

Lyme Planning Board Minutes July 13th, 2017

Board Members and Staff Present: John Stadler, Chair; Tim Cook, Vice Chair; Eric Furstenberg, Member; Amber Boland Alternate; David Roby Jr. Alternate; David Robbins, Planning and Zoning Administrator.

Board Members Absent: C Jay Smith, Select Board Representative; Vicki Smith, Member;

Members of the Public Present: Gary and Karen Phetteplace, Karen Menge, Matthew Fritz-Freck, Nils Johnson, Barb Street, Nancy Wray, Bret Ryan, Barry Schuster, Russell Barnes, Mark Puffer, Patty and Ben Hudson, Doug Gernhart, Tony Pippin, Joseph Longacre, Scott Nichols, Beth Taylor, Phil Elder, Aaron Rich, Rich Brown, Tim Rockwood, Patience Rich, Margo Longacre, Dee Scanlon.

John appointed Rusty Keith to sit for Jay Smith and Amber Borland to sit for Vicki Smith.

Item 1) Frederick & Irene Gernhard and Douglas & Jennifer Gernhard applied to the Lyme Planning Board for a lot line adjustment to annex 0.49 acres of land from Frederick & Irene Gernhard (Tax map 404 Lot 48.1, 74 North Thetford Rd.) to Douglas & Jennifer Gernhard (Tax map 404 Lot 48.2, 68 North Thetford Rd.)

The Board introduced themselves to the applicants.

John asked Eric to work through the checklist to ensure the application was complete.

The following items were not included on the plat:

- 1) Location of existing and proposed easements and areas affected by existing and proposed covenants, reservations and restrictions, benefiting or burdening the property.

There were none on either property so it was determined to be not applicable.

- 2) Location of existing and proposed utilities, wells, septic systems, buildings, drives, parking areas, storm water drainage lines, drainage structures, and drainage ways.

There were no drainage areas included on the plat. Both property owners stated that there will be no changes to the drainage areas of either property. The Board concluded that this could be waived because there will be no change to the existing conditions.

- 3) Full perimeter survey.

The Board determined that a full perimeter survey would not provide any additional information the Board would require to be able to approve the application and therefore decided to waive the requirement.

John made a motion to accept that application as complete.

Amber seconded the motion.

John called for a vote and the motion passed unanimously.

Tim Rockwood described the lot line adjustment, 0.49 acres of land will be annexed to lot 48. 2 from lot 48.1 both lots being on tax map 404. The intent is to move a garden area so that if the parent lot is ever sold the use of the garden area will not be lost.

John asked the Board if there were any questions from the members. Tim noted a duplication of lot numbers on the plat.

John noted that this would need to be corrected on the final plans.

John asked the Planning and Zoning Administrator if he had any concerns. He stated that he had reviewed the application and the plat and had found that the two lots would still conform to the zoning ordinance after the annexation.

John moved to approve the lot line adjustment with the following waivers, findings and conditions:

Waivers:

Drainage ways shown on the plat.

Full perimeter survey.

Findings:

0.49 acres of land will be annexed to lot 48. 2 from lot 48.1, both lots being on tax map 404.

Both lots will remain conforming to the zoning ordinance.

Lot number for Doug and Jennifer Gernhard was incorrect on the plat, it will be corrected to 404 48.2.

Conditions:

The duplicate lot number (404 48.1) for Doug and Jennifer Gernhard will be corrected to 404 48.2.

Amber seconded the motion.

John called for a vote and the motion passed unanimously.

Item 2) Karen Menge applied to the Lyme Zoning Board of Adjustment to appeal an administrative decision under RSA 676.5 III by the Planning Board to approve the Site Plan of Holts Ledge LLC, dated 05-11-17 for the property at 65 Dartmouth College Hwy. (Tax map 401 Lot 53.1).

At that hearing, held on June 15th, 2017, the Zoning Board concluded the applicant had presented new information and questions regarding the Planning Board's interpretation of sections 8.12, 8.13, 8.27 and 4.46 which made it advisable to remand this decision back to the Planning Board for review.

The Board introduced themselves.

John noted that the Zoning Board remanded back to the Planning Board consideration of four sections of the Zoning Ordinance, sections 4.46, 8.12, 8.13, 8.27. The Board would, therefore, only be hearing testimony relevant to the four sections.

John asked the applicants if they wished to make a statement. Barry Schuster, on behalf of the applicant, said he would.

He wished to review the four sections of the ordinance that were remanded back to the Planning Board.

Section 4.46:

Mr. Schuster stated that the first sentence of the section 4.46 states: "If a use is permitted in Table 4.1, then a conversion of all or part of a single building to that use may be allowed.". The proposed use is for a new office and therefore is not allowed by table 4.1 and therefore section 4.46 does not apply.

