

**Shutesbury Planning Board
Minutes – January 13, 2025
Approved – March 10, 2025
*Virtual Meeting***

Board Members Present: Keith Hastie, Deacon Bonnar, Steve Bressler, Michael DeChiara, Robert Raymond, Nathan Murphy (Chair), Tom Siefert, Ashleigh Pyecroft

Board Members Absent:

Other Staff Present: Matteo Pangallo (Land Use Clerk)

Others Present: Linda Reimer, Rick Munroe, Peter Gees, Elizabeth ???

Call to Order: 7:01pm

The meeting is being recorded.

Public Comment

None.

Set Public Hearing for Special Permit application for 72 Baker Road (Sirius Inc) wind turbine (SP #25-002)

Murphy suggests scheduling it for the next public meeting of the Planning Board, on February 10, which would be within the 45-day window required by law. The applicant indicates that date would work for them. Murphy suggests doing it earlier in the meeting, at 7:05pm. The applicant indicates that time works for them.

Motion to set the public hearing for the Sirius application (SP #25-002) on February 10 at 7:05pm: DeChiara; second: Bonnar. Pyecroft remarks that she is an abutter and must recuse; Murphy notes that Raymond also needs to recuse. Bressler: Aye. Bonnar: Aye. DeChiara: Aye. Murphy: Aye. Motion approved unanimously with two abstentions (Pyecroft and Raymond).

Public Hearing on Special Permit Application by Peter Gees for 29 Highland Drive (SP #25-001)

Before the hearing begins, Murphy asks Pangallo to record roll votes by individual. DeChiara notes that the practice is not required by law but it is the practice now for the Planning Board.

Murphy opens the public hearing for the application by Peter Gees for 29 Highland Drive (SP #25-001) at 7:15pm.

The Chair recognizes Peter Gees who describes the project and the request for a Special Permit to place a driveway within the 15-foot setback from the property line. Gees describes where the driveway would lie and why it needs to run there to provide access to the utility lines serving both houses on the road and avoid delineated wetlands. He notes the Conservation Commission

came out twice for site visits and on the advice of his attorney he will be submitting a Notice of Intent to the Commission after addressing the setback issue for the driveway.

DeChiara notes that he and Siefert did a site visit on Friday and he found the approach to be very straightforward and thoughtful. He supports the proposal and does not see how else the driveway could be run. It does not seem to be too close to anybody else's property.

Murphy asks if Gees has evaluated the request regarding the review criteria in the Zoning Bylaw. Gees notes he has received from the Land Use Clerk the checklist for what needed to be submitted, and he believes he has submitted everything he needs to provide.

Murphy asks if there is any other information Gees would like to provide. Gees recalls that the premise of the project is improving the reliability of the utility service by making it easier to access the trees and the lines. This driveway, when plowed in the winter, will make it possible to provide access for service trucks to address any tree-trimming that needs to be done.

Murphy cites the Land Use Planning Handbook for policy perspective and notes that it is important to have all this information shared during the public hearing, even though it had been brought up by the applicant in the past. Notes that he and Hastie also did a site visit to the location and viewed the planned work.

Siefert raises a point of order that there was no vote to open the public hearing. Murphy observes that there does not need to be a vote to do so.

Murphy asks if Gees knows if any abutters would object to or feel injured by this project. Gees answers no because the closest abutter, Tyler N. Richards, is also affected by the wetlands parallel to Wendell Road and those wetlands mean his property is located a very far distance from the property line. Because of the Wetland Protection Bylaw, that part of his property could never be developed anyway. He finds it unlikely that future owners of the two houses on Highland Drive would object to the project. Murphy asks if the properties currently have a shared driveway in use and Gees answers that they do, and that both properties need easements going over M-39 already in order to access their lots.

Murphy asks if the Richards property is a good distance away on the provided map; Gees notes that it is not on the map at all and describes its distance from the property line. Gees shares older maps of the property from when he bought the parcel (Registry of Deeds, Book 49, Page 11) and when he subdivided the property (Registry of Deeds, Book 59, Page 90), to provide context for the proposed driveway's distance from the neighbor's property. Murphy noted existing woods road off Highland Drive under the powerlines with some vegetation, but most trees appear to have been removed when the lines went it. This driveway would thus seem to involve less tree removal than an alternative placement, which would require cutting more trees.

Murphy indicates that he feels very satisfied and invites any final questions from the other members of the Board.

