

Shutesbury ZBA Meeting Minutes  
February 18, 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: Donna MacNicol (Town Counsel), Meaghen and Steven Mikolajczuk, Matthew Borowiec, Michael Petrin, Eric Panilio, Joseph Salvador, Fran Merrigan, Karen Keegan, Donna West, Attorney Jim Martin, Toni Tygard, Glen Humphriss, David Holmes

DiMare calls the meeting to order at 6:01pm.

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

At 6:13pm, Berg moves and Lacy seconds a motion to table the 01.25.21 meeting minutes until the next meeting. Roll call vote: Lacy: aye, Berg: aye, DiMare: aye; the motion carries.

The Board discussed the interpretation of the Land Case Goldhirsh v. McNear.

At 6:14pm, DiMare moves and Berg seconds a motion for the Zoning Board to enter executive session under Mass General Law Chapter 30A section 21 "to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares."

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

The Zoning Board and Donna MacNicol, Town Counsel, enter executive session at 6:17pm. Executive session ends at 7:13pm. The open public meeting resumed at 7:21pm.

Continued Decision Phase for the Mikolajczuk Special Permit (Case 20-002)

Previously, the Mikolajczuk Special Permit (Case 20-002) decision discussion was the second agenda item. DiMare asked Borowiec, whose Special Permit had been the first agenda item, if he would be willing to go second. Borowiec agrees.

Lacy recuses himself from voting on the Mikolajczuk Special Permit (Case 20-002) due to a potential conflict of interest: Lacy is paid for snow plowing by an individual who had expressed opposition to the project during the public hearing process.

Members of the public asked for Lacy to restate his reason for recuse and he did so.

DiMare accepts Lacy's recusal and appoints Herb Gilmore as a voting member for the Mikolajczuk Special Permit (Case 20-002).

DiMare polls the voting members on where they stand on the project.

Berg would like to move forward and approve the project with conditions.

Gilmore also supports approving the project.

Members of the public ask for clarification on 1) why Gilmore is allowed to vote on the project when he could not vote before, and 2) whether Lacy was advised to recuse himself because of legal litigation during the executive session.

Per Town Counsel, Gilmore is an alternate member of the Zoning Board and, since he has attended all of the hearings for Case 20-002, he can act as a voting member if a full member of the Board recuses himself. In regards to the second question, the Board cannot answer due to pending litigation. When the special permit appeal period is over or when any litigation is resolved, then the minutes for the executive session can be released.

After some discussion, Attorney Martin, the attorney for the applicants, agrees to draft the Special Permit decision with the applicants' approval.

At 7:46pm, Berg moves and Gilmore seconds a motion to review the Special Permit decision for Case 20-002, as drafted by Attorney Jim Martin, on March 3, 2021 at 7pm. Roll call vote: Gilmore: aye, Berg: aye, DiMare: aye; the motion carries.

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

At 7:47pm, DiMare opens the decision phase for the Borowiec Special Permit (Case 21-001) and reminds the Board and the Public that Lacy had drafted the decision for the permit.

Lacy screen shares the drafted decision.

Per Lacy, the first section of the decision is the general applicant and location information taken directly from the application and the second section describes the project in relation to the setbacks.

Borowiec and his contractor, Petrin, request that the height limit written in the decision be set at "less than 28 ft." rather than a specific height because the house will be set on helical piers which require approximately a two foot clearance under the house and the exact height cannot be determined until the house is built. Borowiec was unaware of the two-foot clearance requirement when he submitted the permit application. He explains that the Conservation Commission prefers helical piers to other foundation types because their installation requires limited excavation of the soil and little potential for erosion issues. Per Petrin, slab foundations have greater site impacts as they need to be dug below the frost line and would likely require a dewatering plan. Lacy continues to findings and conditions sections of the decision.

Per Lacy, the Board first needs to find that a change to a nonconforming structure that increases the height also increases the nonconformity of the structure (finding # 3) because, if the nonconformity has not increased, then the project might only require a building permit and not a special permit.

For finding #4, which finds that the project is not substantially more detrimental to the neighborhood, the Board added additional information concerning the use of helical piers.

