

# Shapleigh Planning Board

## Minutes

Tuesday, July 28, 2020

This evenings meeting was conducted via Zoom due to Covid-19.

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

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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.

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**The minutes from Tuesday, July 14, 2020 were accepted as read.**

**The Planning Board meeting started at 7:30 p.m.**

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### **Conditional Use Permit – Earth Moving to Replace Stairs and Walls – Map 32, Lot 30 (110 Dogwood Drive) – Allan Krans, Applicant & Property Owner**

Mr. Krans was present via Zoom to discuss his application.

Provided in addition to the application, was a detailed description of the project which read as follows:

This application substantially duplicates the application of previous owners of 110 Dogwood (Mark Rautenberg and Terri Ball) approved by the Planning Board on or about September 27, 2017. The previous owners were not able to execute on their plans in time to meet the deadline approved by the Planning Board. The current applicant purchased the property in March 2019.

The scope of the work includes the relocation of wooden steps on the northerly side of the property running from the house area to near the edge of Square Pond in order to prevent water runoff and contaminants from entering the pond. The steps will be replaced with stone pavers and railing; the location of the steps will be in the middle of the property to improve water drainage.

In addition, 3 wooden retaining walls will be removed and replaced with 2 stone retaining walls approximately 80 feet in length each. Top retaining wall will have a railing.

Also provided was a revegetation plan which stated that the vegetation consistent with the existing conditions will be replaced if disturbed by the project. The existing vegetation consists of perennial plantings along the retaining wall located nearest to the water. It is not anticipated that existing plantings at the waters edge will be disturbed. In addition, new additional vegetation will be planted along the retaining walls and stairs.

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A copy of the Permit by Rule applied for was provided, which had a project description which stated ‘Fix retaining walls & stairs from house to waterfront’. The permit was dated 7/22/2020, but there was no approval date at this time.

A sketch plan was provided which depicted the existing house, deck, leachfield, shed, well location and the location of the walls & stairs. The ‘pond’ and ‘Dogwood Drive’ were also noted on the plan, along with the side lot line distances of 142’ and 209’, and the lot line along Dogwood Drive was noted as 90’.

A copy of the Mortgage Lender deed reference plan, dated 12/23/2002, was provided which depicted existing conditions as of that date. The plan showed the existing survey pins, a proposed conveyance of 700 square

feet, structures which include the house, deck, walls, stairs and dock. The plan certifies the building predates zoning and that it does not fall within a flood hazard zone.

Pictures of the existing structure(s) were provided, taken from the property assessment record for the Town of Shapleigh, done by John E. O'Donnell & Associates, along with pictures of the existing retaining walls and stairs that the applicants wish to replace.

Roger A. asked Mr. Krans to let the Board know what he wanted to do. Mr. Krans introduced himself, stated that he owned the property at 100 Dogwood and that he's owned the property since March 2019. He stated the application he submitted is a continuation of an application the Board heard in 2017, and had granted the application for the previous owners, Dr. Rautenberg and Terri Ball. (On 10/10/17, an application was approved to replace the existing retaining walls and stairs with cement blocks and stairs, same size and in the same location.)

Mr. Krans stated that as part of the approval, the previous applicants had a year to complete the project (the approval stated September 1, 2018 as a date of completion), and they did not do that. He said instead they put the property on the market, it sold, and again he stated he purchased it in the spring of 2019. He said this was his second summer at the property.

Mr. Krans stated that he has a small house that sits above Square Pond and the terrain cascades down toward the water. He said there are three existing retaining walls made of 8' x 8' timbers, and in addition, there is a staircase that goes down on the north side of the property from the house to the water. The distance between the house and the water is about 80 feet. He said the retaining walls and stairs are made out of timber, and what they are seeking approval of is the ability to remove the timbers and replace them with stone, likely a product from Genest Concrete, that will duplicate the existing conditions.

Mr. Krans said there were two exceptions to that. He stated currently the staircase goes down on the north side, is along one side of the property and almost goes to the water. He noted there was a slight curve to them and asked the Board to review the photos. He said they would like to move the staircase to the center of the yard and remove the northern location. He said from the driveway is a slope right down to the water, and during heavy rain the water uses the staircase to get into the pond. He believes by moving the stairs to the center of the property, it will stop the water flow to the lake, by revegetating and managing the area. He noted it does not happen every rainstorm but twice this year it has happened.

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Mr. Krans said the second request is currently there are three retaining walls. The first wall is about 20 feet from the waters edge and about 30 inches high. He said when you combine the wall with the stairs, it almost fits the entire width of the property. He said other than a change of material for the wall, they didn't propose a change in height or width of that wall. He pointed out that there is a significant amount of vegetation at the waters edge, and behind the first retaining wall. He said they want all that to stay for the functional reasons, and it is pretty. They would like permission to address the second and third walls that are up closer to the house. He said the top wall is about 20 feet from the deck. He wished he had better measurements but he didn't know he was going to be before the Board this evening. (Due to the light schedule and the fact Board members had the information, Roger allowed the applicant to be heard. He was not on the agenda.)

Mr. Krans said he would like to remove the two walls and build a bigger wall in the middle. He said the height would be approximately the same but they would go from three walls to two. Mr. Krans stated that he of course did not want the wall to fall down, so between now and the next meeting he was going to try to get some engineering done to see if this was doable. He felt the benefit of having only one wall from a conservation point of view was there would be less structure within the buffer.

Mr. Krans stated that if he was just asking for the approval Mr. Rautenberg and Terri Ball received, he would just ask for an extension of their approval. He said however, they were asking for two changes from the original approval, that he felt would help the situation and certainly not hurt.

