

Shutesbury Planning Board Meeting Minutes
October 18, 2021, Virtual Meeting Platform

Planning Board Members Present: Nathan Murphy, Michael DeChiara, Stephen Bressler, Robert Raymond, Jeff Lacy, Deacon Bonnar, Linda Rotondi (arrived after meeting was called to order before the vote on the Greenbaum ANR.)

Guests are Randy Izer, Don Wakoluk, Herbert Gilmore (ZBA), Chuck DiMare (ZBA)

Call to Order:

At 7:02 Deacon calls the meeting to order. The statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by Bonnar.

7PM Public Comment:

Murphy apologizes for not having a draft of the meeting minutes for 9/14/21 and 10/04/21.

Greenbaum ANR:

See related document [212WendellRd.pfd](#)

Randy Izer from Harold Eaton Associates in Hadley has provided the plans. The parcel is owned by Historical Enterprises LLC, with Joel Greenbaum. The property has been in the Greenbaum family for some time, and they have decided they wish to sell. There are approximately 31 acres in the whole parcel. The plans submitted to the board would split this into two lots, one with a dwelling and just over 3 acres and the remaining undeveloped area with just over 28 acres. Currently there is someone interested in the house lot with 375 ft of frontage and 3.057 acres. There is an interesting aspect of the property, due to the relocation of Wendell Road, there is a small parcel of land owned by Peter Gees between the Greenbaum property and the current location of Wendell Road that borders the former location of Wendell Road, designated on the plans as "Former Location of Highway." Lacy notes that he believes this is a two-family home and that the square footage of the lot and the road frontage meet the requirements in the zoning bylaw specified for a multi-family residence. The Planning Board will charge for two buildable lots (\$140).

At 7:13 Lacy Moves– Approve the ANR showing lot 1 and the remaining lot as both buildable - submitted by Historical Enterprises, LLC.

DeChiara Seconds

Discussion: None

Roll Call Vote: Lacy: aye, DeChiara: Aye, Bressler: aye, Raymond: aye, Murphy: aye, Rotondi: Abstain, Bonner: aye.

The motion passes.

Therault frontage query:

Stacy Therault has a frontage question for the Board. Lacy starts - this is a corner lot on Shore Drive (major road on the East Side of the lake) and Pine – which is a minor road. 50' of frontage is needed for this lot to be considered a grandfathered lot, this frontage clearly exists between Shore and Pine. There

has been recent work done on Pine to improve drainage. Lacy states that he believes this meets the prevailing standard for roads to be a grandfathered lot – DeChiara agrees. Lacy notes that even though this lot will meet the requirements for a grandfathered lot, but that other setback requirements specified in the zoning bylaw would need to be met.

Lacy volunteers to write a letter to send to the Building Inspector, Conservation Commission, and Board of Health.

At 7:29 Lacy Moves that in this case for this applicant, Stacy Theriault, the Planning Board finds that Pine and Shore drive were ways in legal and physical existence when the subdivision control law became effective in Shutesbury in April, 1973 which had sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon and served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.

DeChiara Seconds

Discussion: None

Roll Call Vote: Lacy: aye, DeChiara: Aye, Bressler: aye, Raymond: aye, Murphy: aye, Rotondi: Abstain, Bonner: aye.

The motion passes unanimously.

Minutes 9/13 and 10/4:

This agenda item will be postponed until after holding the joint meeting with the ZBA.

Associate members:

This agenda item will be postponed until after holding the joint meeting with the ZBA.

Meet with ZBA on Lake Wyola house height:

At 7:33 the Chuck DiMare calls the ZBA to order. Statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by DiMare. The following three agenda items are from the agenda posted by the ZBA.

Continued Discussion of an Action Plan with the Planning Board for a recommendation for Zoning By-Law Changes re: Lake Wyola District:

DiMare: Suggests that the Planning Board and ZBA take walk together around Lake Wyola with Lacy will lead based on his role as liaison between the two boards. There may be justification for creating different zoning districts with the area that is currently defined as the Lake Wyola district. The walk should be before December 21st or after March 21st. Before winter so there will be time for submitting any bylaw changes to Town Meeting and to allow more time for residents to be consulted and weigh in on the process and any proposed changes to the bylaw.

DeChiara – States he would like to discuss the concept. He is open to a site visit at the lake but thinks first we need to have discussion about what changes are being considered for context.

