

Shutesbury Zoning Board of Appeals Minutes
DRAFT Minutes – 06/28/2023
(Approved – 11/02/2023)
Virtual Meeting

Meeting Start: 7:00pm

Members Present: Jeff Lacy, Mary David, John Aierstuck

Staff Members: Carey Marshall (LUC)

Other Present: Mark Wightman (Applicant), Jon Thompson, Jeff Weston, Therese Ross (Applicant), Satchel Douglas, Jesse Brekelbaum, and all other unidentified individuals.

Meeting is being recorded

Chair's Call to Order at 7:03pm

Public Comment

None

Education and Guidance

None

01/26/2023 Minutes

Marshall shared the 01/26/2023 draft minutes for ZBA to review via screenshare.

Motion: Aierstuck moves to approve the 01.26.2023 minutes, David seconds. Vote: Aierstuck- Aye, David- Aye, and Lacy- Aye. *The motion carries.*

New Associate Member

Lacy reached out to Jon Thompson asking if he would be interested in becoming an associate member for the ZBA; Thompson agreed. Lacy informs that the official appointment will need to be done by the Select Board. Thompson was the Chair of the Shutesbury Planning Board (PB) when Lacy first joined in 1996. They worked together for many years on both the PB and ZBA, and ran the Old Town Hall Committee together. Thompson is a carpenter and is currently an Amherst Building Inspector but will be retiring soon.

Thompson introduced himself to the ZBA. He shares that he is also responsible for being the Zoning Enforcement Officer in Amherst resulting in him being knowledgeable in both writing, reviewing, and enforcing zoning laws. He is happy to be joining the ZBA and confirms he will be retiring from Amherst as of September 1st, 2023. He served 15 years on the PB; 7 years were as Chair. In the past, he had argued for a case before the ZBA for a construction project being done by Lake Wyola; due to this, Chuck DiMare, former ZBA Chair, asked him to join. He served on the ZBA for 10 years but left his position as his career in Amherst had grown a larger work load. He believes having a builder perspective is great to have on the board specifically

when applicants may believe the plan their presenting is the only way the project can be done; builder perspective have the ability to suggest other plan designs when/if needed. David and Aierstuck have no questions for Thompson.

Motion: Aierstuck moves for ZBA to recommend Jon Thompson as a ZBA associate member to the Select Board, David seconds. Vote: Aierstuck- Aye, David- Aye, and Lacy- Aye. *The motion carries.*

Jeff will reach out to the Select Board to schedule the appointment of Thomson as an associate member

Unanticipated Business

Lacy's Future Departure – Lacy announces that he will be moving out of Shutesbury and into Conway, Massachusetts as soon as Fall 2023 or as late as Spring 2024. He plans to join the PB and ZBA of Conway. He is working towards getting the ZBA fully functional with members and associates; recommended all members be on the lookout for potential new members. The ZBA can have up to three full members and two associates members; ideal in this case. A new Chair will need to be voted in. David asked if he plans to keep consulting for Shutesbury. Lacy shares that he consults for many towns in Massachusetts now that he is moving, he could potentially but has not thought about it.

This year, PB was served with a complaint from W.D Cowl about the Solar Bylaw Revision that was passed at Special Town Meeting and he plans to still be involved in that. He has a meeting with Town Counsel, Donna MacNicol on Friday where he is going to inform her of this situation and ask she pay attention to the ZBA; keep an eye on how things are going and maybe join a few meetings. ZBA matters are all regulatory and are subject to state law, specifically Chapter 40A. He and Thompson know these regulations well due to their profession but believe MacNicol can help once he has left.

Lacy understands that there is a local attorney named Michael Pill, who has expressed some interest in joining the board. Pill is experienced, litigated, and has clients in town some times. If is still interested then ZBA can discuss that later on. He recommends that once he leaves, a member from the PB should also join the ZBA as it is a great conduit of information between two boards that should be work together; Lacy has been doing this for 10 years.

Aierstuck asks that a Chair would need to a full member of the board and not an associate. Lacy confirms that is correct. Aierstuck understands this may be a premature question, but asks if Thompson would consider being a member and not an associate. Thompson states that he would not want to the Chair. Lacy admits that between 27 years on the PB and 10 on the ZBA he also never wanted to be Chair until he had to be.

Wightman Variance Public Hearing for 18 Leverett Rd/ H-151 (7:30pm)

Wightman introduces himself to the ZBA and shares that he has been a land owner in Shutesbury for 25 years and has enjoyed fixing properties and making them into homes.

