

**Lyme Planning Board Minutes  
January/22/2015**

Board Members and Staff Present: John Stadler, Chair; C Jay Smith, Select Board Representative; Vicki Smith, Member; Tim Cook, Member; Freda Swan, Alternate; David Robbins, Planning and Zoning Administrator

Board Members Absent: None

Members of the Public Present: David Roby, Brian Pratt, Bobbie Hantz, Bill Waste, Eric Furstenberg

John opened the meeting at 7:00pm and appointed Freda to sit as a regular member for the vacated position.

**Item 1:** Public hearing to discuss proposed zoning amendments for the 2015 Town meeting for the following amendment:

To change the title section 8.20 from:

**8.20 NON-CONFORMING STRUCTURES AND BUILDINGS AND  
STRUCTURES AND BUILDINGS WHICH WOULD BE RENDERED NON-  
CONFORMING BY EXPANSION**

To

**8.20 NON-CONFORMING STRUCTURES AND BUILDINGS AND  
STRUCTURES AND BUILDINGS WHICH WOULD BE RENDERED NON-  
CONFORMING BY EXPANSION OR RELOCATION**

And add section 8.29:

**8.29 Relocation of an existing structure in a conservation district.**

**The relocation of an existing structure in a conservation district to a different location within a conservation district may be permitted as a special exception subject to the provisions of section 10.40 and the following requirements:**

- A. The relocation shall better serve the purposes of the Conservation District.**
- B. A relocated structure shall not be eligible for conversion under section 4.46 until five years after the completed relocation.**
- C. The original area of disturbance will be restored to satisfy the purposes of the conservation district as determined by the Zoning Board of Adjustment.**

John opened the hearing at 7:02 pm and asked the Board if there was any discussion. The Board reaffirmed its sense that this wording adequately conveyed their intent that the relocation could only be within a single conservation district and not from one to another. John asked the attending public if they had any questions or comments. There being none he moved to approve the amendment and send it to Town Meeting to be voted upon.

**Item 2:** Discuss Legal review of proposed section 8.28.

The Board discussed the legal review of the proposed new section 8.28 and decided that because there was not time to hold another public hearing. They should withdraw this proposed amendment for the 2015 Town meeting and resubmit it at the 2016 meeting after making the changes suggested by Town Counsel.

**Item 3: Preliminary Site Plan Review of the Pinnacle Project.**

Representatives of the Pinnacle Project came to discuss their preliminary development plan with the Board. Pinnacle wanted the Board's non-binding input and general feedback including thoughts on their variance and special exception needs.

Pinnacle presented their plan to develop 36 units, founded on hoped for special exceptions, variances and assumptions of a favorable lot size averaging process providing 6 lots. The 36 units of between 1 and 4 bedrooms would contain a total of 87 bedrooms (an average of just under 2 and 1/2 per unit).

In particular, Pinnacle wants a variance to allow "multi-family" apartments because Lyme's ordinance only allows for "multi-family" conversion. Alternatively, they would seek a variance from the "five year wait" provision before new buildings can convert. Additionally, they hope for relief from requirements relating to agricultural soils, wetlands, wetland buffers, maximum building footprint (potentially), lot coverage plus whatever else might arise.

Pinnacle stated that at this time they would not be making any legally binding commitment that any of the units would qualify as workforce, affordable or senior housing.

The Board asked for clarification of Pinnacle's procedural plan. Pinnacle explained that getting either a variance enabling an "original multi-family" units development or, failing that, a variance from the "5 year wait" was at the heart of their plan.

The following is a topical summary reflecting the feedback provided by various Board members at Pinnacle's request:

**Reasonableness:**

\*Pinnacle has every right to the reasonable and lawful use of its property.

\*However, Pinnacle's proposed plan is very unreasonable due to its density, as well as for other reasons (covered below throughout).

\*Pinnacle has various, existing options for the reasonable and substantive use of its property without the need for any variances, including developments of still significant, but lesser density.

\*At the March 2013 Town Meeting, Pinnacle's Petitioned Zoning Amendment, allowing for up to 26 units on their property and along a strip of Town, was soundly defeated. It was widely regarded as a self-interested attempt to impose Pinnacle's desires on the whole Town, one that would substantially undermine Lyme's Master Plan and zoning ordinance. Given the people's rejection of that approach, it is extremely unreasonable to return now with a plan for 36 units. If Pinnacle were granted a variance for their current plan, they would not only achieve what the Townspeople rejected in 2013, but significantly more. The result would be contrary to the intent of the Master Plan, the zoning ordinance in general and the ability of Lyme to fulfill many of the elements of 1.20 (PURPOSE) therein.

### **Issue of "Co-housing/Multi family" Use:**

\*Pinnacle stated in their cover letter that they needed "a variance to allow the use of Co-housing/Multi family". This terminology is misused and needs clarification.

\*"Multi-dwelling" use is allowed via Site Plan Review in much of the Town through conversion. In fact, Pinnacle had the option of converting the Loch Lyme Lodge (LLL) buildings into multi-dwelling units and still has that option (which would need to be considered in terms of potential density on the parent lot).

\*Co-housing is not prohibited in Lyme. There are various existing scenarios under which interested parties could have a co-housing agreement among themselves. In fact, if Pinnacle had wanted to convert the LLL buildings, they could have done so with a co-housing agreement made among themselves.

\*Multi-dwelling conversion requires that a building be in existence for 5 years before it can be converted. This use is permitted in Lyme to allow for a variety of housing types and to encourage denser development in the existing compact areas of Town. Multi-dwelling conversion use is also allowed throughout the Rural District, again, in a manner that would not overwhelm the municipality.