Motion to close the public hearing at 7:43pm: DeChiara; second: Bressler. Raymond: Aye. Pyecroft: Aye. Bonnar: Aye. Bressler: Aye. DeChiara: Aye. Murphy: Aye. Motion approved unanimously.

Murphy welcomes deliberation from the members of the Board. Seeing no further deliberation, Murphy asks for a motion on the question.

Motion to approve the Special Permit application for 28–30 Highland Drive: DeChiara; second: Pyecroft. Discussion follows:

Murphy notes the Special Permit itself must provide for the use and criteria; these will be described in the written decision.

DeChiara shares the general and specific findings sections for Special Permits under the Zoning Bylaw.

Murphy indicates the Board needs to establish findings that justify approval of the Special Permit and any conditions. In the past, the Board has used a template for Special Permit decisions. The Board has a 90-day period to finalize the written decision that needs to be filed with the Town Clerk. DeChiara recalls the Wightman permit involved voting to approve it and then Jeff Lacy drafted the decision and at subsequent meeting the Board discussed, edited, and voted on that decision. So the sequence for tonight would be voting to approve or not approve, and if it is approved, then having someone draft the decision for review and approval at the next meeting.

Raymond: Aye. Pyecroft: Aye. Bonnar: Aye. Bressler: Aye. DeChiara: Aye. Murphy: Aye. Motion approved unanimously.

Murphy notes that after the decision is filed with the Town Clerk there is a 20-day appeal period. Once the appeal period closes, the decision is final and can be recorded in the Registry of Deeds.

DeChiara asks if Hastie would be interested in drafting this decision based on his drafting of the Wheelock site visit report, but notes Hastie is an Associate Member, so the rest of the Board would have to be satisfied with that. Hastie indicates he could do it if he is provided with examples. Murphy asks if there are any full Members who would like to do it. Pyecroft would if she had more time but does not have time now and thinks Hastie would do a good job. Murphy indicates he does not want to do it either but is willing to assist. He suggests Hastie look at the Wightman decision as a recent example and has other materials about what must be included in a Special Permit decision and how it should be framed.

Murphy asks if there any suggestions for conditions, if any, to be placed on this Special Permit. Pyecroft asks about stone walls, given the rural siting principles in the Bylaw, and whether they should be one of the conditions in the decision. Murphy agrees that the rural siting principles should be part of the Board's deliberations. Gees notes that there are no existing stone walls in the area where the work is being proposed. Based on the site visits and the plan, Hastie and Murphy agree with Gees.

DeChiara notes there was only one condition on the Wightman second permit, which was the requirement that Wightman had to go back to the ZBA for approval, but that was specific to that particular project. Murphy recalls that this was because the ZBA had to provide a variance due to the width of the driveway. He notes the first Wightman decision had more conditions in it.

Bonnar suggests that the Conservation Commission's approval should be included in the conditions. Murphy agrees and thinks that the Commission's approval may be the main condition. Bonnar suggests the decision stipulate that the Special Permit does not grant any permissions relevant to wetlands.

Murphy considers the question of getting a curb cut as a condition. Gees notes that the utility road has been present since 1988 or 1989, so the stretch from Highland Drive and the middle pole was put in before 1990, so there is an existing curb cut already.

Murphy notes the proposed bridge over the wetlands and that the Board could condition the Special Permit on an approved Notice of Intent from the Conservation Commission. Gees concurs and would not start work without the approved Notice of Intent, but he points out the bridge company requires core samples to complete the bridge design. The Conservation Commission needs to grant permission for core samples from the abutment locations.

DeChiara thinks compliance with the Conservation Commission is the only outstanding condition since there is an existing curb cut. He does not think the Board is concerned about the surface of the driveway and there is no need for a vegetative barrier or any protective aspects beyond what the Conservation Commission might require. Gees asks about timing and clarifies that he would have two years from when he gets the Permit to start the project. Murphy notes that the clock starts once the decision is filed with the Town Clerk but that there are remedies in statute if there are delays in construction by which he could obtain more time.

Murphy will provide Hastie with the template and other materials and Hastie will draft a decision for discussion and vote at the next Board meeting. Reminds the Board that any feedback or revisions should be sent only to Hastie and not the entire Board.

Gees thanks the Board for their time and consideration.

Review and Vote on Past Minutes

December 9, 2024. Motion to approve: DeChiara; second: Bonnar. Murphy has two small revisions and DeChiara has some small corrections. Pyecroft: Aye. Bressler: Aye. Raymond: Aye. Bonnar: Aye. DeChiara: Aye. Murphy: Aye. Motion approved unanimously.

