

Shutesbury Zoning Board of Appeals Meeting Minutes
August 21, 2019 Shutesbury Town Hall

Zoning Board members present: Chuck DiMare/Chair, Jeff Lacy, and Andy Berg

Zoning Board alternates present: Herb Gilmore

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Gary Hirshfield and Steven Mikolajczuk

DiMare calls the meeting to order at 7:25pm.

Berg moves and Lacy seconds a motion to approve the 6.3.19 meeting minutes; the minutes are unanimously approved as presented.

The Board acknowledges the need for one more alternate. A quorum of two is needed for meeting purposes and three members are needed to act on a special permit or variance.

Case 19.004 Special Permit 186 West Pelham Road/Hirshfield-Compagnon:

DiMare calls the special permit public hearing to order at 7:30pm and reads the public legal notice into the record (see file). For the record, DiMare conducted a site visit inspection and Berg observed the site from the road. To confirm that the proposed project requires a special permit, Lacy cites the *Town of Shutesbury Zoning Bylaw* Section 4.2-2B.2 Interpretation of Dimensional Requirements “Non-habitable detached or attached accessory structures which cannot meet the setback requirements of this Subsection 4.2-2B may be allowed by Special Permit from the Zoning Board of Appeals, provided that the Board finds such structures to be in harmony with the residential development in the zoning district and not detrimental to the neighborhood.” DiMare reads the applicant’s “Justification for Special Permit” into the record: “We would like to build a 24x28 attached garage. It would be consistent with the purposes and requirements of land use and overlay district, bylaw provisions, and other applicable laws and requirements. It would be less than 2 stories, and painted to match the house. 75% would be over the existing driveway...it will be in harmony with the existing landscape. It will not adversely affect availability or capacity of public or municipal services.” (See file) Gary Hirshfield, citing a photo of the proposed garage site, explains that the building will be 28’ long and 24’ wide. Lacy confirms with Hirshfield that the house meets the required setbacks and that the proposed garage is the only non-habitable structure within the setback. Hirshfield confirms for Berg that the garage will be ~10’ into the setback. DiMare notes that the area between the abutter’s and Hirshfield’s sites is thickly wooded; it does not appear the garage will cause an inconvenience to the nearest abutting neighbor. Hirshfield explains that the proposed site is the only practicable location: the east and south sides have porches and the west has windows that would be blocked by a garage; the site is wooded on all four sides. Hirshfield to DiMare’s question about trees: those with 6-8” diameters and affecting the garage site will be taken down; one tree on the hill near the property boundary may eventually come down. DiMare, to Gilmore’s question, explains that abutters are notified directly, the legal notice is published two times, and the notice is posted in Town Hall and on the website. It is noted that no abutters are in attendance. Hirshfield notes that he has not received any negative feedback from his abutters. The Board has no further questions for the applicant. Berg affirms that the application meets the special permit criteria. Hirshfield confirms that there will be no living area within the garage structure. DiMare: the ZBA is tending to look favorably on this application. Lacy agrees to draft a special permit decision. At 7:58pm, all ZBA members agree to close the public hearing for Case 19.004 and reconvene on 9.5.19 at 7:30pm for deliberation and a decision.

Education and Guidance:

Steven Mikolajczuk requests guidance on the use of two properties: 32 Lake Drive, a lakefront lot with a cabin, and vacant Lot 123 Lake Drive located about 150' across Lake Drive from #32; the lots are not contiguous in any way ("Mortgage Inspection Plat" for 32 Lake Drive dated 6.7.19 and "Mortgage Inspection Plan for Lot 123 Lake Drive" dated 8.12.19). Mikolajczuk explains that he bought Lot 123 for parking and asks if it is possible to build a garage to store a car/boat on this lot. The Board cites and refers Mikolajczuk to portions of *The Shutesbury Zoning Bylaw*: Section 3.3 "Accessory Uses and Structures", the definitions of "Accessory Structure", "Accessory Non-residential Structure", "Accessory Structure for Residential Use", "Building Height", "Structure" and "Office", Section 4.2-1 "Dimensional Table", Section 10.3-2 "Variances", examples of additions (page 26), and Section 6.1-3D "Extension or Alteration". It is noted that Lot 123 meets setback but not frontage requirements. Lacy explains that accessory structures must be on the same lot as the principle use, however, per State law, a single family dwelling could be constructed on Lot 123 because State law relieves area and frontage requirements. Gilmore notes that a garage does not require any inputs, i.e. well and septic system. Lacy: a garage with a "business use" office could be granted by Planning Board special permit. DiMare and Lacy explain the challenges to granting a variance. Lacy and Berg note that it could be argued that a variance be granted from the requirement that an accessory use be on the same lot as the principle use and that, due to the constraints of 32 Lake Drive's lot, a garage cannot be constructed there. DiMare reminds Mikolajczuk that the purpose of this time with the Board is only for education and guidance. Potential ways to extend the footprint of the house on 32 Lake Drive are considered. DiMare encourages Mikolajczuk to confer with the Franklin County building inspector for further guidance.

Old Business:

1. DiMare, noting that the special permit application fee is \$300, reports that the cost of the legal notice for Case 19.004 was \$325. DiMare and Lacy, noting that including a bylaw citing is helpful, consider what language is required and which wording could be eliminated. For future legal notices, DiMare will reduce the wording to achieve an ad cost below \$300.
2. DiMare will attend the public comment portion of a future Select Board meeting to request special recognition of Tom Williams' long service to the Town.
3. As planned during the 6.3.19 meeting, DiMare signs the "Opinion regarding interpretation of language in the Zoning Bylaw of Shutesbury Section 8.10, Ground-Mounted Solar Electric Installations". Berg will post the document on the Board's webpage.

At 9:06pm, Lacy moves and Berg seconds a motion to adjourn the meeting; the motion passes unanimously.

Respectfully submitted,
Linda Avis Scott
Land Use Clerk