Mr. Krans said he would be happy to answer any questions the Board may have. Roland L. said he had two questions for Mr. Krans. He said the first was, looking at the photo of the stairs, would the wall continue beyond where the stairs are currently or would that area all be revegetated? Mr. Krans felt it would be revegetated, however, there are two big trees on the upper level, they need to be sure the wall wraps around the trees in a way that doesn't harm the trees. He said right now the stairs create the retaining buffer, so he

believes it will be substantially revegetated but they need to pay attention to the area around the trees to make sure no harm is done. Roland stated that at some point Mr. Krans will have to tell the Board definitely 'this is what I plan to do'. Mr. Krans said he understood.

Roland L. said the second question, and he noted it may have been answered, but the merger of the two walls 'walls two and three', will the height of that replacement wall be the height of the two existing together? Mr. Krans said, "Yes". Roland said, "Ok". Roland asked, "Do you know approximately how tall each wall is right now and what the total / combined height would be?" Mr. Krans said the two walls are around 37 – 38 inches. He said he measured in a couple of places but the terrain isn't level. He believed each wall was less than four feet in height. Roland said, "Then my question is, the combined height will exceed five feet". Mr. Krans said, "Yes". Roland said, "Thank you".

Roger A. said that new wall would have to be engineered and the Board would need to see the engineering before a vote on the application, because the wall will be greater than four feet in height. Mr. Krans said he understood. He stated they have had a contractor look at it, and they are seeking a second opinion, and then they are going to get some engineered expert opinion as to whether or not they can build a wall that will last. He said the plan B would be to just go with what they have in terms of the heights of the two walls. He said they were hoping they could do the one wall. Roger asked if Mr. Krans would have the engineering information for the next meeting on August 11<sup>th</sup>? Mr. Krans said he would try.

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Ann H. asked about the Permit by Rule to the DEP. She said the Permit by Rule stated they were looking to fix the retaining walls and stairs from the house to the water, it didn't say anything about replacing them. She asked if this would be an issue? Mr. Krans said he didn't know. Roger thought the DEP looked at a repair and replacement as the same. He said with respect to moving a wall, there may be some issues that need to be addressed with the DEP. He was not certain. Ann was asking because she wanted to be sure it didn't need to be changed prior to the next meeting. She didn't want Mr. Krans to have an issue later with his permit. Roger asked CEO Demers if he knew the answer. CEO Demers said that Mr. Krans was looking for guidance, so he can provide the Board with the right documentation for either the two walls or just the one. He said if there a possibility for the one wall, he will get engineering, if not, he will not need engineering. He said he was not going to make the decision of whether or not he could have the one wall, it was up to the Board.

Steve F. asked if the Board had the option to look at moving and combining walls? He said that what Mr. Krans is trying to do may be great for him and the lake, but it was his understanding when you replace walls, other than moving steps, the Board has had to replace the wall inch for inch. Steve didn't know if the Board had the flexibility in the ordinance, but if there was in shoreland zoning, he was happy to allow what Mr. Krans is requesting being both good for the property owner and the lake. He asked if the Board had the flexibility? Roger A. didn't think the Board could move them around. He said if one was going to be put in place of two, the location of the single wall would have to be put where one is existing now. Roger added that he felt a slope would need to be created, if a 7 foot wall went in.

Madge B thought Ann was on the right track, meaning Mr. Krans cannot make many changes without going back to the DEP with those changes. Roger A. agreed. Ann said that that was what she was trying to point out, before he goes to any expense for engineering that he checks with the DEP to be sure he can do what he wants. She didn't want him spending money on engineered drawings then not be able to do it. She noted that other DEP permits have been replace wall and this application just says 'fix' the retaining wall. Ann didn't know who would call the DEP to see if fixing and replacing was the same thing. Roger said the applicant would contact the DEP. Mr. Krans said, "Ok". Ann said she didn't want Mr. Krans to go through this process only to find out he needed to file another permit.

Mr. Krans asked if the Board met twice in August? The Board members said, yes. He felt the later meeting in August would be best to give him time to work out more details. Madge B. stated that it didn't matter to the Board.

Ann H. wanted to know who would make the decision regarding the one or two walls? Mr. Krans stated he would be contacting the DEP and if they say he cannot do the one wall, then he will come back to the Board and do three walls same place same height. He felt the advice the Board has given him was well taken, that perhaps the Board is not permitted to allow what he is seeking to do. He said again, if that was the case, he

will take a different route. He asked the Board if that made sense? They all said, yes. He agreed he didn't want to spend a lot of money on something the Board can't allow.

Roger A. asked Mr. Krans to contact Barbara F. when he is ready to come back before the Board. Mr. Krans asked if site inspections were on the same day as the meeting? Roger said this time of the year, because there is enough daylight, the Board does it the same evening. Mr. Krans asked if there were any other questions or concerns? Roger did not believe so. Mr. Krans thanked the Board for allowing him to appear this evening.

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**Madge B. moved that the Board table the application until Mr. Krans is ready to come back with additional information. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 5 – 0 the motion to table was unanimous.**

Nothing further was discussed.

**Amendment to the Subdivision Known as Red Pine Estates – One Additional Lot – Map 11, Part of Lot 28F (Newfield Road) – Nickolas Richardson, Property Owner; Joseph Stanley, Representative**

Mr. Stanley was present via Zoom to discuss the application.

The preliminary application for the amendment to the subdivision contained the following information:

**Red Pine Estates Subdivision**

Property

Owner & Nickolas Richardson

Applicant: 41 Newfield Road

Shapleigh, Maine 04076

Surveyor: Joseph Stanley , PLS #2453

455 Main Street

Springvale, ME 04083

jstanley@lineprosurveying.com

**Land Information**

Location: YCRD Book 14748, Page 340-341 – Warranty Deed from Cormier to Richardson

Recorded February 6, 2006

Tax Map 11, Lot 28F

Zoning: General Purpose

Part of the property lies within 250 feet of the high-water mark of Lake Sherberne.

