

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – December 19, 2019

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

Alternate Members: Absent - Lynne Parshall

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

Public: Paul Mayo, Matt O'Clair, Stuart Cady, Jared Davis, Phil Harrison, Fran and Bob Lee, Carolyn Cox, Jackie and Harry Glass

Chair Frank Bowles called the meeting to order at 7:30 pm.

Application #2019-ZB-98 – Crossroads Academy (Tax Map 401 Lot 56) 101 Dartmouth College Highway

Crossroads Academy has applied for a Special Exception under sections 4.61 B 5 and 4.63 B 4 to repair a damaged storm water treatment structure on its property at 101 Dartmouth College Highway in the Commercial District. Frank noted that the Conservation Commission's letter had not yet arrived and asked if Crossroads would be willing to continue the hearing until the next regularly scheduled meeting on January 16, 2020. Phil Harrison agreed and the board voted unanimously to continue on a motion by Mike Woodard seconded by Alan Greateorex.

Application #2019-ZB-99 – Jared Davis (Tax Map 407 Lot 76.1) 119 Whipple Hill Road

Jared Davis has applied for a Special Exception under Section 4.53 B to construct a driveway that exceeds the slope allowed under the Zoning Ordinance. The driveway will allow him to access his property at 119 Whipple Hill Road in the Rural District. Jared explained that he wishes to build a house back from the road but had to deal with the grade of the hillside. Frank asked about the straight line indicated on the driveway profile, and contractor Matt O'Clair explained that one spot will be filled to accommodate the drive. Frank observed that lot coverage and footprint are not issues. David Robbins said that the drive proposed avoids steep slopes, which are farther up the hill. He said a curb cut is under review by the Planning Board and Highway Department. Mike Woodard asked if this is the best that can be done. Matt explained that other routes were steeper and too close to the Class IV Mud Turtle Pond Road. The drive is over 50' from the side setbacks. Sue asked if drainage would be directed away from neighbors' property. Frank noted that this is required by the ordinance. David added that the subdivision that created this lot occurred in 2002. Alan asked about the location of the existing barn in relation to the proposed drive, since it was not shown on the drawing. Jared said it is to the right of the drive and that he will continue to maintain the barn for his use. Alan measured it as 150' from the curb cut.

Abutter Bob Lee said that he was the original owner and subdivided this lot from the house across the road at 132 Whipple Hill Road. The proposed access was drawn on the subdivision map at the time, located about 50' closer to the barn, but the drive proposed in this application is not in the same place. The original drive did not require a culvert, but this one does. David replied that the town is looking at it and will see if a culvert is needed. Abutters Harry and Jackie Glass had no comment, but Harry asked why the original drive location was denied. David responded that drives off Class IV roads or at junctions are not allowed.

Deliberations: Bill moved to approve the application as submitted, with the following findings of fact:

- The proposal meets the requirements of section 4.53B
- Abutters have testified and offered no objection
- Sections 4.62B1 and B7 do not apply
- The drive will not exceed 14% in any part
- A cut and fill method will be used to maintain grade
- The drive will not be over 1000'
- After reviewing each individual part of section 10.40 A and B, the board found that the proposal meets each aspect or the aspect does not apply
- Conditions: a curb cut permit is needed from the Town; construction will proceed using the methods outlined in section 4.53B.

Alan seconded the motion and it passed unanimously.

Out of Deliberations

The minutes of the meeting of November 21 were approved on a motion by Mike seconded by Frank.

Application #2019-ZB-93 – Carolyn Cole, Esq., on behalf of Paul Mayo (Tax Map 408 Lot 30) 45 Dorchester Road

Carolyn Cole, Esq., on behalf of Paul Mayo, has applied for a variance of the requirement in Article II, driveway definition, that a driveway shall not serve more than two lots. The applicant is seeking the variance for his property at 45 Dorchester Road in the Rural District to be able to access a future subdivided lot and use the deeded ROW as a driveway. Currently the ROW is used for access by two other lots.

Attorney Cole reviewed the subdivision history of the former Menard property, noting that the private road was intended to serve as a drive to the back part of what was once a much larger lot. The 1981 plan indicates the purpose of the drive. In the Poages' deed to the property now owned by Paul Mayo, the existing right of way is described and suggests a future house lot. In 1988, Menard reconfigured the subdivision and records indicate that the Curriers and Poages were the intended users of the road. However, in 1987 the Town issued a building permit to the Flickingers that included use of the road as a drive. Attorney Cole concluded that the Flickingers got a driveway permit that was intended for the Curriers and Poages. Jim Poage had raised the issue in a letter to the selectboard at the time, but she could find no evidence that it was pursued. David Robbins concurred.

Frank asked Alan if he had any light to shed on this, as he was on the board at the time. Alan said he could not. Bill asked if the lot existed before zoning and noted that once the Poages bought the back land, their two lots were merged. Paul reviewed that the subdivisions occurred in 1981, January 1988, and July 1988. Zoning was adopted in 1989. Bill concluded that the ordinance was not in place when the subdivision was made. Mike observed that he does not believe zoning applies since when this situation was created, zoning had not been adopted. Frank agreed that this is a lawfully existing, non-conforming use and that the question should be referred to the Planning Board. David said that this conclusion makes sense and that the road was built to serve the lots behind those fronting on Dorchester Road.

Abutter Stuart Cady reported that he had walked the area with Paul Mayo and expressed concern that a drive to a future house could join the private road at a steep, dangerous corner. Paul said he hoped to locate it closer to Dorchester Road to avoid that dangerous area. Frank recommended that Stuart attend the Planning Board session that would address this. Alan advised Paul to arrange for a driveway profile along the center line to show grade.

Deliberations: Frank moved to find that the board believes the application is unnecessary because the three properties existed with access before the adoption of the Zoning Ordinance, and the private road with access to these three properties is therefore a pre-existing non-conforming use. No variance is therefore needed. Mike seconded the motion and it passed unanimously.

Out of deliberations. Frank said that he and David are working on an outline or template to guide the construction of motions.

Meeting adjourned 8:45pm
Respectfully submitted,
Adair Mulligan, Recorder