Section 8.12:

Mr. Schuster read a letter from Phil Elder, a longtime employee of the Maxfield's (the previous owner of the property.) The letter described the varied and heavy historical commercial uses of the past owner. Mr. Schuster stated that the new office space will be a decrease in traffic over the past commercial uses. The previous uses had undetermined work shifts while the new use would have regular work shifts. The water usage and septic uses can be easily accommodated by an onsite well and the state approved septic system. The noise and vibration generated by offices would be negligible when compared to that of a tractor repair business. Odors, dust and smoke from the running equipment would be also significantly reduced.

Section 8.13

Mr. Schuster stated that at no point in time did the applicant abandon the commercial use of the property. From the time he purchased the property he has used the garage and the shed for his rentals business.

Section 8.27

Mr. Schuster stated that the replacement buildings are more conforming as to the setbacks and there was no increase in the non-conformity.

John asked the Board if they had any questions. There were none.
He then asked the public if they had any questions. There were none.

John asked Karen if she would present her information. Mark Puffer stated that he was representing Karen and would present for her.

Mr. Puffer stated that he was in agreement that the scope of the hearing only covered those four sections of the Zoning Ordinance that were remanded back by the Zoning Board. He then proceeded to give his analysis of each of the four sections and how each section applies to the Holt's ledge application. For each section under discussion Mr. Puffer had a handout with a brief discussion followed by his thoughts on each section's applicability to the Holt's ledge application.

Section 4.46.

Mr. Puffer agreed that section 4.46 does not apply because the buildings are new and, therefore not converting an existing building.

Section 8.27.

Mr. Puffer felt the issue with this section was that the buildings that were constructed went far beyond just a replacement. The one story buildings were replaced with two and three story buildings. He believes that this exceeds what is allowed under the section.

Section 8.13.

Mr. Puffer stated that a landowner's subjective intent, or that of his predecessor in title, does not determine whether a nonconforming use has been discontinued. Whether a non-conforming use exists and may be converted to another business use simply depends on whether the prior non-conforming use ceased to exist.

Section 8.12.

Mr. Puffer explained that if the Board were to determine that the prior use had discontinued then section 8.12 was irrelevant as the conversion under section 8.12 could not take place. If it had not been discontinued then the burden is on the applicant to prove that the new use did not result in an increase in the intensity of use.

Karen Menge read a letter describing the past uses on the property and supplied an affidavit from Richard Menge describing his recollection of the past uses on the property.

She stated that the business hours for over the past 20 years were 8 am to 5pm Monday through Friday, 8 am to 12 pm on Saturday and closed on Sunday.

She noted that in 1994 the steel building business ended after Les Maxfield died, and that there were not regular deliveries after 1994. She also stated that the gas pumps as well as the gas tanks were removed in 2009. After 1994 the business was just a small tractor and lawn mower repair business with gas pump service until 2009.

Robbie Woodward ceased his on-site business shortly after Ginny Maxfield died on February 3, 2012.

John noted that the test of intensity of use revert back to the adoption of Zoning. For the Town of Lyme, that would be March of 1989.

Rusty asked if Karen or her brother considered purchasing the property. She stated that they had but the asking price was too high. She understood that the owners felt that the property was worth more because of its commercial use. Rusty asked if it was listed as a commercial property. Karen confirmed that it was.

John asked if there were any other questions or comments Mr. Schuster read a memo to the file from the Planning and Zoning Administrator dated June 20th, 2015 stating:

“The existing garage and shop building historically had been used for a tractor repair business. After it was sold the new owner used it to store and repair machinery.”

The new owner is replacing the garage and shop buildings with two new buildings. These new buildings will be used as commercial space. Under the ordinance the buildings are being replaced as preexisting non-conforming buildings under section 8.27.

Any different business use will need to go to the Planning Board for Site Plan Review. The interior design of the buildings will be built to suit the tenants. “

Scott Nichols stated he is in support of the project and that he believed that a business cannot be judged by the last use. Businesses ebb and flow and change over time.

Nils Johnson stated that he felt that it would be improper for the Board to take away the business use of the property. He believed that it would constitute an illegal taking.

Beth Taylor was in support of the project as the Town currently has limited office space.

Dee Scanlon suggested that a commercial use should somehow be tied to a property so that it does not get lost because of discontinuance.

Mr. Puffer stated that he had additional information for the Board. John asked him to please continue.

He presented photographs documenting the property as well as the real estate listing describing the garage and shed, documents showing the closing and removal of the gas tanks, a copy of a tax card where a note from 2005 stated “ Very little activity” and Karen Menges appeal to the Zoning Board.

