

Shapleigh Planning Board

Minutes

October 26, 2021

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

The minutes from Tuesday, October 12, 2021 were accepted as written.

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 who is speaking.

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

Conditional Use Permit – Replace Retaining Wall – Map 43, Lot 27 (109 Pine Cone Drive) – Paul Litchfield, Applicant & Property Owner

Mr. Litchfield was present for the review of the application.

Provided along with the application, was a copy of an email from the Maine Dept. of Environmental Protection, showing payment on May 4, 2021 for a Permit by Rule project located on 109 Pinecone Drive, by Lisa Conti, along with an email stating the DEP Permit by Rule had been received. (A copy of the actual Permit by Rule was not provided.)

Provided was a sketch plan depicting Lot 27, the existing 1196 SF house, the distance from the house to the side lot lines, and the approximate location of the existing concrete wall to be removed. A notation on the plan stated ‘Approximately 28 linear feet of wall to be replaced’, and it noted part of the existing wall was concrete and part was made from railroad ties. The location of a tree next to the existing wall was also depicted on the plan. Abutter’s noted were Thomas Pratt (115 Pine Cone Drive) & Robert Sullivan (105 Pine Cone Drive). The location of the lake and Pine Cone Drive were also on the plan.

The application detailed description of the project was as follows: *Remove and replace existing failed retaining wall.*

Board members did a site inspection on an individual basis due to light constraints before the meeting.

Roger A. asked Mr. Litchfield to brief the Board on what he wanted to do. Mr. Litchfield stated he wanted to remove and replace the existing failing retaining wall. He said he hoped all the members were able to take a look at the site.

Mr. Litchfield said he had a question regarding the surveyor pinning the wall in the existing location. He asked if this information got submitted to CEO Demers, and then after the wall is completed is the surveyor information also submitted to CEO Demers? He asked if this is how it works. Roger A. said, “Yup”.

Madge B. said she thought that she read in the application that Mr. Litchfield would like to move the wall in order to save the tree. Mr. Litchfield said he wanted to move the wall out the width of a block which is about 8 inches, but if this makes him jump through hoops, then he will leave the wall where it is. Madge did not believe this could be done, moving the wall closer to the high water mark. Mr. Litchfield stated that he would have to go to the State and get permission from them. He said he didn't want to do that, so he will just replace the existing wall in the same location. Madge asked if the tree would survive? Mr. Litchfield thought it would, he was just being cautious. He said the tree was very established.

Roland L. said that he went to the site and double checked to be sure he was at the right location, but he didn't see a wall. He said he wasn't sure where it was. Mr. Litchfield said, "You didn't see the concrete"? Roland said that he did not. Maggie M. said it was by the tree, and noted there was not a lot of it. Mr. Litchfield said there were railroad ties, some were buried because they are rotted out. He said further down, some were buried as well. Roland said he saw some railroad ties and rotted materials, but he could not identify a wall, nor say that it was 2 feet high. He said that was his personal observation. He saw some filtering material at the water's edge. Mr. Litchfield stated, "You didn't see the concrete"? Roland said that he did not. He apologize for not seeing it.

Madge B. said she didn't see anything 2 feet high but she was going to trust him. Mr. Litchfield said some of the wall will be in the ground. Roland L. said the application was asking for a 2 foot wall, he only saw a little bit of stubble. He said he will pass on voting, because if he was to act on this, he would like to see a picture / documentation that showed there was a wall there. Mr. Litchfield showed him a picture on his phone and said there was a piece of concrete and pointed out where the corner was that was rotted. He asked Roland if this is what he saw on site, rotted timber. He again pointed out the concrete. Roland asked if some of the material had been removed, stating again he did not see it on site. Roland said he would defer to the other members because he didn't see a wall.

Maggie M. said she saw something less than a foot high. Madge B. agreed with Maggie, noting some was in the ground. Ann H. wondered if it just didn't crumble apart and wash away. Madge said it looked like things were falling apart. Maggie said some of the sand had washed up, so it was hard to tell. Mr. Litchfield said before he bought the property, no one had lived there for 40 to 50 years. He said that that was how long the area has been eroding. He said he didn't want it to continue to erode and then lose the tree.

Roger A. stated that the Board had been on site before. Roger said at this site they brought a small bobcat and cleaned up to the water, in order to get a beach. He said there was a DEP concern on that. He said what the Board is looking at today is the wall. He said when he measured it, he saw a 6' x 12' wall, not an 8' x 20'. Mr. Litchfield said when Maggie showed up, he showed some of the railroad ties that had gotten buried. He asked Roger if he saw what he exposed? Maggie said when she showed up, he had dug a little bit in the corner, but the wall wasn't 2 feet high, and she figured most of the wall was underground. Mr. Litchfield said he would use 8 inch blocks, one will be buried, and then it will be 16 inches on top of that. He said he didn't want a huge wall, he just wanted to keep the erosion back. He said the concrete area was about 18" high on the corner, he said the sand had washed in but he wasn't sure what was on the bottom.

Mr. Litchfield said he had a surveyor coming out to see where the wall is located, and then he can get a height for it. He said when he finished the wall, the surveyor will come back and give the information to CEO Demers. He said where the wall is, that is where it will be located.

Roger A. said there is a low retaining wall allowed in the Shoreland District for walls less than 24 inches in height. He said this is where the allowed wall will fall under, because where it sits today it is only 6' x 12'.

Roger said he went to the very end of the wall and dug out some of the earth. Mr. Litchfield asked if looking to the left, when he dug it out, did he not see anything? Roger said he went to the end of the timber, and the timber was 12 feet. Mr. Litchfield said if he had continued down, there was more buried, Roger said he dug it back to get to the end of the 1st timber and that was 12 feet. He said the cement wall was only 6 feet. Steve F. said the Board can permit the other 8 feet under the new ordinance. Roger agreed, saying he would have no issue permitting a wall that fit under the criteria of the ordinance (105-4.D(9)). Roger added that he looked at where the high water mark would be, and he felt the wall was 30 feet back.

Roger A. reviewed §105-4.D(9) as follows:

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

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

- (a) The site has been previously altered and an effective vegetated buffer does not exist; ***The site has been previously altered.***
- (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; ***The new wall shall be at least 25 feet from the high-water line, the surveyor shall pin the wall to indicate the location.***
- (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; ***The site does have an existing erosion issue.***
- (d) The total height of wall(s), in the aggregate, are no more than 24 inches; ***The new wall shall not be greater than 24 inches in height.***
- (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; ***This location is not on the FEMA flood map for Shapleigh.***
- (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; ***The area will have grass behind the existing wall, there shall be no structural development within the setback area.***
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - [1] The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - [2] Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - [3] Only native species may be used to establish the buffer area;
 - [4] A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - [5] A footpath not to exceed the standards in Section 105-51.B(1)(a) may traverse the buffer.

- (h) All approved plans shall require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.
[1] Side setbacks for structures shall not apply to low retaining walls.

