

Shapleigh Planning Board

Minutes

Tuesday, January 14, 2020

Members in attendance: Roger Allaire (Chairman), Madge Baker, Ann Harris, and Roland Legere. Maggie Moody and Steve Foglio (Vice Chairman) were unable to attend. Code Enforcement Officer Mike Demers was also in attendance.

Minutes are not verbatim, unless in quotes “” – If the name of a citizen making a comment was not requested by the Planning Board Chairman, the reference to their name will be known as ‘Citizen’ or ‘Abutter’ depending on whom is speaking.

Proposed Ordinance Changes: Amend §105-4 to Allow Low Retaining Walls in the Shoreland District; and Allow a New Accessory Structure in the Shoreland District; Addition(s) to §105-15. Definitions. & §105-17. Land uses; Amendment to §105-26 Stormwater runoff

Barbara F. provided members with copies of the proposed ordinance changes and additions, which included an amendment to ‘New Accessory Structure in the SD’ based on the discussion on the topic at the last Planning Board meeting held on December 10, 2019, and a recent email from Jeffrey Kalinich of the Maine DEP, Assistant Shoreland Zoning Coordinator. At the meeting on December 10th, it was noted by Steve F. that Section 105-35 addressed accessory buildings, requiring them to be set back 10 feet from the rear and side lot lines, and it could not be located in the ‘require front yard’. In the SD the front yard, the area between the road and existing structure is likely where the new accessory structure would or could be located, so it appeared there would be a conflict in the ordinance. Barbara brought this to the attention of Jeffrey Kalinich when she emailed him the proposed additions and amendments to the Zoning Ordinance for him to review. Mr. Kalinich agreed stating, “It would appear that Section 105-35 conflicts with (the addition to) Section 105-4.D. I am not sure what a required front yard is but clearly 105-35 is saying accessory structures must meet the setbacks and (the addition to) 105-4.D is saying they do not have to meet setbacks in certain circumstances. You could amend 105-35 to say except when the criteria of 105-4 are met, or visa-versa.”

Barbara F. stated that she amended New Accessory Structures since this has been presented in a public hearing to voters already, whereas any change to 105-35 has not, so she didn’t feel comfortable amending that section at this late date. She did say the board could consider a change to 105-35 for next year if they felt it was appropriate.

Barbara F. stated that she also made a change to ‘New Accessory Structures’ regarding side lot and road setbacks after the last discussion. She added ‘In no case shall the structure be located within 10 feet of the setback to the edge of the road or side lot line.’ Barbara said the board could change this, she just wanted something to open a discussion regarding the setback issue for the new structure.

Roger A. stated that after reviewing the new ordinance for Low Retaining Walls, under the new section (h) ‘All approved plans may require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board’, he wanted to add a number 1) stating that the side setbacks do not apply. He said the reason is the side setback requirement is 10 feet and it is likely the low retaining wall will go up to the side lot line. He said the placement of the structure is likely to be by a licensed surveyor, so the board would be allowing the wall to go up to the side lot line.

Roger A. said the board would not have to change anything else in the ordinance, just add line item 1 under the surveyor section, this would allow the wall to go to the side lot line. The board discussed this and agreed this would work. Roger said again the surveyor would be depicting the location. The board members did note that Section (h) stated that ‘All approved plans *may* require confirmation in writing by a licensed surveyor’, there was concern over the word ‘may’. Barbara F. said this had been discussed when initially talking about adding the section for a surveyor to this new section of the ordinance, and several members thought the word ‘shall’ was too strong. Roland L. asked if the word ‘may’ is used, who makes the determination whether a survey will be required? Both Ann H. and Madge B. did not like the word ‘may’. Ann said with the word ‘may’, applicants could accuse the board of allowing a wall to go in without a survey for one person, while requiring a survey for another applicant. She felt ‘may’ should be removed. Madge agreed. Ann stated that with so many issues with property lines, and the fact many people still haven’t had a survey done, this could help them realize where their actual boundary is. She noted some people may be shocked unfortunately. Roger agreed ‘shall’ would be appropriate.

Board members agreed to place the word ‘shall’ under Section (h) ‘All approved plans *shall* require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.’ Also under Section (h) will be Section [1] which will read, ‘Side setbacks for structures shall not apply to low retaining walls’.

