

Shutesbury Zoning Board of Appeals Meeting Minutes
August 14, 2018 Shutesbury Town Hall

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

ZBA Alternate member present: Andy Berg

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Patrick Rondeau/Valley Solar, Mark and Theresa Rivers/70 Lake Drive, Bruce Hartley/25 Great Pines Drive, Karen Lynch/29 Great Pines Drive, Bob Douglas/66 Lake Drive and Ron Meck/12 Birch Drive

DiMare calls the meeting to order at 7:32pm.

Berg moves the Board approve the 7.18.18 meeting minutes; Williams seconds the motion. Berg, Williams and DiMare approve the 7.18.18 minutes as presented; Lacy abstains. Motion carries.

DiMare reviews the agenda and receives permission from Patrick Rondeau/Valley Solar (Lovely Site Plan Review Case 18-006) to address the public hearing scheduled for Case 18-007.

Case 18-007/30 Great Pines Drive:

DiMare addresses Mark and Theresa Rivers, residing at 70 Lake Drive and owners of 30 Great Pines Drive to explain that there was a defect in the public legal notice published in the *Daily Hampshire Gazette* (see file). Per DiMare the address used in the notice was 70 Lake Drive rather than 30 Great Pines Drive, the location of the proposed project and subject of the application. DiMare explains that due to the error in the notice, the case could be challenged therefore the public hearing date needs to be republished and abutters re-notified. The new date for the public hearing is Wednesday September 12, 2018 at 7:30pm. At this point, Lacy unexpectedly needs to leave the meeting.

Case 18-006 Site Plan Review/Lot X25 Round Hills Road

The Site Plan Review (SPR) application for a solar array installation on Lot X25 Round Hills Road was filed on 7.19.18 (see file); the property owner, Kelly Nevin Lovley lives at 9 Round Hills Road. Patrick Rondeau/Valley Solar representing the owner: All Earth trackers follow the sun, are always perpendicular to the sun and produce more power on a smaller footprint. Per Rondeau, the tracker's maximum height in the winter is 20-25' and ~ 15' in the summer; the tracker goes flat at night and may face north during snowy weather; newly planted trees follow the curve of the access road to the field where the tracker will be located. Per the Site Plan, dated 5.16.18, location #1 is the proposed "Tracker PV System" and location #2 is the new pedestal service. Rondeau notes that Round Hills Road residents receive their electricity via underground wires. DiMare: the subdivision plans may need to be researched. Per Rondeau, the two parcels – 9 Round Hills and Lot X25 are recorded separately. DiMare: the question is the location of a residential ground-mount solar system on a non-residential lot. Berg, referring to Section 8.9-2 *Town of Shutesbury Zoning Bylaw (current version Section 8.10-2 Applicability A.)*:

"Installations which are accessory to an existing residential or non-residential use which generate electricity principally used by such residential or non-residential use are permitted by right, do not need to comply with this Section, but require a Site Plan Review from the Zoning Board of

Appeals...”. Berg then reads the definition of “Accessory Use” into the record: “A use customarily incidental and subordinate to the principal use or building, and located on the same lot with such principal use or building.” DiMare: because the lots are recorded separately, the owners may need to confer with the Planning Board about merging the lots to allow the proposed array site to fit the definition. Williams notes that Round Hills is a subdivision road. DiMare: if the lots cannot be merged, the applicant may consult with the Planning Board about a waiver. Berg, per Section 9.2-2 (*current version Section 8.10-2 Applicability D.*): “The Planning Board may waive or reduce any requirements of this Section upon findings of: 1. Special circumstances of the site or proposal, or that the objectives of this Section may be met in an alternative manner; and 2. That such a waiver or reduction will not derogate from the purposes or intent of this Zoning Bylaw.” Williams, referring to Section 8.9-2 A. (*current version Section 8.10-2 Applicability A.*): non-residential generation is for principally non-residential use; this application is for residential use however there is no residential use of the lot. Rondeau: all of the generated power will go to the grid; the Lovleys will receive an energy credit. Williams and Berg agree that principal use of the installation’s generated power must be accessory to the use of the lot. DiMare: “principal use” means use of “a majority”. Williams: if agricultural use could be proved to be “principal use”, this would be an allowable non-residential use. DiMare: in this case, the non-residential use is minor. Williams and DiMare note the need for Planning Board guidance regarding interpretation of the Bylaw language relative to “residential production to residential use” and “non-residential production to non-residential use”. Williams recommends using the more restrictive reading of the language noting the option of a Planning Board waiver. DiMare plans to attend the next Planning Board meeting scheduled for 9.10.18. Berg: with the grant of a waiver, merging the lots will not be necessary. Rondeau, noting that he is representing a customer, states his concern that the delay may result in the applicant receiving significantly decreased solar incentives from the State. 65 days from receipt of the application, 7.19.18, is 9.22.18. Rondeau asks if the outcome of this discussion would be different if Lacy had been present. DiMare: we do not know if the outcome would be different. Williams: only the Planning Board has the power to waive. The SPR process for Case 18-006 will continue 9.12.18; the decision will follow in 1-2 weeks; once the decision is filed with the Town Clerk, there is a 20-day appeal period. DiMare: during the 7.18.18 education and guidance meeting, the Board seemed to consider the application sufficient. Williams: with a waiver, the application will stand as submitted.

The draft the ZBA’s FY18 Annual Report will be drafted by Scott.

There being no further business, Berg moves and Williams seconds a motion to adjourn the meeting at 8:38pm; motion passes unanimously.

Respectfully submitted,
Linda Avis Scott
Land Use Clerk