

## **Shutesbury Zoning Board of Appeals**

Minutes – July 8, 2024

Approved – August 5, 2025

*Virtual Meeting*

**Board Members Present:** Jon Thompson, John Aierstuck, Jeff Lacy

**Board Members Absent:** None

**Other Staff Present:** Jeff Gougeon (Building Inspector)

**Others Present:** Tom Siefert

**Call to Order:** 11:05am

### **17 Leverett Road Accessory Building Concern**

Thompson notes that the ZBA is meeting because the property at 17 Leverett Road has had an addition put on to a pre-existing non-conforming single family home. A building permit had been issued by the FRCOG inspection services in error because the project should have first been approved by the ZBA under a Site Plan Review. The goal of this meeting is to find a way forward for this project and to define a process for the ZBA and FRCOG going forward that will avoid similar situations in the future.

Lacy notes that Jim Hawkins has indicated in the past that Shutesbury's Zoning Bylaw is quite complex. Lacy thinks that would mean that the Building Inspector would be careful in reviewing permit applications in town and consult with the ZBA or Planning Board when the need arises.

Aierstuck asks if this kind of a situation has happened in the past. Lacy indicates that it has and he acknowledges that building inspectors like FRCOG's who have to cover 17 towns are faced with a difficult situation.

Lacy thinks the building inspector should stop work until the ZBA completes a Site Plan Review.

Thompson notes that there appears to be no plot plan for the property, though there are building plans and a permit application for solar. He checked the assessor's GIS system for setbacks of the current building, which is at 14 feet from the property line. Jeff Gougeon notes that the addition is being built in the same location as a previously existing garage so it is not a new setback. Lacy points out that the Town Center zoning requires a 20-foot setback from property lines. He adds that the Zoning Bylaw says that accessory apartments must conform with side and rear setback requirements but it conspicuously leaves out the front setback. He says they did that because so many houses are so close to the road. Thompson says that it therefore sounds like setback is not an issue. He raises the question of frontage required and notes that it is the same in

Town Center as in other districts. Lacy observes that frontage for accessory apartments is also left out of the bylaw and only total area is specified, at 45,000 square feet.

Aierstuck asks if the parcel has sufficient area to be compliant. Lacy thinks it does and Thompson agrees, noting that the property goes far back from the road. Lacy explains that the reason a frontage setback was not included in the amendment to the Zoning Bylaw in 2008 was because so many houses were originally built without the currently required frontage that the Planning Board did not want to make things difficult for those property owners if they wanted to build accessory units.

Thompson asks if a site plan review was part of this application process. Gougeon explains that there was no site plan submitted, though one should have happened. He says that no site plan was submitted because it was being built on the previous garage footprint. Lacy says that a site plan review would still be required in that situation.

Aierstuck asks about the height of the structure. Thompson notes that zoning does not address height; that would be a concern for the building code. Gougeon confirms that the structure is under the height requirement of the building code but that the drawings are not the clearest he has seen. Thompson agrees.

Gougeon explains he did not do the plan review on this; he signed off on it because it was in their system as ready to issue. He reports that Jim Hawkins has issued a stop work order while the ZBA does its site plan review. Thompson regrets doing that but he agrees that it is the cleanest way forward. Gougeon confirms that there was an oversight on the Building Inspector's part but the work should pause while the review is conducted. It looks like there should be no problems with setbacks because it is in the footprint of a pre-existing structure.

Thompson asks Gougeon to report back where Hawkins is on this because Hawkins informed Thompson that he had sent a message to the home-owner, but Hawkins did not send that message to Thompson or the ZBA. Thompson would like to know where the inspector has left things with the owners. Gougeon states that Hawkins said they can rescind the permit for now so the ZBA can perform the site plan review and then the inspectors will go from there. He will contact the owners and explain what they are doing and why.

Lacy notes that the housing bond bill in the state legislature includes a definition of accessory apartments that would cover this project and, if it passes, the state law would take precedence over the town's Zoning Bylaw where the two conflict. The state law would allow an accessory unit to be half the gross area of the principal building or 900 feet, whichever is smaller, which could effectively increase the Town's 800-foot requirement to 900 feet, and it says localities cannot require owner occupancy, which differs with the Zoning Bylaw. He urges the Board to

ensure its decisions align with the bill because he is sure it is going to pass. Thompson asks if the legislation is retroactive. Lacy says he believes that if you are in the middle of a process and the law changes, you have to change with the law.

Thompson notes the owners live in the property now, so the piece of the bill that might have an effect is the size of the unit. Gougeon reports that the unit is 840 square feet to the outside and the bylaw says 800 square feet of floor area, so this is right on the edge if not within the allowed amount. Lacy points out that the bill specifically refers to heated area. Gougeon says that his calculation of the square footage did not include decks, but he did not include the second floor, which may put them over. Lacy states that this is why the Board would want to do a site plan review, as well as to ensure it aligns with other requirements of the Zoning Bylaw.

Gougeon asks if the lot has three parking spaces. Lacy is not sure and Thompson says it is difficult to say during construction.

Lacy expects to address all of this in the site plan review process. Thompson thanks Gougeon. Lacy confirms that FRCOG will rescind the permit and instruct the applicant to come to the ZBA for site plan review.

### **ZBA Vacancy**

Thompson talked with Nathan Murphy about getting a Planning Board member to join the ZBA. Murphy indicated that there might be some interest. Thompson will follow up with him on that.

Lacy asks if Thompson spoke with Tom Williams and Thompson says he has not because Williams has indicated he is fully retired and moved out of town and so not likely to be interested. Lacy and Thompson speak highly of Williams' past service on the ZBA and the Planning Board. Lacy asks for Thompson's permission to try speaking with him anyway and Thompson says he can certainly try.