Lacy – this stems from cases that the ZBA gets from the Lake District. There are three cases [special permit applications] from recent years involving lake front homes that were seeking to expand or build

out within their rights having lawfully non-conforming structures. In all three of those cases, they want to enlarge their home, they want it higher or bigger. In each case a neighbor or abutter comes to the board and is aggrieved because the change may interfere with their view, and they submit negative testimony. For the first two cases, there was compromise reached. For the third case (within the last year), no compromise was reached and the ZBA was divided. Chuck's idea is to let people in the back go up higher. Lacy is more of the opinion that homes on the water should possibly be constrained. There is difference of opinion on the ZBA, but all agree it is an issue.

DiMare – States he is not set in his position and would like to be informed by feedback from residents.

DeChiara – States that he is for listening to residents but stresses the importance of how feedback from residents is gathered. We might need to think of it outside of the people speaking up at the lake and look at it from the whole town perspective. Notes that allowing increased size of structures may result in increased stress on natural resources.

Bressler – Agrees to go on the site visit, cautions against going down a rabbit hole and setting any dangerous precedents.

Gilmore – Asks if it is true that the current bylaw is written so that non-conforming lawful lots cannot build larger than the current existing structure by right.

Note - there is additional back and forth with respect to Gilmore's question and whether there may be an error of contradiction in the bylaw. The text of the bylaw is discussed below.

DiMare – States that our bylaw is constitutional on its face but that there are cases that suggest our bylaw could be unconstitutionally applied. DiMare states that the 28 feet height limits is an established right. DiMare believes that if you are within the setbacks, you should be able to go to 28 feet by right.

Lacy – has reviewed the bylaw and references subsection 6.1-3.D

D. Reconstruction, extension, structural change, or major exterior alteration (collectively hereafter "alterations") to a nonconforming single or two-family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted by right under the following circumstances:

- 1. The proposed alterations comply with the setback requirements, or, if they do not comply, the proposed changes that encroach upon the setbacks satisfy the following conditions:*
 - a. they do not decrease the distance between any lot line and the nearest point of the structure; and*
 - b. the highest point on the roof line of these changes will be no higher than the highest point on the roof line of the existing structure; and*
 - c. the proposed alterations do not violate or prevent compliance with any other applicable laws or regulations.*

There is discussion about whether there are inconsistencies in the above language from the bylaw and the visual examples that immediately follow (6.1-3.D.2). It is agreed that there are not contradictions, but that the language could be modified for clarity.

DeChiara – wonders if there would be any consideration to provide for an increase in height by right that would otherwise constitute an increase in the nonconforming nature of a structure, if the height increase was within a specified percentage of the existing height.

DiMare – States that there are bylaws that do that. Notes that there have been cases where the Zoning Board has denied the applicant going out a foot and a half on each side, which was clearly infringing on the setbacks specified in the bylaw, but notwithstanding there was a clear infringement, the Supreme Judicial Court found in at least two cases that the denials were arbitrary and capricious and voided the Zoning Board decisions. Further, it seems that the court may take a stance against two-acre zoning for a variety of reasons including environmental and social justice concerns. The result may be increased risk of lawsuits files against towns that could expose members of town boards to personal liability.

DeChiara – questions whether there are protections for individuals serving on town boards.

DiMare – States that he has sued dozens of cities and towns and been successful in 90% of they and they are personal liability cases. Zoning Boards don't get hit with cases as much, but they do get cases against individuals. These can come out of federal and state civil rights statutes. Mass General Law CH 12 S11 H and I. Those cases arise out of the zoning cases – they even sue the abutters.

Lacy – Notes that he has been sued personally a number of times and that he hasn't needed to spend a penny to defend himself and that none of the cases have gone anywhere.

DeChiara – States that there will always be pushback against regulations claiming infringement, but that unless it's a free for all, there needs to be a line somewhere specified by a regulation.

Gilmore – Asks if the ZBA could pursue a change to the bylaw, or if the process dictates working with other boards.

DiMare – States that the ZBA could put forward a bylaw change at town meeting, but that he would not be comfortable doing so without the support of the Planning Board.

Murphy – requests that DiMare share the cases he referenced. (DiMare agrees) Lacy has and will share.

DeChiara – Suggests we go on the site visit, regroup jointly to discuss substance, then decide whether to pursue any changes at town meeting.

