

**Shutesbury Planning Board**  
**Minutes – April 7, 2025**  
**Approved – May 12, 2025**  
*Virtual Meeting*

**Board Members Present:** Robert Raymond, Nathan Murphy (Chair), Tom Siefert (Associate Member), Michael DeChiara, Deacon Bonnar, Jeff Weston (joined at 7:03pm), Ashleigh Pyecroft (joined at 7:06pm)

**Board Members Absent:** Steven Bressler, Keith Hastie (Associate Member)

**Other Staff Present:** Matteo Pangallo (Land Use Clerk)

**Others Present:** Gail Fleishaker, Jeffrey Lacy, Mary Lou Conca, Rita Farrell, Melissa Makepeace-O'Neill, Peter Gees, Linda Reimer, Leslie Bracebridge, Rick Munroe

**Call to Order:** 7:01pm

The meeting is being recorded.

**Public Hearing on Three Proposed Zoning Bylaw Amendments**

Murphy opens the public hearing at 7:01pm. Murphy introduces the three proposed Zoning Bylaw amendments to remove Section VII, update the section on Accessory Dwelling Units (ADUs), and add regulations on and definitions for Tiny Houses. Murphy summarizes and explains the Board's justification for each of the proposed amendments. He relates that the Board has deliberated on these amendments at several past meetings and has incorporated changes to them based on discussions with Town Counsel.

DeChiara shares the proposed Zoning Bylaw amendment regarding ADUs and walks through the language of the amendment and the sections of the Bylaw it would affect, explaining both the content required by the new State law and content that was not required by statute. He points out that section 4.4-2 of the Bylaw is the part that will undergo the most substantial revisions with this amendment and he explains the origin and intention of each of those revisions.

Murphy invites testimony from members of the public.

Peter Gees asks for clarification that the 3/13/25 version has been replaced by the 3/30/25 version. Murphy answers that the second version is closer to what the Board intends to submit to Town Meeting but that it might also be changed to reflect testimony from the public hearing. Murphy explains the reason for the several differences between the older version and the newer version and how the new version aligns with the State law. Gees notes that in the original Zoning Bylaw required that the distance between the primary and accessory dwelling be a maximum of 75 feet, in the 3/13 version of the amendment that distance is required to be no more than 100 feet from the principal dwelling, and in the 3/30 version there is nothing about maximum distance indicated. He notes that in the State law it only indicates that the distance cannot be more restrictive than for the primary residence and he asks if the Board is stipulating a maximum distance. Murphy answers that the distance requirement was specifically removed so the amendment would align with the State law and be approved by the Attorney General. DeChiara

explains that the change to no maximum distance was made on the advice of Town Counsel because it is not clear from the State law if municipalities are allowed to make such a requirement. He points out that maximum distance requirements would make no sense for a primary dwelling to itself, which is the source of the confusion about whether the Town can stipulate a distance between the primary dwelling and the ADU. Murphy notes that the State law's reference to being no more restrictive than requirements on primary dwellings refers specifically to setback requirements from property lines.

Jeff Lacy asks where the reference to Tiny Houses is in the ADU amendment and Murphy notes that there is a separate amendment document on Tiny Houses. Lacy asks what the purpose is in limiting a Tiny House to 400 square feet. DeChiara answers that it is the international standard and now used as the definition of a Tiny House by the State. Murphy explains that if it is over 400 square feet the building would be considered a normally regulated primary dwelling.

Lacy recommends changing "residential lot" in 4-4.2A to "any lot with a principal dwelling," which would also include commercial structures and mixed-used buildings.