Roger A. stated the lot is flat and sandy. He said on the camp side of the wall is grass, and the area behind the wall will be grass. Roger stated that with Best Management Practices, the one layer of silt fence he did not believe was sufficient. He thought more was required. Mr. Litchfield said he had two layers and noted he was licensed in Maine for BMP. Steve F. asked Mr. Litchfield when the project would be started? Mr. Litchfield stated he wanted to get started in November. Steve asked when it would be completed? Mr. Litchfield stated within 2 weeks.

Steve F. asked if the existing tree will stay? Mr. Litchfield stated that it would.

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

- 1) The project, including revegetation (grass) and mulch as needed, shall be completed by July 31, 2022. The existing tree shall remain.**
- 2) Best Management Practices shall be kept in place until the revegetation is completed.**
- 3) A survey by a licensed surveyor, placing the existing wall and new wall location shall be provided to the Code Enforcement Officer. The new wall must be greater than 25 feet from the high water mark per the ordinance.**

Maggie M. made the motion to approve the replacement of the existing retaining wall on Map 43, Lot 27, per the plans provided and as discussed, with three conditions. Madge B. 2nd the motion. Roger A., Steve F., Madge B. and Maggie M. approved the motion; Roland Legere abstained from voting. By a vote of 4 – 0, the motion passed.

Nothing more was discussed.

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**Findings of Fact**

1. The owner(s) of Shapleigh Tax Map 43, Lot 27 (109 Pine Cone Drive) are Paul M. Litchfield & Lisa M. Conti, mailing address of 47 Rumford Street, Lowell, MA 01842 per Warranty Deed, BK 17205, PG 497, recorded 3/28/2016.
2. The property is located in the Shoreland District, and according to the Assessor's office, it contains .15 Acres.
3. Provided was a copy of an email from the Maine Dept. of Environmental Protection, showing payment on May 4, 2021 for a Permit by Rule project located on 109 Pinecone Drive, by Lisa Conti, along with an email stating the DEP Permit by Rule had been received. (A copy of the actual Permit by Rule was not provided.)
4. Provided was a sketch plan depicting Lot 27, the existing 1196 SF house, the distance from the house to the side lot lines, and the approximate location of the existing concrete wall to be removed. A notation on the plan stated 'Approximately 28 linear feet of wall to be replaced', and it noted part of the existing wall was concrete and part was made from railroad ties. The location of a tree next to the existing wall was also depicted on the plan. Abutter's noted were Thomas Pratt (115 Pine Cone Drive) & Robert Sullivan (105 Pine Cone Drive). The location of the lake and Pine Cone Drive were also on the plan.

5. The application detailed description of the project was as follows: *Remove and replace existing failed retaining wall.*
6. The application as presented met the performance standards under §105-4.D(9) ‘Low retaining walls in the Shoreland District less than 24 inches in height for erosion control’ as per the documentation provided and as presented with three conditions. The Board agreed a wall was needed for erosion control measures, the new wall shall be greater than 25 feet from the high water mark, the new wall shall be no higher than 24 inches in height, and the area behind the wall shall be revegetated with grass.
7. A notice was mailed to all abutters within 500 feet of the property on October 13, 2021. Meetings were held on Tuesday, October 12, 2021 and Tuesday, October 26, 2021. A site inspection was done by members on an individual basis prior to the meeting.
8. The Planning Board agreed to approve the Conditional Use Permit for earth moving in the Shoreland District to replace a retaining wall with a wall less than 24” in height for erosion control purposes, on Map 43 Lot 27 per the documents provided and as presented, with three conditions.
9. **The conditions of approval are as follows:**
  - 1) **The project, including revegetation (grass) and mulch as needed, shall be completed by July 31, 2022. The existing tree shall remain.**
  - 2) **Best Management Practices shall be kept in place until the revegetation is completed.**
  - 3) **A survey by a licensed surveyor, placing the existing wall and new wall location shall be provided to the Code Enforcement Officer. The new wall must be greater than 25 feet from the high water mark per the ordinance.**

**Decision:**

**The Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining wall on Map 43, Lot 27 (109 Pine Cone Drive) per the plans provided and as reviewed, with three conditions was approved.**

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**Conditional Use Permit – Replace Retaining Wall – Map 31, Lot 4 (4 Cillie Road) – Levesque Excavation, Applicant / Contractor; Elizabeth Schatzel-Murphy, Property Owner**

Mr. Levesque was present for the review of the application. *Members did a site inspection on an individual basis, prior to the meeting.*

Provided along with the application, was the DEP Permit by Rule, dated 8/23/2021, which had a project description on the application stating ‘retaining wall replacement, same size, same location’. In addition, the following was attached: Maine DEP Permit by Rule Explanation ~ The activity that we are proposing to perform is the replacement of a rock retaining wall that has failed and smaller block walls on Goose Pond in Shapleigh, ME. The new walls are proposed to be built out of precast concrete blocks manufactured by Genest Concrete Works of Sanford, ME. The new walls are to be constructed in the same location and to the same dimensions as the existing. The walls are located at 4 Cillie Road, Shapleigh, ME, Map 31, Lot 4. All required permits will be in place through the Town of Shapleigh prior to construction, and all BMP’s will be used during the construction phase. Pictures of the existing conditions were attached as well.

Provided was an engineered plan, drafted by Steven R. Grant, LPE #6825, of SRG Engineering, Inc. Structural Engineers, located in Gray, Maine, dated 8/31/2021, entitled 'Proposed Segmental Retaining Walls, 4 Cillie Road – Goose Pond, Shapleigh, Maine'. The plan includes Sheet W1 – Title Sheet; W3 – Wall Elevations; W4, W5, W6 – Wall Details; W7 – Wall Details & Sections. The plan depicts Anchor Diamond Pro Retaining Wall Units, Geosynthetic Reinforcement, Leveling Pad Base, Drainage, Reinforced Fill Details & other construction details.

The application detailed description of the project is as follows: *Replacement of existing retaining wall. Same location, same size.*

Roger A. asked Mr. Levesque to let the Board know what he wanted to do. Mr. Levesque stated he was before the Board for approval for a wall. He stated they were replacing a retaining wall, same location, same size and he noted that it was engineered. He said it was 4 ½ feet tall, and the Board had a copy of the plans drafted by Steve Grant. He stated a couple of trees will be removed and they will be replanted by the owner. He stated there are stairs that need to be replaced, they are wooden stairs and they will be done by the owner as well.

Roger A. asked about the top wall, if the small garden will be included or will the wall go straight across? Mr. Levesque stated that in reality that wall will not get replaced. He said it is included in the permit, and in the event it does get replaced it will be straight across and further away from the lake than it currently is.

