

Shutesbury ZBA Meeting Minutes
January 25, 2021 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 Steven Mikolajczuk Matthew Borowiec, Michael Petrin, Eric Panilio Joseph Salvador, Fran Merrigan

DiMare calls the meeting to order at 7:01pm.

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

At 7:03pm, Berg moves and Lacy seconds a motion to approve the 12.21.20 meeting minutes with the following edits.

- page 2, "be" should be replaced by "by".

Roll call vote: Lacy: aye, Berg: aye, DiMare: aye; the motion carries.

Lacy requests that the Town Counsel's comments regarding alternate members and whether continuation paperwork mentioned in the 12.21.20 minutes be discussed as new business.

At 7:10pm, Berg moves and Lacy seconds a motion to approve the 01.13.20 meeting minutes with the following edits:

-page 1, "Lake Drive" should be "Shore Drive"

-page 1, Lacy clarifies his statement regarding Goldhirsh court case and the sentences is edited to read "Lacy refers to Goldhirsh v NcNear Court Case and explains that, according to his reading, nonconformity can be increased within the existing footprint if there is an increase in height."

-page 4, "roll" should be "role"

-page 4, missing word "is" in the third bullet point under new business.

Roll call vote: Lacy: aye, Berg: aye, DiMare: aye; the motion carries.

Decision Phase for a Special Permit re: Application of Andrew A. Cloutier for a construction of a prefab metal shed with a concrete pad (Case number: 20-003)

At 7:21pm, DiMare opens the Decision phase for the Cloutier Special Permit Case # 20-003.

Lacy shares his screen to show the draft of the Special Permit and reads through the four findings.

1. There was no adverse testimony from parties in interest, or anyone.
2. There is an adequate fenced and vegetated buffer between the proposed structure and the adjacent dwelling to the south.
3. There are no dwellings behind the subject lot that would have their views of the lake impaired by the structure.
4. The structure will provide additional storage space for vehicles, equipment, and materials now stored in the open.

DiMare and Berg approve of the findings.
Per Berg, the project is straightforward.

At 7:25pm, Berg moves and Lacy seconds a motion to approve the Special Permit for the Cloutier prefab shed at 80 Shore Drive as written.
Roll call vote: Berg: aye, Lacy: aye, DiMare: aye; the motion carries.

DiMare authorizes Dowling to sign his electronic signature to the Special Permit. Lacy emails the decision to Dowling. Dowling will get a certified copy of the decision from the Town Clerk and mail it out to start the appeal period.

Public Hearing for a Special Permit/Variance re: Application of Matt Borowiec for Reconstruction of a house at 16 Wyola Drive. (Case number: 21-001)

At 7:30pm, DiMare opens the public hearing for the Borowiec Special Permit case # 21-001.
DiMare reads the public notice regarding this hearing.

DiMare asks if the Board has conducted a site visit to this property as he did last week.

Lacy, Berg, and Gilmore visited the site today (January 25, 2021).

DiMare confirms that all members have at least an electronic copy of the project application and site plans if not a hard copy and an electronic copy.

DiMare notes the letters of support including in the application from the following abutting lots: Lots 612, 614, 611 & 633, 618, 605 & 622, and 669 & 645.

A letter of support from the Salvadors at 51 Merrill Drive was submitted to the Board on January 17, 2021.

DiMare asks the applicant why the project should be approved.

Borowiec introduces is engineer, Michael Petrin, who is also attending the meeting and then explains that his family has been a party of the Lake Wyola community for generations since the 1950s. He met his wife on the Lake. They purchased the 16 Wyola Drive house, which is in a state of disrepair, so they can stay there with their family and improve the neighborhood by rebuilding the house, keeping in alignment with other lake house designs. They plan to take down dangerous trees on the property and replant with maple trees and blueberry bushes. They talked to neighbors to get their support for the project. There are no view impacts. They have submitted a special permit as the property is nonconforming in the side-setbacks. When the house is rebuild it will be less nonconforming on the west side has it will be further from the property line. The height of the proposed house rebuild is likely to be 26.2 ft., but that height might increase depending on what the contractors need to do to install the helical piers that will be used as the house foundation.

DiMare asks for questions from the Board.

Lacy asks if the applicant knows the height of the Merrigan abutting property?

Per Borowiec and Petrin, they believe it was 24 ft. in height.

DiMare asks if the public has questions or comments.

Nick Tarmac of 18 Wyola Dr. and Joe Salvador of 51 Merrill Dr. are in full support of the project.

Gilmore asks about the nine trees that will be removed from the property.

Per Borowiec, they are decaying soft wood trees. The plan is to replant with maples and blueberry bushes.

Gilmore asks what the use of the property will be and the plan for the septic system?

Per Borowiec, a single-family residence. There will be a 2000-gallon tight tank installed.

There is not room for a larger tank with setbacks.

Berg asks about off-street parking?