Roland L. asked if he was correct in assuming a low retaining wall would allow stairs to go thru it? Madge B. and Roger A. stated that yes, stairs would be allowed. Roland said he wanted to be sure because it wasn’t stated. Madge said that it was common sense.

Madge B. asked if it was clear that these walls could not be put in if there were trees impacted? She said she did not want people taking down trees to put in these walls, she wasn’t sure if that was clear. Madge said that behind the wall you revegetate. Barbara F. asked if she had a suggestion? CEO Demers said that even in front of the wall it had to be re-established with a buffer. Madge said she didn’t want the new walls to take out trees. Roland L. said he agreed. CEO Demers stated that this was Planning Board review, so on a case by case basis the board has the ability to review the situation. Ann H. thought they couldn’t just take down trees in another section of the ordinance. CEO Demers believed during the review process there would be a determination of whether or not the tree could stay or needed to go. Roger A. agreed. Madge said these walls were going in to prevent erosion because of no existing buffer, so she didn’t feel an existing tree should be removed that is part of an existing natural buffer. She said if the ordinance said no tree removal she would feel better. Barbara asked Madge where she would like it stated? Madge asked Roland his opinion.

Ann H. also spoke about the fact that the new ordinance for low retaining walls didn’t specifically state the walls are for erosion control only. She read the first paragraph of the ordinance which states ‘Retaining walls that are not necessary for erosion control shall meet the structure setback requirement,

except for low retaining walls and associated fill provided all of the following conditions are met:’. Ann was not sure it was clear that this ordinance was for erosion control measures only, and asked if there should be a sentence added that specifically states the walls are for erosion control purposes. CEO Demers stated that the ordinance was taken from the DEP Chapter 1000 guidelines and thought the board should keep it as written, so there would be continuity between ordinances in surrounding towns. He felt it was easier for him to correspond with other CEO’s when asking them what they might do in a specific situation, therefore, he didn’t want it changed. He felt the more the board changes it, the more there could be unintended consequences. Ann thought if a regular person read the ordinance it does not say why low retaining walls are allowed. CEO Demers said, “Because no effective erosion control exists’. Ann stated, “But it doesn’t say that anywhere”. Madge B. and Roland L. thought it said quite the contrary. Roland said it says if you want a retaining wall not for erosion control purposes. Ann added that it goes on to say ‘shall meet the setback requirements, except for low retaining walls’. She said it doesn’t say why low retaining walls are an exception. CEO Demers stated the way it is written, that if you want to put a wall beyond the 100 foot setback then it doesn’t have to be for erosion control, otherwise it does. Ann agreed but said again the way it is written it is not clear. Roland agreed stating that he just read it and he didn’t know it was for erosion control only. Barbara F. asked CEO Demers if he thought, so there is no confusion, the section should be entitled ‘Low Retaining Walls in the Shoreland District less than 24 inches in height **for erosion control**’. She asked if it would be confusing or would it work? CEO Demers did not think it was confusing. Ann thought it would work. Barbara agreed it was best placed there than to try to rewrite the paragraph in the ordinance. The board members agreed as well.

Roger A. said with respect to trees it will be up to the board. He stated that if a tree is removed they will have to replace it. Ann H. agreed but it would not be the same removing a large canopy and putting in its place a six foot tree. Madge B. said the board doesn’t have to allow the tree to be removed if it is not necessary. Roger agreed. Madge said if removing the tree will make the situation worse than the board does not have to allow it. Roland L. wished the board would include a statement that says ‘no tree will be removed in order to place a wall’. Barbara F. said you would have to be specific because what if there was a dead tree. She thought sometimes the more you put into an ordinance the more difficult it is to enforce. She felt the board had the right now, as it was written, to pass judgement on whether or not a tree could or should be removed during the application process. CEO Demers agreed.

Roland L. asked about Section (a) ‘The site has been previously altered and an effective vegetated buffer does not exist’, in this case will a person not be able to put up a wall if the site hasn’t been altered? Madge B. thought that was why CEO Demers told Mr. Mageary at the public hearing that his site would not qualify under this ordinance for a wall. She said Mr. Mageary’s property is steep but it hasn’t been altered, so he can’t use this ordinance. CEO Demers agreed, because the site hasn’t been altered. He said there were other camps down the road, that from the road to the lake it is all sand, there isn’t any way to grow any vegetation, so a retaining wall would be perfect. Madge said again that in Mr. Mageary’s situation he could not use this ordinance to get a retaining wall. CEO Demers stated that was the way he would interpret it.

