

Shutesbury Zoning Board of Appeals Meeting Minutes  
September 12, 2018 Shutesbury Town Hall

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

ZBA alternate present: Andrew Berg

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Mark and Theresa Rivers/70 Lake Drive, Bruce Hartley/25 Great Pines Drive, Karen Lynch/29 Great Pines Drive and Todd Tietchen/20 Great Pines Drive

DiMare calls the meeting to order at 7:31pm.

Berg moves and Williams seconds a motion to approve the 8.14.18 meeting minutes; the minutes are unanimously approved as presented.

Case 18.006: Site Plan Review - Lot X25 Round Hills Road/Lovley:

DiMare notifies the Board that the applicant has formally withdrawn their Site Plan Review application; for the record, the application is withdrawn without prejudice and they may reapply in some other form; the request to withdraw was received from Patrick Rondeau/Valley Solar late in the afternoon of 9.12.18. Per DiMare, Rondeau related that the deed for 9 Round Hills Road and Lot X25 prohibits certain structures on Lot X25. DiMare offered for the Board to review the deed documents however they have not been received. Berg: unless there is a structure on the lot, there can be no other structures. Williams notes no one representing the project is present for the meeting. Williams moves the application be withdrawn without prejudice; Lacy seconds the motion that passes unanimously.

Case 18.007: Special Permit and/or Variance – 30 Great Pines Drive/Rivers:

DiMare reads the public legal notice for the case into the record: “The application for Mark & Theresa Rivers, for property located at 30 Great Pines Drive, for a Special Permit and/or Variance pursuant to Sections 6.1-3, 9.2, 10.3-2 and other Sections of the Shutesbury Bylaw for the re-building of an existing house (staying within the existing footprint and not decreasing the distance between any lot lines) but increasing the height of the house from fourteen (14) feet to twenty-seven feet (27)”. For the record, DiMare notes that members of the Board conducted a site visit on 9.8.18 at 11:40am to the location and walked the nearby streets and stood on the property across from the location. Testimony received on 8.13.18 from Tamara Spears/6 Haskins Way is read into the record (see file). Lacy reports that he plows Spears’ driveway. DiMare asks Lacy if this would prejudice him in any way in applying MGL and Shutesbury zoning bylaws. Lacy: no. The 8.24.18 testimony from Randy and Mary Brooks/9 Haskins Way is read into the record (see file). The locations for 6 and 9 Haskins Way are located on the Assessors 300 foot abutter map. DiMare notes receipt of a packet of 7 photographs from Bruce Hartley as well as the zoning bylaw amendment previously proposed by Mare Fox, formerly of 18 Haskins Way. It is noted that this proposed amendment was not approved. Per DiMare, Hartley’s packet also includes a highlighted paragraph about Americans with Disabilities Act standards for housing.

DiMare invites the Rivers to present their proposal and notes that, per Lacy, this is a special permit case. Berg notes that the current structure at 30 Great Pines Drive is nonconforming and is located on a nonconforming lot and confirms with the Rivers that the deck is over the lot line. Theresa Rivers: they own both ZB 11 and 13; it was necessary to clear Lot ZB 11 for the 70 Lake Drive (ZB50) septic system. Lacy: this case is relative to the diagram in the *Shutesbury Zoning Bylaws* (page 27 bottom). Lacy reads the description into the record: “An alteration that increases the overall height of the structure. This example proposes to add a second floor to a structure that encroaches upon the front setback. Since the height of the proposed addition within the setback is greater than the height of the existing structure, this alteration requires a special permit.” Berg, Williams and DiMare agree with this description relative to the case; the special permit process is to be reviewed. DiMare invites the Rivers to persuade the Board that