Acreage to

be Developed: **2.03 Acres**

No Current Deed Restrictions, Easements, or other Encumbrances.

Part of the parcel does include a waterbody.

Part of the property is within a special flood hazard area as identified by the Federal Emergency Management Agency.

**General Information**

No. of Lots: 4

This development currently has a road.

Water Supply: Individual Wells

Sewage Disposal: Individual Septic Tanks

Fire Protection : Existing Fire Pond

There Are No Proposed Recreation Areas or Common Land

Provided was a copy of the soils map of the area; a copy of a Subsurface Wastewater Disposal System drafted by Kenneth Gardner, SE #73, dated 12/16/2019 for a 3 bedroom home, permitted on 12/20/2019; a copy of the Town of Shapleigh Tax Map 11, highlighting Lot 28F; a copy of the original subdivision

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Plan for Red Pine Estates, a 4 lot subdivision, approved on 7/17/1990, and a copy of the approved Private Way Plan on Lot 28F, dated 11/13/2007, recorded at YCRD on 11/14/2007, Plan 725, Page 38.

Provided was a plan for preliminary review entitled ‘Plan Showing a Revision to Lot #4 of Plan Book 325, Page 37, Red Pine Estates, A Subdivision on Newfield Road in Shapleigh, Maine (Tax Map 11, Lot 28F) by Nickolas Richardson, 41 Newfield Road, Shapleigh, ME 04076’, dated March 24, 2020, drawn by Joseph Stanley, MPLS #2453. The plan depicts a proposed 2.03 Acre lot with frontage on ‘Not-a-Road’, as well as Newfield Road. The proposed lot holds an existing house and leach field, as well as a turnaround area on Not-A-Road, adjacent to the proposed new lot.

Provided this evening was a final plan entitled ‘Plan Showing a Revision to Lot #4 of Plan Book 325 Page 37, Red Pine Estates, A Subdivision on Newfield Road in Shapleigh, Maine (Tax Map 11 Lot 28F) by NBR Properties, LLC, 41 Newfield Road, Shapleigh, ME 04076’, dated July 28, 2020, drafted by Joseph L. Stanley, MPLS #2453. The plan depicts the proposed new lot, 2.03 acres in size; the new location of the turnaround which is adjacent to the new lot, 50 feet from the rear lot line, and parking restrictions on the turnaround; existing house and leach field; the frontage on Not-A-Road the existing private way, and the Newfield Road. The fire hydrant is also on the plan with a reference to the easement to be granted to the Town of Shapleigh for access for fire protection purposes, as well as, a use easement to Not-A-Road to access the fire hydrant.

Also provided this evening, was a letter listing the requested waivers, those being for §89-29A ‘Underground utilities’; 89-30A ‘Stone monuments’; §89-36M ‘Sidewalks’; and §89-36I ‘Street design standards’. In addition, provided was the proposed description for an easement from NBR Properties, LLC to the Inhabitants of Shapleigh. The easement read as follows:

A perpetual easement to access, utilize, maintain and repair, a fire hydrant and fire pond situated on the easterly side of Newfield Road in the Town of Shapleigh, County of York, State of Maine. Said Fire Pond & Hydrant are as depicted on “Plan Showing A Revision to Lot #4 of Plan Book 325 Page 37 Red Pine Estates” dated July 28, 2020, prepared by LinePro Land Surveying, LLC, to be recorded at the York County Registry of Deeds upon Planning Board approval.

The easement will specifically begin on the easterly sideline of said Newfield Road at its intersection with the Private Way known as “Not-A-Road”, and will run generally Easterly along said Private Way, onto and through Lot #4 as shown on said plan. Reference is made to said plan for the specific location of the access road and fire pond/hydrant.

There is a gate near the end of “Not-A-Road” as the Private Way enters the remainder of Lot #4. As part of this easement the Grantor agrees to supply the Grantees, as well as their Emergency Services personnel, key and/or a knox box setup to ensure said Grantees have access to said Fire Pond in the event that the gate is closed.

Roger A. asked Mr. Stanley to let the Board and anyone on line know where they were at. Mr. Stanley stated he supplied Barbara F. with a pdf to pass along to members of the final plan. He stated that since the last meeting he submitted the formal waiver request which was asked for. He said they were asking for setting

capped irons for survey rods instead of stone monuments; a waiver for sidewalks; and underground utilities so all lots are covered. He said there was existing overhead power to the back lot but

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the new house lot does have underground power. He said the last waiver being asked for was that the road didn't need to be paved in the unique situation that there is.

Mr. Stanley stated that the waiver requests were also added to the plan, and on the plan was added 3 additional notes. He said one note relating to the fire pond, that the Town of Shapleigh will be granted a perpetual easement and a separate document will be recorded relating to that. He said he added the note no further division of the lots may happen without Planning Board approval, and a few notes under Note 13 regarding the private way, that the Board has asked for in the past, that the town isn't required to maintain the road. He said also noted was that this version of the plan extends the road 50 feet from the previous approval, just as discussed at the site visit.

