

Shapleigh Planning Board

Minutes

Tuesday, December 10, 2019

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

Public Hearing began at 6:00 p.m.

Several homeowners attended the meeting: William ‘Bill’ Mageary, William ‘Bill’ Porreca, Diane Bragdon and John Reeves.

Roger A. opened the public hearing by stating that the Planning Board was introducing several new sections to the ordinance, both of which are taken from the DEP Chapter 1000 ‘Guidelines for Municipal Shoreland Zoning Ordinance’. He stated that both are therefore allowed by the DEP but to date the Town of Shapleigh had not adopted them.

The first proposed addition to the ordinance Roger read as follows:

§105-4. Nonconformance

D. Nonconforming structures.

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

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.**

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- (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 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.**

Roger A. stated that the Planning Board added item (h) to the DEP guidelines because this is a new structure in the Shoreland District on lots where property lines can be questionable, this way the Planning Board has the ability to ask for a survey if it appears necessary.

Roger A. asked if there were any questions. Bill Porreca asked where the height of 24 inches came from? He didn't feel this would be enough height in certain areas with very steep slopes with an erosion problem. Steve F. stated that the board was looking at a tool the DEP currently allows to help mitigate erosion issues. He agreed it would not help in all areas, but in areas where there are sandy soils, where there is no vegetation it would help to slow down the water, and it is something that the town currently does not have.

Bill Mageary asked if he understood correctly that the new wall had to be 25 feet back from the high water line? The board stated that was correct. Mr. Mageary asked how far from the first wall a second wall could be placed? Roger A. stated that the new ordinance did not dictate that, nor did the DEP. Mr. Mageary thought this was a great step. He stated that he went to the DEP, as he has a greater than a 30 degree slope and he wanted to know what he or they could do; they asked him what lake he was on and he said Mousam. He said the DEP told him they were not doing anything on Mousam, and that he could use mulch only. He said that he was happy when he saw this option.

Steve F. stated that this ordinance will not let anyone put in a new wall at the water's edge. Bill Mageary asked if the DEP would be involved. Roger A. stated that you would have to get a Permit by Rule from the DEP and there would be a 14 day window. He stated that the DEP would contact the CEO if there were any issues. Roger said if the town adopts the ordinance the DEP would still need to bless the project

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as presented. Roger stated that he felt this would at least help some of the erosion that is taking place now, where vegetation will not work.

Mr. Reeves wanted to know if you put in a wall in an area where there is no existing vegetation, and due to the sandy soil no vegetation will grow, is there an alternative to having to plant vegetation? Roger A. stated that you could use mulch for stabilization of that area. Ms. Bragdon asked if you could use pine needles if that was what was currently there? The board had no issue with that.

Bill Porreca and Bill Mageary both wanted to know why this was only allowed on lots that were previously altered? Steve F. stated that if you currently don't have a buffer of plants, trees, or other vegetation and you are unable to stop the erosion, this allows for an alternative. He said that what the board and likely the DEP does not want, are walls going in just for aesthetic reasons, so this ordinance is put in place for areas where there are no trees to slow the water down. Mr. Mageary agreed this would help to slow the water down but on a 30 degree slope it may not be enough, he said he was still happy to have the ability to utilize this. CEO Demers stated that based on Mr. Mageary's lot, he wasn't sure in his situation it would work to his satisfaction. CEO Demers stated that Mr. Mageary's lot is natural, this ordinance is looking at places that have been cleared in the past. Again the question was asked why this was put into the ordinance, that being the words 'the site has been previously altered'? CEO Demers stated that it is tough to address all situations, but this would be a tool to help some situations around the lakes. He said again that in Mr. Mageary's case he didn't think this would fit his lot. Maggie M. was not sure about that. She pointed out that when you read further in the ordinance it states that a wall can be constructed where there is a legally existing lawn 'or' is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings. She felt the ordinance was trying to help with areas that cannot be stabilized and it appeared there was an either/or alternative. The board did not disagree with her assessment.

Roger A. asked if there were any additional questions? There were none.

The second proposed addition to the ordinance read as follows:

Place Under §105-4.D 'Nonconforming structures', placed after Section D.(2)

New Accessory Structure in the Shoreland District

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.

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2) At no time shall the structure be expanded.

3) The structure shall not be used for habitation.

Roger A. stated that this would allow people who did not have an accessory structure to have a shed for tools, ski's and yard tools, etc.

Roger A. asked if there were any questions?