Per Borowiec, there are two gravel spots that will drive over the septic tank.

Lacy supports the tight tank, which limits water use. Sees the house as a seasonal cottage.

The house will be slightly narrower but larger.

Per Borowiec, yes, but the increase in the footprint of the house conforms to front and back setbacks.

Gilmore points out that there was no letter of support from #14 Wyola Dr.

Borowiec explains that he has not met the owner of 2B-615 (14 Wyola Dr.). The house was sold 4-5 year ago.

Berg asks the size of the rebuild?

Per Borowiec, 1800 square feet.

DiMare asks the Board is section 6.1-3 of the town zoning bylaws applies to this project.

Per Lacy, yes, 6.1-3 applies and the ninth example of projects that require special permits shown on page 23 of the zoning bylaws.

DiMare asks if the Board needs additional facts to make a decision regarding the project.

Per Berg, there is enough information given the state of the cottage.

Lacy agrees that there are enough facts including what he observed at the site visit. His observations included:

- 1) There was 19 feet between structures on the east side and 16 feet between structures on the west side of 16 Wyola Dr., which is more than between other structures along the lake.
- 2) Houses across the street already do not have much of a view of the lake with the current structure because the area is flat.
- 3) There are no objects to the project on record. The immediate neighborhood supports the project.

Per Berg, the current structure needs work. DiMare agrees.

Per Borowiec, full intent to improve the house, which was built in the 30s or 40s. Per Lacy, 1938.

Gilmore states that he does not have any more questions for the applicant.

Borowiec asks if there would be an issue if the height of the new structure went up to 26.8 ft. instead of 26.2 ft. due to the helical piers. At this point in time the engineer does not know the exact height.

Per Petrin, the building height will stay below the 28ft district limit.

DiMare confirms that the height cannot exceed 28 ft.

DiMare asks how the Board would vote on the project. All board members and the alternate express that they are in favor of the project.

DiMare asks Lacy to draft a Special Permit decision for 16 Wyola Dr. for the February 18, 2021 meeting and Lacy agrees.

At 8:09pm, Lacy moves and Berg seconds a motion to close the hearing for case 21-001. Roll call vote: Berg: aye, Lacy: aye, DiMare: aye; the motion carries.

Case 21-001 will now be in the decision phase.

Steven and Meaghen Mikolajczuk request that their special permit project at 32 Lake Dr. be second on the agenda after the 16 Wyola Dr. project.

Education/Guidance

Per Mikolajczuks, why can the 16 Wyola Dr. project go up to 28ft district limit?

Per DiMare, it depends on how the application is written.

New Business

- Discussion to Increase the filing fees from \$400 to \$500 for Appeals of a Building Inspector's Decision/Order; &Permits/Variances; and increase to \$250 for Application Fees for Site Plan Review beginning January 1, 2021.
Per DiMare, the last public hearing notice in the Gazette costs \$610, higher than the filing fee. DiMare asks Dowling to reach out the Gazette and ask how they determine the cost of a public notice.
- DiMare delegates the writing of the Annual Report to Dowling. The Board will review the Annual Report at the February 18, 2021 meeting.
- Per Lacy, with a three member ZBA, Special Permits and Variances must have a unanimous vote. Berg suggests increasing the board to five members so that people can vote their conscious but a decision can be made with a supermajority and not unanimously. A decision would to be on one specific person. DiMare would be in favor of a five-member board.
- Per Lacy, the Board cannot approve a decision and then let the clock run out on submitting it so that the project is approved. Both Attorney Bob Ritchie and Town Counsel Donna MacNicol do not approve of running out the clock on a decision. DiMare agrees and says he would resign as Chair if he did that without the consent of the full Board.
- Per Lacy, Town Counsel MacNicol and Attorney Bob Ritchie agree that if an alternate member attends all the hearings related to a project that they could be dropped in as a voting member if needed (such as an emergency that caused a voting member to have to miss a meeting). This is a correction of a previous statement made by Town Counsel that said alternate members had to designated as voting members when a hearing first opened.
- Lacy comments on when the Continuation form is required to be signed by the Board Chair and the applicants. The entire hearing for a special permit or variance must be completed within 65 days or continued with the joint approval of the Board and the applicant. If there were join agreement, a continuation form would be signed.

Old Business

Dowling reminds the Board of the All Board's Meeting on February 16, 2021 starting at 6:30pm. Berg will attend to speak for the ZBA and summarize recent work.

Schedule next ZBA Meeting/Site Inspections

The deliberation phase for the Borowiec Special Permit and the Mikolajczuks Special Permit will be held on February 18, 2021 starting at 7pm. The Mikolajczuks have requested that their Special Permit be the second item on the agenda.

At 8:35pm, Lacy moves and Berg seconds a motion to adjourn the meeting. Roll call vote: Lacy: aye, Berg: aye, DiMare: aye; the motion carries.

Respectfully submitted,
Tessa Dowling
Land Use Clerk