\*Lyme is a rural town with a population of slightly over 1700. If multi-dwelling use were generally available in the manner in which Pinnacle proposes, Lyme could easily be overwhelmed with scattered, dense developments, would lose its rural character and face enormous demands on its services and infrastructure.

\*These concerns provide a fair and substantial relationship between the general public purposes of the ordinance provisions under discussion and their application to Pinnacle's property.

### **Density:**

\*Pinnacle's 87 units with an average of 1 and 1/2 people per unit would result in 130 people. Since the Board is required to consider the parent lot in this case (under the Subdivision Regulations), the Loch Lyme Lodge lot would need to be included in the analysis. Including the lodge population at peak season would make the overall density significantly higher, but even with only the 130 people considered, it would be a 7 and

1/2% increase in Lyme's current population. It is unreasonable for Pinnacle to expect Lyme to accept that.

\*Serious concerns about traffic were expressed.

\*The estimate of 73 parking places seemed quite low.

\*The overall parent lot's vehicle count and the shared driveway with the lodge were matters of serious concern.

\*The potential impact on the school and taxes were matters of serious concern.

\*This proposal, if realized, would likely be the biggest development in Lyme's history.

### **Spirit and Intent of the Ordinance:**

\*The plan was contrary to the ordinance's spirit and intent in various ways.

\*The objectives of the rural district (3.23) were being disregarded (and the objectives therein are currently consistent with the state of the general area under consideration).

\*Additional potential problems with the plan relate to the objectives of the various relevant conservation districts (in particular the Agricultural Soils District (3.27.4)), and many elements of 1.20 (Purpose) including reference to "implementing the Lyme Master Plan" and especially "undue concentration of population", among others.

### **Implications:**

If Pinnacle's unreasonable criteria for a variance were granted, other similar developments would likely follow. The variance would establish a dangerously low and unbalanced, new threshold that could well upend Lyme's functional wellbeing.

### **Lot Size Averaging:**

\*The six lots, as shown on the applicant's map, seem based on a misunderstanding of Lot Size Averaging (LSA).

\*The Planning Board must and will be lawful and reasonable.

\*That said, LSA is not a simple mathematical formula. Rather, it's an "Innovative Land Use Control" that designates the Planning Board as administrator.

\* 5 D. 1. states the Board may approve reduced lot sizes *in accordance with the Master Plan*. Other considerations are what promote the most appropriate use of the land, plus those relating to impacts on public services and agricultural soils.

\*It also states clearly in 2. "The maximum number of lots in a subdivision" using LSA "shall be determined by the Planning Board..."

\*In 3., "Lot sizes, frontage and setbacks shall be determined by the Planning Board based on the character of the land and neighborhood...", as well as through consideration of traffic issues, among others.

\*Pinnacle assumes a "bonus lot" based on the "Increased Density Option". Under clause (a) in that section, the wording is discretionary, "the Planning Board may approve more lots" but it is not required to do so. The Board should consider whether conserving additional open space would justify the "bonus", especially in a case where the density is so unreasonable.

### **Variances:**

\*Under 10.18 B, there must be “extraordinary conditions” to grant a variance. It is unclear what Pinnacle’s “extraordinary conditions” are. There are serious doubts as to whether Pinnacle qualifies under any of the criteria, but certainly not under all of them:

- A. It is possible that the proposed use will diminish surrounding property values.
- B. The granting of a variance would be contrary to the public interest. It would seriously undermine Lyme’s ordinance, especially 1.20 PURPOSE and the Town’s ability to maintain orderly development. Also, the 2013 Town vote showed the public’s strong opposition to Pinnacle’s approach.
- C. The use is clearly contrary to the spirit and intent of the ordinance, as stated throughout above.
- D. Substantial justice will not be done by granting a variance, because Pinnacle is not and never has been laboring under any injustice. In fact, it would be a serious injustice to Lyme to grant the variance.
- E. There is no unnecessary hardship:

\*There exists a fair and substantial relationship between the general public purposes of the ordinance and its specific application to this particular property.

\*The proposed use is not reasonable, as stated throughout.

\*Pinnacle’s property can be reasonably used under the ordinance without a variance.

\*The real problem is their development plan, which is simply an overreach and demands too much.

**Public Comment:**

David Roby stated his opinion that the proposal was very unreasonable and not allowed under Lyme’s Zoning Ordinance. He felt they were wasting the Town’s time and resources as well as their own.

**Item 4: Alternate Planning Board Members**

Eric Furstenberg had volunteered to become an alternate member of the Planning Board.

Tim moved to appoint Eric as an alternate member of the planning Board as set forth in RSA 673:6

Vicki seconded the motion.

John called for a vote and the motion passed unanimously.

**Item 5: Public hearing for trimming trees on scenic roads.**

The Planning and Zoning Administrator had received a letter from PSNH asking the Board to hold a Public Hearing under RSA 231:158 The Board could then issue a letter of

approval to allow the trimming on Acorn Hill Rd, Breck Hill Road, Parts of River Road, and Washburn Hill Road.

The Planning and Zoning Administrator suggested holding the hearing on February 12<sup>th</sup>, 2015 at 7:00 pm. The Board having agreed, Vicki suggested and the rest of the Board agreed that letters should be sent to the individual land owners notifying them of the hearing.

The Planning and Zoning Administrator said he would notice the hearing and send the letters.

**Item 7: Acceptance of minutes from January 8th, 2015**

John moved to accept the minutes as submitted.

Vicki seconded the motion.

John called for a vote and the motion passed unanimously.

The Meeting adjourned at 9:35pm

Respectfully Submitted

David A. Robbins

Lyme Planning and Zoning Administrator.