

Shapleigh Planning Board

Minutes

Tuesday, March 10, 2020

Members in attendance: Roger Allaire (Chairman), Steve Foglio (Vice Chairman), Madge Baker, Ann Harris, Maggie Moody and Roland Legere. 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.

Public Hearing began at 6:05 pm

Conditional Use Permit – Barber Shop – Map 18, Lot 32 (112 Emery Mills Road) – Rhonda Burnell, Applicant; Paul & Bob Muse, Property Owners

Rhonda Burnell and Lisa Clarke were present for the review of the application, along with Paul Muse.

Roger A. opened the public hearing by asking Ms. Burnell to let the public and board know what she was doing. Ms. Burnell stated they were planning on opening a barber shop with possibly a beautician station in the back, in the Emery Mills Energy building in Emery Mills.

Roger A. asked what the hours of operation would be? Ms. Burnell stated 7 am to 8 pm, but she noted that generally it would be open 9 hours a day, 3 or 4 days a week and a half day on Saturday. Barbara F. asked if she put down 7 days a week. Ms. Burnell said that she did.

Roger A. asked if anyone had any questions for Rhonda? There were none.

The public hearing closed at 6:07 pm.

The minutes from Tuesday, February 25, 2020 were accepted as read.

The Planning Board meeting started at 6:30 p.m.

Conditional Use Permit – Barber Shop – Map 18, Lot 32 (112 Emery Mills Road) – Rhonda Burnell, Applicant; Paul & Bob Muse, Property Owners

Rhonda Burnell and Lisa Clarke were present for the review of the application, along with Paul Muse.

Previously presented along with the application was a sketch depicting the size of the lot, the size of the existing structure that being 26’ x 40’ and its proximity to the lot lines, the location of the leachfield and

septic system, well, the location of the existing signage and Route 109. Also provided, was a sketch entitled ‘Parking Plan’ which depicted the existing structure, and parking area layout both beside and behind the structure. The plan noted that there was a total of 15 - 10’ x 20’ parking spaces on site.

The detailed description of the project is as follows: Barber Shop: 4 (possibly 5) booths. Cutting and styling hair. Open 7 days, 7:00 am thru 8 pm. Currently 3 Barbers (2 full time & 1 part time – 16 hours/week).

Roger A. opened the meeting by asking Ms. Burnell to once again let the board know what they wanted to do. Ms. Burnell stated that they wanted to move the barber shop from Springvale to the Emery Mills Energy building. She said there would be 3 barbers and possibly 2 beauticians, and business hours would be 7 am to 8 pm, 7 days a week. She stated that as a rule it was 9 hours a day, Wednesday thru Friday and half a day on Saturday. Roger noted that the board had asked Ms. Burnell to use a wide window for hours of operation in case they wanted to open at another day or hour, this way she would be allowed to do so, and if there was a complaint that it was opened other hours than typical, it would be on file that it was allowed.

Roger A. asked if there were any questions for Ms. Burnell? There were none.

Roger A. began review of the Basic Performance Standards for the application.

- 105-21 – Traffic. *Roger A. stated access to the site was safe, this location was previously approved on the original CUP. Site distances can be met in both directions.***
- 105-22 – Noise. *Roger A. stated there will be no noise generated from the activity.***
- 105-23 – Dust, fumes, vapors and gases. *Roger A. stated there is no dust, fumes, vapors or gases, generated by this activity.***
- 105-24 – Odors. *Roger A. stated there will be no obnoxious odors generated.***
- 105-25 – Glare. *Roger A. stated there shall be no additional lighting added to the structure. There is existing lighting on the building at this time. The addition of a barber pole will not cause any glare onto the roadway or neighboring property.***
- 105-26 – Stormwater runoff. *Roger A. stated there are no changes being made to the property that would cause a stormwater problem. There are no issues at this time, and the building and parking area are in existence.***
- 105-27 – Erosion control. *Roger A. stated there are no changes being made to the existing property that would create an erosion issue. The building and parking area are in existence.***
- 105-28 – Setbacks and screening. *Roger A. stated existing vegetation will remain, no changes are being made on site.***
- 105-29 – Explosive materials. *Roger A. stated, there shall be none on site and none to be generated.***
- 105-30 – Water quality. *Roger A. stated, there is no waste or hazardous material generated by this activity and no outdoor storage of fuel to affect water quality.***
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *Roger A. stated no changes are being made to the existing parking area, there is no outside storage associated with this activity.***

- 105-32 - Relation of proposed building to the environment. **Roger A. stated the building is in existence and conforms well with others in the surrounding area.**
- 105-33 – Refuse disposal. **Roger A. stated there was minimal refuse generated by this activity. The applicants or property owner will take refuse to the transfer station.**
- 105-34 – Access Control to Route 109. **Roger A. stated that the existing entrances were previously approved, there are no curb cut changes being made. The minimum site distances can be met.**
- 105-43 – Off-street parking and loading. **Roger A. stated there was plenty of off-street parking in existence at this time to meet the needs of the new business and existing apartment. A minimum of seven spaces are required, there are a total of 15 according to the plan provided.**
- 105-46 – Sanitary provisions. **Roger A. stated there is an existing State approved septic design on site. The Code Enforcement Officer shall see that the system will meet the needs of the proposed business.**
- 105-47 – Signs and billboards. **Roger A. stated that all signage must be permitted and approved through the Code Enforcement Office.**

Roger A. then reviewed §105-73.G ‘Standards applicable to conditional uses’ and made findings of fact.