Ms. Bragdon was concerned that there wasn't anything in this ordinance that specified what type of shed could be put up. She stated that she didn't want to have something that was unattractive, such as having no siding or built from junk. She wanted to know if there was anything written in the ordinance to address this? Roger A. stated that there was no language written that addresses the appearance of the structure, only the size. Ms. Bragdon asked about maintaining the structure, is there anything stating it will not get run down? She noted there were sheds now around the lakes that were falling apart and she didn't want to see more of that. Roger said that this ordinance only allows someone to put a shed on their property, it doesn't address the appearance of it. Roger stated that even existing structures in Shapleigh, some that perhaps should be condemned, are not addressed with respect to appearance. Roger added that the DEP will allow the new structure based on the size and the criteria that they have written. The board is using their criteria to allow the structure, which currently is not allowed.

Ms. Bragdon stated that she understood the need. CEO Demers stated that the new structure will be built to the building code.

CEO Demers wanted to know if the existing camp is 50 feet to the water and 50 feet to the road setback, does the new structure go next to the camp or can it go next to the road. He also asked if there was only 10 feet side setback existing, which would not allow for much room for a shed, could the shed go closer to the road? Roger A. stated that the new ordinance doesn't state it can't go between the house and the road. He stated that the ordinance states that there is the ability to allow for an accessory structure. Barbara F. stated that she could ask the DEP if they had an opinion with respect to this.

CEO Demers thought perhaps an exemption to the road setback should be added for the shed, such that if the shed could not be put to the side of the existing structure, it did not have to honor the road setback. Roger believed that how the ordinance is written now, it could go closer to the road. He felt that this was giving a waiver to the side and rear setbacks to allow for a new structure. The board thought that perhaps something needed to be added to the 105-17 'Land use' table.

Ms. Bragdon asked what the side setbacks were? CEO Demers stated that a minimum of 10 feet to the side lot line and an accumulation of 30 feet.

CEO Demers asked if this could be considered a Best Possible Location? Roger A. stated that it was not. Roger stated that it was an 80 square foot structure, with a height no greater than 8 feet, that could not go any closer to the water than the existing structure. He said the permitting would be the responsibility of the CEO, not the Planning Board.

Roger A. asked if there were any additional questions? There were none.

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The third proposed addition to the ordinance read as follows:

§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.**

Roger A. stated that these were added to support the new ordinance for low retaining walls being proposed.

Roger A. asked if there were any additional questions? There were none.

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The last proposed addition to the ordinance read as follows:

§105-17. Land uses. RP SD GP FD SP

Low Retaining Walls² NO CU CU/CEO NO CU

Roger A. asked if there were any questions?

Mr. Reeves asked if there was a specific material that had to be used for the new walls or could it be made out of anything such as concrete, stone, brick, etc. Roger A. stated that the wall could be no greater than 2 feet in height but it could be made out of any material that would work.

Bill Mageary asked if you were required to get 1 permit per wall or could you get a permit for all the walls at one time, if you were going to put up multiple walls? He also asked what if it was going to be three years between the time you put up the first wall and the time you put up the next wall, was there a time limit for the permit? Roger A. stated that you could get a permit for one wall or all of them at once if you knew you would be having additional walls. He said they could all be permitted at the same time. He did note however that the Conditional Use Permit and building permit were only good for 2 years, so if you did not think all the walls would be finished in 2 years, you likely would need to do it on separate permits.

Steve F. added that the Planning Board and the ordinance want construction time to be at a minimum, therefore, the board will put an end date on the permit. He said in part, this keeps disturbance at a minimum and it is also for erosion control purposes.

CEO Demers asked what the difference was between a CU and CEO permit in the General Purpose District? The board was not sure? Roger A. thought it had to do with earth moving, because these walls are not size specific. Madge B. and CEO Demers could not remember anyone having to get a permit for a

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wall in the General Purpose District. Barbara F. thought perhaps that this should be changed to ‘Allowed’ or ‘Yes’ under GP.

Several board members also questioned whether or not Note 2 applied which reads in part, ‘Dimensional requirements in the underlying zoning district shall apply’. Because the wall is allowed up to the boundary, it will not meet the 10 foot side setback, so perhaps Note 2 should be removed. Roger A. thought the reason the board added the possibility of requiring a survey was so the wall could go up to the side lot line, so he agreed this needed to be discussed further, as Note 2 may not apply.

Madge B. stated that the 10 foot side setback may not apply to the shed as well, she was not sure. CEO Demers asked if the shed could go up to the border? Steve F. stated this was new territory, so the board needs

to talk more about what the intention of the changes are, but he felt this was a good start. CEO Demers stated that both permits will require a PBR through the DEP and so they will have an approved plan. He felt the board would just have to rubber stamp it.

