

Town of Lyme
LYME ZONING BOARD OF ADJUSTMENT
Minutes – September 21, 2017

Board Members: Present - Frank Bowles, Walter Swift, Michael Woodard

Absent: Alan Greateorex, Bill Malcolm

Alternate Members Absent: Dan Brand

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

Public: Sue Ryan, Bret Ryan, Barry Schuster, Aaron Rich, Patience Rich, Nancy Uline, Betsy Uline, Michael Whitman, Mark Puffer, Karen Menge, John Mecchella

Chairman Frank Bowles called the meeting to order at 7:30 pm. The minutes of the meeting of July 20 were approved on a motion by Mike seconded by Walter.

Application #2017-ZB-30, Karen Menge (Tax Map 401 Lot 53.1)

Karen Menge has appealed back to the Lyme Zoning Board a decision of the Lyme Planning Board on July 27, 2017 that the site plan review of May 11, 2017 for Holt's Ledge LLC for the property at 65 Dartmouth College Hwy (Tax map 401 Lot 53.1) was consistent with sections 4.46, 8.27, 8.12, and 8.13 of the Lyme Zoning Ordinance. These are the four sections that the Zoning Board remanded back to the Planning Board at the June 15, 2017 hearing. Frank asked Karen and her attorney, Mark Puffer, if they would accept a board of three, since two regular members and one alternate member are absent and there is a vacancy for a second alternate member. Karen and Mark agreed but asked for advance notice of expected board member attendance in the future, since Karen lives in Los Angeles. Mark Puffer recorded the entire meeting on his device.

Frank introduced the case and noted that at this meeting the board would review the decision about the four ordinance sections only. Mike asked about the presumed date of non-conformity as it relates to sections 8.12 and 8.13. Attorney Puffer said that the ordinance states that it is the date zoning went into effect (1989), but that when portions of such use are discontinued, such as dispensing gasoline, these are no longer part of the lawful non-conforming use. He maintained that if a use did not exist for 24+ months before Bret Ryan's application, it is no longer valid. He continued that after 1991, there was one employee of one business using the site, an equipment repair business.

The Planning Board used 1989 as its benchmark for its analysis. All parties agreed that the gas station function ended by 2009. All parties agreed that section 4.46 does not apply.

Walter asked what the grandfathered non-conforming use was present in 1989. Atty. Puffer replied that testimony on that is contradictory but is based largely on a letter submitted by Phil Elder. Karen said that her brother was a regular customer and that by 1989 Ken Dimick was working there on off-site repair of farm buildings, and Rob Woodward was doing equipment repairs until Ginny Maxfield died in 2012. Phil Elder had left and so did not know what occurred on the site afterwards.

Frank noted that there had been two buildings on the site. Bret added that there had been parking in the back and front of the buildings, and that they had contained offices.

Frank observed that there was not a 24-month period where there was no intent to use the property for commercial purposes.

Bret said that he had checked in with the town regularly during his period of ownership, and has used the buildings to store and maintain equipment used to support his rental business. He said he was using the property in conjunction with his business within 24 months. Atty. Puffer said this was a change of use.

Walter said it is hard to reconcile the terms “commercial” and “business” use. He observed that there was a non-conforming legal use in 1989 and later, although they might be different uses. He thought it sounded like low-impact background use. Bret said he has 7-8 employees who repaired appliances and stored vehicles inside. Walter asked Bret about his intentions when he bought the property. Bret replied that he didn’t know what he would do at the start, but that offices sounded like a better use than an auto repair shop. Walter asked if Bret got any permits when he bought the property in 2013. Bret said he did not apply to make a change right away because he had not yet developed plans for how he would use the land. Bret’s attorney, Barry Schuster, said that there was legal non-conforming use in 2012 that stopped but was resumed by Bret in 2013 within 24 months.