John asked if there were any other questions or comments

Phil Elder stated that he worked for Maxfield’s from the 1970’s well into the 1980’s and reiterated the information stated in his letter.

Eric asked what the number of employees was during that time. Phil responded that it varied between three and four as well as others that worked offsite. Eric then asked if it was noisy. Phil stated that it certainly was.

Tim asked what was happening on the property in 1989. Phil stated that he was no longer working there by 1989, but that he was generally aware of activity into the late 1980s.

John asked if there was any additional questions or comments.

Mr. Schuster added that the applicant started using the property for storage materials and equipment for his rental business as soon as he had purchased this property.

Scott Nichols stated that the Town has already set a precedent for allowing business uses to continue. The Zoning Board had given him permission to conduct light manufacturing on his property on Brook Lane well after the original business had ceased.

Karen stated that she believed that the approved hours of operation and the traffic that could be generated far exceeded customary office use.

There being no other comments or questions and due to the late hour, John suggested that the Board continue the hearing. The rest of the Board was in agreement, John moved to continue the hearing to July 27th, 2017 at 7:00 pm in the Town Offices conference room.

Item 3) The Eirini Trust (Gary and Karen Phetteplace, Trustees) of 7 Masa Morey Ln (tax map 407 lot 130), Benjamin & Patricia Hudson of 83 Pinnacle Rd (tax map 407 Lot 101) and Barbara Street of 69 Pinnacle Rd (tax map 407 Lot 99) have applied to the Lyme Planning Board for a lot line adjustment/ boundary line agreement to:

- 1) Annex 10.89 acres from lot 100 to lot 130
- 2) Annex 0.17 acres from, lot 100 to lot 99
- 3) Annexation/ boundary line agreement between lots 100 and 101 to correct the boundary between the two lots and to correct the acreage of both lots.

John made introductions.

John asked Eric to work through the checklist to ensure the application was complete.

The following items were not included on the plat:

- 1) Location of existing and proposed easements and areas affected by existing and proposed covenants, reservations and restrictions, benefiting or burdening the property.

There were none on either property so it was determined to be not applicable.

- 2) Location of existing and proposed utilities, wells, septic systems, buildings, drives, parking areas, storm water drainage lines, drainage structures, and drainage ways.

There will be no changes to the existing conditions of the drainage areas on any of the four properties. The Board concluded that this could be waived because there will be no change to the existing conditions.

- 3) Location of zoning district boundaries and area of each lot in each district. It is noted in the plat that all lots are in the rural district.

John moved to accept the application as complete with the waivers as previously stated. Amber seconded the motion. John called for a vote and the motion passed unanimously.

Tim Rockwood gave an overview of the application.

The submitted plan contains a **(1)** boundary line agreement between the owners of lots 100 and 101 both on tax map 407. Due to an approved subdivision in 1979 that relied on a sketch that incorrectly represented the subdivided lots, it was not possible to recreate the boundary shown on the sketch. The boundary line between lots is considered lost. This current agreement establishes a new boundary line and sets the acreage of lot 101 at 10.73 acres and Lot 100 as having 16.69 acres on both sides of Pinnacle Rd. **(2)** 0.17 acres is annexed to lot 99 increasing this lot to .7 acres. **(3)** The southern portion of lot 100 being 10.89 acres will be annexed to lot 130. The total acreage will be 29.80 after the annexation. **(4)** The remainder of lot 100 will 5.10 acres.

The Board made the following findings:

The boundary line between lots 100 and 101 is considered lost.

Lot 99 on tax map 407 will contain .7 acres.

Lot 100 on tax map 407 will contain 5.10 acres.

Lot 101 on tax map 407 will contain 10.73 acres.

Lot 130 on tax map 407 will contain 29.80 acres.

Lot 99 is a preexisting non-conforming lot that will become more conforming.

The Board set the following conditions:

Conditions:

The deeds transferring land to lot 130 and lot 99 shall have a deed restriction placed in the body of the deed or other instrument of transfer stating as follows: "The grantee(s) by virtue of acceptance of this deed agree(s) that the premises hereby conveyed shall not be deemed or considered a separate lot of record, but shall be regarded as merged into and

made an integral part of the contiguous lot of land previously owned by the grantee(s) so that the same shall hereafter be one combined single lot of record.”

New deeds will be written and registered with Grafton County for lots 99 and 101 so as to reflect the boundary line agreement.

John moved to approve the application.

Amber seconded the motion.

John called for a vote and the motion passed unanimously.

The meeting adjourned at 9:25pm.

Respectfully Submitted

David A. Robbins

Lyme Planning and Zoning Administrator.