Mr. Stanley believed this covered the changes since the Board last met. Roger A. stated the only other question was regarding the Road Maintenance Agreement, if one would be filed. Mr. Stanley stated that there was one written and it is a requirement on the prior approval, and he reiterated it on the current version of the plan. He stated there was one prepared but Mr. Richardson hasn't filed it because he is the only owner of all the lots on the road. He said it didn't matter to them if the Board would like to see that filed along with the other documents, they would be happy to do that. He believed Mr. Richardson was just going to do it whenever he sold a lot and a second party was involved. He said there were two versions, one Attorney Joe Linkowski had written several months ago, and Barbara F. supplied him with the original document from the first approval in 2007. Roger thought for clarity at the time of sale, it would be best to file the document now. Mr. Stanley said that was fine, it was probably best to do it while it was fresh in his mind.

Roger A. asked if Board members wanted to make a motion for the requested waivers? The waivers requested are as follows: Article 89-29.A 'Utilities shall be installed underground except as otherwise approved by the Board'; Article 89-30.A (1), 'Stone monuments shall be set at all street intersections and at all corner and angle points of the subdivision'; Article 89-36.M, 'Sidewalks shall be installed within all subdivisions within the urban compact area'; and Article 89-36.I 'Design standard of minimum pavement width of 12 feet'.

**Madge B. made the motion to waive the requirement of 'Underground utilities' on all lots; waive the requirement for 'Stone monuments', rebar will be used instead; waive the requirement of 'Sidewalks'; and waive the requirement of 'Pavement' for the right-of-way. Roger A. added that it would be for a distance of 350 only, enough to access the new lot and turnaround. Madge B. agreed. Mr. Stanley stated that it could be worded per the private way as depicted on the plan, or 350 to be safe. He said if a future revision came through, the topic of the road will have to be revisited. Madge stated that she moved for approval of the waivers as stated. Roger stated that the road waiver would be for a distance of 350 feet on Not-A-Road. Madge stated, "Correct". Maggie M. seconded the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Roger A. asked if there was a motion for approving the amendment to the subdivision to create the 2 acre lot?

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**Madge B. moved for approval of the plan provided to create the new lot from Map 11, Lot 28F, the mother lot, originally known as Map 11, Lot 4. Maggie M. seconded the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.**

Mr. Stanley left the plans with Barbara F. Roger A. stated he would sign the plans this evening and members can come in as they can, to sign the plans which will be kept in Barbara's office. When that is completed, she will contact Mr. Stanley so he can record the plans.

Nothing further was discussed.

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The Planning Board acted on the application for an Amendment to a Subdivision, known as the Red Pine Estates Subdivision, to add one additional lot being 2.03 Acres in size, as follows:

## **FINDINGS OF FACT**

1. The owner of the property is NBR Properties, LLC of 41 Newfield Road, Shapleigh, Maine 04076.
2. The property is located at Shapleigh Tax Map 11, Lot 28F (Newfield Road), in the General Purpose District.
3. The applicant is Nickolas Richardson, and has demonstrated a legal interest in the property by Title Reference of Deed Book 14748, Page 340-341, registered at the York County Registry of Deeds on 2/6/2006. The applicant transferred ownership to NBR Properties, LLC via Deed Book 18174, Page 837, registered at the YCRD on 2/19/2020.
4. The applicant proposes to create one additional lot; being 2.03 acres in size, and the remaining will be open land. The lot will have its road frontage on the existing private way known as 'Not-A-Road' and all zoning setbacks shall be met. The private way is to remain a private road until acceptance by the Town of Shapleigh and is subject to a road maintenance agreement and homeowner association agreement previously required during the approval in 2007.
5. Provided was a copy of a Subsurface Wastewater Disposal System drafted by Kenneth Gardner, SE #73, dated 12/16/2019 for a 3 bedroom home, permitted on 12/20/2019 on proposed new lot 28FB. Soil test pits logs were provided by Kenneth Gardner, dated 12/16/2019.
6. This new lot will have a private well as a water supply.
7. Provided was a copy of the original subdivision 'Final Subdivision Plan of Red Pine Estates for Michael Morris', a 4 lot Subdivision, approved on 7/17/1990, recorded at YCRD on 7/19/1990, Plan 193, Page 25; a copy of the approved 'Private Way Plan for Nick Richardson, Newfield Road, Shapleigh, Maine 04076' on Map 11, Lot 28F, dated 11/13/2007, recorded at YCRD on 11/14/2007, Plan 325, Page 38; and a copy of 'Redivision of Lot 4 & Land Exchange for Nicholas Richardson on Newfield Road, Shapleigh, Maine 04076', on Map 11, Lot 28F, dated 11/13/2007, recorded at YCRD on 11/14/2007, Plan 325, Page 37.
8. Provided was a plan for preliminary review entitled 'Plan Showing a Revision to Lot #4 of Plan Book 325, Page 37, Red Pine Estates, A Subdivision on Newfield Road in Shapleigh, Maine (Tax Map 11, Lot 28F) by Nickolas Richardson, 41 Newfield Road, Shapleigh, ME 04076', dated March 24, 2020,

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drawn by Joseph Stanley, MPLS #2453. The plan depicts a proposed 2.03 Acre lot with frontage on 'Not-A-Road', as well as Newfield Road. The proposed lot holds an existing house and leach field, as well as a 50' x 50' turnaround area on Not-A-Road, adjacent to the proposed new lot, 57.64' from the rear lot line.