Roger A. asked about the engineered plan. Mr. Levesque stated he had given a full size copy to Barbara F. Barbara showed Roger the plan. Roger asked about a time frame? Mr. Levesque stated the job should be completed prior to March 2022. Madge B. stated that will not include the plantings. Mr. Levesque stated, "Correct". He said the planting would be completed by July 2022 and he noted again that that was the owner's responsibility. Steve F. asked if the replant plan was mulch and letting it come back in with pine needles. Mr. Levesque stated that yes, erosion control mulch will be used. Madge asked if they were going to replant 4 trees. Steve said they were, and looking at the property nothing else will grow. Madge agreed. Mr. Levesque stated when he leaves, the area will be stabilized with erosion control mulch. He said the only thing that will not be completed is the replanting of the trees. Steve stated that he understood.

Madge B. asked if any berry bushes could be planted, she thought it might help. Steve F. said if she wanted blueberry bushes, they may do well, because it will be all pine needles. She said soil is disturbed, and she thought the blueberries would be more of a ground cover. Steve asked if she was speaking 'instead of the trees'. Madge said no, and she said she was not an expert. Steve said he had no problem putting the trees in, and eventually they will mess up the next wall. Madge agreed. She thought the Board may need to tweak the ordinance because she thought large bushes would be fine. Steve thought in a situation like this, it would be beneficial. Madge thought if they used something like high bush blueberries it would be ok. Steve added that it would work in the long term. Madge agreed but the ordinance would have to be amended.

Madge B. said there was a drain on site, and if you walk down by the outlet of the drain there is a large culvert. She wanted to know what is going on there, and what is going to happen. Mr. Levesque stated that that area was not going to be disturbed. He said that is why the site is being accessed from the other side. He didn't know if it was a Town maintained pipe or private; its drainage for the road, so their intention is to leave it as is. Madge asked Roland if he knew anything about it. Roland L. stated when they re-did the road, they started with a catch basin at 18<sup>th</sup> Street. He said it goes diagonally under Goose Pond Road, and comes out. It was supposed to be ripped along the side toward another catch basin and that goes under Cillie Road to the other catch basin

where Madge was parked. He said it then dumps into Goose Pond. He said the owners gave the Town an easement across their property in exchange for a parking area, that Mr. Levesque will use to access the area. He said they cut a couple of big pine trees down at the time, but they didn't cut the small one which ended up growing up and knocking the wall over. He said his concern was similar to Madge's, but in talking with Mr. Levesque, they are not going to disturb that area, which is the best thing for it. Roland said it was heavily vegetated now, so if the catch basin ever freezes over, the water never even makes the pond, it just stays there. He thought Mr. Levesque's plan was the right way to go. Madge said, Ok. Steve F. agreed the catch basin was doing a good job. Madge said she knew the owners didn't create it. Roland said it was done 3 owners ago. Madge thanked Roland for his explanation.

Roger A. stated Best Management Practices will be used throughout the project. Mr. Levesque stated that he knew that. Roger asked where the old stones would be taken. Mr. Levesque stated they would be hauled off-site and out of Shapleigh. Roger said, "As well as the timbers". Mr. Levesque said, "Yes".

Roland L. asked if Mr. Levesque was taking responsibility of demoing the stairs, or was the owner? Mr. Levesque stated the owner was supposed to be, but in his experience, it is likely he will be doing it.

There were no further questions.

**The findings for §105-73.G 'Standards applicable to conditional uses' are as follows:**

*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. ***It will not, the new retaining wall(s) will help protect fish and aquatic life.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***Replacing the failing wall(s) will help to conserve shore cover and access to the lake, by stabilizing the area.***
- 3) The use is consistent with the Comprehensive Plan. ***The Comp Plan is in favor of protecting the health of the lake.***
- 4) Traffic access to the site is safe. ***It is safe for the proposed use.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***The project is not in the flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***The existing wall material will be taken out of Shapleigh and disposed of at the proper facility. It will not go to the transfer station.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***The existing creosote railroad ties will be taken out of Shapleigh and disposed of properly.***
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. ***The new wall(s) will be constructed per the engineered plans drafted by Steven R. Grant, LPE #6825, dated 8/31/2021.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Best management practices will be in place during the project and until all revegetation is completed, and the project will be constructed per the engineered plans.***

- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. *N/A for this application.*
- 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. *There is existing vegetation, the area behind the wall will be stabilized with erosion control mulch. The trees to be removed shall be replaced. The only noise is during the project. There is no glare, fumes, dust and odors associated with this project.*
- 12) All performance standards in this chapter applicable to the proposed use will be met. *They shall with conditions.*

Mr. Levesque asked what the criteria was for the surveyor requirement. He said he spoke with Steve Horne, a licensed surveyor, and he will take care of it. So he goes out and retrieves the existing location of the wall, and then he comes back out after the wall is completed. Roger said yes, he verifies. Mr. Levesque asked if a letter from a licensed surveyor was acceptable, or what is the format that is required. Roger A. said that he designates where it sets and then when he comes back, he will take measurements and sends a letter to CEO Demers. Mr. Levesque stated, "So he just sends a letter stating he verified the current location of the old wall and the new location of the new wall and that it meets the criteria". Steve F. said, "Yes".

Roger A. noted that on the plan, the replacement trees are noted as 5 feet in height but they must be 6 feet. Mr. Levesque stated that he can change it and initial the plan now, or he can email a copy to Barbara F. He asked Roger how he wanted it handled. The Board made it a condition of the permit that the trees shall be 6 feet instead of 5 feet in height. *Note: §105-69 'Liability of contractors for penalties.' This section assesses penalties to both the homeowner and contractor associated with a project not in compliance.*

Steve F. stated that if the contractor fails to do the work as permitted, would it fall back on the property owner. Steve said his concern are the trees, which are the responsibility of the homeowner, but the application is in Mr. Levesque's name as the applicant. Mr. Levesque stated he was pulling the permit for the homeowner, so he felt it was up to the homeowner.

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

- 1) **The project, including the replacement of the trees and bark mulch, shall be completed by July 31, 2022. If this date cannot be met, another date must be set with the Code Enforcement Officer.**
- 2) **The trees removed will be replanted by the homeowner and shall be 6' in height measured from the base of the trunk to the top of the tree.**
- 3) **The existing stones, railroad ties, and stairs shall not go to the Shapleigh Transfer Station after deconstruction, they shall be disposed of at a proper facility.**
- 4) **Best Management Practices shall be kept in place until the project is completed which includes complete stabilization of the area. Anyone other than the homeowner working on the project must be certified by the MDEP in erosion control practices and must be on site during the project, the contractor's MDEP certification number shall be given to the CEO during the permitting process.**
- 5) **A licensed surveyor shall confirm in writing to the Code Enforcement Officer the location of the existing wall, and that the placement of the new wall is in the exact location as the existing.**



**Roland L. made the motion to approve the Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining walls & stairs, per the plans provided and as discussed, on Map 31, Lot 4 with the stated conditions. Steve F. 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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Findings of Fact