Lacy states that he believes that setting a 100-foot offset maximum to the principal dwelling is allowed by the statute and that the State's regulations are inaccurate. He notes that Conway is keeping the 100-foot maximum because it is not in excess of any existing standards and is entirely unique to the context of ADUs. He recommends including a provision for getting a waiver if the situation of the site warrants it. He suggests keeping the restriction in and if the Attorney General objects to it, her office will strike it out. He thinks it is a valuable provision so that ADUs are not scattered around parcels out of keeping with New England design standards which prioritize compact development. Murphy asks Lacy if the Attorney General had advised against Conway keeping the provision in and Lacy answers that they said it might be deemed unreasonable because it is different from standards that relate to the principal dwelling. He explains that there is no comparable standard for principal dwellings so it should not be evaluated as if it were the same. DeChiara asks Lacy to share what Conway's proposed language on waivers from the 100-foot requirement is and Lacy reads the language. Lacy emphasizes that we should not be creating whole new clearings in the forest to put these in and they should not be scattered around a parcel.

Regarding driveway access, Lacy notes that some ADUs might be placed in such a way that a new driveway access point might be needed, though he does suggest keeping the limit to just the original curb cut. He also advises removing "one-family" from the phrase "one-family dwelling" in that paragraph because multi-family dwellings can have ADUs.

Lacy suggests removing the language about proximity to commuter services but DeChiara explains that Town Counsel recommended keeping it in to make it clear the Town is complying with the State law.

Lacy asks about the section on utilities, water, and septic and if the amendment is requiring separate utilities, water, and septic. DeChiara confirms that the amendment does not require that.

Lacy notes that he added in Conway definitions of ADUs a definition of “gross floor area” and how to calculate it, a definition of “principal dwelling,” a definition of “protected-use ADU” and of “single-family residential zoning district.” He based those definitions on what is in the State regulations and the statute.

Lacy recommends removing the severability section since there is a global severability protection in the entire Bylaw. DeChiara notes that it was included here at Town Counsel’s advice and that it relates to the warrant article specifically.

Murphy asks Lacy if a ZBA that denied a Site Plan Review for a protected-use ADU would be going outside the by-right process. Lacy explains that if the project does not meet the basic dimensional requirements in the Bylaw, it is okay to deny the project, whether it by-right or by-right and review process.

Murphy notes that the State regulations address non-conforming lots and structures and that an application for an ADU on a non-conforming lot cannot be denied. Lacy explains that this is unclear but he thinks that it means that an application cannot be denied only because the lot is non-conforming. He expects that these are the kind of ambiguities that will end up being clarified in the courts. He thinks that as lots get smaller and smaller, like down at Lake Wyola, it will be harder and harder to allow ADUs, even given the State law.

Peter Gees asks if four-family units are allowed to have ADUs. Murphy explains that the regulations say that any principal dwelling can add an ADU by right and a principal dwelling is any structure that has at least one residential dwelling in it. Lacy notes that a large commercial building that has even just one apartment would be considered a “principal dwelling” because of that one unit.

Siefert notes that he has caught some typographic errors in the amendment that he will pass along for correction.

Gees asks whether a standard-sized house could be built on a lot that already has a Tiny House as its principal dwelling, making the Tiny House into the ADU. DeChiara notes that the Tiny House is already considered a primary dwelling, despite its small size. It would be impossible to answer the hypothetical without knowing the specific situation of the lot.

Murphy offers his understanding that there is nothing in the State law or regulations regarding distances between the house and ADU. He notes that the law states Special Permits cannot be required to build an ADU and that it indicates that dwellings built on non-conforming lots cannot be rejected unless the proposed dwelling would increase the parcel’s non-conformity.

DeChiara suggests that, as with other amendments, such as the solar one, the Board should be prepared to continue to revisit this in future years. He notes that Town Counsel advised avoiding the discussion of non-conforming lots because it seems that would be something the Attorney General would strike down. Lacy offers several hypothetical cases where an ADU might be built on a non-conforming lot and how those situations would play out under the amended Bylaw and

notes that only in particular circumstances would an ADU on a non-conforming lot likely increase the lot's non-conformity.

DeChiara shares the ADU amendment again and walks through the potential changes based on the testimony received at the hearing, though he recommends also keeping the hearing open in case additional testimony is submitted.