their application meets the special permit criteria and they should be granted a special permit; the ZBA will do fact finding relative to this criteria. Mark Rivers: the lot is nonconforming on all sides and, per the zoning bylaw, they can rebuild on the same footprint; the use will be for a mobility impaired family member; wheelchair access cannot be accommodated within the current 900 sq. ft. footprint therefore they are proposing the addition of a second floor with two bedrooms and a lift system. The Board notes that there is enough room to build, within all setbacks, on the lower lot (noted as #13 and 14 on the plot map) of ZB13. M. Rivers: the original cottage would be torn down; we want to do the right thing by the neighborhood as well. DiMare asks the Rivers if they want to withdraw their current application and receive education and guidance regarding building on the lower lot. The Board reviews Section 6.1-3 (D1) of the *Shutesbury Zoning Bylaws* (page 24-25). Lacy: building on the lower portion of the lot would meet setback requirements. Williams: hypothetically, it is possible to withdraw the current application and only need a building permit to build a new house on the lower lot. Lacy: as per D, “Reconstruction...shall be permitted by right under the following circumstances: 1. the proposed alterations comply with setback requirements...” M. Rivers: a two bedroom ranch with a garage underneath, built on the lower lot, will be level with Great Pines Drive. Lacy asks and T. Rivers confirms that, with such a plan, they would meet their needs without a height increase. T. Rivers: the existing septic system has Title V approval. DiMare suggests putting the special permit application on hold thereby allowing time for the Rivers to confer with the Board of Health to ensure the septic plans are adequate. Williams suggests returning to the case at hand. Karen Lynch/29 Great Pines Drive (ZB31): there are abutters who have problems with the current plan; we will need to be informed of an alternate plan as views may be impacted. DiMare explains that if the Rivers choose an alternate plan, approved by the Board of Health and building inspector, the ZBA will not have a role. Lynch confirms that she would prefer the Rivers stay with the current plan. Todd Tietchen/20 Great Pines Drive states that he is an interested citizen who wants to hear the proceedings; he has no concerns or position, however, did not like that trees had been cut; is heartened to hear that the Rivers are willing to compromise. Bruce Hartley/25 Great Pines Drive confirms the if the special permit application is withdrawn and the Rivers build on the lower lot, it will be between the Board of Health and building inspector and can be done by right and the ZBA will not be involved; to do this would affect his view – whichever way this goes, his view is affected. DiMare asks Hartley if he has a preference. Hartley: no matter which way, his view will be affected; the height of 70 Lake Drive (owned by the Rivers) is over by 3 ft. so he is concerned about the height of either option. M. Rivers to Lacy’s question: 70 Lake Drive attained its existing height in 2012. DiMare confirms with Rivers that the building permit for 70 Lake Drive was not appealed and that the ZBA was not involved. T. Rivers notes and Lacy confirms that they were free to go up to 28 ft. in height by right. Hartley: when the roof trusses for 70 Lake Drive went up, he consulted the building inspector to learn how height was measured. DiMare: what relevance does this have to the present case? Hartley: once the roof trusses are up, the owner would not be required to take down the structure if there is a question about height; if the special permit is pursued, he would want the ZBA to be required to participate in measuring the structure and for interested parties to be involved. DiMare: there are measurement criteria in the bylaw and mockups can be done. Williams: measurement criteria can be conditioned. Lacy: the specific method for measuring height is in the building code. Berg reads the definition of “Building Height” into the record: “The vertical distance measured from the highest point of the roof to the average finished grade elevation at the walls” (page 71). Hartley refers to the 2012 plans for 70 Lake Drive and notes that what is on paper is different from reality. DiMare explains that the 2012 plans for 70 Lake Drive are not relative to the current case and that the Board will take abutters’ fears and concerns into consideration. Lacy notes the building inspector is the zoning enforcement office. DiMare: the building inspector approves a plan and the structure has to conform to the plan; a tear down can be required. Lacy: the building inspector conducts periodic inspections and if trusses are too high, a cease and desist order can be issued. DiMare assures Hartley that his concerns have been heard by the Board. DiMare confirms that the Rivers have heard the abutters’ concerns and asks if they have made a decision. M. Rivers requests the special permit application be put on hold for a future meeting allowing them time to confer with the Board of Health and building inspector. Lacy: by doing so, you are preserving your

rights regarding the special permit application. The meeting posting procedure is explained to the public; the public hearing is continued to 10.10.18 at 7:30pm. The “Agreement to Continue Public Hearing” is signed by DiMare and the Rivers and will delivered to the Town Clerk. DiMare requests the Rivers notify him if they decide to withdraw their application.

DiMare moves and Williams seconds a motion to spend \$61.40 for the Board’s share of printing costs for the updated *Shutesbury Zoning Bylaws*; motion passes unanimously.

At 8:42pm, Williams moves and Lacy seconds a motion to adjourn the meeting; motion passes unanimously.

Respectfully submitted,  
Linda Avis Scott  
Land Use Clerk