Atty. Puffer said that the previous use was low impact but that a three-story building is now in place. Bret corrected this, explaining that the building is two stories with a basement. Frank noted that the Zoning Ordinance does not speak to the number of stories. Atty. Puffer said that the building is not appropriate under section 8.27, replacement of structures, because what was built is larger than what was replaced. However, he noted that the structures conform to the ordinance in height and setback and are more conforming than the previous ones, and can be allowed to stay. David Robbins noted that the ordinance is written to allow changes to be made to buildings. Atty. Puffer disagreed, and said the buildings should be the same size, but the greater issue is the use to be made of them. He noted that new office buildings are not allowed in the Rural District, although a clinic or day care would be allowed. He said that David did not get approval for his decision to issue a building permit, and that having 7-8 employees on site is not lawful. He added that the steel fabrication business was discontinued. Frank observed that there has been evolving, continuous commercial use of the property. Atty. Puffer said that the owner is not allowed to increase the intensity of use and that there were never 45 employees on the site. Karen said that she did not see continuity of use. Frank noted that use of the lot has evolved. Atty. Puffer asked to submit a binder of material. Frank said that the board could not review such material at the present hearing and would consider it after the opposing side had had a chance to make a presentation.

Atty. Schuster said that Phil Elder’s letter, and those that concurred with it, demonstrate that there was legal non-conforming use of the property that included an equipment repair business of one sort or another. Bret said that the buildings had been cleared out before he bought the property. He described his equipment, which he stores under cover, and said that he thought if he were living next door, he would be glad that the property was not being used for a logging equipment business or a noisy wood-working shop. Atty. Schuster noted that section 8.12 allows a change to another non-conforming use, and that Phil Elder had described the level of traffic and noise in previous years. He said that while there will be more employees on site, there will not be constant traffic in and out of the property. He reviewed the entire list of aspects of intensity of use of the site between previous uses and Bret’s proposed use, concluding that the only visible change is in the number of employees, and that some of the previous uses would be allowed to start again. He said that Bret’s use will have far less impact than what was occurring on the site before. He reiterated that commercial use of the property has been maintained and that the 24-month period was not violated.

Bret said that photographs presented by Karen Menge do not show all the things that were present on the property before it was cleaned up for sale. He bought the property in September, 2013, moved in, and started using the property right away. Walter asked when Bret got a building permit. Bret replied it was in July, 2015, because it took him a while to figure out what to put on the site. He waited for the 30 day appeal period to expire before he started construction. No appeals were made during that time. Atty. Schuster said that the number of activities taking place there in 2010-12 led the Planning Board to conclude that similar non-conforming legal uses had continued. He added that an office use has less impact than a commercial repair facility. Mike observed that the ordinance does not define “commercial.”

Frank asked for comments from the public in attendance. John Mecchella said that when he bought the property at 60 Dartmouth College Highway, he inquired about future use of this property, and was happy to hear that it might be offices, because he preferred that use to the other potential uses mentioned.

Karen said that her information was not referenced by the Planning Board and wants to submit a series of letters. She said that having 45 workers on the site would be a more intense use than what she characterized as a sleepy business with little intrusion, and that she would see parking for 45 cars from her property. Frank reminded that at the previous hearing, she was asked to work with the owner to resolve her concerns. Karen said she did, but that Bret would not change the number

of employees. Atty. Puffer asked the board to accept the evidence he wished to submit. Frank instructed him to put the information, including what Karen wishes to submit, into binders so members can review it and treat the parties fairly. Atty. Schuster said that he had just received the binder but not Karen's information and has not had a chance to review it. David said that seven notebooks are needed, with a copy for Atty. Schuster. Frank offered the same opportunity to Atty. Schuster and Bret. Atty. Puffer said he would also submit a brief to explain his position. Walter said that the two sides would each be given five minutes at the beginning of the next hearing to assert their positions before the board goes into deliberations.

The board voted to continue the hearing to October 19, 2017 at 7:30pm on a motion by Mike seconded by Walter.

Meeting adjourned 9:13pm
Respectfully submitted,
Adair Mulligan, Recorder