Pyecroft would like to have the requirement of 100-feet maximum distance be included for the reasons that Lacy indicated. Murphy notes that it is not clear if the Attorney General would consider that a reasonable regulation, and he adds that setting an ADU far from the house increases the cost of it which might make it prohibitive anyway without the need to regulate the distance. DeChiara states that he would be comfortable leaving it out for now and then revisiting in the future only if distances from principal dwellings becomes a problem, though he notes that the severability clause means it could be included and just removed by the Attorney General if they rule against it. Pyecroft agrees to leave it as-is in the draft and revisit it in the future if it becomes a problem.

Murphy states that the Board should prepare clearer language for the Town Meeting warrant itself and vote on that final version at its May meeting. Murphy asks when the Select Board will finalize the warrant. DeChiara notes that the Administrative Secretary is putting the warrant together for review at the Select Board's next meeting. Melissa Makepeace-O'Neill explains that the Select Board is looking at a draft tomorrow night and will continue to look at drafts with changes and updates at subsequent meetings. It needs to be finalized in the first week of May.

Motion to put forward a warrant article relating to a draft amendment to remove Section VII of the Zoning Bylaw: DeChiara; second: Raymond. Vote: Raymond - Aye; Pyecroft - Aye; Bonnar - Aye; Weston - Aye; DeChiara - Aye; Murphy - Aye. Motion passes unanimously.

Motion to put forward a warrant article relating to a draft amendment to the Zoning Bylaw regarding Tiny Houses: Raymond; second: DeChiara. Vote: Bonnar - Aye; Weston - Aye; DeChiara - Aye; Pyecroft - Aye; Murphy - Aye. Motion passes unanimously.

Motion to put forward a warrant article relating to a draft amendment to the Zoning Bylaw regarding Accessory Dwelling Units: DeChiara; second: Raymond. Vote: Raymond - Aye; Pyecroft - Aye; Weston - Aye; DeChiara - Aye; Bonnar - Aye; Murphy - Aye. Motion passes unanimously.

Motion to close the hearing: DeChiara; second: Weston. Vote: Raymond - Aye; Pyecroft - Aye; Weston - Aye; DeChiara - Aye; Bonnar - Aye; Murphy - Aye. Motion passes unanimously.

DeChiara recognizes Robert Raymond for his service on the Planning Board because this is his last public meeting before his term ends with the upcoming Town election.

### **Special Permit for Sirius, Inc. Wind Turbine Energy System**

DeChiara shares the draft Special Permit decision for Sirius, Inc.'s wind turbine energy system and explains the contents of the decision. He notes that this comes under the new expanded Special Permit criteria adopted at the previous Town Meeting, which is why the decision includes General and Specific Findings. He reads over and explains the Findings.

The Board discusses Specific Finding #5 and its relation to the complaints received regarding noise from the previous turbine. Siefert proposes some revisions to clarify language.

Murphy asks that Specific Finding #12g, regarding erosion from the development, be revised to indicate that the foundation is already built.

