

## Zoning Board of Appeals Meeting Minutes

Excerpt from Shutesbury Planning Board Meeting Minutes  
September 10, 2018 Shutesbury Town Hall

Planning Board members present: Deacon Bonnar/Chair, Robert Raymond, Jeff Lacy, Michael DeChiara, Steve Bressler, Jim Aaron and Linda Rotondi  
Staff present: Linda Avis Scott/Land Use Clerk

Guests: Attorney Donna MacNicol/Town Counsel; Chuck DiMare and Tom Williams/Zoning Board of Appeals; Becky Torres/Town Administrator; Sanford Lewis, Mary Lou Conca and Don Wakoluk; Patrick Rondeau/Valley Solar; Kevin Sullivan and Jeff Macel/Lodestar

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

Public Comment: None offered.

ZBA Case 18-006 Site Plan Review Lot X25 Round Hills Road/Lovley: It is noted that a quorum of the ZBA is present. Chuck DiMare/ZBA Chair: the ZBA has a Site Plan Review (SPR) application for a residential ground-mount solar array; this case is different because the building lot is separate from the proposed location for the array; when considering “accessory use”, the use is accessory to the main home and they are on the same lot or the lots are merged; in this case, the lots are separated by Round Hills Road; given this, the ZBA is requesting the Planning Board’s guidance. DeChiara: it seems the definition being sought is that of “accessory”. DiMare: the array will be connected to a pole on the non-residential lot; the owner’s electricity benefit will come via net-metering. Lacy: the definition for “accessory” is clear. Williams 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 (page 70 *Town of Shutesbury Zoning Bylaw*). Lacy, referring to page 52: 8.10-2 D. “The Planning Board may waive or reduce any requirement of this Section upon findings of 1. Special circumstances of the site of 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” - does the Planning Board have the ability to waive “accessory” in this case? Attorney Donna MacNicol/Town Counsel: this portion of the Bylaw refers to large-scale solar array projects. DiMare: the ZBA requested Patrick Rondeau/Valley Solar/applicant’s representative to attend in order to request a waiver. MacNicol questions giving a waiver for non-residential use; it could be one lot with a road separating it. Lacy: it could be a conjoined ANR (approval not required) lot. DiMare: once merged, the ZBA will not have an issue with the SPR application. Tom Williams/ZBA: Lot X25 has plenty of frontage; the question is the size of the lot. Per information on the Assessors property card, the X25 is 2.24 acres. Lacy: it could be a building lot. Williams: the subdivision plan needs to be consulted; it would be in the Planning Board’s records and at the Registry of Deeds. MacNicol: if merged, the owner could be giving up a building lot. Lacy: it could be re-subdivided in the future. MacNicol: yes, as long as zoning does not change. Patrick Rondeau/Valley Solar joins the meeting and refers to 8.10-2 A: the question is whether one could say accessory to non-residential can be used for residential; can terms be mixed and matched? DiMare agrees with MacNicol that accessory use needs to be on

the same lot. Lacy explains that the ZBA and Planning Board are referring to definitions; “same lot” occurs in both the definition for “Accessory Structure” and “Accessory Use”. DiMare: merging may result in giving up a building lot; the subdivision plan needs to be researched. Rondeau: in looking at the subdivision plan for Round Hills Road (Plan of Land prepared by Harold L. Eaton and Associates, dated 10.6.1992), in the top right corner it states that Lot 1A (X25) and 1B (9 Round Hills Road) are to be in “common ownership and never divided into separate ownership”; in the deed there are two parcels in common ownership. DiMare and MacNicol review the deed and note the reference to two parcels. Lacy: the house is on an undersized lot; the house lot is not viable without the other lot. MacNicol: during their meeting, the ZBA needs to review the site plan and deed to ensure the meets and bounds are identical; 1A and 1B need to be clarified and, if yes, they are the same lot and 1A is a non-conforming lot, they cannot be separated as long as the descriptions match. Lacy: the Planning Board does not have any regulatory responsibility in this case; there needs to be confirmation that there is only one lot. DiMare requests Rondeau bring sufficient copies of the relative documents to the 9.12.18 ZBA meeting. Williams, referring to 8.10-2 A: “small scale...which generate electricity principally used by such residential or non-residential use...”: this language is unclear, or interpretable, what does “principal use” mean – due to the net-metering process, use could only be a portion of the energy generated; what was the Planning Board’s intention re: “principal use”? Lacy: “at least 50%” for whatever use is on the property. DeChiara: what you are describing is apportionable. Williams: in fact, most people are not home when the majority of solar electricity is generated; in this case, there will be two meters. Rondeau expects the array to generate 11,000 kilowatts; the home is currently using 10,500 kilowatts. MacNicol: the query is such that is the system designed to meet the use of the residence; the goal is to avoid the construction of an overlarge system. Williams recommends changing the language to “in aggregate”. DiMare thanks the members of the Planning Board and MacNicol for their time and guidance.