Maggie M. wondered if the side setback could be like for new trees, 5 feet from the side lot line, or something similar. CEO Demers thought the 5 feet for trees was so you didn't have all the trees in a straight line along the border. Maggie added that it was also so that you were not planting on the lot line. Roger A. agreed.

Steve F. stated that the board would need to look at §105-35 'Accessory buildings' as well, because he didn't think it would apply with this new ordinance, so perhaps a notation would need to be made there as well.

The board agreed to take any questions back up at the next meeting and the next Public Hearing for the ordinance changes after final revisions will be held on Tuesday, January 28, 2020 at 6:00 p.m.

Nothing further was discussed.

The minutes from Tuesday, November 12, 2019 were approved as written.

The minutes from Tuesday, November 26, 2019 were amended as follows:

Madge Baker stated that under the approved Growth Permits, Permit GP #18-19, it states that Pump Box brook may be located on the property, or a stream of significance. Madge wanted it in the record that Pump Box Brook is not located on that parcel of property. She did note that there is water in that area.

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

Madge Baker spoke about the Three Rivers Land Trust and what they were doing presently and how it related to the Town of Shapleigh.

Madge began by stating that when reviewing the Comprehensive Plan from 2005, she was pleasantly surprised how much it mirrored what the Land Trust was trying to do with respect to preserving farm land and forest with respect to conservation. She stated that the Land Trust updated their maps and provided members with copies to review.

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Climate Resiliency Map - Madge explained that lands with high resiliency tend to have the following characteristics: existing high density and variety of wildlife, unbroken forests, topographic variety, micro-climates. The map showed the majority of the land owned by the Three Rivers Land Trust is above average in climate resiliency. She said, "Also on the map is a focus area of the Land Trust and in Shapleigh it is primarily Fort Ridge and the Pump Box Brook watershed; for all of the reasons listed, 'micro-climate', lots of up and down, wonderful vernal pools, these are a great wildlife habitat and it is unbroken forest, because there are no public roads."

Madge said she was nuts about the subject of climate change. She said she believed it was real and coming, and she would love to see Shapleigh be more proactive. She agreed it was a hard topic.

Farmland Map – Madge said what Three Rivers Land Trust is interested in is prime agricultural lands. She said they just got an easement on David Mann's land on Hooper Road. She said there is some prime Ag land. She noted the Comp. Plan speaks of protection of high value agricultural land. She noted again the overlap between Three Rivers and the Town's Comprehensive Plan.

Forest Resources Map – Madge stated they are always looking for unbroken forested land and blocks of land. She noted the Three Rivers Land Trust owned an easement on Ron Prevoir's land which shows up on the map, because it provides a corridor between the wildlife refuge and the Waterboro Barrens. Madge said the Comprehensive Plan also talks about protecting wildlife corridors.

Recreation Resources Map – Madge stated the Land Trust believed if people couldn't use the land they would not be so keen on protecting it thru conservation. She said they have always tried to promote use. She said it's

one reason the William's property is a neat place, she noted the Town of Shapleigh owned it not the Land Trust. She said it was very accessible to the public. She noted the 5th grade going to the site in the spring.

Madge said there was a problem with North Shapleigh Pond because there was no public access at present. She said the Land Trust had acquired Hanson Pond but this also has an issue with access. She said they were putting in a walking trail but you wouldn't be able to put in a boat.

Water Resources Map – Madge said it was easy to know why water is so important to preserve.

Anna Desmond was also present for this discussion. Madge wanted to know if Anna wanted to add anything or if any of the board members wanted to add something that they care about? She asked if what she spoke of sounded good to the board, and did any members want to talk about priorities?

Madge stated that Three Rivers Land Trust has been trying to purchase land in the Pump Box Brook watershed since creation. Madge stated that Bill Hutchens and Charlie Gruber wrote to every landowner in the past in that area, saying if they ever wanted to sell or conserve the property to please let the Trust know. Madge believed acquisition is important because of the climate issue. She also believed education was very important. She said they need resources to be able to pay people to educate others. She asked members how they felt about land purchases?

Steve F. believed it comes down to landowner education. Madge said it made sense. Steve said he liked the idea of conservation, and he believed there was room for a mix with what he did (Realtor) and what

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the Land Trust wanted to do. He said he pushed people into considering cluster subdivisions and to build toward the road. He felt it was smarter to do a small cluster than putting in an expensive road, as well as conserving the backland. He said people need places to live but there is a smart way to do it. He thinks whether someone is selling their land on their own or with an agent, it makes sense to show them what might be a good idea. He said it is their land but it is important to show the benefits of an easement, or selling their backland to the Trust. Madge agreed.

