

Shutesbury ZBA Meeting Minutes
November 23, 2020 Virtual Meeting Platform

Zoning Board members present: Chuck DiMare/Chair, Jeff Lacy, and Andy Berg

Zoning Board alternates present: Herb Gilmore

Staff present: Tessa Dowling/Land Use Clerk

Guests: Meaghen and Steve Mikolajczuk, David Holmes, Karen Keegan, Roy LaClaire, Toni Tygard, Glen Humphriss, Nick Yarmouth, May Emery, Joe Salvador, Steven Svoboda, Rob Smith, Wm Levine

DiMare calls the meeting to order at 7:04pm.

Statement relative to conducting virtual meetings following the Governor's restrictions on public meetings is read into the record by Dowling.

At 7:06pm, Lacy moves and Berg seconds a motion to approve the 10.14.20 meeting minutes with the following correction in the fourth paragraph on page two of the minutes:

Strike "Lacy says that 28ft is a maximum in the Lake Wyola District and most properties have full sized lots." Replace with "Within the Lake Wyola District, if a property has a full sized lot then the house on the property can reach a maximum height of 28 feet as a matter of right (no special permit required)."

The minutes are unanimously approved with correction.

Public Hearing Continuation for a Special Permit/Variance (Case 20-002): Application of Steven & Meaghen Mikolajczuk for Reconstruction of a house at 32 Lake Drive

At 7:11, DiMare opens the continued hearing for Special Permit Case 20-002 at 32 Lake Drive. DiMare lists the evidence that was reviewed as part of the Case: 12 photos, letters from abutters including one from Evan Jones that included a photo that showed the house at 32 Lake Dr. and the neighboring houses, and the special permit ruling for 67 Shore Dr.

DiMare asks Lacy if he brought his attorney friends to the abutter Homes' property to look mock up of the 32 Lake Dr. project and access the impact to the view of the lake.

Per Lacy, attorney friends were not brought to the area. Attorney friend Bob Ritchie said that neighborhoods could be treated differently around the lake.

Per Lacy, the ruling in favor of the project at 67 Shore Dr. does not mean the circumstances are the same at 32 Lake Dr. Each project needs to be judged on its own merits.

DiMare requests comment from abutters.

Per Svoboda, who owns a rental property at 29 Lake Dr. across the street from #32, the project would have a major impact on #29. There would be a loss to the view of the lake and the tenant is concerned and unhappy. The project would change the feel of the area. Has bigger concern about health and safety around the lake and the loss of views. Is concerned that septic systems

and increases in rainwater runoff may have a negative impact on the lake. Hopes that changes can benefit the community.

Per DiMare, the applicant is planning to cut down a tree on the property that could open up some of the view.

Per Svoboda, more trees are needed along the lake. Opening the view by taking down a tree is not the same as keeping the view open by limiting the height of a building.

Per Humphriss, the tree they are planning to take down is dangerous.

Svoboda is not against taking down dangerous trees.

Per Smith, abutter at 25 Lake Dr., the project is not a direct impact but does decrease the lake view and there is a concern that height increases on small lots in general along the lake decrease the view.

DiMare asks for comment from the applicant.

Per Mikolajczuks, plan to improve infrastructure on the property and take down a tree hazard. Have worked closely with the Conservation Commission. We disagree that 32 Lake Dr. is a different neighborhood. We conducted research on what projects around the lake were approved and chose the lowest common denominator in regards to the height increase. Do not believe the project is substantially more detrimental to the neighborhood.

Smith asks for clarifications on height requirements.

Per DiMare, in all other districts the height maximum is 35ft. The height maximum for the Lake Wyola District is 28ft. If a lot does not meet the setback requirements than the structure on the lot is nonconforming and increasing the height requires a special permit.

Per Smith, concern about the 26 Lake Dr. project across the street that could block 50 to 60% of lake view.

Per Mikolajczuks, if the lot meets setback requirements than the structure can reach the height maximum without a special permit hearing.

Per DiMare to Smith, if you have specific questions you can come for education/guidance at a future meeting.

Per Emery, tenant at 29 Lake Dr., where will the parking be located at 32 Lake Dr.

Per Mikolajczuks, there will be parking in front of the house and in 10ft strips along the sides of the building. The Conservation Commission approved drainage system.

DiMare checks that there are no more abutter comments or other evidence for the Case.

Lacy asks if ZBA members are ready to move to the deliberation/discussion phase of the hearing.

At 7:47pm, the hearing is closed and moves to the discussion phase.

Per DiMare, zoning bylaw 6.1-3 does not require that the ZBA access the project in light of the section 9.2-2 criteria, but the project meets this more stringent criterion.

DiMare asks for comments from members.

Per Berg, considering the area in regards to future projects is a legislative activity. Does not believe the project is substantially more detrimental than current conditions. There is a minimal height increase. Changes to the bylaws would take collaborating with the planning board. Work with the bylaws as they are written otherwise the applicant does not have clear expectations of what is allowed. There could be legal trouble for capricious rulings.

Per Gilmore, personal visions regarding the appearance of and the appropriate amount of development around the lake should be kept out of the discussion. Agree with DiMare and Berg in support of the project.

