

Shutesbury Zoning Board of Appeals Meeting Minutes  
April 20, 2017 Shutesbury Town Hall

Zoning Board members present: Chuck DiMare/Chair, Tom Williams, and Jeff Lacy

Zoning Board alternate present: Andrew Berg

Staff present: Linda Avis Scott/ZBA Clerk

Guests: Nick Rhodes, Ruth Flohr, and Charles Bado

DiMare calls the meeting to order at 7:04pm.

Berg moves to approve the 1.9.17 meeting minutes as presented; Williams seconds the motion that passes unanimously.

In response to the 4.10.17 Select Board letter, DiMare and Berg state their willingness and availability to serve another three year term.

The Board notes that expansion of the square footage for accessory apartments is not on the 2017 Annual Town Meeting Warrant.

484 Pelham Hill Road/Lot O74: Nick Rhodes is seeking guidance on the permitting process for an accessory apartment. Per Rhodes, sale of the 11.83 acre lot is contingent upon receipt of a building permit; the plan is to construct a three bedroom single family home with a one bedroom accessory apartment above the garage; home will be owner occupied. Site plan is reviewed; driveway is 800' in length; well is to be installed and septic inspection completed. Per ZBA guidance, a Site Plan Review application is required. Rhodes expects to be the owner by the time the Site Plan Review application is made.

Citizen Petition to Amend Zoning Bylaw: Per Lacy, the Planning Board will hold a public hearing on 5.4.17 at 7:30pm on the proposed amendment that will make every increase in building height in the Lake Wyola District require a special permit. Lacy: currently, an increase in height to a non-conforming structure, if it is entirely within setbacks, can be done "by right". Lacy notes that he has conferred with Donna MacNicol/Town Counsel and refers to the Branson case: this relevant case may mean that even a home, in the Lake District, with no setback encroachment and the proposed height increase meets all requirements, would still require a special permit because the small lot size would make it non-conforming. Lacy: it can be understood that some residents have no recourse for nearby height increases. Williams: such a matter should be publicly heard. Williams moves the ZBA send a letter to the Planning Board stating that the ZBA is in favor of the proposed citizen petition bylaw regarding height increases in the Lake District for the reason that the ZBA feels citizens should be heard relative to height changes within the Lake Wyola District. Berg seconds the motion. Williams, DiMare, and Berg vote in favor of the motion; Lacy abstains.

Case 17-002 12 Old Egypt Road Site Plan Review/Flohr: Note: During the 1.9.17 meeting, Lacy indicated his intention to recuse himself from this case. DiMare: via her Site Plan Review application, Ruth Flohr is seeking approval of an accessory apartment located within an addition

completed in late 2015-early 2016. DiMare and Berg inspected the premises on 4.15.17. Referring to the site plan, DiMare and Berg concur that the total square footage for the accessory apartment is 882 sq. ft. Charles Bado/contractor agrees: 880 sq. ft. The current zoning bylaw limit for an accessory apartment is 800 sq. ft. Bado: per Jim Cerone/Franklin County Cooperative Inspection Program (FCCIP), the presence of a kitchen requires approval as an accessory apartment. Per Bado, a building permit for a one bedroom addition was issued in October 2015; the notes for the application did not indicate that the kitchenette was not existing. Bado: between the issuance of the permit and the start of construction, it was decided to leave the bedroom in its original location and build an addition with a kitchen; they did not go back to FCCIP as a kitchen was always a part of the plan; the overall scope of the project was not changed; the work is complete, inspections and signoffs are done; there was no specific discussion about plans for an accessory apartment. Bado: the pending sale of the property is contingent upon formal approval of an accessory apartment. DiMare: there is presently a door between the two spaces; if there is no lock on this door, it is one house not an accessory apartment. DiMare: an accessory apartment has a kitchen with a stove; without a stove, it does not meet the definition of an accessory apartment. Bado: the requirement is for two means of egress that are located as far apart as possible; that is why, if there is to be an accessory apartment, the door cannot be locked – it is needed as a means of egress; the building inspector requires that the door between the two spaces not be lockable. DiMare: the problem is that the square footage is greater than 800 sq. ft. therefore a variance demonstrating a hardship in soils, shape, and/or topography would be required. DiMare asks Lacy if the Planning Board is likely to recommend an increase in the square footage of accessory apartments to 900 sq. ft. Lacy: in general, the Planning Board likes accessory apartments as a housing form. Williams asks if there is some way to condition the accessory apartment. DiMare: it is likely that the square footage will be increased to 900, this Site Plan Review application could be withdrawn and the future owners could return for Site Plan Review. Bado: an affidavit for the unlocked door is required. It is noted that the building inspector is the enforcement officer. Bado: Cerone would view the structure as a single family home with two kitchens. Berg: unfettered access indicates a single family home. Williams: with unfettered access, it is not a separate dwelling unit; as far as the ZBA can tell, with an open door, this is not an accessory apartment and cannot be sold as such; it is legal and occupiable as a single family home. Williams: if this were to be an accessory apartment, the ZBA would be particular about the means of egress and square footage; in the future, if there is a change to square footage, the means of egress would be a concern. DiMare: options – continue the Site Plan Review and invite the prospective buyer and their attorney or withdraw the application. DiMare: if the Board acts on the Site Plan Review application, it would have to be denied on the basis of square footage.

A brief recess is taken. Bado and Flohr state their decision to withdraw the Site Plan Review application for an accessory apartment and to sell the structure as a single family dwelling. Flohr and Bado state their decision to withdraw on the application and provide their signatures. The decision to withdraw the Site Plan Review application for 12 Old Egypt Road without prejudice is accepted by the ZBA.

The definition of “Floor Area” is read into the record by Lacy: “The gross floor area measured along the perimeter of the outside walls of a building without deductions for hallways, stairs, closets, thickness of walls, columns, or other features, including the combined total gross area of all floors. Basement or attic space used in connection with a principal or accessory use shall be

counted in the calculation of floor area unless such space is used exclusively for storage or has a ceiling height of less than 54 inches.” (Page 65 *Town of Shutesbury Zoning Bylaw*) DiMare recommends the definition of floor area be changed from gross to net.

DiMare states, as Chair, he would be inclined to waive the fee for a Site Plan Review application for 12 Old Egypt Road if it is received by 8.14.18.

Berg reports that he has digitized the document titled: “Zoning Board of Appeals – Town of Shutesbury Rules and Regulations Adopted Pursuant to MGL C. 40A, §12” for review at a future meeting.

At 8:42pm, all members agree to adjourn the meeting.

Respectfully submitted,  
Linda Avis Scott  
ZBA Clerk