1. The owner(s) of Shapleigh Tax Map 31, Lot 4 (4 Cillie Rd) are Elizabeth Anne Schatzel-Murphy & Kenneth Patrick Murphy of 140 Eliot Street, Milton, MA 02186, per Warranty Deed, BK 18372, PG 571, recorded 9/20/2020.
2. The property is located in the Shoreland District, and according to the Assessor’s office, it contains .18 Acres.
3. Provided was the DEP Permit by Rule, dated 8/23/2021, which had a project description on the application stating ‘retaining wall replacement, same size, same location’. In addition, the following was attached: Maine DEP Permit by Rule Explanation ~ The activity that we are proposing to perform is the replacement of a rock retaining wall that has failed and smaller block walls on Goose Pond in Shapleigh, ME. The new walls are proposed to be built out of precast concrete blocks manufactured by Genest Concrete Works of Sanford, ME. The new walls are to be constructed in the same location and to the same dimensions as the existing. The walls are located at 4 Cillie Road, Shapleigh, ME, Map 31, Lot 4. All required permits will be in place through the Town of Shapleigh prior to construction, and all BMP’s will be used during the construction phase. Pictures of the existing conditions were attached as well.
4. Provided was an engineered plan, drafted by Steven R. Grant, LPE #6825, of SRG Engineering, Inc. Structural Engineers, located in Gray, Maine, dated 8/31/2021, entitled ‘Proposed Segmental Retaining Walls, 4 Cillie Road – Goose Pond, Shapleigh, Maine’. The plan includes Sheet W1 – Title Sheet; W3 – Wall Elevations; W4, W5, W6 – Wall Details; W7 – Wall Details & Sections. The plan depicts Anchor Diamond Pro Retaining Wall Units, Geosynthetic Reinforcement, Leveling Pad Base, Drainage, Reinforced Fill Details & other construction details.
5. The application detailed description of the project is as follows: *Replacement of existing retaining wall. Same location, same size.*
6. The application as presented met the performance standards under §105-73 ‘Conditional Use Permits’ as per the documentation provided and as presented with five conditions.
7. A notice was mailed to all abutters within 500 feet of the property on October 13, 2021. Meetings were held on Tuesday, October 12, 2021 and Tuesday, October 26, 2021. A site inspection was done by members on an individual basis prior to the meeting.

8. The Planning Board unanimously agreed to approve the Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining wall(s) and stairs on Map 31 Lot 4, per the documents provided and as presented, with five conditions.
9. **The conditions of approval are as follows:**
 - 1) **The project, including the replacement of the trees and bark mulch, shall be completed by July 31, 2022. If this date cannot be met, another date must be set with the Code Enforcement Officer.**
 - 2) **The trees removed will be replanted by the homeowner and shall be 6' in height measured from the base of the trunk to the top of the tree.**
 - 3) **The existing stones, railroad ties, and stairs shall not go to the Shapleigh Transfer Station after deconstruction, they shall be disposed of at a proper facility.**
 - 4) **Best Management Practices shall be kept in place until the project is completed which includes revegetation and complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.**
 - 5) **A licensed surveyor shall confirm in writing to the Code Enforcement Officer the location of the existing wall, and that the placement of the new wall is in the exact location as the existing.**

Decision:

The Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining wall(s) & stairs, same length and height as existing, on Map 31, Lot 4 (4 Cillie Rd), per the engineered plans provided, with five conditions, was approved.

Conditional Use Permit – Earth Moving in the SD – Map 21, Lot 42 (17 Hollon Way) – Gallo Construction, Applicant / Contractor; Hollon Way LLC (c/o Kevin LaPierre), Property Owner

Mr. Gallo was present for the review of the application. *Members did a site inspection on an individual basis prior to this evenings meeting.*

Provided along with the application, was a document dated May 13, 2021, from Kevin Lapierre and David Dorwart, owners of the property, that stated the following in part: Hollon Way LLC (Kevin Lapierre and David Dorwart) authorizes Michael Gallo to act on our behalf for the purpose of obtaining the necessary permits and approvals for the retaining walls, additions, tree cutting, septic system and assorted site work.

Provided was a copy of the DEP Permit by Rule, dated July 20, 2021. The application Brief Project Description is as follows: Remove stone retaining walls & replace with Loc-blocks.

Provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by Hope Hampton, SE #427, dated 8/19/21 for a replacement system for a single family dwelling unit for up to 4 bedrooms.

Provided was a plan 8/26/2021, drafted by Jo-Ann Cropley Cavanaugh, Licensed Architect from J.C. Cavanaugh Architecture LLC, located in Springvale, Maine. The plan is entitled 'Renovations and Additions at 17 Hollon Way, Shapleigh, ME for Kevin Lapierre, 1611 Wood Song Court, Sugar Land, TX 77479'. The plan depicts the location of direct abutters, located on Map 21, Lot 44, Map 21, Lot 43A & Map 21, Lot 40. It also depicts the existing house, along with the proposed addition. The plan shows the 75 foot setback to the normal high water line and the 100 foot setback to the normal high water line. The addition is almost entirely outside of

the 100 foot setback. The following notes are on the plan: 1) Remove Ex. Stone Retaining Wall; Proposed 3.5' Retaining Wall; New 6' Wide Stair w/ 6- 14" Treads. Center on House; Proposed 3.5' H. Retaining Wall; Remove Ex. Conc. Stair; Remove Ex. Shed; Replace Ex. Deck & Stairs; Relocated Ex. Shed Out of Setback; Proposed 4' H. Retaining Wall; Proposed Location New Septic Field, Existing Leach Field to be Replaced w/20' x 35' Chamber Bed for 4 Bedrooms; Existing Septic Tank to be Replaced w/ 1000 Gal. Heavy Duty Conc. Tank. Other notations include the existing driveway location and relocation, boundary markers, and wetland area.

Also on the plan provided are the following calculations:

Existing Building Footprint = 725 SF

Existing Porch = 302.5 SF

Existing Entry Deck = 64 SF

Total Footprint Ex. Structure within Shoreland Setback = 1091.5 SF

30% Expansion = 327.45 SF

New Entry Deck = 115 SF

New Addition = 369 SF (Portion of new addition in Shoreland setback = 69.4 SF)

Total New Structure Footprint within Setback = 184.4 SF

Total New Structure Footprint = 484 SF

Lot Coverage 10% of 29.493 SF = 2,949.3 SF

Lot Coverage Ex. & New Structure = 1.575.5 SF

The application detailed project description is as follows: *Earth moving in the Shoreland Zone*

Roger A. asked Mr. Gallo to let the Board know what he intended to do for the record. Mr. Gallo stated he was before the Board to get permission to move a thousand yards of gravel off a hogback, using it to level off part of the property and to put a better road in, which is now an entranceway for two camps. He stated that all the gravel will be staying on site; the only thing leaving the site would be boulders and stumps.