9. Provided was a final plan entitled 'Plan Showing a Revision to Lot #4 of Plan Book 325 Page 37, Red Pine Estates, A Subdivision on Newfield Road in Shapleigh, Maine (Tax Map 11 Lot 28F) by NBR Properties, LLC, 41 Newfield Road, Shapleigh, ME 04076', dated July 28, 2020, drafted by Joseph L. Stanley, MPLS #2453. The plan depicts the proposed new lot, 2.03 acres in size; the new location of the turnaround which is adjacent to the new lot, 50 feet from the rear lot line, and parking restrictions on the turnaround; existing house and leach field; the frontage on Not-A-Road the existing private way, and the Newfield Road. The fire hydrant is also on the plan with a reference to the easement to be granted to the Town of Shapleigh for access for fire protection purposes, as well as, a use easement to Not-A-Road to access the fire hydrant.
10. Provided was a copy of a perpetual easement dated July 28, 2020, to access, utilize, maintain and repair, a fire hydrant and fire pond located on Lot #4 of Red Pine Estates Subdivision, to be recorded at the York County Registry of Deeds upon Planning Board approval.
11. A notice to abutters was mailed on June 25, 2020. A public hearing was held on July 14, 2020. Meetings were held on June 23, 2020, July 14, 2020 and July 28, 2020 via Zoom due to Covid-19.
12. Four waivers were requested by the applicant for §89-29A 'Underground utilities'; 89-30A 'Stone monuments'; §89-36M 'Sidewalks'; and §89-36I 'Street design standards'.

## **FINDINGS ON THE REQUESTED WAIVER(S)**

The Planning Board finds that the request to waive the requirement, Article 89-29A 'Utilities shall be installed underground except as otherwise approved by the Board'; ***shall be granted*** as utilities already exist

on both existing lots (one overhead, one underground).

The Planning Board finds that the request to waive the requirement, Article 89-30A (1), ‘Stone monuments shall be set at all street intersections and at all corner and angle points of the subdivision’; ***shall be granted*** provided that all markers used to delineate property lines are placed deep enough into the earth that they are not easily removed by vandals. A minimum of three feet of rebar shall be placed into the earth.

The Planning Board finds that the request to waive the requirement, Article 89-36.M, ‘Sidewalks shall be installed within all subdivisions within the urban compact area’; ***shall be granted*** due to the fact this subdivision is in a rural area, and does not fall within an Urban Compact Zone.

The Planning Board finds that the request to waive the requirement, Article 89-36.I ‘Design standard of minimum pavement width of 12 feet’; ***shall be granted*** for a distance of 350 feet on the private way known as Not-A-Road which accommodates the new lot, and previously approved Lot 28FA. The Town is not required to maintain the private way (see Plan Note 13) and any additional lots may create a condition that requires paving the private way.

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#### **Conclusion(s)**

Upon review of all material presented, and a site inspection, the Board concluded the standards of the Town’s Subdivision Ordinance have been met.

#### **Planning Board ACTION**

The Planning Board hereby approves the application for the addition of one additional lot, being 2.03 acres in size, per the plans provided, with the following conditions:

1. Any subdivision not recorded at the York County Registry of Deeds ***within ninety days*** of the date upon which the plan is approved and signed by the Planning Board shall become null and void, unless an extension is granted by the Board in writing.
2. The written easement for access granted to the Town of Shapleigh to the existing fire hydrant and over the private way known as Not-A-Road, shall be recorded within 90 days.
3. Any further division shall have to come back before the Planning Board.
4. No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given, unless the revised final plan is first submitted to the Planning Board and the Board approves any modifications.

#### **Conditional Use Permit – Hold Small Events & Venues, and Weddings – Map 1, Lot 22A (24 Deering Ridge Road) – Meagen & Brent Lavoilette, Owners & Applicants**

Mrs. Lavoilette was present via Zoom to review her application.

Provided along with the application were the following:

- Aerial photo / sketch plan of the property with the land survey imposed, which depicted the existing structures, lot line measurements and entrance onto Deering Ridge Road. The sketch plan also noted that the property was 3.5 ± acres to the river’s edge and 5.10 ± acres to the river centerline.
- Sketch of the property depicting the location of the house / garage / barn and the distance from the structures to the river that being 184 ¾’ to the barn and 149 ¾’ to the house; the distance from the road to the house being over 200 feet; and the distance from the house and barn to the septic tank being a minimum of 25 feet from either. Both the barn and house appear to be located in the Shoreland District.
- A sketch plan which appeared to be part of a surveyed plan, depicting the location of the house / garage / barn; the location of the gravel driveway including two entrances onto the property; the location of a garden area, cemetery, and three proposed locations for parking. One parking location was depicted as 64 feet by 113 feet, one location 60 feet by 103 feet and a third location being 52 feet by 64 feet. Each parking area is located on the rear of the property behind the barn.



- A sketch plan entitled Parking Plan. The plan depicts the flow of the traffic pattern, in addition, the size of the parking areas, the square foot calculations, were given for each area. The total parking area calculation is 16,740 square feet. The amount per parking space is 200 square feet. This allows for 83.7 spaces for parking. The barn size is also depicted on the plan, that being 38 feet by 72 feet or 2,736 square feet. (Note: §105-43. 'Off-street parking and loading'. If allowing for 200 people, 66.66 parking spaces are required per the ordinance.)

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The detailed project description is as follows:

We are proposing to have the following venues and events in our barn on 24 Deering Ridge Road:

- Weddings ( $\leq 200$ )
- Small events & venues: small bands/music events, anniversary parties, bridal showers, baby showers, exercise classes, open barn vendor expos, community events, fundraisers, silent auctions, food & beverage events

We are proposing the following as part of our plan:

- Parking Plan
- People working: The only people working on the premises will be volunteers of Babbling Brook Farm and the Lavoilette family. All other working people will be hired by vendors of the customer.
- Hours of Operation: 10 am thru 10 pm – all patrons will be off the premises by 10 pm
- Noise control: Events involving music, live music, and audio systems will be contained in the barn. In the event there is a live band or music outside of the barn, it will not surpass 8 pm.
- Septic: There are no plans for use of the septic system on the property. Septic needs will be rentals specific to the event.
- Trash removal: Trash will be disposed of by the owners of the property at the local transfer station or by the customer. If trash is being taken off the property by the customer, we will ensure disposal location is indicated within their rental contract.