Standards applicable to conditional uses. It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. The Board shall approve the application unless it makes written findings that one or more of these criteria have not been met.

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds or other wildlife habitat. **Roger A. stated, it will not.**
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. **Roger A. stated this is not applicable.**
- 3) The use is consistent with the Comprehensive Plan. **Roger A. stated it is, the Comp Plan wants businesses along Route 109.**
- 4) Traffic access to the site is safe. **Roger A. stated it is, the site distances meet the minimum in both directions.**
- 5) The site design is in conformance with all municipal flood hazard protection regulations. **Roger A. stated it is, the project is not in the flood zone.**
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. **Roger A. stated a State approved Septic System is on site, and any solid waste will be removed by the applicants.**
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. **Roger A. stated that there is none generated by this activity.**
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger A. stated there are no changes being made to the property from the previous application approval for a CUP.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger A. stated no changes are being made on site to create an erosion issue.**

- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger A. stated this location is not far from the Emery Mills fire hydrant.**
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors and the like. **Roger A. stated there are no changes being made to the existing vegetation.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger A. stated they shall with conditions.**

Roger A. stated the conditions of approval are as follows:

- 1) **The hours of operation shall be 7:00 a.m. thru 8:00 p.m., seven days a week.**
- 2) **A total of five booths will be located inside the structure.**
- 3) **Signage for the business shall be permitted through the Code Enforcement Officer, as well as required permits from the CEO for the changes taking place inside the structure.**

Madge B. made the motion to approved the Conditional Use Permit to operate a barber shop inside the structure located on Map 18, Lot 32, per the plans provided and with the stated conditions. Maggie M. seconded the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.

Nothing further was discussed.

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### **The Findings of Facts**

1. The applicant is Rhonda Burnell, mailing address of P.O. Box 244, Springvale, ME 04083.
2. The owner of Shapleigh Tax Map 18, Lot 32 (112 Emery Mills Road), is Paul Muse, mailing address of P.O. Box 157, Acton, Maine 04001.
3. The property is located in the General Purpose District and according to the assessor, the property contains .51 acres.
4. The applicant is before the board for a Conditional Use Permit to open a barber shop.
5. Received was a sketch depicting the size of the lot, the size of the existing structure that being 26' x 40' and its proximity to the lot lines, the location of the leachfield and septic system, well, the location of the existing signage and Route 109.
6. Received was a sketch entitled 'Parking Plan' which depicted the existing structure, and parking area layout both beside and behind the structure. The plan noted that there was a total of 15 - 10' x 20' parking spaces on site.

7. The detailed description of the proposal is as follows: Barber Shop: 4 (possibly 5) booths. Cutting and styling hair. Open 7 days, 7:00 am thru 8 pm. Currently 3 Barbers (2 full time & 1 part time – 16 hours/week).
8. The board reviewed the Basic Performance Standards and the board concurred the application met all the standards imposed.
9. The board reviewed Zoning Ordinance §105-73, Section G, ‘Standards applicable to conditional uses’ and concurred the application and information as presented met the performance standards in this chapter.
10. A notice was mailed to all abutters within 500 feet of the property on February 26, 2020. Meetings were held on February 25, 2020 and March 10, 2020. A scheduled inspection was not necessary as the board members were familiar with this location.
11. The Planning Board unanimously approved the Conditional Use Permit to open a barber shop, to be located on Map 18, Lot 32, per the plans provided with conditions.
12. **The conditions of approval are:**
  - 1) **The hours of operation shall be 7:00 a.m. thru 8:00 p.m., seven days a week.**
  - 2) **A total of five booths will be located inside the structure.**
  - 3) **Signage for the business shall be permitted through the Code Enforcement Officer, as well as required permits from the CEO for the changes taking place inside the structure.**

Motion:

After careful consideration and a review of all material presented to the Board, including the review of the Zoning Ordinances ‘Basic Performance Standards’, and §105-73, Section G, ‘Standards applicable to conditional uses’ a motion was made on Tuesday, March 10, 2020 to approve the Conditional Use Permit for a barber shop, to be located on Map 18, Lot 32, per the plans provided, with three conditions.

