administrator believes this was an error as the previous administrator did not deduct the area of the building zone from the Agricultural Soils district for the calculations, even though they showed on their worksheet that the building was not within the conservation district. David believes the area of the building zone is excluded from the Agricultural Soils Conservation District, therefore the area of the building zone is deducted from the area of the district, so the existing house is currently under the maximum building footprint because of the error. He advised that the 2002 decision needed to be amended if the project is approved. He found no issues with conservation districts based on his GIS analysis, but did not make a site visit. The entire lot is in the Agricultural Soils Conservation District but the house was built before zoning and has a building envelope.

Joan Pakenham, the abutter on the west side, presented a diagram showing her house, the Hutchins house, and the proposed addition on a Google Earth image. She created this image from known measurements based on her experience doing such imagery for a surveying firm. She noted that a drainage runs across the area and that she gave verbal, but not legally recorded, permission in 2002 for this drainage from the neighbor's property to run across her property. She said she does not want to have to accommodate increased drainage that would result from this project. The proposed addition would sit on the edge of her property line, along her fence. The neighbors have added a drive and parking area close to her property and gravel from plowed snow now rests on her stone wall. She presented an elevation image of the proposed addition and said that it would have a very negative visual impact on her property. She suggested that there is a better area to place the addition in the Hutchins' back yard. She said that they are currently doing excavation work there, and have already raised the drive and added gravel. Her property had been surveyed in 1973 when the lots were laid out, but the granite marker that once indicated her property corner was destroyed by the state during road work.

Frank observed that a landowner has the right to make use of his/her property but that enough information has been brought forward to lead him to say that a site visit is needed and/or a licensed survey is required. Bill observed that the abutter has made a case that the project is inappropriate and that the addition could be reasonably located outside the setback area. Frank expressed concern about water flow. Mike noted that the septic system is in the front yard, and so an appropriate location is in the back yard. Joan asked whether the presence of the well in the backyard would be an impediment. Frank replied that a better plan and rationale is needed, and the board could not comment on that until they are provided.

Deliberations: Bill moved to deny the application with the following findings of fact:

- The project does not meet the requirements of section 8.23A
- The board lacks data to further evaluate the proposal
- There is not enough information to say that the project does not fail the requirements of section 10.40 A 1,3,4,5,6, and 7.
- Alan seconded the motion and it passed unanimously.

Frank noted that if the applicant wishes to bring a revised application to the board, it will be considered. Correction of the earlier decision would be made at that time. Out of deliberations.

Application #2019-ZB-46– Justin and Emily Boren (Tax Map 201 Lot 67) 6 East Thetford Road

Justin and Emily Boren have applied for a variance to add a 264 sf (12' X 22') addition to their house and replace an existing 18' by 30' garage with a 28 by 30' garage on their house in the Lyme Common District. Based on data from a 2003 ZBA decision the lot size is 18,365sf, max building footprint 1,102sf, max lot coverage is 2,204sf. After that decision there was 82 sf of the allowable 500 sf of building footprint left and 62 sf of the allowable 500 sf of lot coverage left. Because the remaining special exception allowances are too small to allow for the proposed additions they have applied for a variance.

The structure footprints are as follows: house 1,828sf; deck 196sf; garage 540sf; shed 342sf, for a total lot coverage of 2,906 sf. The addition to the house would bring the house footprint to 2,092 sf. The replacement garage will add 300 sf to the footprint bringing it to 840 sf. The replacement garage will be moved so that there will be no greater intrusion into the property line setback than currently. The total new lot coverage would be 3,470 sf.

Jay Boren told the board that he has had an architect draw up another plan and shown it to the abutters, who reviewed and supported it. This plan would remove the deck to gain credit and makes the garage smaller to eliminate space for a workbench and gear storage. He noted that he would rather pursue the original plan and not remove the deck. The garage would be one story with a pitched roof. He has written letters of support from the Mundys and others. Mike Mundy has expressed concern that the garage would block some of his view of the fields. The septic field is in the back yard and wetlands are at some distance. The Lyme village water installation is on this property.

David noted that there are four lots on East Thetford Road that are much smaller than others around Lyme Common and that he believes they are shortchanged by the ordinance because the dimensional controls for the Lyme Common District are written for larger lots. He believes these four landowners are not getting what other landowners in the district are able to do.

Deliberations: Frank observed that both plans call for moving the garage away from its currently location right on the lot line. He moved to grant a variance for construction of the garage as originally proposed with the following findings of fact:

- The project meets all the conditions in section 10.50 for a variance
 - The project is not contrary to the public interest
 - The spirit of the ordinance is observed
 - Substantial justice is done
 - The values of surrounding properties are not diminished and
 - Literal enforcement of the provisions of the ordinance would result in unnecessary hardship, as testimony has been received from the Zoning Administrator that this property has been distinguished from others in the Lyme Common District by virtue of the smaller size of the lot
- Conditions:
 - best construction practices will be used
- Alan seconded the motion and it was approved unanimously. Out of deliberations.

Meeting adjourned 9:26pm

Respectfully submitted,
Adair Mulligan, Recorder