Lacy – Notes that with respect to issuing a special permit, the ZBA is guided by state law, M.G.L. Chapter 40A, §6, Paragraph 1, and that this is closely mirrored in the Shutesbury Zoning Bylaw, Section 6.1-3, Subsection C. Lacy shares his screen which places these two sections of law side by side. To quote to section from state law, Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension of alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Bressler – Asks DiMare if the Massachusetts Supreme Court is calling into question this kind of state statute.

DiMare – Answers no, but they have criticized the statute, or portions of the statute. The statute is clearly constitutional on it's face, but it's possible to be unconstitutional as applied.

There is some discussion about how applying this law is difficult because “substantially more detrimental” and “neighborhood” are not clearly defined.

DiMare – Notes that providing additional provisions to build up by right may lead to favorable rehabilitation of properties with deferred maintenance or other aspects that are detrimental to the neighborhood.

Lacy – Notes that he has also read some of the case law around this issue and found that in cases where municipal bodies have been overturned in the courts, either the building inspector, zoning board, or planning board has really mucked up. However, if the process is followed closely and good findings and decisions are made, the court does not usually overturn these decisions.

Murphy – Responding to Lacy, says we need to make sure that people serving on our boards that might serve as a Special Permit Granting Authority are well versed in what is required to adhere to the process and maintain public decorum so that we don't bump into any civil rights issues in the application of a decision with respect to a zoning bylaw. There doesn't seem to be an issue with the bylaw itself.

DeChiara – The Conservation Commission and the Board of Health should be kept abreast of these discussions, as building height is a proxy for other encroachments on water and septic, and the lake is a resource that needs to be considered in that regard.

Site visit is set for 11/6 at 1:00 in the beach parking lot. Assuming 2 hours for the visit. Jeff will lead the site visit. Next Planning Board meeting will be 11/8, discussion of site visit with ZBA will be put on the agenda.

Old Business (briefly):

DiMare notes that minutes need to be approved from past meetings. This is not addressed at this time.

Schedule next ZBA Meeting(s)/Site Inspections

The was done above.

Motion to Adjourn:

At 8:37 Herb moves to adjourn.

Lacy seconds.

Discussion: None

Roll Call Vote: Lacy: aye, Gillmore: aye, DiMare, aye.

The motion carries unanimously.

Minutes 9/13 and 10/4:

There are not drafts of these minutes to approve. For the 10/4 joint meeting between the Planning Board and the Select Board we will use the minutes generated by the Administrative Secretary for the Select Board.

Associate members:

Bonnar notes that the situation with respect to finding associate members is unfortunate. (The last two Associate Member candidates were each not approved by a joint vote of Planning Board and Select Board on 10/04/2021.

The Board will send out another Town Announce soliciting Associate Member candidates. Other strategies may be to reach out on social media and reach out to the Lake Wyola Association.

Wakoluk notes potential volunteers are being scared off, same as what happened with the Conservation Commission, and that people are concerned about the precedence that is being set by the Select Board. Also notes that it would be good to have representation from renters on the Planning Board and on Town Boards in general.

Lacy notes that we can recruit associate members by word of mouth. DeChiara noted his distaste about how one of the associate member candidates was asked who they were recruited by.

Regarding the situation with the AG and the new bylaw – Jeff reports that Bob Ritchie’s position was, more or less, that he did not agree with the decision based on Home Rule. There is no appeal mechanism for AG decisions regarding town bylaws, the town would have to re-submit the bylaw through Town Meeting and hope that after clarifying our position with the AG and potentially making some edits, it would this time be approved.

At 8:57 DeChiara moves that Lacy proceed with discussions with Donna MacNicol and Bob Richie about talking to the AG. DeChiara will be included in those discussions.

Murphy seconds.

Discussion – Raymond wishes to recap what the AG did. DeChiara explains that the AG indicated that the Associate Member can only participate in special permits and scratched a portion of the law.

Rollcall Vote: Lacy: aye, DeChiara: aye, Bressler: aye, Murphy: aye, Rotondi: aye, Raymond: aye, Bonner: aye.

The motion passes unanimously.

Unanticipated Business:

None.

Adjourn:

At 8:59 DeChiara moves to adjourn.

Raymond seconds.

Discussion: None.

Roll Call vote: Raymond: aye, Rotondi: aye, Murphy: aye, Bressler: aye, DeChiara: aye, Lacy: aye, Bonnar: aye.

The motion passes unanimously.

Related Documents:

212WendellRd.pdf

Respectfully Submitted by Nathan Murphy.