Vote:

By a unanimous vote of 5 – 0, the motion to approve the Conditional Use Permit for a barber shop, to be located on Map 18, Lot 32, per the plans provided, with three conditions, was accepted.

Decision:

**The Conditional Use Permit for a barber shop, to be located on Map 18, Lot 32, per the plans provided, with three conditions was approved.**

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Other:

Madge B. showed the board a picture of a building going in on Kato’s Nose, and she pointed out the wetland in the area and stated there was fill brought in to put in the building, and the building itself is

within 250 feet of the lake. She said she assumed it was not a 10-acre wetland, but she did not have the capability to figure it out. She if this much fill was brought into the shoreland district, she thought it needed a Planning Board permit. The board agreed one was required. Roger A. said he did not recall the board reviewing it. CEO Demers said this was permitted when Norm Hutchins was acting CEO and they had the pond in the back deemed a man-made pond; they got the DEP to say it was a man-made pond; Norm said if he owns both sides of the road he was able to build the structure, so he got the permits and he built. CEO Demers said it was not what he would do today, but it is what it is now.

Madge B. said if this is true, than it seems the board needs to look at the ordinance because there is no reason to have this kind of building sitting on the edge of a wetland, and less than 250 feet from the lake. Ann H. said, “They are probably going to pave that too because it is a garage”. Madge said, “Probably and there are dormers on each side, so they could live up there”. Ann said it would probably be an illegal live-in, but everyone is living everywhere. Madge stated that the board just heard from Acton with what they are doing with wetlands, and she admits they may have gone too far, but she asked members if they want this allowed?

Steve F. asked how the DEP determined it was man-made. CEO Demers stated this happened was when he first got to Shapleigh, so he was not sure. Madge B. thought the board should be doing something restrictive around a wetland. CEO Demers stated it was an accessory structure that meets lot coverage and building height. He said he would have had issue with the setbacks to the road, but Norm Hutchins stated that because the gentlemen owned both sides of the road it didn’t matter, but the division of the land is a division of the land. Ann H. asked if the town could prevent them from paving the area, so it remains permeable? Roger A. said the board has nothing to do with this.

Madge B. said she felt this was instructive for the board, and we should think about what we can do to keep this kind of thing from happening. Madge said it is right on a lake, she did not see why this happened. CEO Demers asked if the wetland was greater than 10 acres? Madge did not believe so. CEO Demers stated that with wetland setbacks, it does not mean nothing can happen within the setback. Madge said she understood, and she understood you can fill, but she felt the board should be reviewing this kind of fill. CEO Demers said, “Lets make an ordinance.”

Barbara F. stated she thought the board should have a workshop or workshops to discuss possible changes to the ordinance. She said the members could bring up concerns and start to work on possible amendments. Board members were open to coming in in the afternoon. Barbara will connect with them and see what day(s) would work best.

CEO Demers brought up Mike Roberts, who wants to put up a garage; he has the dimensional requirements but there is what appears to be a vernal pool, and he wants to fill it in. Mr. Roberts is trying to get the DEP to say it is a man-made vernal pool. CEO Demers said he didn’t know, so he told Mr. Roberts he needed expert advice. Roland L. knew of the body of water which has been there at least 60 years. CEO Demers said Mr. Roberts had to get someone to say he can do it, and he noted there is a percentage of wetlands you can fill in. It was noted if within 250 feet of the high water mark in the Shoreland District it may need Planning Board approval.

Board members agreed to start workshops.

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**Growth Permits**

**Map 3, Lot 5 (299 Shapleigh Corner Road) – Multi-family Home**

**Permit Denied**

Per Shapleigh Zoning Ordinance 105-18, the dimensional requirements for a multi-family dwelling cannot be met due to the existence of a residence and permitted business on the lot at this time. The applicants must relinquish the business permit in order to have the multi-family structure.

Madge B. asked CEO Demers how he justified giving Mr. Boise (Map 3, Lot 5) a building permit before the Planning Board reviewed this under subsection 8 (§105-4.D(8))? CEO Demers stated that the building is allowed to be expanded and he is treating it as an addition right now, because Mr. Boise wanted to get his foundation in. He said currently there are 2 uses on the property, a residence and the commercial and this does not change with the addition, it is still two uses. He said at some point in the future he will need three documents from Mr. Boise, a growth permit application, a written testimony that there is no adverse impact and that he rescinds his Conditional Use for a business. He stated that when those three documents are presented it will be switched over to a multi-family dwelling unit. He said the reason he permitted it as an addition was because even if Mr. Boise does not get the multi-family, he is still going to do the addition and take care of his in-laws in his home. Madge asked if this makes it two-family? CEO Demers said a two family is defined as provisions for living, sleeping, cooking and eating. He said if the addition is minus a kitchen it does not make it a two-family dwelling unit; it is still one dwelling unit since it is attached. Madge asked why wouldn't Mr. Boise go through subsection 8 and find out whether or not he can have a two-family dwelling unit? CEO Demers stated that he would, it was a matter of timing. Madge did not think there anything to prevent him from going through subsection 8 now. CEO Demers stated that Mr. Boise was not ready to give up the Conditional Use for the business right now. He said he was moving to Acton but not at this time, and the multi-family dwelling was contingent on the sale of a property in Wells, so he is still going to operate his business, sell his in-laws place, so there are a lot of things taking place. CEO Demers stated that the foundation was in and will stay capped over for likely a couple of months until things are ready to move forward. Madge asked if Mr. Boise understood the board had the authority to review it under Subsection 8 and decide they were not happy with it. CEO Demers stated, "Correct, but he would still have his in-laws there without a kitchen". Madge said that because CEO Demers approved the building permit, she assumed the setbacks to the road, side yard and to the water are met. CEO Demers stated that the new structure was no more non-conforming than what was there. Madge said, "OK".

