

Shutesbury Zoning Board of Appeals

09/27/2022

Approved – 01/26/2023

Virtual Meeting

Meeting Start: 7:00pm

Members Present: Jeff Lacy, Mary David, John Aierstuck,

Members Absent: None

Other Staff: Carey Marshall (Land Use Clerk)

Other present: None

Chair's Call to Order at 7:06pm

Meeting is being recorded

Jeff Lacy, new Chair of ZBA, welcomes new members Mary David and John Aierstuck to the board.

Lacy introduces himself; a part of the Zoning Board of Appeals (ZBA) for 10+ years and the Planning Board (PB) for 24 – he has never been Chair but prefers to be a technical person. ZBA needs a clerk and at the last meeting he was designated clerk as well but because the town has Land Use Clerk, Carey Marshall, that title doesn't mean much.

Public comments

None

Lacy explains that in this section of the meeting any members of the public can make general comments, questions, or concerns about matter regarding the ZBA.

Education and guidance

None

Lacy explains this section of the meeting is where any members of the public can make comments, questions, or pose concerns about specific projects, permitting processes, and etc.

ZBA organizational issues discussion

None

There are no cases to review but Lacy notes this is where ZBA will conduct scheduled cases. He has sent documents to review the 5 functions of the ZBA – 4 out of the 5 are stated law whereas the last one is stated in our bylaws.

Lacy: The first function is site plan review which is a review process without a public hearing – members would ask questions and/or conduct site visits to gather any information needed. ZBA

can either approve it, approve it with conditions or deny them. This function is written in our bylaw.

Lacy: The second function is special permits which are defined in law by the state's zoning act. PB does special permits as well but in different circumstances that are considered larger projects such as solar fields, subdivisions or shared driveways. ZBA handles smaller special permits such as renovations or rebuild of current structures down by Lake Wyola (single residents).

Lacy: The third function is zoning variances – these can be made by a landowner who wishes to do something not in accordance with the bylaw. For example, the frontage requirement is 250ft but a landowner only has 248ft. They come to the ZBA and ask to accept the 248ft instead of the require 250ft – ZBA is deviating a dimension required in our bylaw. Zoning variances are also in the state's zoning law and are specific as to what the ZBA can and can't do for variances – little discretion compared to a special permit.

Lacy: The fourth function is appealing a decision by the building inspector. Our building inspector is the zoning enforcement officer in town. An example of this is when a neighbor complained to the building inspector that his neighbor wrongfully had a permit for a dog agility center on his property (considered commercial). The building inspector then sent a cease and desist order to that landowner to which the landowner appealed to the ZBA. The ZBA held a Public Hearing to hear from the building inspector, and the landowner to gather facts (including doing a site visit). The ZBA decided that it wasn't a commercial use but used for the purpose of a hobby – reversing the building inspector and allowing the landowner to proceed. ZBA can either uphold and support the decision made by the building inspector or reserve his decision.

Aierstuck: why did the landowner approach the building inspector first and not ZBA? Lacy: the use was already occurring so the neighbor correctly filed a complaint with the zoning enforcement office which is the building inspector. The building inspectors gathered his own information and processed as such.

Lacy: The fifth function is Chapter 40b which is the state's affording housing law. Shutesbury does not have 10% of their housing stocks in affordable housing – affordable housing meaning housing that is affordable to those who do not make 80% or less of the area median income. ZBA has never handled a case like this and there is not many places in Shutesbury that qualify for this law. Someone could come in with a project under Chapter 40b which allows someone to apply for multiple waivers in order to not apply for any variances. It is to consolidate a process that would come before the ZBA. ZBA assumes the functions of other local boards (specially PB) and becomes the permitting center for a project as such.

Lacy: out of all 5 of these functions, ZBA most commonly handles special permits and site plan reviews. Aierstuck: the Chapter 40b section seems to be complicated – how come it doesn't go to the PB? Lacy: he is not entirely sure but that is how the law is written. It is probably because all the zoning waivers are going to be requested and negotiated – ZBA dealing with variances is in theory use to dealing with zoning waiver issues. In variances ZBA has a lot of authority to deny but with Chapter 40b ZBA doesn't have any.