We would love the ability to also provide a space for the community for functions and activities. We take great pride in this piece of history in Shapleigh and are anxious to share it with others.

Roger A. stated the next applicant to speak was Mrs. Lavoilette. Mrs. Lavoilette stated that she did not have a lot to share this evening. She said she wanted to discuss the traffic report that Barbara F. had sent to members and herself. She said it was the traffic analysis for the bridge, and based on what she read, after 6:00 pm the number of vehicles goes down in both directions. She said in her opinion this would work in her favor, that the traffic dies down. She felt that if they had 75 vehicles for the number of people she was proposing, assuming people come in groups of two or more, the road should be able to assume the volume that would be leaving her place. She added that she did not think everyone would leave at exactly the same time, there would be some people that trickle out.

Mrs. Lavoilette stated she did get some measurements from her driveway, and information on speed limits on the roads. She said where cars would be exiting from her driveway the speed limit is 35 mph, all the way to Sanford, as well as Rte. 109. She said that put them within the site distance requirement of recommended or minimum. Madge B. asked what the site distance was? Mrs. Lavoilette stated from the lower driveway, if you take a left up the hill, that is approximately 335 feet. She said this was based on her husband at the driveway and she walked until he could see her from the waist up. She stated there was more than enough site distance to the right toward Rte. 109.

Mrs. Lavoilette stated from Deering Ridge Road, pulling onto Rte. 109, Mrs. Goodwin had expressed concern with visibility. Mrs. Lavoilette said in her opinion, pulling out onto that road all the time herself, she did not believe there was an issue with visibility in either direction. She said you can see cars coming from beyond Ted's which is well over 500 feet, and the measurement turning left to the corner is over 400 feet.

Steve F. stated he was surprised, looking at the numbers, to see at the time her venues will be done, between 8 pm and 10 pm, the 9 o'clock hour had 8 vehicles. He said it was surprising to him and the

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traffic study was huge. He said the numbers in the study combined with her willingness to have someone out there directing traffic for the exit and entrance, took care of his concern that he had at the beginning due to the driveway location.

Mrs. Lavoilette stated she was striking out trying to reach Paul Mitchell the traffic guy or the Sheriff in York County. She stated she left a message with another person in that office and she has also reached out to Sanford and is hoping to hear back. She asked Board members if they knew, based on previous experience, if Sanford hires into Shapleigh? She said if the Board had any suggestions, she would appreciate it. Steve F. didn't think it would necessarily have to be police enforcement. He said there were different traffic control companies that may be able to offer just as good a service or better for her. He thought perhaps she could go through contacts for venue coordination to see if they have that information. He said he didn't think this was the first time that a multiuse venue had to provide traffic control. Mrs. Lavoilette stated she wanted to do what was right by her neighbors, and she was just trying to get someone to call her back.

Madge B. stated she had a question about the traffic study. She said she assumed it was a weekday, so it must have been a commuter day. Ann H. stated it was done on a Wednesday. Madge said that Mrs. Lavoilette had talked about having events not necessarily at night but always on the weekend. She asked if this was correct? Mrs. Lavoilette stated, "Yes". Madge said it was mentioned that perhaps a yoga event would take place which would not be huge, and she asked again if it was going to be run on the weekends. Mrs. Lavoilette stated that for weddings it would be on the weekends. Madge asked about other venues, such as yoga classes, would those also be on the weekends? Madge said the permit she believed said weekends. Madge thought the traffic situation would be better for all events if they happened only on the weekends. She didn't think the high traffic numbers would be seen on the weekend, only during a weekday. Mrs. Lavoilette agreed that the high traffic count appeared to be during commuter hours, with between 3 pm and 5 pm being the highest volume of traffic.

Roger A. stated that based on this, would Mrs. Lavoilette be comfortable with stating the events would be on a Friday, Saturday or Sunday. Mrs. Lavoilette stated, "Yup". Madge B. asked about Friday afternoon? Mrs. Lavoilette thought if she had an event on Friday, it would likely start between 3 and 5 pm as a rough estimate.

Steve F. stated that when looking at the numbers, it is easy to make judgement calls based on what the Board is looking at, but when you breakdown the numbers, at 5 pm you have just over a car a minute. He didn't think it was excessive traffic. He stated he was surprised the numbers were not more than double what the study showed. Ann H. asked if Mrs. Lavoilette could get approval with the condition if she has a certain amount of people, such as 50 or more, she would need to hire a flagger or someone for traffic control. She said the Board could do it as a controlled number, so it would be known. She said she wasn't sure what that number should be, perhaps it should be 25? Ann thought 50 people might be 25 cars if there are couples. She asked if the Town gave her a number to go by, as a condition, then that is when she needs traffic control when the venue ends and everyone leaves. Ann added that this way, she could open any day of the week for scheduling purposes, but would have that number where she would have to get someone for traffic. Madge B. said that was what Mrs. Lavoilette proposed. She thought what the Board was hoping, because Mrs. Lavoilette just pulled the number out of the air, as did the Board, it might be helpful if she could find someone to have them say 50 sounds reasonable. Someone who does traffic control. She said this is the sticking point, to come up with why the number 50 would work. Ann said, "Gotcha". Mrs. Lavoilette agreed.