The Board decides to approve the remaining outstanding minutes on a rolling basis.

Raymond notes that reviewing minutes from so far in the past is challenging and would prefer reviewing them the month following going forward.

DeChiara asks about the minutes described as “Ex” in the agenda. Murphy notes that those are meetings that were both in open session and executive session.

Pyecroft suggests grouping them together and doing a few at a time. Murphy agrees and suggests going in reverse order. DeChiara suggests starting with the oldest first, before they are too hard to remember. Murphy thinks the more recent ones will be fresher in everyone’s memory and we should address them while we can. Hastie thinks the Board should address the older ones first. Murphy agrees but wants to still address the immediately prior meeting as well. Next month will be today’s minutes plus four other sets of minutes to be determined and distributed by email.

Zoning Bylaw discussion pertaining to Accessory Dwelling Units (ADU), including affordable housing and “tiny houses”

Murphy invites DeChiara to share the draft and prefaces the discussion by noting the goal is to bring Shutesbury’s Zoning Bylaw into alignment with the new State statute. Future amendments will likely be necessary in order to keep the Bylaw in compliance with the law. Additional considerations might arise that go beyond the State law and they may necessitate other amendments.

DeChiara walks through the list of questions he asked to Town Counsel, Donna MacNicol, and her responses. Her advice was to be intentional and take it slowly in order to ensure the amendment is done correctly and the Board does not make additional policy that ends up having unintended consequences. She advised doing just what is needed to comply for now because it is very hard to reverse course. The revisions here avoid making changes to things we do not yet know about how the State law will work.

ADUs would be regulated by Special Permit and must be on a lot with 45,000 square feet, or half of a new single family dwelling’s lot. Still an open question about whether ADUs would be allowed on multi-family dwelling parcels. Setbacks must be same or more flexible than for single-family dwelling unit; State law requires they cannot be more restrictive. Cannot put restrictions on being “consistent with the character of the neighborhood.” Current regulations are not clear about time limits placed on rental and MacNicol advised waiting until the law is settled on this. No clear guidance on whether ADU cannot be used for a Home Occupation but should probably follow guidance for single-family dwelling. MacNicol strongly recommended against allowing manufactured homes (mobile homes) as ADUs.

Notes that the Use Table needs to be changed to allow ADUs by right and footnote 1 needs to be removed from Table 1. 4.4-2 includes ADUs and needs to be revised in specific ways to align with the State law. No additional curb cuts or driveways would be allowed beyond what is allowed for a single-family dwelling. Additional content added about square footage and other parameters to align with the State law. ADU cannot be located more than 100 feet from the principal dwelling. Updates made to the common driveways section and to the house number section, with each ADU having its own house number for emergency access purposes. Changes definitions to align with the State law.

Raymond asks if the ADU can share the septic system of the principal dwelling. DeChiara assumes it would have to be approved by the Board of Health and have the appropriate capacity for the total number of bedrooms. Bressler agrees. Raymond asks if it can share electrical service from the principal dwelling. DeChiara notes ADUs must still meet the Building and Environmental Codes, just like any dwelling. Raymond asks if ADUs can be prohibited from being simply a bedroom and DeChiara notes that it does, and this is reflected in the revision to the Bylaw. Murphy notes it must meet all the criteria if a “dwelling unit,” including electrical, water, separate entrance, bedroom, kitchen, and bathroom facilities. Murphy points out this is allowed under right and if someone wants to rent out a bedroom in their house, that is not the question; nothing in the Bylaw prohibits you from renting out a room in your house, but you could not just build a cabin that is just a bedroom and call it an ADU.

Siefert notes that section 6’s definition of “dwelling” does not align with the State’s definition of an ADU in 760 CMR 71.00. Suggests revising section 6 to be less specific and align with the State’s definition. Suggests also removing references to “accessory apartment” since the State law uses “accessory dwelling unit” only. DeChiara agrees with those points. Siefert suggests just deleting section 6 since the definition is already provided in the definition section. Siefert proposes that the definition also be made more complete and repeat the entirety of the State’s definition. Murphy observes that the State definition includes language about being reasonably subject to municipal regulation, which could be removed, but other parts of the State’s language could be included as Siefert suggested.

Bressler asks about using “apartment” or “dwelling unit” and DeChiara suggests following Siefert’s suggestion and using “dwelling unit”. Bonnar notes that the title of the section would also then need to be revised.

Murphy asks about the language about Gross Floor Area and DeChiara notes the language comes from the State law.