CEO Demers asked if the DEP had seen the preliminary version of the ordinance changes? Barbara F. stated that yes, and Mr. Kalinich had made comments and stated the language in the retaining wall and accessory structure sections with the added language met the requirements of Chapter 1000. She added that she will send him a copy after the next public hearing with the final version for his review.

Roger A. stated that with respect to the New Accessory Structures, if someone doesn't have a shed and wants one they can, as long as it isn't between the existing structure and the water, and it meets the dimensional requirements. He said they can put it on the side of the camp or toward the road. CEO Demers stated that the side setback requirement is not going to apply to a shed where no other accessory structure exists on the lot. Roger said what he considered for setback requirements are: 'The structure shall be setback from the road a minimum of 25 feet from the edge of the road'. He felt this would allow them to encroach closer to the road without a best practical location. He said this would allow them someplace to put it. CEO Demers said, "So you would allow them to place it 25 feet from the edge of the road or right-of-way". Roger said, "Yup". Roger said the side setback minimum would remain 10 feet, but they would be allowed to go up to 25 feet to the edge of the road. CEO Demers wanted to be sure they put road 'or right-of-way'.

Barbara F. again noted she added section b) to state, Section 105-35 of the ordinance does not apply when the criteria in this section are met. Roger A. agreed this makes it specific to the shed, because he didn't want to apply it to any other shed. Ann H. asked if with this shed lot coverage applies, and did it have to be added here. Madge B. and Roger said it already is written in the ordinance, so it didn't have to be added here.

Madge B. stated she would prefer the word 'dwelling' to residential structure in the first sentence. 'On a non-conforming lot of record on which only a residential structure exists', she liked the word dwelling. Ann H. asked about a pop-up camper on a lot, what if they want a shed because they can't fit everything into the camper. Madge said the board does not want that. Barbara F. did not think this was the DEP's intention and if the board wanted to make a change like that they would have to go back to the DEP to ask their permission. Roger A. agreed. Barbara said no additional changes can be made after this evening, so any additional changes would have to be brought up to go before voters in 2021.

Madge B. asked how the board would feel about saying one dwelling unit instead of residential structure? She felt residential structure is wishy washy. CEO Demers stated that the important part is you are only allowed an accessory structure if there is a main structure, provided there is no other accessory structure on the lot. He didn't think it mattered what you call the primary structure. Roger noted that under 105-18 Land Uses, for the setback requirements the word used is 'Residential Dimensional Requirements'. He felt it would be best to stay with residential instead of dwelling because of this. *As a note under definitions it is called 'Residential Dwelling Unit'. In addition, the last line of the definition reads 'Recreational vehicles are not residential dwelling units'.*

Madge B. said she was fine with that, but she just still felt uncomfortable with the word, especially around the lake because of some of the places on the lake. She said she did like the fact that lot coverage counted. She felt this would limit the number of new sheds.

Ann H. was concerned that the ordinance didn't say you could only have one. CEO Demers stated that it says on a lot on which only a residential structure exists, which means there are no other structures on the property.

Barbara F. stated the only other change was the addition to §105-17 for low retaining walls, she added 'Yes' in the General Purpose District as they are allowed without a permit. The board members agreed. Barbara asked CEO Demers if this was ok with him? He stated it was.

Barbara F. also provided members with a copy of the Comprehensive Plan that was amended by the Planning Board in 2016, and voted on and approved in March 2017 by the voters. She said Madge B. wanted the board to review it and see if there were any changes to the ordinance the board would want to consider, based on what was in the Comprehensive Plan. She thought the board could discuss it in the near future, perhaps at the next meeting.

The board agreed to the following ordinance changes and additions which will be presented at a Public Hearing on Tuesday, January 28, 2020. After that they will be presented to voters at March Town Meeting.

Place under §105-4.D 'Nonconforming structures'

(9) Low Retaining Walls in the Shoreland District less than 24 inches in height for erosion control.

Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:

- (a) The site has been previously altered and an effective vegetated buffer does not exist;**
- (b) The wall(s) is(are) at least 25 feet horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;**
- (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;**
- (d) The total height of wall(s), in the aggregate, are no more than 24 inches;**
- (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.**
- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and**
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:**

[1] The buffer must include shrubs and other woody and herbaceous vegetation.

Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;

- [2] Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
- [3] Only native species may be used to establish the buffer area;
- [4] A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
- [5] A footpath not to exceed the standards in Section 105-51.B(1)(a) may traverse the buffer.

(h) All approved plans shall require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.

- [1] Side setbacks for structures shall not apply to low retaining walls.

~~~~~  
Place Under §105-4.D ‘Nonconforming structures’

**New Accessory Structure in the Shoreland District**

- a) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. Additionally the following apply:
  - 1) In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.
  - 2) In no case shall the structure be located within 10 feet of a side lot line or 25 feet from the edge of the road or right-of-way.
  - 3) At no time shall the structure be expanded.
  - 4) The structure shall not be used for habitation.
  
- b) Section 105-35 of the ordinance does not apply when the criteria in this section are met.

~~~~~  
Proposed Amendment to Zoning Ordinance §105-15

§105-15. Definitions

Retaining Wall – Retaining Wall is a structure that retains (holds back) any material (usually earth) and prevents it from sliding or eroding away. It is designed to resist the material pressure of the material it is holding back.

Low Retaining Wall – A low retaining wall is considered to be a wall less than 24 inches in height measured from the base of the wall to the top of the wall. The base is considered the area exposed that can be seen upon visual inspection.

~~~~~  
Proposed Amendment to Zoning Ordinance §105-17

|                            |           |           |            |           |           |
|----------------------------|-----------|-----------|------------|-----------|-----------|
| §105-17. Land uses.        | RP        | SD        | GP         | FD        | SP        |
| <b>Low Retaining Walls</b> | <b>NO</b> | <b>CU</b> | <b>YES</b> | <b>NO</b> | <b>CU</b> |

~~~~~  
Proposed Amendment to Zoning Ordinance §105-26

§105-26 ‘Stormwater runoff’.

- A. Surface water runoff shall be minimized and shall be detained on-site if possible and practicable. If it is not possible to detain water on-site, downstream improvements to the channel may be required of the developer to prevent flooding caused by this project. The natural state of watercourses, swales, berms, terraces, wooded areas and floodways or rights-of-way shall be maintained as nearly as possible. The design period is the ~~fifty~~ **one hundred** year storm (the largest storm which would be likely to occur during a ~~fifty~~ **one hundred** year period).

Other:

Madge B. stated that she spoke with Tom Cashin who had been a member of the Planning Board in Acton for a long time, and asked if he would come and speak about setbacks with respect to wetlands. She believed Steve F. had brought it up at a previous meeting and the fact Acton’s requirements are different from Shapleigh’s ordinance. Madge thought it would be interesting to hear more about what Acton does. She noted both towns share so much in the way of water.

Roland L. noted that Acton allows 20% lot coverage, whereas Shapleigh only allows 10%. He hears comments about the Acton side and how waterfront properties have much larger structures. The new structures seem huge.

Madge B. didn’t mind asking Mr. Cashin about that but she wanted to talk about what was ‘pro-active’ to protect water quality. Roland agreed. Madge said water in this town was so important, including for the tax base. Madge said she was not saying the way Acton does things is the right way, she just wanted more information about what they do.

Madge B. asked if the members had any objections to having Mr. Cashin come to a meeting. Roger A. said he did not. Roland L. thought it would be interesting to open dialog. He thought it would be a good idea when having projects that straddle the line, to have Acton notified of what was going on and ask their opinion. Barbara F. noted that Acton or any abutting town is notified of projects that abut both towns.

She said she mails the agenda, minutes and application to both the Planning Board and Selectmen. She added that she typically does not have any feedback. Roger A. added that with respect to subdivision the school district gets notified as well for comment. He said we never get a comment but they have the opportunity to let the board know of any concerns. He said all abutting properties are notified.

Roger A. stated that he was asked this week about the road for the Chadbourne subdivision on Square Pond, West Shore Drive and Apple Road in Acton. He said the findings placed a limitation of 2 years to complete the private way and because Mr. Chadbourne hasn't sold a lot, he wants to extend the deadline to complete the road. Roger said he told him that he would have to file an amendment to subdivision approval, because it was a change to the conditions of the approval. Roger said any change to the conditions of an approval need to come back before the board.