Roger A. asked if she was able to get someone to evaluate the barn floor to be certain it will be able to handle up to 200 people? Mrs. Lavoilette said she had reached out to several people and it is very

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expensive, so she didn't want to do it unless she would get approval. She stated it was thousands of dollars. Ann H. asked if there were blueprints of the barn. Roger A. and Madge B. did not believe so, and Roger added that due to the age, the original blueprints would no longer be valid. Mrs. Lavoilette stated the only thing she had that was current was the inspection report from when she purchased the property. Steve F. asked if she had a copy of the report? She stated that she did and that Cory Normand did it. Ann H. said she had to use structural engineers on fire claims and there is a man in Gray that has done many for her, and he was not too expensive. She said she would be happy to pass this name on to Mrs. Lavoilette. Mrs. Lavoilette

stated that she didn't want to invest that much money without approval. She said she would be happy to take the number.

Mrs. Lavoilette asked if it had to be a certified structural engineer? Roger did not think anyone else could do it. Steve F. asked if the Board was liable for this, if something happens if the barn falls down and its full of people? He said he didn't recall the Board asking for something like this in the past. Ann believed you had to, because it was a life safety concern. She noted an example of children being burnt in a fire, afterwards, every town was supposed to have a life safety person assigned to them. Steve agreed that the last thing the Board wanted was to have someone get hurt. He felt life safety code fell under code enforcement and he didn't want to put this on CEO Demers. He said the Board are not the inspectors, if it was a life safety issue or structural issue, it would fall under code enforcement. He felt as a Board they could stipulate those inspections happen. Roger agreed but upon the Board granting the application, the Board has to be sure it is a safe site that the Board can grant what the applicant wants to do vs granting it when we didn't know whether or not it would sustain the number of people she requested. Ann asked about granting with a condition that a life safety person feels it is safe? She said there would have to be a document in the file saying we approved it as long as the life safety person agrees. Roger said the Board is asking for proof the structure is safe and the floor can hold the weight. Someone has to come by and say they have looked at it and they will certify it will support x number of pounds per square foot. He said then the Board would know the floor load will be safe for what the Board is approving. Roger noted that as time goes by, due to the age of the structure, the weight limit will likely decrease, such as in the winter with a snow load on the roof. Although he did not feel with the pitch of this roof, it would be an issue. He said an engineer would take into consideration all factors. Ann asked who Shapleigh's life safety person was? No one knew. Steve thought it would be the CEO, based on an issue he was dealing with in Waterboro. He wasn't sure if just having a structural engineer come in and say the floor is safe, is where the Board wants to stop. He thought it would be good to have documentation in the file stating the entire venue was safe, for things like egress, fire extinguishers and those sorts of things. He thought somebody should lay eyes on the structure before it goes into public space. He said before it was a hay barn, now it's a public venue; he thought they were missing a step and he felt the floor inspection could be rolled into all of it. Steve agreed this needed to be looked at by someone other than the Shapleigh Planning Board. Ann H. added that she didn't want to be dragged into a law suit if something happened on site, because if the Boards name is on documentation, they can get dragged in. Roger agreed and stated that is why he wanted an engineer to sign off, so the Board can fall back on the engineer's expertise that was used to make the decision the structure was safe to be approved, for the number or people allowed based on pounds per square foot. Steve thought there should be a further and more detailed inspection. Ann asked if the life safety person could make the decision?

Roland L. thought for everyone's benefit a determination has to be made, its who makes the determination. He said with respect to municipal buildings in Sanford, where he worked for many years, every building had a placard and it said how many people could be in the bleacher area, how many on the main floor, and they stuck to those numbers for good reason. Roland said that you don't want to have a catastrophic failure which will create a lot of problems. He asked how the Board determines if Shapleigh does have such a person? Roger A. stated, "Shapleigh does not." Roger said that was why he wanted it to

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fall upon an engineer to certify the structure for capacity. Roland said that pending that determination being made, could the Board set that piece aside, go through the other issues and questions the Board has, and if the Board can get through the various points, get to the point of approval and make it contingent on getting the engineered report. He said, then it could either come back to the Board or he would recommend having CEO Demers review it, and if he feels comfortable with it, then she is good to go. Roland understood Mrs. Lavoilette not wanting to put money out there and then the Board not support it. Ann H. agreed. Roland said he understood where Mrs. Lavoilette was coming from but he also felt it was important to know whether the building can handle the number of people that she is suggesting. Roger said when the Board was reviewing the minutes, a question was asked about the noise level, justifiable question, and it was mentioned after a certain time, if there was music, it will be inside the building. Roland thought Mrs. Lavoilette would want to know if she will be safe having 200 people in there.

Mrs. Lavoilette stated she agreed 100% with what Roland shared. She stated if the Board had another reason why she would not be approved, she didn't want to spend the money, but she agreed from the safety standpoint. She said it would be nice to have the approval with the condition that she could not open until she supplied the report to whomever in the town, whether that be CEO Demers or the Board. Roger A. stated he had no issue with a preliminary approval, stating the only thing the Board needed additionally, is that something is required prior to opening, stating the structure is safe. Mrs. Lavoilette stated she was fine with that, it makes complete sense.

Madge B. asked about what Steve F. brought up, what about the inspection for things like fire code. She said, as compared to other approvals such as a child day care, the Board requires the Fire Marshall to approve the location before approval. She said the Board also needs to decide whether 50 cars are the right number to require traffic control, and the Board should see if Mrs. Lavoilette can get some information on that. Madge thought the Board could ask her to get the fire safety stuff done, because she didn't think that was a big expense and is absolutely necessary. She said this would leave only the one thing to condition, that being the capacity of the structure. Roger A. said the Board could have a preliminary approval with 2 conditions for floor load safety, as well as the Fire Marshall for the number of people for what venues will take place. Madge added that the Board also needs the number of cars that would require traffic control. Madge thought she could get answers for several of these prior to approval. Roger thought if the Board decided on the number of cars this evening, then it would just be the floor capacity and Fire Marshall. Madge did not feel the Board was ready to say 50 cars, she believed Mrs. Lavoilette was going to get someone else to say what the appropriate number is. Madge did not think the Board could act on anything this evening, there were too many variables. Roger had no issue with waiting. Ann H. asked how she would come up with the number of vehicles? Madge stated she has been trying to find someone who would give the Board the answer, she had the traffic count for a week day. Madge believed someone other than the Board, someone qualified should make the decision.