Murphy suggests that specific language from the State’s regulations not be included in the Bylaw in case the regulations are revised or updated. Bressler points out it would be helpful for applicants if that information is included in the Bylaw so they would not need to go searching through the State laws for the information. DeChiara suggests putting in citations that specifically direct applicants to where they need to look in the State regulations and law. Murphy agrees and notes the State law and regulations could also be provided on the Board’s website alongside the Bylaw.

Murphy notes next step is to translate this into a warrant article. DeChiara points out that it is already pretty much written that way and briefly describes how the article would be structured to help people at Town Meeting identify the changes that are being made to the Bylaw.

DeChiara notes there is mention in the Zoning Bylaw of “tiny houses.” Murphy notes the most recent State Building Code, in Appendix AQ, discusses “tiny houses,” so Building Inspector can review plans for these structures. The Bylaw should be made to align with these new criteria. This means deciding if a “tiny house” that is a manufactured home would be a protected use as an ADU. Notes that the State statute does not identify manufactured homes as being ADUs. He

would be willing to consider another warrant article on this revision and would like to hold a forum to get public input on this. It may be too late to get this into Town Meeting this year.

Raymond would like to see a Tiny Home bylaw for this Town Meeting. DeChiara notes that the Board could define Tiny House in accordance with the International Residential Code and fold that into the Bylaw in a way that would be clearer to a reader than the State's poorly written and hard to find regulations. Murphy considers whether a Tiny Home could still serve as a primary dwelling as long as it complies with all other regulations for a primary dwelling. Bressler notes that under the section 4.4-5 as written it would.

Raymond compares the Nantucket definition with the one DeChiara has shared. Notes that the requirement of having a foundation and being permanent, in distinction to the moveable nature of the Nantucket Tiny Home, seems preferable. Nantucket prohibits use of vehicles, recreational vehicles, shipping container, boat, and so forth, which might be worth included in this amendment. DeChiara wonders if stipulating this would raise the trailer home issue again. Hastie notes such a structure would not comply with the occupancy requirements of having septic and water. As written now, a Tiny Home would have to comply with everything a primary dwelling complies with but only smaller. Hastie wonders why then we need a separate section for Tiny Houses if they are covered under the Building Code already. DeChiara considers it a matter of user friendliness so people do not have to dig through the State's confusing code. Bressler sees no downside to adding the language from Nantucket about vehicles and such. Raymond is concerned that without that language, the article might fail at Town Meeting. Murphy agrees that the Board should try to get a sense about where the community is on this matter because some might be opposed to allowing these but for others it might be the only way they could afford a home in Shutesbury.

Community Outreach

Murphy would like to hold a public event, forum, or survey. Notes that Amherst did a community housing survey and would like to get a copy possibly to be a basis.

Unanticipated Business

Murphy cautions the Board to remember that emails should only be sent to individual Board members and not to the entire Board, per Open Meeting Law.

DeChiara notes he loaned Murphy a copy of the Land Use Book, which is very expensive, around \$400. Suggests the Board should invest in buying a copy to have for the Board's and Chair's perpetual use.

Motion to authorize the Chair to purchase The Handbook of Massachusetts Land Use and Planning Law for use by the Planning Board, contingent on available funds: DeChiara; second: Pyecroft. Hastie asks how often they are updated and Murphy notes supplemental material comes out every year but the book remains the same. Pyecroft: Aye. Bressler: Aye. Raymond: Aye. Bonnar: Aye. DeChiara: Aye. Murphy: Aye. Motion approved unanimously.

Adjournment

Motion to adjourn: Raymond; second: DeChiara. Pyecroft: Aye. Bressler: Aye. Raymond: Aye. Bonnar: Aye. DeChiara: Aye. Murphy: Aye. Motion approved unanimously.

Adjourned: 9:27pm

List of Documents Used:

- Special Permit Application by Peter Gees for 29 Highland Drive (SP #25-001) and accompanying plan
- Property map from Registry of Deeds, Book 49, Page 11
- Property map from Registry of Deeds, Book 59, Page 90
- Special Permit criteria list from the Zoning Bylaw
- Minutes of December 9, 2024
- List of Michael DeChiara's questions about the State's Accessory Dwelling law and Donna MacNicol's answers
- Drafts of proposed Zoning Bylaw amendment regarding Accessory Dwelling Units
- New section 1A of Chapter 40A of the General Laws, regarding Accessory Dwelling Units
- Draft of proposed Zoning Bylaw amendment regarding Tiny Houses