Roland L. said that as requested Mr. Gallo put out bright blue flags so he could see the proposed line. He said he was trying to figure out if there would be trees removed beyond the blue flags. He asked if that was where the second retaining wall would be or would it be at the top of the cut? Mr. Gallo stated the trees will be taken down beyond the second retaining wall because he was digging around the roots and for 15 feet beyond the wall. He said the rest of the trees would be staying. Roland said his approximate count was that 2 dozens trees would be coming down greater than 6 inches. Mr. Gallo stated he did not count them because he was beyond the zone that he had to count them. He said he thought it would be more than 2 dozen. He said it was a heavily wooded area. Roger A. stated that the Shoreland District was anything within 250 feet of the water. Mr. Gallo said he was in the Shoreland District. Roger said Mr. Gallo said he didn't count them because he was beyond the SD. Mr. Gallo said he didn't count them because he was beyond the 100 foot ruling where he had to replace them. He said it was heavily wooded, but it was the only way to get the gravel out. He said if he leaves them, with the roots impacted, they will lose them anyway. CEO Demers stated that beyond the 100 foot rule, is a 40% rule, where no more than 40% of the trees can be removed. Mr. Gallo said he was barely impacting the trees. Mr. Gallo said that 15 feet beyond where the flag was, was the farthest he would be taking trees down.

Roland said that if he read the plan correctly, there was about a 10 foot change in elevation between the 1st and 2nd wall. Mr. Gallo stated that was correct. Roland asked what will be behind the two walls to stabilize the soil. He asked if he was putting mulch? Mr. Gallo said he was putting the big bark, the erosion control mulch, which is crushed stumps. He thought it lasted the longest and was best for erosion. He said there would also be bark mulch in front of the wall, it is too steep for grass. He said the basic idea was to get a level 20 foot spot on the

bottom for the septic system and a place to park the camper that they have. He said they would also build up the road. He said when it rains there are six inches of water on the road, but it will not be there after he is finished.

Roger A. read an email received from an abutter prior to this evenings meeting, it read as follows:

Dear Planning Board Members,

I am Cheryl (Cherrie) Moody. I own & reside at # 69-24th St. in Shapleigh, Maine. Map # 21, Lot # 38. I am also a co-owner of Map # 21, Lot # 38 D. Hollon Way is my deeded right of way (R/W) to lot # 38, and much of Hollon Way is located on lot # 38 D.

Although I plan to attend the October 26, 2020 meeting, I'm sending some of my concerns in advance. Speaking on land issues is not routine for me, so I'm hoping for your understanding and guidance.

I would like to preface my concerns by stating that it is not my desire to interfere with the LaPierre permit, I simply have some concerns.

1) Drainage: The description is a bit vague. Will the drainage ditch be located on the LaPierre property? What is the length, and will it be draining close to the existing marsh?

2) Additional wear on the R/W: In recent years the LaPierre home has been used / rented year round. The plowing and additional use has caused some issues that I feel should be addressed.

3) Use of excavated fill: Will the excavated fill be appropriate for a road? Will driveway be sloped away from abutter's property, and the r/w? How much of the r/w will be effected?

4) Trees: The trees aren't depicted on the plan, and I saw none marked on site.

I appreciate your assistance with this matter, and look forward to the meeting.

Appreciatively,
Cherrie Moody

Mr. Gallo asked if the abutter was present. Mrs. Moody stated that she was. Mr. Gallo asked which house was hers? Mrs. Moody stated she lived at 69 24th Street but she noted that she had other property. Mr. Gallo asked if the mound of rocks was her property? Mrs. Moody stated that no, that was Mr. Rawnsley's. She stated that going into Hollon Way she had about 267 feet. Mr. Gallo asked if she abutted the Lapierre property? Mrs. Moody stated she did not. She stated there are three properties beyond Lapierre's which can be affected, including hers. She said she had a ROW going in past Lapierre's. Mr. Gallo thought he knew where she was talking about, noting he won't affect her, because he won't have enough fill to go that far. Mrs. Moody agreed, but she stated again she had 267 feet initially going into Hollon Way, that can be affected.

Mr. Gallo said he didn't have an answer because he wasn't going to be near her land to do what he is doing. Mrs. Moody said her concern was, because it has been a busy property with a lot of heavy equipment going in to the property, oil trucks because they go in in the winter, and they plow; that the plowing is pushed up against the Rawnsley property, blocking the ROW, this is an issue. She said the road cannot take a lot of abuse. She added that a huge RV was brought in, with trees being cut on her property, which she was not aware of, only seeing it after-the-fact. She said she was concerned with a lot of people going in with the road not in good repair and only getting worse.

Mrs. Moody said she was concerned with the 1000 yards of material to be taken out, being put on the ROW. Mr. Gallo interrupted and said the reason he is digging it out is only for the purpose of leveling off their land where the RV is parked, because there is a 22' section then it goes up. He said by digging it out, it will be 20 feet wider and level, and the fill is going to go in the road, because now when it rains the runoff goes to the house (which is a relative), it goes there. He said he will be building it up another 2 feet and pushing the water towards the swamp. He said they are going to ditch the sides of the road. Mrs. Moody asked, "Both sides"? Mr. Gallo said, "Both sides, get the water to go to that area, where the mound of rocks sits in the middle". Mrs. Moody noted it was a boundary line. Mr. Gallo agreed it was a boundary line and said he had permission to move that because it is in the ROW, and people have hit it. He said he is taking it out and widening the road there. He said the applicant owns most of the land on the left side, and the abutter in the back has agreed to have the rocks removed. He said they will drive the boundary pipe in level with the ground, so the corner marker remains and he said it was on the plan. Mr. Gallo said this is to open the area up a little more, for the purpose of the big RV they bring in. He noted it was very tight and they can't get in there, which is the main reason he is spending the money to get the RV in, because he comes and spends a month there every summer. Mrs. Moody stated she gets concerned with them taking trees down to get the RV in. Mr. Gallo said he didn't know anything about that and he said he wasn't going that far. He said he wasn't trimming any trees. Mrs. Moody said she wasn't saying that he would. Mr. Gallo asked if she was saying that they trimmed trees to bring the RV in before? Mrs. Moody stated that they did without her knowing, on her property.

