

**Town of Lyme**  
**LYME ZONING BOARD OF ADJUSTMENT**  
**Minutes – November 16, 2017**

**Board Members:** Present - Frank Bowles, Walter Swift, Michael Woodard, Alan Greateorex, Bill Malcolm

**Alternate Members:** Dan Brand

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

**Public:** Sue Ryan, Bret Ryan, Attorney Barry Schuster, Aaron Rich, Attorney Mark Puffer, Karen Menge, Barney Brannen

Chairman Frank Bowles called the meeting to order at 7:30 pm. The minutes of the meeting of October 19 were amended slightly to clarify the response to a question to town counsel, and approved on a motion by Mike seconded by Alan.

**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.

Mark Puffer recorded the entire meeting on his device.

Chairman Bowles noted that extensive materials had been provided by both parties' attorneys and invited brief comments or elaborations. Attorney Puffer noted that the structures now on the site conform to the Zoning Ordinance and so the question is the use to which they will be put. He responded to materials presented by opposing counsel on Nov. 7 by noting that the applicant's descriptions of the uses of the property refer to those in the past that he believed have been discontinued. After 1990 there was only a farm repair business operating with one employee. He continued that Bret Ryan's mechanical repair business was different from the farm equipment repair business. He added that before Bret applied for site plan approval, there had been no mention of office space. He thought that the Planning Board erred in dismissing the difference in number of employees on site. He concluded that two office buildings with 45 employees would be a substantial change and that there are no other areas in Lyme like that. Alan Greateorex said that he thought that Loch Lyme Lodge and Camp Pinnacle, also in the Rural District, probably have a similar number of employees. Frank Bowles noted that this was another use that existed before zoning, and reminded all that the Zoning Board cannot use the ordinance to create a taking.

Atty. Puffer said that the Board should look at whether a use has been discontinued and that it is not permissible to use the site for any commercial purpose. He also said that the request to allow the project to remain because it will improve the appearance of the site is not the right test; rather, intensity of use is the proper test. He asked that the Board overturn the Planning Board's decision and offered a suggested motion. Frank and Bill objected to this suggestion but Frank permitted printed copies to be provided to board members. Karen Menge clarified that in a photo that appeared in Atty. Schuster's memo, her family's tractor was incorrectly identified as belonging to the Maxfields. Walter Swift asked whether the business passed to Rob Woodward when Les Maxwell died in 1994. Karen said that it passed to Les' widow and Rob worked there.

Attorney Shuster stated that the property's uses in the 1970s were not irrelevant and that it was an active business. If Mrs. Maxfield had wanted to be able to repair 10-20 tractors on site even after zoning went into effect, the Town would not have objected. He described the building on the site as obviously used as a commercial service building that was suitable for Bret's use as a commercial repair and storage building. He said that there was ongoing business use of the property that was never discontinued except right after Mrs. Maxfield's death, although the intensity of use may have varied over time. He said that the Zoning Ordinance identified Maxfield's as a lawful non-conforming use and that it could be converted to another business use. He continued that the Planning Board had determined the proposed use acceptable and said that it would be better that what it could have been if the old business had been continued and expanded. He referred to John Stanhope's letter and noted that the town tax records refer to the property as a useable business property.

Alan asked if the board considered “commercial” to equate to “business.” Board members agreed and Mike Woodard clarified that there was no definition of the use by the Maxfields at the time because there was no zoning in place that included a definitions section.

Karen noted that there was only one employee who, could not make much noise, and that the proposed use would change the character of that rural area of Lyme, and that her mother had placed a conservation easement on her land to support that character. Alan asked if the easement included an exclusion to allow the sale of farm products, which could have resulted in some commercial activity on that land. Karen said she did not know. David Robbins distributed a letter just received from Robert Stanhope regarding the uses of the Maxfield property, in which he recalled the intensity of commercial use in the past and supported the proposed use.

Deliberations: Bill asked about the source of advice from counsel, cited in the minutes of the previous meeting, and Frank said that it was from the NH Municipal Association.

The Board found that section 4.46 (Conversions) is not applicable to the discussion, on a motion by Frank seconded by Walter Swift. The vote was unanimous.

The Board found that section 8.27 (Replacement of a Non-Conforming Structure) does not apply because the new structures are built to conform to the ordinance. This motion was made by Frank, seconded by Mike, and also passed unanimously.

Walter noted that Attorney Buckley’s advice, cited in the October 19 minutes, reinforced that the time of the Zoning Ordinance’s enactment is the time to use to determine intensity of use. A discussion ensued about the relevance of definitions of grandfathered non-conforming uses, such as cottage industry. While Walter thought they might apply, other members of the board disagreed. Frank reminded that the use of the property was “business” of varying intensity that was not discontinued, and that the Maxfields could have transformed it to a higher intensity use without town approval at any time.

The Board considered section 8.13 (Resumption after Discontinuance) and found that the property was continuously used for business purposes, so the Planning Board did not err in maintaining that business use had not been discontinued for more than 24 months. This motion was made by Frank, seconded by Alan, and also passed unanimously.

Bill moved to affirm the findings of section 8.12 (Conversion of Existing Non-conforming Business Use to Another Business Use) in view of evidence presented to the Planning Board and Zoning Board. Alan seconded the motion. Four members (Frank, Bill, Mike, and Alan) voted in favor of the motion, and Walter opposed it. Frank determined that the motion carried, and asked Walter about his objections. Walter said he thought that the traffic generated and increased number of employees involved with the proposed use represents an increase in intensity of use. He noted that office use is allowed by conversion. Alan pointed out that the statute citation in the minutes is incorrect and should be RSA 674.19, not 647.19.

Out of Deliberations: Frank reopened the motion to accept the minutes of October 19, and they were revised on a unanimous vote to correct the statute citation, noting that the board had reviewed the statutes and confirmed that the revised citation is correct.

Frank thanked both parties for their extensive preparations.

Meeting adjourned 8:43pm  
Respectfully submitted,  
Adair Mulligan, Recorder