### **Unanticipated Business**

#### **6 Kinder Lane**

Thompson notes that the owner of the home at 6 Kinder Lane, Edith Hunsberger, contacted the Planning Board and the Planning Board has passed her email on to Thompson. Hunsberger inquired about making the pre-existing apartment in the basement a legal accessory apartment. Thompson researched the assessor's information on the property and the lot is 15,000 square feet, so under the required size. It also does not have the needed setbacks at side and rear. He informed her that for those reasons it is unlikely the ZBA would approve it and she has not

responded. Lacy suggests that the email exchange go into the ZBA's records as education and guidance and for future reference in case the owner builds the apartment or tries to build it. Thompson notes that the apartment is already there and he thinks the original owner of the house, Howard Kinder, built it.

Thompson did speak with the outgoing Land Use Clerk, Carey Marshall, about the Board's records, which are still kept in paper only, with nothing digitized. Currently the paper records stay in the filing cabinet drawer at Town Hall until the drawer is full and then they get boxed up and moved to Old Town Hall.

### **59 Shore Drive**

An existing cottage on the property that the owner would like to tear down. They have applied for a building permit. Thompson is not sure if FRCOG has denied the permit but he has seen the plans. Kuhn-Riddle has designed a large house to go on the small parcel. Thompson is not sure about the setbacks but the house is 25 feet from the lake and the parcel has only 100 feet of frontage, which would make it impermissible. Lacy notes that the owners would need to get a Special Permit from the ZBA. Thompson agrees and notes he is unsure what Hawkins has communicated to the owners about how they should proceed. He would like a clearer process of communication with the Building Inspector going forward. Thompson notes the house would also be a two-story structure, so it would be taller than the flat-roofed, one-floor cottage it would replace. Lacy suggests that when situations like this come up, Hawkins reviews the scenarios in the Zoning Bylaw to determine if the project is allowable by right—in which case he can simply issue the Building Permit—or if it is not allowable—in which case the owners would first need a Special Permit from the ZBA. Lacy would like Hawkins to direct owners seeking to undertake a project that is questionable to attend a ZBA meeting to discuss it during the Education and Guidance segment of the agenda.

### **585 Wendell Road**

The owner sought a Building Permit to put an extension on an existing small, circa 1970 wooden shack that is on the property. Hawkins rejected it because it appeared to be an accessory apartment and so would need to go before the ZBA. The owner has asked to appeal Hawkins's decision to Carey Marshall because it would not be an accessory apartment. Lacy notes that the ZBA is the authority to whom the Building Inspector's decisions can be appealed and that there is a process for doing that. In his experience, they have only ever had one appeal request and in that case the Board overruled the Inspector. Lacy suggests the applicant either follow the appeal process or apply to the ZBA directly to seek a Special Permit. Thompson will follow up with the owner with those suggestions.

The Chair recognizes Tom Siefert who asks who is currently serving on the ZBA. Thompson answers that he is a full member and acting chair and John Aierstuck is a full member and Jeff Lacy is an associate member. The Board needs a unanimous vote of three members to issue regulatory decisions and if there are not three full members, the associate members can be activated. There are openings for one full member and one more associate member. Thompson says that this is to ensure that if there is a conflict of interest there are still enough people to issue decisions.

Siefert notes that 59 Shore Drive has been actively before the Conservation Commission for about a year or more now and the existing property has already been demolished. Thompson notes that there is not a great deal of communication between boards and committees in Shutesbury, which is regrettable. Lacy points out that the ZBA cannot issue a Site Plan Review on a property that involves changes that impact septic and water until after the Board of Health has issued its own septic and well permit. Lacy notes that 59 Shore Drive has been before the ZBA in the past and there may be old files on the property. He will go back and look because he believes they came before the ZBA for education and guidance.

Thompson asks Lacy to put the files he has on his computer on a thumb drive and get that drive to Thompson. Thompson also asks for the electronic template for Special Permit and Site Plan Review Decisions. Lacy will do so and he offers to continue writing the Board's permits, even if he is not part of the decision-making process. Lacy does not think the chair should also have to take on the task of writing permits and Thompson agrees.

Thompson reports that he and the chairs of the Planning Board and Conservation Commission interviewed someone who has applied for the Land Use Clerk position. He is a reporter and published author, though no experience on any of these kinds of boards. Thompson's sense was that the Town will offer him the job. Lacy recollects that Linda Avis Scott was the gold standard when it came to clerks and he expresses frustration with retaining Land Use Clerks. He notes that in Charlemont there is a Secretary to the Boards who serves all the boards, including the Select Board, which makes it a full-time position that someone is less likely to leave. He thinks the Land Use Clerk position is not enough of a job to keep people very long. Thompson recalls that Scott had been clerking for the Conservation Commission and that when he was clerking for the ZBA and serving on it he found it too much work and so he suggested bringing Scott onboard for the ZBA as well. The Planning Board then also took her on as clerk. It is very difficult to serve on a board and have a position as an administrator busy taking minutes. Thompson notes that Charlemont might be able to make that work because they likely have less that comes up than Shutesbury, especially the Conservation Commission, because of the lake. Thompson notes that the applicant for Land Use Clerk seemed to be planning to do it for about five years.

Aierstuck asks another meeting date should be set at this point. Thompson thinks that an application would need to be submitted first.

**Adjourned:** 11:49pm

**List of Documents Used:**

- Building plan for 17 Leverett Road
- State housing bond bill
- Assessor's records for 6 Kinder Lane
- Assessor's records for 59 Shore Drive