Ann H. asked Roger A. if there was a State law that determined when a construction company, landscape company, etc. had to have flaggers? Roger did not know the answer to that question. Ann said that some of her clients hire temporary flaggers and temporary traffic control at certain jobs. Roger felt it was a safety issue for the people involved in doing the job, but he wasn't sure if it was a law or a provision to ensure safety of workers. Ann thought perhaps the DOT might know. Roger did not know.

Roland L. stated that both Acton and Shapleigh share cost for a Deputy Sheriff. He said he did not have the town website open, but he thought if Mrs. Lavoilette went to the town website, the Deputy's contact information was there and he noted he did work for Acton and Shapleigh. Mrs. Lavoilette stated she thought of that but didn't know where the contact info was. The Board members told her to go to the

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Home page to find it. Roland felt that as a resident and taxpayer in Shapleigh, the Deputy could help her get the information or direct her to the right person. Roland said he might even have regular contact with the right person. Madge B. agreed that it was a great suggestion. Ann H. asked if she lived on a State road? Roger said no, it was a town road. Ann said, "Then DOT doesn't have anything to do with that road". Roger said, "No".

Mrs. Lavoilette wanted to know if the Fire Marshall was before or after the structural engineer? She wanted to know if the Fire Marshall would need to know how many people were allowed first? Ann H. thought he would need to know how many the structural engineer allowed, and then he would tell her what she needed for fire extinguishers, door openings, etc. Ann didn't think he would charge for this service. She noted that they came to her office and they didn't charge her for a fire inspection. Mrs. Lavoilette said that she had five exits, she believed she was fine with that. Roger A. thought the Fire Marshall might not need the engineers report, just the proposed number of people and type of event, to be able to determine if additional lighting was required, an alarm, etc. Madge B. thought she could use the 200 people figure because she knows she will not be having greater than 200 people at one time. Mrs. Lavoilette asked if she used the Shapleigh Fire Marshall? Roger said, "No, it's the State Fire Marshall". Roger added that the town does not have a Fire Marshall, the town has a Fire Chief only. He said the State Fire Marshall has jurisdiction over any gathering

place. Mrs. Lavoilette asked where she could get his contact information? Roger said it would be listed under the State Government website.

Ann H. asked if the Shapleigh Road Commissioner could help determine when she needs someone to direct traffic? Roger A. and Madge B. both said no, that is not their job. Madge thought Roland had the right suggestion, for Mrs. Lavoilette to contact the Deputy Sheriff and go from there.

Roger A. believed due to the number of items that the Board needed information about, the application should be tabled until more information could be provided.

Mrs. Lavoilette stated she would try to get in touch with the Town Sheriff, and the State Fire Marshall, and she hoped her only condition would be the structural engineer. Roger A. believed if the Board had all other information, they could approve the application with a condition an engineer certify the structure prior to occupancy. Mrs. Lavoilette stated, "Ok".

Mrs. Lavoilette asked Ann H. for the contact info for the engineer she spoke about earlier. Ann stated that she would try to get her the contact info. Mrs. Lavoilette gave her her phone number.

Roger A. asked for a motion to table until the next meeting. Mrs. Lavoilette stated she was unavailable on August 11<sup>th</sup>. Roger asked that she contact Barbara when she would be ready to come back.

**Madge B. moved that the Board table the application until Mrs. Lavoilette requests a time on the agenda and that she can provide the board with the additional information requested. Maggie M. 2<sup>nd</sup> 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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### **Growth Permits**

#### **Map 18, Lot 23 (21 1<sup>st</sup> Street) – Seasonal Conversion GP #14-20**

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There is an existing structure on site. A copy of the warranty deed was provided. There is nothing on file that would not allow the seasonal conversion.

#### **Map 7, Part of 17A (Town Farm Road) – New Home GP #15-20**

This is a legal lot of record, a deed showing ownership was provided, the lot meets the minimum lot size requirement, and has 200 feet of road frontage.

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**Roger A. reminded members that the plan for Mr. Richardson will be in Barbara's office for their signature.**

**The Planning Board meeting ended at 8:45 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 next Planning Board meeting scheduled will be via Zoom on Tuesday August 11, 2020 at 7:30 p.m. See the Town website, [www.shapleigh.net](http://www.shapleigh.net) to obtain the link details, or use the information below.**

To attend the meeting, you may connect via the following:

- **Join Zoom Meeting**

<https://us02web.zoom.us/j/84895865996?pwd=R0tBZE5ENFVLSGRibFRFaWFVQmEvZz09>

- **If calling in:** Find your local number: <https://us02web.zoom.us/j/84895865996?pwd=R0tBZE5ENFVLSGRibFRFaWFVQmEvZz09>

**Zoom Meeting ID: 848 9586 5996 Password: 479754 (For all links)**

- You may send an email by noon on the day of the meeting to [planningBoard@shapleigh.net](mailto:planningBoard@shapleigh.net) and the link to the meeting will be emailed to you, or you can find that link on [www.shapleigh.net](http://www.shapleigh.net) under Planning Board

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.

Respectfully submitted,

Barbara Felong, Land Use Secretary

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