Lacy summaries that this project was before the PB where he did not vote on because of his role as Chair of the ZBA as that is where this project seemed to be headed for. This application is for an Open Space Design project for an 18 acre lot that has an 800ft long and narrow path leading North to enter the property; then opens up to the remainder of the parcel. Since the narrow pathway is the only entrance to the parcel, it will have to be where the driveway is placed. Due to the nature of this, placing a driveway that is compliant with the regulations would require 15ft setbacks on either side and to be 12ft wide. This would mean it could not reside on the current alignment and a new one would need to be created resulting in a lot of alteration to and around the 800ft pathway. Due to this aspect, the PB decided this part of the application would not be approved and require the current alignment be approved by the ZBA before the project could start. These requested changes require two variances from the ZBA. Wightman thanks Lacy for presenting the project.

Jeff Weston, PB Member, adds that a neighbor was in attendance at one of the public hearings. The neighbor expressed concern over the driveway as it would invade some privacy due to some bedroom windows being in close proximity to the driveway. In response, Wightman has offered to pay for arborvitaes to be placed along the driveway and between their home to provide privacy or \$10,000 if they wish to complete this vegetated barrier project themselves. The neighbor agreed with this negotiation and appreciated his generosity. Wightman clarifies that there was a question of whether he would still offer this negotiation if he were to keep the current alignment and confirms he is. He is still offering \$10,000 worth of arborvitaes to be placed wherever the neighbor believes they as best fit and the option of having them placed on his property if he wishes to have control of their maintenance.

Wightman states the pathway is 150ft from the road to the back of the neighbors to where it then opens up therefore the entire driveway doesn't need to be increased in width; just the first 150ft. Part of the pathway moves around a tree with a stone wall in close proximity, in-between the wall and tree is roughly around 9 ½ ft. Wightman suggests including a condition in the permit that would state the canopy of the tree line surrounding the pathway would need to be maintained either at a specific height or enough to allow emergency vehicles to move without disturbance. Lacy agrees and asks if Wightman is able to complete this maintenance while the project is in development before being sold. Wightman confirms. Weston summaries that PB was amenable to the narrow driveway because the project is for a single family home; traffic would be acceptable for a small slimmer driveway as such.

David asks if Wightman can provide more detail about the turn way driveway. Wightman explains it will be a hammerhead driveway to allow for future occupants or emergency vehicles to have an easier ability to move/turn around vehicles on the property. Aierstuck shares his experience walking the property and agrees with the placement of the driveway. One of the abutters has not commented on this project but Wightman believes this is do their ongoing agreement which allows the neighbor to drop leaf litter, grass trimmings, etc. onto his property. Wightman plans to, if the permit is approved, contact both neighbors during the appeal period to confirm there are no longer outstanding issue with his project.

Aierstuck asks how PB decided 9ft is an adequate width. Wightman summaries that PB understands that since it will only be a single family home there won't be a lot of traffic flow, a

second turn around could be added halfway through the driveway if needed and once past the tree is a straight path to where the home will be located.

Jon expresses concern over the 9ft width and the close proximity of the driveway to the neighbor's garage that also has a patio behind it. He asks how snow would be plowed using this driveway. Wightman states that the snow would need to be plowed 75ft up the driveway to where the area opens wider. He talked to Leonard Czerwonka, Shutesbury Fire Chief, whom also expressed concern on how a fire truck would navigate properly on a driveway as narrow as 9 ft wide. He adds that ambulances are 10ft wide as well. Wightman was unaware ambulances were 10ft wide as he believes no vehicles were allowed to be larger than 8ft. If ZBA does not approve of the 9 ft wide driveway then he will have to go back to the PB to rediscuss the 12ft wide driveway. Lacy states that even though the driveway is 800ft there will be a turn away, the slope is less than 3% and it will be straight line to the home. The variances would only be applied to the first 100 – 200ft of the driveway. He measured his truck that he uses for plowing and the wheel base is about 6ft 9in. He also measured one traffic lane on Leverett Rd which was 9ft 6inch. He notes that highway roads are 12ft wide and isn't sure how it came be a standard for driveway width in their bylaw; believes it was incorrectly carried over.

Jon shares that the Fire Chief in Amherst has sent him charts of emergency vehicle sizes: ambulances are 9ft wide overall and firetrucks being 9ft 9inch wide overall (including mirrors). Wightman states that vehicles can't have a larger wheel base than 8ft and since the width in including the mirrors then the 9 ½ should be amendable and with the canopy being maintained so vehicles wouldn't be disturbed.

Lacy breaks down the variances being requested; new alignment and reducing the driveway to 9ft in a small section. The alignment is a small request that ZBA seems to be amenable to this request. As to the 9ft wide driveway, he recommends ZBA considering making the driveway 10ft wide instead. Wightman would be amendable to this decision and could push back the stone wall that is away from the west side neighbor that is already very close to the proposed driveway. Lacy informs Wightman that would require for him to go back to PB to amend his special permit to say 10ft wide driveway instead of 9ft. Wightman understands.