CEO Demers thought until the Planning Board got the documents from Mr. Boise, he suggested the board table the application. Madge B. asked if the board wanted to table it. Roger A. stated, "No. The reason why is because the board can table a Conditional Use Permit, but the board does not have the mechanism to table a Growth Permit". Madge agreed. Roger said the board has to approve or deny it, and based on §105-18 Dimensional Requirements, the dimensional requirements cannot be met for an additional dwelling unit, along with an existing home and business. Roger said he would need to rescind the business in order for the board to approve the Growth Permit for a multi-family under §105-41. Madge B. stated that she moves the board denies the Growth Permit.

Before the board voted it was asked that they review §105-4.D(8) Change of use of a nonconforming structure. It reads as follows:

- a) The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.
- b) In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and functionally water-dependent uses.

Roger A. stated that he was not using this section as a refusal of the permit. He said it was under §105-18 for the commercial use and the multi-family, both cannot occupy the lot and meet the requirements. Madge said she understood, but when the business moves, the board will be reviewing all the standards in the ordinance and this section is included which she believed was particularly important. She read part of the section again, citing these were very good standards to review in this location because of the existing water body, ‘In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and functionally water-dependent uses’.

Madge B. believed these standards apply. Roger A. asked if this circumvented §105-42 which allows the multi-family? Madge believed both applied in the review process, to ensure proper controls are in place to meet the standards in the Zoning Ordinance. Roger did not believe you could deny a multi-family on an approved lot. CEO Demers asked if they were holding them to §105-42? Roger said it was §105-18, dimensional requirements. Madge stated that *everything* in the Zoning Ordinance that applies to the lot can be used to review an application.

Maggie M. was not sure she saw the need to deny the permit. She said CEO Demers said he needed three documents to change from what exists now in order to start the multi-family, she asked why the board couldn’t just hand the Growth Permit back and tell him to bring it back when all the other documents are ready. CEO Demers stated that is what tabling or postponing the application would do, but the board is looking at making a decision on the application this evening, which is to deny it.

Roger A. stated that there are no provisions in the Growth Permit ordinance to table it, we either approve or deny the application. Madge B. agreed. Roger said when you submit the application you need to meet the criteria in the ordinance or you will be denied, he does not meet the criteria. Ann H. stated that the board needs to act on it because other people could be waiting, so you cannot hold onto it.

The board agreed to deny the Growth Permit based on the provisions in the Zoning Ordinance and Growth Ordinance.



**Map 19, Lot 10 (51 Emery Mills Road) – Replacement Home**

**GP #03-20**

This is a non-conforming legal lot of record and the applicant is replacing an existing structure with a new structure which will meet current setback restrictions listed under §105-18 ‘Dimensional Requirements’, excluding lot size.

**Map 7, Lot 5F (Hodgdon Road) – New Home**

**GP #04-20**

This is a legal lot of record meeting the lot size requirements in the Zoning Ordinance.

**Map 29, Lot 29 (43 Hickory Street) - Replacement Home**

**GP #05-20**

This is a legal lot of record and the replacement structure location was approved by the Planning Board under a Best Practical Location review on March 12, 2019.

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**The Planning Board meeting ended at 7:40 p.m.**

**NOTE: The summer hours are in effect, the meetings now begin at 7:30 p.m. and any scheduled public hearing begins at 7:00 p.m.**

**The first Planning Board meeting scheduled after shut down due to Covid-19 will be via Zoom on Tuesday June 9, 2020 at 7:00 p.m. See the town website, [www.shapleigh.net](http://www.shapleigh.net) to obtain the link details if you wish to attend.**

The Planning Board meets the 2<sup>nd</sup> and 4<sup>th</sup> 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, 207-636-2839, x4.

**The next meeting date is to be determined.**

Respectfully submitted,  
Barbara Felong, Land Use Secretary

[planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)