Per Lacy, 1) A special permit proposal similar to 32 Lake Dr. was granted for 67 Shore Dr. but the properties are in different neighborhoods of the Lake. There is more spacing between houses in the neighborhood around 67 Shore Dr., giving abutters across the street a greater chance to see the lake between houses, and the houses across the street from the lake are higher up with a greater chance to see the lake over the roof tops. In the neighborhood around 32 Lake Dr. side setbacks are smaller and the height across the street is lower. There is greater detriment at 32 Lake Dr.

2) It is at the discretion of the ZBA to approve project. It is not legislating or part of town meeting. The house is going from 1.5 stories to 3 stories, doubling in size. This could lead to a wall of houses along the lake.

3) The project is building up and out (dormers), which blocks the view of the lake in two directions.

Could see approving: a 1.5 to 2.5 story project, redoing the interior of the structure, and the planned porch.

Height increase is not in the best interest of the neighborhood. Would vote no.

Per DiMare, the project proposes a 5ft increase in height from 21.5ft to 26.5ft.

Per Lacy, the basement would be finished.

Per Berg, the basement is not livable. The house is going from 1.5 to 1.75 stories, not doubling. The structure is approximately 1200 square feet which is not a large project. There would be a wall of houses only if you consider future projects. Within 100 feet a similar project was approved. The basement is not a full story, it does not have windows and doors on all sides.

Per Mikolajczuks, we would not be using the basement for bedrooms or kitchen. A height increase was approved at 28 Lake Dr. in 2010, which is less than 50 feet away. Not a separate neighborhood.

DiMare refers to photo submitted by Evan Jones, other houses in the vicinity are two stories. There is a loss of the lake view from abutters but does not equal a substantial detriment to the neighborhood.

Per Lacy, other two story houses do not have houses across the street. The project is not in the public's interest.

DiMare believes a negative ruling on the Case could be seen as arbitrary and capricious and could run the risk of a court case and would like to receive input from town counsel.

Lacy objects to input from town counsel as Shutesbury's town counsel, Donna MacNicol, owns a one-story cottage on Lake Wyola. There could be conflict of interest.

Per Lacy, a realtor might provide more insight than a lawyer on the detriment to the property values of abutters due to a height increase at 32 Lake Dr.

Per DiMare, town council would express their view on whether a negative ruling on the Case would expose the town to a possible lawsuit.

DiMare will request input from town counsel Donna MacNicol on the legality of a negative ruling for Case 20-002 and ask that MacNicol attend the December ZBA meeting. DiMare will relay to MacNicol Lacy's concern that there may be a conflict of interest. If MacNicol feels that she needs to recuse herself from the Case, then DiMare will request advice from a different lawyer.

The Discussion phase for the Special Permit Hearing for Case 20-002 will be continued to the December 21, 2020. It will be on the agenda after the special permit hearing for Case 20-003.

Education/Guidance

Wm Levine came forward to request guidance on whether building on the property at 585 Wendell Rd would require a special permit. Levine is interested in buying the property but is not the current owner. There is a structure on the property (approximately 478 square feet), but no running water or septic system. The lot size is 6.25 acres. The lot has 296 feet of frontage on Wendell Rd that includes a 51-foot logging right of way. The front setback is approximately 170 feet. The rear setback is approximately 300ft and the side setback is greater than 1 acre. Levine asks if the existence of a right of way effects whether the frontage meets zoning bylaw requirements.

Lacy will check the bylaws and regulations to answer this question. He provides Levine with his phone number so they can address the question outside of the ZBA meeting.

Levine also asks whether any new owner living on the property would be required to put in a septic system.

Per Lacy, this might depend on how the new owner paid for the property. A mortgage with a bank would likely require that the owner install a septic system.

New Business

Per DiMare, the ZBA and Planning Board should meet to discuss legislative change in regards to zoning bylaw height maximums in the Lake Wyola District, perhaps after the pandemic is over and the meeting can be held in person.

Lacy will reach out to the Chair of the Planning Board to initiate the discussion.

Old Business

Reminder that Application Fees for Special Permits/Variations increase to \$400 & Application Fees for Site Plan Review Fees increase to \$200 beginning on January 1, 2021 (Voted in favor at the October 14, 2020 ZBA Meeting)

DiMare reminds ZBA members of the 10.14.20 meeting's vote to approve fee increases for Special Permits, Variations, Application Fees and Site Plan Review Fees. The fees are being raised in response to increases in the cost of public hearing newspaper notifications.

Berg notes that the fees were not raised for the review of Appeals of a Building Inspector Decision/Order. These Appeals do not occur very often.

ZBA members confirm through a review of the Zoning Bylaws and MA General Law Chapter 40A section 15 that these Appeals require public hearings.

DiMare takes a poll of whether members approve of a fee increase from \$300 to \$400 for Appeals of a Building Inspector Decision/Order. Members approve.

At 9:03, the discussion is noted and the vote for the fee increase is tabled until the December 21, 2020 meeting.

Berg will update the ZBA website to reflect the filing fee changes after the ZBA votes the fee change for the Appeal of a Building Inspector Decision/Order.

Schedule next ZBA Meeting/Site Inspections

The Special Permit Hearing for a shed at 80 Shore Drive (Case 20-003), submitted by applicant Andrew Cloutier, is scheduled for December 21, 2020. The meeting will start at 7pm.

At 9:04pm, Berg moves and Lacy seconds a motion to adjourn the meeting; the motion passes unanimously.

Respectfully submitted,
Tessa Dowling
Land Use Clerk