Lacy explains that ZBA has a 100 day period to deny or approve a permit from the day an application is submitted. Today marks the 68th day but if they were to approve the permit today than they would have 14 days to sign a permit. He states that if the board votes tonight then he will draft a permit based on what he believes the board's censes is. Aierstuck believes that the addition 1ft to make it 10ft would be an amendable compromise, would not greatly disturb the historical stone walls and provides more comfortable safety measures in terms of vehicle travel. David agrees with Aierstuck's comments. Wightman understands agrees with their comments.

Lacy shares that one condition that he would add to the permit is to have mitigation to reduce the water flow into the west side neighbor's driveway. The condition would be to place a small berm on the driveway to keep the water from entering neighboring properties. Wightman agrees and notes that on his plans that water must go down the driveway therefore this condition is not any issue. Lacy will draft a special permit decision for ZBA members and Wightman to review for any additional or the removal of any conditions.

Motion: David moves to close the Public Hearing for the variance on H -151 on Leverett Rd, Aierstuck seconds. Vote: David – Aye, Aierstuck – Aye, and Lacy – Aye. *The motion carries.*

Motion: David moves to table discussion for the variance special permit for H -151 on Leverett Rd to allow time for Lacy to draft it and to be voted on at their next meeting, Aierstuck seconds. Vote: David – Aye, Aierstuck – Aye, and Lacy – Aye. *The motion carries.*

The next meeting will take place on July 13th, 2023 at 5pm.

Ross Site Plan Review Public Hearing for 530 West Pelham Rd

The project was applied for by Valley Solar on the behalf of Theresa Ross for the property on 530 West Pelham Rd. The application is for a ground mounted resident solar project; panels will be freestanding in backyard and not on the roof. ZBA members confirm they have visited the site.

Brekelbaum shares the site plan for 530 West Pelham Rd for ZBA to review via screenshare. He describes the project as being a 24 panel ground mount array which fall under section 8.10 – 2 of the Shutesbury zoning bylaw; site plan review required. The panel will be 168ft away from the road, 50ft 1inch from the plot line to the North, 133ft from the back lot line, 109ft 9inch from the south lot line and 28ft 2inches from the main dwelling. He believes that since it is a 168ft from the road and in a slightly forested spot then it shouldn't be visible from the road. A wetland delineation was done on the property and it was concluded that the project was 116ft away from the closest point of the wetland identified. The wetland delineation was completed Ward Smith from the Wendell Conservation Commission. David adds that the building permit was signed off by the Shutesbury Conservation Commission, SCC.

Lacy asks if it was an isolated wetland or a connected wetland. Brekelbaum states that it was an isolated wetland that Smith quoted it as 'by far too small to qualify as Land Subject to Flooding'. Lacy asks if it less than 1,000 sqft. Brekelblum confirms it was and states the other important qualification it didn't have to qualify was to that the area must contain a quarter acre ft of water to an average of depth of 6inch at least once per year.

Brekelbaum explains that the panel is 14ft by 38ft and faces east to west. The construction will be done using helical piles (ground screws). He believes is less invasive as they won't have to use large augers and concrete. The project would use 6 helical plies to complete the project. The final height of the panels will be 96.25in which is about 8ft to 11ft in case they want to raise the Leading Edge Height. Brekelbaum shares a photo of the site for anyone who was unable to visit the property.

Lacy asks if the array produce twice as much electricity than the home uses. Brekelblum states it would not and that there are some limitations on the irradiance on this site due to the surrounding forest; they are below the 100% mark. Aierstuck asks where the wetland fall relative to the outbuilding on site. Ross states that the wetland is to the east of the outbuilding Aierstuck is inquiring about. Aierstuck recalls viewing the flagging and asks if it will be taking over some of the garden he saw. Ross confirms that they plan to remove the raspberry patch he saw to make

room for the panel. David asks what the trench will be re-seeded with. Brekelblum confirms it will be re-seeded with grass. The trench will be 24 inches wide and 18 inches up to the conduit. Weston has worked with Valley Solar before and commends their work.

Aierstuck agrees to draft the Site Plan Review Permit for 530 West Pelham Rd.

Motion: David moves to approve the approach outline by Lacy for this permit, Aierstuck seconds. Vote: David – Aye, Aierstuck – Aye, and Lacy – Aye. *The motion carries.*

This discussion will continue to their next meeting on July 13th, 2023 at 5pm.

Motion to Adjourn: David moves to adjourn, Aierstuck seconds. **Vote: David – Aye, Aierstuck – Aye, and Lacy – Aye. *The motion carries.***

Meeting Close: 8:52pm

Next Meeting: July 13th, 2023 at 5pm

Documents Used

- 530 West Pelham Rd Site Plan Review