Mr. Moody said their main concern was the ROW, erosion and drainage problems. He said the plan doesn't show where the drainage is. He asked if he was going to drain on both sides of the ROW? Mr. Gallo agreed the plan didn't show that. He said one side would be ripped, and he had mentioned it at the previous meeting. He said it would be a series of stone dams, he said coming out of the property with the lake at their back, going toward their property, it would be on the right hand side. He said this was a natural ditch, so they will bank everything that way until they get to the end of the road, where it turns, then they will have it cross the road into the marsh. Mrs. Moody said, "So the water will eventually go into the marsh". Mr. Gallo stated, "That is where it goes now, yes". Mrs. Moody said that a lot of it goes... Mr. Gallo interrupted and said a lot of it went the opposite way which was why he was raising the road up, so they are not swamping the land on the other side, which it does now. Mr. Moody agreed. Mr. Gallo said more water would go toward the marsh afterward. He said part of the reason they were doing this, was because of their relative / neighbor next door. Mr. Gallo said he was there after a heavy rain, where the neighbor had to walk through 6 inches of water to get into his car. He said the gentleman said he didn't care if he had to walk off a cliff if he didn't have to stand in the water anymore. He said the only water he will have after, is the water that naturally comes off the banking behind him, which is nothing like what comes off the hill that he is digging into. He said by terracing it, all the water will go towards the road to the ditch, not onto their land. He asked if they could picture how he was going to terrace it? Mrs. Moody said, "Yes". Mr. Gallo believed they were solving a neighborhood problem and making the land more accessible for the large RV.

Mr. Moody said they didn't want to cause Mr. Lapierre any issues, but the concern is that the ROW has no defined footage, so is the drainage going to be on Lapierre's property? Mr. Gallo said it would be on the ROW. Mr. Moody asked how it can happen? Mr. Gallo said that every ROW has rules that go with it. He said they share the ROW in the deed, and this will be maintaining the ROW by draining it correctly. Mr. Moody said what is there now is about a 12 foot wide ROW. Mrs. Moody said that it was owned by Mr. Rawnsley in the area Mr. Gallo will be working. Mr. Gallo said that according to the surveyor it was a ROW not owned by one person, but a group of people. Mrs. Moody said, "Correct". Mr. Gallo said that was the land he will be working on. Roger A. stated that the Board didn't have anything giving Mr. Gallo permission to work on the ROW. Mr. Gallo said he had it in the letter from Mr. Lapierre. Roger asked if all the people on the ROW gave permission? Mr. Gallo said that Mr. Lapierre originally deeded that land out of their parcel to make the ROW. Mrs. Moody said that they own the ROW but people have the right to pass. Mr. Gallo said that they owned the property and they deeded people the right to use the ROW. Mrs. Moody said that the Lapierre's don't own it there, the

Rawnsley's own it there. She stated that the Lapierre's abut the ROW. Ann H. asked if everyone on the ROW has it in their deed that they have access to the ROW? Mr. Moody thought so. Mrs. Moody stated that Hollon Way goes up the hill, around the corner and down by Rawnsley's. She said when it gets to the top of the hill, she assumes Townsend and Dunn, have a deeded ROW. Ann asked if Hollon Way was a road, and not an easement? She asked if it was a private road? Mrs. Moody said it was a private road. Ann asked if anyone owned Hollon Way Road? Mrs. Moody said they do. Ann asked if in those deeds, did it state the footage of each person that owns part of the road? Mrs. Moody said a lot of them have a ROW to navigate from their property thru 24th Street to Route 11. Steve F. stated that someone owns the land under the ROW. Ann said right, did it say there is so many feet 12 foot wide in the deed? Mrs. Moody said people pay taxes on a percentage of their lots that includes the ROW. She said people have a right in their deed to go over it and have ingress and egress over the ROW. Ann asked if there is a deed showing who owns the road and gave the ROW. Mrs. Moody said, "Yes". Mr. Gallo stated that he believed it was the Lapierre's who owned it. Mr. Moody said, "No". Ann said if they did, it would make a difference. Mr. Gallo said he knew they owned the boundary because the surveyor told him that. He said where he is digging they own that. He didn't think there would be an issue for the road because it is a good thing for everyone. He said he can take the 1000 yards of gravel and sell it, and leave the road the way it is, and still create the level area for the septic system. Roger said that they needed permission from the owners of the ROW. Mr. Gallo said he was a builder, not a lawyer, he said he wasn't getting involved. He said he would turn it over to Mr. Lapierre and his lawyer, get something the Board will be happy with, stating whomever owns it. He said if they give him permission, he will then do it. He said he didn't want to go on someone else's land. Roger said, "Right". Mr. Gallo said this is a legal issue and not a building issue. He said he is backing out of the deal and doing what he is doing, which is the retaining wall and removing the gravel. He said by then they may know where the gravel is going to go.

Mr. Moody said that was fine, if they get in touch with people and they all agree. Mr. Gallo stated his understanding was the family all sat around and agreed. Mrs. Moody said they were not included. Mr. Gallo said he understood, since the applicant lives in Texas. Mr. Gallo said he wasn't going to go onto someone else's property and change a ROW. Mrs. Moody said she interpreted the Rawnsley boundary by a pipe by the fence, which divides Lapierre's and Rawnsley's. Mr. Gallo knew of the pipe. She said that pipe connects with the pile of rocks Mr. Gallo is removing. Mr. Gallo said it was on the plan. Mrs. Moody said the ROW goes over Rawnsley property. Mr. Gallo said he wasn't going that way, he was going to the left of it. Mr. Moody said if he was going to do drainage on both sides of the ditch he was going on Rawnsley property. Mr. Gallo asked if when you go down Lapierre's property was Rawnsley to the right. Mr. Moody said, "Yes". Mr. Gallo said he was not going to the right. Mr. Gallo and Mr. Moody continued to discuss where Mr. Rawnsley's property was located and Mr. Gallo had Mr. Moody show him on his plan.

Madge B. said she had a question about trees. She said there was nothing on the plan with respect to trees within the 100 foot mark. She said she believed there were trees being affected by the front wall. Roger A. thought there were 8 trees on the Mousam side coming down, that were not on the plan. Roger said there were some by the new wall, 2 near the deck. Steve F. agreed there were 8 trees. Madge said she believed the trees needed to be on the plan.

The discussion between Mr. Gallo and Mr. Moody continued with Mr. Moody's concern with the additional traffic, and that the ROW was not adequate for the additional traffic. He also noted concern with winter plowing, blocking part of the ROW. He said the Lapierre's may have spoken with Mr. Rawnsley, but they did not speak with them. Roger A. stated they will not be able to put fill on the road without permission. Mr. Gallo stated he would get a legal opinion before he addresses the road. Steve F. didn't think the road had to be in the scope of what the Board was looking at because it was beyond 250 feet. Roger disagreed because the Board was looking at what they did with the 1000 yards of gravel. He said CEO Demers can only look at several hundred yards outside of the Shoreland District. CEO Demers agreed. Roger said the Board would have to review where the gravel went.

Mrs. Moody stated that Mr. Lapierre may have permission from the Rawnsley's. Roger A. stated that the Board didn't have a letter stating that and they need a letter.