DeChiara reviews the Conditions section of the decision and that compliance with State and local noise regulations will be required. If the Shutesbury Police Department or Board of Health determine the turbine is violating either the State or local noise regulation, the turbine's use will be suspended until it is modified or repaired to bring it into compliance. The Condition indicates that the Police or Board of Health would take action if they receive two separate formal complaints from a Shutesbury resident over the course of not less than one week. Siefert offers several revisions to clarify language. He notes that the 1989 Noise Bylaw identifies the Police and the Select Board as the authorities to whom a complaint can be filed and so the Board of Health should be replaced with the Select Board. He points out that repairs or modifications might be insufficient to bring the turbine into compliance if the problem is caused by environmental conditions and so DeChiara adds the phrase "as necessary" to broaden the conditions under which it could become compliant. Siefert expresses worry that the two-complaint mechanism might result in weaponizing the complaints process and wonders if they should require substantiating the complaints. DeChiara notes that it could specify that more than one person make the complaints and agrees that they should be wary of people misusing the mechanism while still giving abutters the chance to register legitimate concerns. Siefert asks if this has been shared with Town Counsel and DeChiara indicates that he had not. Siefert wonders what mechanism the Police or Select Board would have for even determining if there was a noise violation and he suggests removing all but the first and last sentences of section 2 of the Condition. DeChiara indicates he would prefer keeping the citations from the State regulation and Town bylaw for clarity. He thinks the trigger mechanism is important to include so it is clear what would constitute a violation of the Permit's Conditions. Murphy notes that the Police are not going to be consulting the Board's Special Permit decision; the Police would simply determine, based on the Noise Bylaw, whether a violation has occurred and should be penalized. He recommends revising the language simply to indicate what agencies enforce what specific regulations. Pyecroft asks if there is a method for corroborating a complaint or if this means that the turbine is simply going to be shut down immediately upon receipt of two complaints. Murphy notes that the Planning Board cannot require the Police to enforce a Special Permit decision; someone would have to petition for zoning enforcement to either the Planning Board or ZBA, or the Building Inspector. DeChiara proposes that the language be changed so that if there is a pattern of violations of the State regulation or Town bylaw, the Planning Board would be responsible for making the evaluation if the turbine is creating a noise nuisance. Seifert suggests the decision should not outline a legal process and should instead simply state what the laws are and that the turbine must comply with those laws.

DeChiara suggests and Makepeace-O'Neill agrees that the situation is similar to a dog noise complaint or any other noise complaint, which would involve a hearing and a negotiated situation that involves the Select Board, not the Planning Board. Murphy points out that the Board of Health is named as an enforcement agency of the noise ordinance because the State regulation names them as such. Murphy suggests including language indicating that the public can petition the Planning Board to evaluate a noise complaint. DeChiara disagrees and states that based on Makepeace-O'Neill's comments, complaints should be made to the Select Board. The language is revised to reflect this and DeChiara states that he thinks this makes the decision fair to the applicant and clear to people who might have a complaint about noise. Pyecroft advises also adding a requirement that the turbine comply with the relevant noise provisions in the Zoning Bylaw, Section 8.8-4F.

Motion to approve the Special Permit decision for the Sirius, Inc wind turbine energy system: DeChiara; second: Weston. Vote: DeChiara - Aye; Weston - Aye; Siefert - Aye; Bonnar - Aye; Murphy - Aye; Pyecroft - Abstain; Raymond - Abstain. Motion approved unanimously with two abstentions.

Murphy notes that in the future the Board needs to refrain from engaging in conversations with an applicant during meetings following the close of a public hearing unless proper notice was given to abutters that such a conversation is going to be held since doing so could expose the Board's decisions to legal action. Discussions cannot be held with the applicant after the hearing has been closed, however, based on information from recent Citizen Planning Trainings, it is possible that the hearing does not need to be closed before the Board deliberates. Murphy will look into this further.

### **Executive Session**

DeChiara notes that the Board was going to go into a brief Executive Session this evening but given the late hour it can cover what needs to be covered at the scheduled joint Executive Session with the Select Board on Wednesday. The Board does not enter Executive Session.

### **Adjournment**

Motion to adjourn: Raymond; second: DeChiara. Vote: Pyecroft - Aye; Raymond - Aye; Weston - Aye; Bonnar - Aye; DeChiara - Aye; Murphy - Aye. Motion approved unanimously.

**Adjourned:** 9:37pm

### **List of Documents Used:**

- Proposed Zoning Bylaw amendment regarding removing Article VII
- Proposed Zoning Bylaw amendment regarding ADUs
- Proposed Zoning Bylaw amendment regarding Tiny Houses
- Draft Special Permit decision for Sirius, Inc. Wind Turbine Energy System