In regards to condition #3, Borowiec asks that the name of the firm that will create the plans be used instead of a date as the plans are not finalized and so the date is not set. The final version of condition #3 reads, "The Building Inspector shall assure that the grades are in conformance with the elevation plans on the final construction plans submitting with the building permit application."

At 8:10pm, Berg moves and Lacy seconds a motion to approve the Special Permit decision for Case 21-001 as written and displayed by Lacy. Roll call vote: Berg: aye, Lacy: aye, DiMare: aye; the motion carries.

DiMare authorizes Dowling to sign his electronic signature to the decision. Dowling explains to Borowiec and Petrin that the decision will shortly be mailed out after being signed and filed by the Town Clerk, and a 21-day appeal period will commence.

The Board says that the Case 21-001 decision can be used as a baseline for Attorney Martin who has agreed to draft the decision for Special Permit Case 20-002. Lacy specifically mentions that the findings #1-3 from Case 21-001 should be included in the decision for Special Permit Case 20-002.

#### Education/Guidance

West owns a cottage on Lake Wyola at 69 Shore Dr. She also owns the adjacent property at 67 Shore Dr. Combining the properties would lead to a total of 1150 square ft. of land, 100 ft. of road frontage, and 126 ft. of water frontage. West would like to combine the two properties, tear down the cottage, and build a two story single-family house within setbacks, but not necessarily on the footprint of the current structure. West would like to use the current holding septic tank as it is 8 years old. The tank is 7 ft. from the current structure.

Per Lacy, conforming to setbacks would require a 20 ft. setback along the road, 25ft in back, and 15ft on either side. The height limit is 28ft.

The Board recommends talking to the Planning Board and using an ANR (Approval Note Required) plan to combine the two properties, and talk to the Board of Health to determine where a new structure could be located and still use the current septic system.

Salvador knows an architect designer that West could talk to about septic systems and tight tanks, and recommends that West give him a call to get the designer's contact information.

Lacy recommends having the Building Inspector look at the town zoning bylaw section 6.1-3D. Structures built within setbacks can be built by right and would not require a special permit.

To provide further guidance the Board would need to see plans for the new structure.

#### New Business

- Conservation Commission Applications to ZBA  
Town wetland bylaw states that the ZBA should receive hard copies of all Conservation Commission Applications. Per DiMare, in the past only relevant applications to the ZBA have been raised by the Land Use Clerk, such as projects on the Lake. The Board supports this practice and recommends that Dowling share Commission applications that are relevant to the ZBA or when the Commission specifically wants ZBA input and realize that Dowling will have a greater understanding of what is relevant as time goes on.
- ZBA Annual Report  
Dowling wrote and submitted the Annual Report to the Board. The Board supports the report. Dowling will submit the report to the Admin Secretary.
- Newspaper legal public notice cost

Dowling talked to the Hampshire Gazette and learned that the Hampshire Gazette cost per inch for a public notice is twice as expensive as the cost per inch for a public notice in the Greenfield Recorder. The Board asks that Dowling check with the Town Administrator about whether the ZBA can switch which to using the Greenfield Recorder for public notices.

- Per Dowling, the Cloutier Special Permit (Case 20-003) appeal period ends on February 22, 2021. The Town Clerk will sign the final Permit decision and it will be mailed to the applicant next week.

### Old Business

- All Boards Meeting

Berg attended the all Board's meeting on February 16, 2021 representing the ZBA. Berg gave an approximately 3 minute report on the special permit ZBA cases, the fact there is an alternate member vacancy on the ZBA, and the interest in a joint Lake Wyola bylaw project with the Planning Board.

DiMare asked about meeting attendance and Berg replied that attendance was in the high 20s. Per DiMare, once it is safer to meet in person, perhaps with the increase in vaccinations, the ZBA will take a walk with the Planning Board around Lake Wyola and discuss modifying the zoning bylaws concerning Lake development.

### Schedule next ZBA Meeting/Site Inspections

The deliberation phase for the Mikolajczuks Special Permit will be held on March 3, 2021.

At 8:45pm, 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