Roger A. stated that the other concern was with respect to the 8 trees being removed on the Mousam side within 100 feet of the water. He stated they were not on the plan. Mr. Gallo stated that they were. Roger asked him to point it out. Mr. Moody said there were no trees flagged. Mr. Gallo agreed and he said he addressed it at the last meeting. He said he put some flags in but hid them, because of what was happening tonight. Looking at the plan, he admitted the trees were not marked. He said they were there and were between two pipes. Roger said they have to be on the plan. Mr. Gallo said there were six trees. Roger asked about the 2 trees alongside the deck? Mr. Gallo said those were being removed, so he could get his machine in there. Mr. Gallo asked if the Board wanted them on the plan, or did they want him to flag them. Roger stated the Board wanted them on the plan. Roger said they are to be placed on the plan, so when CEO Demers goes over he knows exactly which ones are coming down. Mr. Gallo said he and CEO Demers already met on site and he knows where they are. Roger stated that if CEO Demers is gone tomorrow, whoever takes his place will not know where they are if they are not on the plan. CEO Demers agreed. Mr. Moody asked if the trees were in front of the house? Mr. Gallo said they were. Mr. Moody said that when Mr. Gallo brought up the trees he said they were greater than 100 feet from the water. Ann H. stated those were different trees, different wall. Mr. Moody said it was stated that it was mentioned at the last meeting, but they were not at the last meeting. Roger stated that the first meeting the Board goes over the plan, then at the next meeting there is a discussion where the abutters are invited to take part. Mr. Moody asked when the Board looked at it? Ann said within the last 2 weeks.

Mr. Moody stated that they just wanted the Board aware of the issues with the road. He said no one had ever been in there in the spring, but now they are and there is an issue with ruts, etc. Mr. Gallo stated that if he works on the road it isn't going to be a highway, it is just going to be gravel over the existing road. Mr. Moody said that if he gets Rawnsley permission, he is sure they will also give permission. He just wanted the Board to be aware of the ongoing issues with the road. He said the bulk of the work being done is on Rawnsley land, and before you get to that land, they are traveling over Cherrie's (Moody) land, from the time you leave 24th Street you are on her property. Mr. Gallo said he would not be near her property. Mr. Moody said it wasn't stated how much road. Mr. Gallo said, "Until I run out of the 1000 yards of gravel".

Mrs. Moody said she had one other question. She said in the plan it states in the first section, 'tree removal' which she doesn't know where, and 'stump removal' on the second plan. She asked if the removal of stumps were on the shoreline, with the trees being removed? She asked if the trees will be replaced? She said she understood the wall was close to the shoreline. Steve said, "Yes, the 8 trees being removed because of the retaining wall do need to be replaced". Mr. Gallo said, "With much smaller trees". Ann H. said he has to mark the plan. Mrs. Moody stated, "So he is taking the stumps out and putting the wall in, and then replace". Steve said, "Yes". Mrs. Moody said it wasn't stated, so she wanted to know.

Mr. Moody stated that on the DEP plan, it was not mentioned that any vegetation was being removed, the box was not checked off. Mr. Gallo said the Town does vegetation, not the DEP. He said the DEP does the wall, which they gave permission for, and then they talk to the Town and they tell me how many trees I have to replace for the ones I am taking down. Mr. Moody said the DEP Permit has a box stating removal of any vegetation and it was not checked. Mr. Gallo said he was not removing any vegetation, he is in a sandy area. Mr. Moody said trees are coming out. Mr. Moody said that he knew what it was, Cherrie owned it for years, it was in their family since 1904.

Mr. Gallo felt they were beating a dead horse, so he wanted to Board to tell him what they wanted and send him on his way. Roger A. stated the Board needs a legal document regarding the ROW, giving permission to do what he intended to do. Roger stated that the trees being removed need to be on the plan, and where the replacement trees will be located. Mr. Gallo asked if he was talking about the revegetation plan? Roger said,

“Yes”. Mr. Gallo thought it was something he did with CEO Demers after he pulled a permit. CEO Demers said the Board will do the revegetation plan as part of the permitting process. Mr. Gallo said it wasn’t like last time, where Springvale Nursery came up with the plan. Roger A. stated that he can do that, but the Board gets the plan, then it goes to CEO Demers.

Madge B. said that the front shed will be removed and the further back shed will be moved, the front one will be removed. She asked if the one being moved will be kept beyond 100 feet from the water? Mr. Gallo said he did not understand the question. Roger A. said the front shed is being removed and off the property, the one by the water. Mr. Gallo said there were 3 sheds on the property. He said one is marked on the plan to be removed. Madge said, “Right, but there is a second one that will be moved, and I just wanted.... it actually says, ‘will be replaced’.” Roger said, “Beyond 100 feet”. Madge said it did say beyond the setback. Ann H. agreed that it said out of the setback. Madge said she thought out of the side setback, because it’s too close to the side. She said it should also be beyond 100 feet. Steve F. thought it was now.

Mr. Moody asked if the shed on the left hand side by the fence is going to be relocated and where? Mr. Gallo said, where he was taking the gravel out. Mr. Moody asked if this was the parking area. Mr. Gallo said, “Yes”. Mr. Gallo said that was assuming when he picked it up it didn’t fall apart. Mr. Gallo said the other one is in the good shape and will be moved about 8 feet. Mr. Moody thought that was the one on the plan to be removed. Steve F. and Roger A. agreed the plan states it was being removed. Mr. Gallo said he was moving it up the hill if it stays together. He said the other shed is being moved 8 feet. Mr. Gallo said that is what the owners said they can legally do. Mr. Moody thought they should check with the Board. Madge B. said it would be more conforming if they move it.

Steve F. stated that to be clear, the Board needs the trees to be removed put on the plan, and where the new trees are being located, on the revegetation plan. He said the Board also needs a letter from someone’s attorney stating the applicant has the right to work on the road. Roger A. agreed. Mr. Gallo asked if the Board was talking about the trees near the lower wall. Ann H. said yes, and the trees by the deck. Mr. Gallo said, “Ok”. Madge B. added, anything within 100 feet of the water.

Roger A. said the plan says the wall will be 3 ½ feet high, but now it is around 30 inches. Mr. Gallo said it varies. He said some places it is not even a foot, and in some places it is over 4 feet where the steps are. Roger asked if it was going to get filled in. Mr. Gallo said no, behind the wall will be filled in to control the erosion, which is why the wall is going up to 3’ 5”, so the water will be behind the wall instead of going into Mousam. He added that that is what it does currently.

Madge B. asked about if there would be mulch or blueberry bushes in addition to trees being placed? Ann H. thought mulch. Roger A. said there would be a landscaping plan which will depict that. Mr. Gallo said it would be grass, that is what is there now. Steve F. said that it should be put on the plan.

Mr. Moody said he was curious regarding the sheds and their placement. Ann H. said it was up to CEO Demers. Mr. Moody said the one on the left doesn’t meet the setbacks and he thought the Board said it was being moved to meet the setbacks. Mr. Moody said both sheds arrived since the applicants arrived, and he didn’t think there was a permit for either shed. CEO Demers said he hadn’t looked at that, but noted there was a complaint form if Mr. Moody wanted to fill one out. Mr. Moody said he wasn’t going to file a complaint but because it is an issue discussed and because it appears there is some deception going on, he wanted to be sure it was addressed correctly. Steve F. stated that if Mr. Gallo has it on the plan to be removed, then that is what the Board will approve. Mr. Moody said there were several things mentioned that were not on the plan. Mr. Moody thanked the Board for listening.

