

Shutesbury Zoning Board of Appeals Meeting Minutes
May 2, 2019 Shutesbury Town Hall

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

Zoning Board alternate present: Andy Berg

Staff present: Linda Avis Scott/Land Use Clerk

Guests: Susan Gomberg, Tom Kelley/Northeast Solar, Jacqueline Strauss, Jeanine Haendiges/PV Squared, John Bailey, Tom Siefert and Frank McGinn

DiMare calls the meeting to order at 7:30pm.

Williams moves and Lacy seconds a motion to approve the 11.29.18 meeting minutes as amended; motion passes unanimously.

Case 19.001 Site Plan Review 114 West Pelham Road/Gomberg:

The applicant, Susan Gomberg and Tom Kelley/Northeast Solar are present to represent the proposed ground-mount solar array application. Per Kelley, the proposed array will be located in the rear yard and shielded by vegetation. For the record, DiMare conducted a site visit on 4.27.19 and Berg conducted a drive-by inspection. Per Kelley, all setback requirements are met.

Williams clarifies that the side setback of 50' is the closest the array site comes to a setback.

Kelley: there will be one ground-mount array of 24 panels which will be 3' off of grade and 10'8" at their tallest dimension; the infrastructure is low-profile and stationary; the abutting property to the south has an almost identical array. Kelley explains that the array will generate more than 100% of the electricity Gomberg currently uses; the owner recently installed central air conditioning which will affect the percentage. Kelley in response to Williams' request for an analysis of the total kilowatts generated/used: the system is expected to generate 9kW/year and prior to the a/c installation, the owner used 7kW/year. Gomberg to DiMare's question: she owns a single 2.1 acre lot. There being no further questions, all ZBA members agree this will be a standard installation and close deliberation. Lacy will draft a decision on which members will vote during a 5.16.19 meeting.

Case 19.002 Site Plan Review 71 Locks Pond Road/Fontaine:

DiMare reports receiving a phone call from Louise Reardon/Valley Solar regarding the need to change the anchoring system for the proposed solar array. DiMare reads the 4.30.19 email from Reardon "Application withdrawal: 71 Locks Pond Road" into the record; Reardon agrees that if the applicant refiles within four months, the fee of \$100 will be waived; she anticipates refiling well before the 9.2.19 deadline. Williams moves the Board accept the applicant's proposal to withdraw the application without prejudice with the provision an application be resubmitted before 9.2.19; if not, the application fee of \$100 will not be waived. Berg seconds the motion that passes unanimously.

Case 19.003 Site Plan Review 50 Old Egypt Road/Strauss:

The owner, Jacqueline Strauss and Jeanine Haendiges/PV Squared are present to represent the ground-mount solar array application. For the record, DiMare conducted a site inspection on 4.27.19 and noted that the proposed location is quite a distance behind the house. Lacy notes that

he is familiar with the site. Per Haendiges, this will be a two pole top-mounted system with fifteen modules/pole; the modules (panels) will be five high and three across at a 60 degree angle and 13.5' high; the proposed location is screened by trees. Strauss: the lot is ~2.7 acres and the system will meet their electricity needs and more. Haendiges: this is a small scale 9.6kW system. Williams explains that the Board is considering adopting language to clarify "use". There being no further questions, all ZBA members agree this will be a standard installation and close deliberation. Lacy will draft a decision on which members will vote during a 5.16.19 meeting. If DiMare is not present for the 5.16.19 meeting, Williams will be acting chair and DiMare will be present by remote participation.

Scott reports that the Conservation Commission completed site visits for all three locations, found no jurisdictional wetland within 100' of the proposed sites and signed each building permit application.

Education and Guidance:

1. John Bailey explains that subsequent to a conversation with owner Steve Puffer, he has been brainstorming with several others about possible uses for Puffer's property on Baker Road. Per Bailey, there are two abutting parcels each with 200' of frontage; the one acre lot has two mobile home residences; the site of a former sawmill, closed around 1980, and a newer barn are on the seven acre parcel that was considered a "light industrial site"; one of the parcels is in Mrs. Puffer's name. The Board considers various ways the lots could be used, however, explains to Bailey that the FCCIP Building Inspector is the final arbiter for how the lots can be used and recommends that Bailey determine when the lots were conveyed.
2. Tom Seifert and Frank McGinn seek guidance on Lot A40 South Laurel Drive. Seifert explains that in 2017 this lot was separated from the Z lot that comprises the other three parcels they own and that their goal is to discover the history of why Lot A40 was separated; the land touches corner to corner so it is contiguous with the other three parcels. Seifert: they have received different answers as to why A40 was separated and they believe Shutesbury's Assessors Office was wrong. Williams notes that there are situations where lots contain a part of the road. It is noted that South Laurel Drive is privately owned. Seifert: the question is not whether A40 is contiguous, the question is how the zoning code was decided when the lot was separated in 2017. DiMare and Lacy: neither the Planning Board nor Zoning Board discussed this lot. Per Lacy, A40 is not a buildable lot; the highest use is in combining the lots. Seifert: the decision to separate should have come before the Zoning or Planning Boards. Lacy: the Assessors do not come before Zoning or Planning, the owners would come. To Lacy's question, Seifert states that he has attend Board of Assessors meetings. Seifert: essentially, a new lot appeared because the Assessor said so; is this its official use until it is changed; do I have a case? DiMare: you can challenge the tax bill and request an abatement. Seifert: we have applied for an abatement and to remerge the lot; Ken Holmberg/Administrative Assessor said he separated A40 to assist former owner Patricia Alves with her taxes – it was not done because the lots are not contiguous. DiMare: the Board of Assessors looks at lots for tax purposes; the ZBA does not consider lots unless there is a specific application. Lacy suggests Seifert seek guidance from the Building Commissioner/Zoning Enforcement Officer for a "use" decision. To DiMare's question, Seifert states that his goal is to

determine whether A40 was mistakenly separated and asks how to challenge the Assessors. DiMare restates the need to file for an abatement. Seifert: what if it is less licit? DiMare to Seifert: you could argue that the use classification should be different. Seifert states that he wants to file a complaint. At 9:00pm, Lacy leaves the meeting; Berg's presence makes quorum. Williams recommends Seifert consult the Zoning Enforcement Officer regarding his concern that the wrong use has been applied because the parcel cannot be developed and ask what the reason was for the separation of A40 from the Z lot.

Board members review the "Use Table – Proposed New Section: Marijuana Establishments"

Williams reviews his "Opinion regarding interpretation of language in the Zoning Bylaw of Shutesbury Section 8.9, Ground-Mounted Solar Electric Installations". Williams reads the "Interpretation" paragraph into the record and suggests that the ZBA could adopt this document as a rule. Berg notes that the requirement to provide the calculated annual production of power from the solar array and the calculated annual consumption of power be considered under "any other information required by the approving board". Williams suggests the Board consider a different site plan review application for ground-mounted solar. This topic will be further considered during a future meeting.

At 9:11pm, Williams's moves and Berg seconds a motion to adjourn the meeting; the motion passes unanimously.

Documents and Other Items Used at the Meeting

1. "Use Table – Proposed New Section: Marijuana Establishments"
2. "Opinion regarding interpretation of language in the Zoning Bylaw of Shutesbury Section 8.9, Ground-Mounted Solar Electric Installations" by Tom Williams

Respectfully submitted,
Linda Avis Scott
Land Use Clerk