Lacy: lawfully non-conforming structures pertain mainly to the homes on Lake Wyola. Lawfully non-conforming structures were built a long time ago when they were considered lawful; there is a provision in our local bylaw that protects those structures. These structures can be worked on to be made larger or taller but subject to determination through a special permit process; the process determines whether the proposed change would be or would not be more substantially detrimental to the neighborhood than the current structure. Aierstuck: given that the structure was built under lawful prescription but now, by definition, the desired changes are not lawful; is it not in the bylaws to do those desired changes? What is the guidance for those? Lacy: some things are allowed with a building permit which as specified and in the zoning bylaw, there is a list of scenarios along with pictures to help. Other things trip the threshold which sends projects to ZBA for a special permit. Attached or detached uninhabitable accessory structures are sheds, barns, garages, or workshops placed within the lot setbacks – can be closer to the lot line than usual.

Lacy: Ground mounted solar is usually proposed as installed in the back of a home to service the home. These come before ZBA for approval to mostly avoid sticking those in the face of a neighbor - ZBA has the authority to make adjustments so that it is not too visible from the street or neighboring property.

Lacy: if ZBA was to receive a site plan review, Marshall would forward the application, start a card copy file and he will give it a case number. He would then email everyone the application along with information on picking a meeting to review it. ZBA may visit the site, either together or separately, and then hold the meeting to review it. Site plan review is not governed in state law – home rule powers. If ZBA were to receive a special permit, it will be similar but the first meeting will be a Public Hearing because ZBA has to hold a Public Hearing for the special permit application within 65 days of receiving the application. During the Public Hearing, the applicant will be present the project along with a consultant if they have one. ZBA will be able to ask questions along with opening it up to the public for public comment. Sometimes the Public Hearing will be continued if more information is needed. Once the ZBA is satisfied, the Public Hearing will be closed - ZBA will have 90 days to give a written decision to the applicant.

David: does the board have standing meeting or are the meetings scheduled based on the cases that come in. Lacy: ZBA is purely a regulatory board meeting the board only meets when there is a case presented.

Lacy: he believes ZBA needs an alternate member(s). ZBA can meet and pass site plan reviews with only two members but for a special permit, all three members must vote in favor for it to pass. He recommends that the current members, including himself, come up with some candidates in mind. David: is there any situation you would recuse yourself from a case? Lacy: yes there is a conflict of interest law that lists criteria that disqualifies a member from participating as an acting member just as a family member is an applicant, a member has a financial interest in what is being proposed or if you are abutter that meets the specific criteria listed. ZBA alternates can do anything a normal member can do. David: do alternates have to have participated in all of the meetings pertaining to the application to participate? Lacy: yes but there is a rule that states a member or alternate can miss one meeting and stay on it as long as they make it up by watching the meeting recording or attesting they have read the minutes.

David: Marshall do you know if anyone in town has printed herself and Aierstuck copies of the Shutesbury Zoning Bylaws? She had asked them but haven't heard back. Marshall: I can locate a copy in the office and print 2 copies for each of you to have. She will email David and Aierstuck once their copies have been made and left in the ZBA mailbox for them to pick up.

Lacy: open meeting law is something ZBA has to be cautious about. Since ZBA is only a three member board, they can't discuss cases in subsumptive matter – for example, after a site visit he and Aierstuck couldn't make comments to one another about what they think of the site and/or application because it is consider deliberation outside of a meeting. ZBA can discuss scheduling for meetings or site visits. David: do you, Lacy, have any written decision they may have to review as examples? Lacy: yes, he will send an example of a site plan review and special permit.

Adjourn: Motion: David moves to adjourn, Aierstuck seconds. Vote: David- Aye, Aierstuck- Aye, and Lacy- Aye. So moved

Meeting Close: 7:50pm