Roger A. asked CEO Demers if Adrienne Knox – Knox Autobody – would be coming in for an amendment to his approval. At this time Adrienne placed an addition onto the structure of his business without Planning Board approval. CEO Demers stated that he would be coming in soon. He said Mr. Knox had been on vacation this past month.

CEO Demers stated that he sought legal advice as to what is or isn't an amendment to a Conditional Use Permit. CEO Demers stated in June the board had discussed what did or did not constitute a change in use for a CUP. He said since that time he has spoken with Durwood Parkinson about several scenarios.

CEO Demers said that with Keepin It Local the new structure was not a change of use, because everything was staying the same. Ann H. said the business is staying the same. CEO Demers said even the structure itself is staying the same from what was approved, it was demolished, rebuilt the same size and the same location. He said with an in-home day care, if the day care is adding on a bedroom for personal use, no change of use. If the same day care is adding on another room to facilitate more children that would be a change to the approval and use.

CEO Demers stated with respect to the Knox business, the permit was issued in 2018, and because he is putting on an addition that is a change of use. He said that moving forward, expansions to a business will come before the Planning Board.

Note: CUP to Own and Operate an Auto Body Collision Repair Facility on Tax Map 3, Lot 4 (359 Shapleigh Corner Road) was approved in April 2004. At that time an engineered site plan was presented showing a gravel parking area, 48' x 60' garage, 30' x 40' spray booth room and a 12' x 16' storage shed. Mr. Knox was also approved to sell up to 4 vehicles, and the total number of vehicles on site for sale or service shall not exceed 14.

CEO Demers said with Durwood Parkinson's advice he will send an addition to a business to the board in the future. He said with respect to the Knox business they will be coming back to the Planning Board for an amendment. He said they want to up the number of vehicles allowed, they need a new parking plan, as well as plans for the new structure. He said they would be in soon with a plan.

Roger A. stated that any change to an approved conditional use, that change has to come back before the Planning Board. CEO Demers stated, “Right”. Roger said that if the conditional use existed before the writing of the chapter, then they have to come back if there is a change in materials or 25% floor space. CEO Demers said with respect to the Knox place it may have been interpreted wrong.

CEO Demers stated another scenario was with a gravel pit, if there is an approved gravel pit and someone puts a house on the property as a residence, it doesn’t have to come back before the board as it has nothing to do with the business. Roger A. agreed, it would only require a growth permit. CEO Demers asked if anyone had any questions. The board didn’t have any.

Roger A. said that with respect to Keepin it Local, that even though they tore down the existing structure and put up a new one the same size, the board should have been informed because they could have changed some of the conditions, because it was going to be a new structure. He felt they should have come back because it was a brand new conditional use and a change of use of the existing structure, to a new structure. CEO Demers stated that the CEO was Norm Hutchins and he determined there was no change of use, basically it is up to the CEO’s discretion if there is a violation or not.

Roger A. stated that any conditional use granted, subdivision, etc. comes back to the board if there is a change from the approval or conditions of the approved use.

Roger A. also brought up a recent conversation with a developer who asked if he could put in a 4 lot minor subdivision now and then wait 5 years and put in another 3 lots as a minor. Roger said he told him that time was not an issue, if you create a minor now and down the road add to it, it will become a major and an interior road will be required. Roger said he certainly could do a minor now but in the future it will turn into a major and will be required to follow all the conditions imposed for a major.

Nothing more was discussed.

Growth Permits

There are Growth Permits available.

The Planning Board meeting ended at 7:20 p.m.



NOTE: The winter hours are in effect thru March 31st, the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.

The Planning Board meets the 2nd and 4th Tuesday of each month unless it falls on a holiday or Election Day. Should there be a cancellation due to a storm event, holiday or Election, the meeting will typically be held the following Wednesday, also at 7:30 p.m. Please contact the Land Use Secretary if there is a question in scheduling, 207-636-2844, x404.

The next meeting will be held on Tuesday, January 28, 2020.

Respectfully submitted,
Barbara Felong, Land Use Secretary

planningboard@shapleigh.net