Madge B. noted the Town Forest was used for recreation. Madge said the Conservation Commission created a trail. Anna Desmond stated that they have made great strides in creating a trail which is marked. She said some know about it and in the past it got some bad reviews, but now it is well marked and should be completed by late spring. She noted the Boy Scouts did some work on it, along with the Conservation Commission and volunteers. She said they were proud about that. Anna asked in terms of climate change, was there anything we should think about with the Zoning Ordinance. She asked if the issues have been addressed? Anna thought that the Town has addressed some of what they discussed.

Roger A. stated that over time the Planning Board has tried to conserve and enhance water quality. He stated that everyone that has been on the board has tried to limit erosion issues and problems related to storm water issues. Roger noted he owned a large piece of property and hoped to retain it for recreational uses for his family.

Anna D. stated that it was apparent there was some very forward thinking done years ago, people who recognized the importance of preservation of land, water and the wildlife. Madge agreed, stating that the Town Forest was a good example of that. Anna said the reason there is a trail there now for people to use, is because the Town Forest exists.

Roger A. added that the Town creating the soccer fields for the children was a great thing. He said many people looked at preserving land for future use, noting today it probably could not be done. Madge and Anna agreed, with the amount of land preserved, they were grateful to those in the past who thought about preservation for future generations.

Steve F. said one thing the board could do is to take a look at the village areas and bolster that, short of having public water and sewer. He said at present there is no village, Shapleigh's four villages are no longer. He believed at some point perhaps they could address this.

Steve F. asked Madge what her ideas were? Madge felt the board should take up the Comprehensive Plan and look at it. She believed the board has done some of the things they thought should be done, but perhaps there was more the board could look at. Madge said in 2005 it talked about increasing density, and the board did do

it. She wanted to go back through the list the board created. Madge also wanted to see the wetlands protected as much as possible. She said the wetland protection in zoning now was not great.

Steve F. said from a practical standpoint, from his viewpoint, if someone sees wetland grass people are typically not interested. He felt there was better land out there. He said he was not suggesting taking it off the priority list, but he felt from a developer standpoint if they see wetlands they see unusable land.

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Steve F. asked if wetlands can be used toward land area calculations. CEO Demers said that yes, you can for dimensional requirements. Steve said Acton does not allow it. CEO Demers said in Acton if you create a private drive, the private drive does not go towards the dimensional requirements. CEO Demers said he didn't see anything here that prohibits. Roger A. said wetlands are subtracted only under subdivision (§89-26). Roger said with respect to a 2 acre private lot, the wetland is not subtracted. CEO Demers asked if it was in the subdivision regulations? Roger said it was under subdivision. Steve said if you are on a non-conforming lot of record, no one is looking at the wetland. Roger agreed. Roger said the structure will have to be placed to keep it away from the wetland, so if you have a small lot it could be an issue.

Steve F. stated that in Acton, the bigger the wetland the further the setback. Madge said ok, she liked that. Steve thought it was too much. Madge said wetlands are very important, especially along Pump Box Brook. Steve said it was because it was part of the tributary. Madge said, "That is it!"

The board agreed to look at the existing Comprehensive Plan. Barbara will provide a copy of the changes enacted in 2016.

Madge asked if the board would like a copy of the maps. Steve F. stated he would and he would like it downloaded onto the website. He said several years ago it was discussed with the Selectmen and everyone was in favor of doing overlays of the town map, but he was frustrated that to date it has not happened. Madge said she agreed it was important and Steve McDonough also wanted them because they are very important. Steve F. said the town needs to decide what is important, and noted these maps would help to educate the public as well. Barbara F. did not think some people knew how much these maps are utilized by the board, CEO, and the public and what an asset good maps would be. Roger A. said he went out and got a proposal to do the layers and gave the information to the Selectmen. Roger said he understood it has to go out to bid, but the criteria for the maps should be what the Planning Board and CEO need, as they utilize them, as do other people in town. CEO Demers stated there was a reason Shapleigh had low taxes. Steve did not disagree but you have to look at what is important. Maggie M. added that the longer you wait the more expensive it gets, and the town is not in danger of going broke.

Madge B. thanked members for listening and she looked forward to future discussions.

Growth Permits

The year ended with 16 Growth Permits available and 2 for Habitat for Humanity.

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



There will be no meeting held on Tuesday, December 24, 2019.

The next meeting will be held **Tuesday, January 14, 2020** at 6:30 p.m.

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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.

Respectfully submitted,

Barbara Felong, Land Use Secretary

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