Nothing further was discussed.

Conditional Use Permit – Replace Retaining Wall(s) & Stairs – Map 26, Lot 24 (236 16th Street Loop) – Tyler Matthews, Applicant; Ben Welch, Property Owner

Mr. Matthews was present for the review of the application. *Members did a site inspection on an individual basis prior to this evenings meeting.*

Provided along with the application, was a copy of the Town Tax Map depicting Lot 24, with a house, stairs, patio, stairs & wall sketched on the lot.

Also provided was a sketch plan which showed where mulch will be placed between the house and the patio area. The stairs from the house to the patio were depicted with a notation that stated ‘Concrete stairs uneven & difficult to walk on, replace w/even stairs made w/stone & pavers’. There is a small wall just above the patio area depicted, which is 2 feet in height and having 6’ to the left of the stairs, and 18’ on the right of the stairs. A notation states, ‘Small retaining wall to be replaced’. The patio area had a notation that states, ‘Remove old patio, install permeable patio’. From the patio area was another set of stairs toward the water, which had a notation that stated, ‘Replace rotted stairs w/stone stairs’. The wall along the water to be replace was depicted as 4’ in height for a distance of 22’ in length to the left of the stairs facing the house from the water, 4’ in height for a distance of 16’ to the right of the stairs facing the house, and 2’ in height for a distance of 36’. A 4 foot set of stairs from the patio area, between the 2 four foot sections of wall was also on the plan.

The application detailed description of the project was as follows: *Replacing RR tie retaining wall near water w/concrete wall. Replacing stairs from camp down to the water & two small walls built into hill. Replacing flat area w/pavers.*

Mr. Matthews provided a revised sketch plan this evening. The new plan differed from the original plan by removing the words ‘remove old patio / install permeable patio’. Instead the 12’ x 22’ area is to have mulch, there shall be no patio, as there was not a permitted patio in that location previously.

Roger A. asked Mr. Matthews to let the Board what he wanted to do. Mr. Matthews said he brought a new plan which depicted mulch instead of pavers for a patio.

Roger A. asked if the height of the new wall was going to be 4 feet, noting the existing structure is approximately 4’ 3 inches. Mr. Matthews stated that was correct, the wall will be no higher than 4 feet. Roger asked what he was doing for landscaping? Roger asked what would be on top behind the new wall? Mr. Matthews said behind the wall will be filter fabric, crushed stone, drainage, and then on the hill will be soil conservation mulch. He said it will be walkable, but it will keep the soil in place. Roger asked if there would be conservation mulch on all disturbed areas? Mr. Matthews said, “Yup”.

Roger A. stated a survey will be required for location. Mr. Matthews stated that there would be a certified surveyed plot plan of wall location before and after, certifying where it is.

Roland L. said if he was at the lake, looking at the wall, coming from the right to the stairs, does the wall step back, and then it continues. Roger A. asked if he was talking about where the well pipe comes in? Roland said, “Yes”. Roland asked if the right-hand wall will be moved back to line up with the left-hand wall or move the left-hand wall out? Mr. Matthews was not sure, he said the wall will go back where it sets now. He said he cannot give them more beach, although he would love the option. Roland said that when you look at the plan, it looks like the wall will be straight across. Roger said that on the left hand side it actually has a curve. Roland

said that it was stepped back. Roger agreed part of the wall was stepped back. Mr. Matthews stated that the new wall would be where the existing wall was located. He admitted his drawing was not the best. Roland said he just wanted it clear that the existing wall is not straight across. Roland said he wanted it clear that the wall was not going to be pulled back. Roger said the new wall has to be where the existing sets. Ann H. agreed, noting the ordinance requires a survey of before and after, so the applicant cannot change the location. Mr. Matthews agreed that the left wall sets back a little more than the right. He said he would love to go straight across because it would look better. Roland said if it was his choice he would agree, but it wasn't his choice. Steve F. asked if this was part of the DEP Chapter 1000? Roger said that it was. He noted the Board can be more strict, but they can't be more lenient. Steve asked if Chapter 1000 asked for same location, same size? Ann asked in what way could the Board be more strict, keeping it away from the water? Roland said for the record, he wanted it noted that the plan is not exactly where the wall is going to go. Ann stated, "Correct". Roland said that was what he was questioning. Steve said that the Board can't approve it per the plan then. Roger said they can approve per the surveyor's placement of the existing wall. Madge B. pointed out that the drawing on the copy of the Town Tax Map depicted the existing wall more accurately than the sketch plan. Roland agreed.

CEO Demers asked the size of the blocks for the new wall? Mr. Matthews stated they were Genest blocks, 6" x 18" in size.

Roger A. asked Mr. Matthews when the project would be completed? Mr. Matthews stated it should be completed by May 30, 2022, in case he didn't get to it this fall. Roland L. asked how high the water would come up in the spring. Mr. Matthews stated that the wall will be dry, but not as far away from the water as now. Roland asked if he would be in the water doing it if it is done in the spring. Mr. Matthews stated that he would not. He added that he hoped to do the wall next month (November).

There were no further questions.

The findings for §105-73.G 'Standards applicable to conditional uses' are as follows:

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. ***It will not, the new retaining wall(s) will help protect fish and aquatic life.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***Replacing the failing wall(s) will help to conserve shore cover and access to the lake, by stabilizing the area.***
- 3) The use is consistent with the Comprehensive Plan. ***The Comp Plan is in favor of protecting the health of the lake.***
- 4) Traffic access to the site is safe. ***It is safe for the proposed use.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***The project is not in the flood zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***The existing wall material will be taken out of Shapleigh and disposed of at the proper facility. It will not go to the transfer station.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***The existing creosote railroad ties will be taken out of Shapleigh and disposed of properly.***

- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. ***The new wall(s) will be constructed per the specifications of the manufacturer, in this case Genest Concrete.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Best management practices will be in place during the project and until the area is completely stabilized.***
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***N/A for this application.***
- 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. ***There is existing vegetation, the area behind the wall will be stabilized with erosion control mulch. The only noise is during the project. There is no glare, fumes, dust and odors associated with this project.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall with conditions.***

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

- 1) **The project, including soil stabilization shall be completed by May 30, 2022. If this date cannot be met a new date of completion must be established with the Code Enforcement Officer.**
- 2) **Best Management Practices shall be kept in place until the project is completed which includes complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.**
- 3) **A licensed surveyor shall confirm in writing to the Code Enforcement Officer the location of the existing wall, and that the placement of the new wall is in the exact location as the existing.**
- 4) **Existing wall / railroad ties shall not be taken to the Shapleigh Transfer Station, they will be disposed of at the proper facility.**

Madge B. asked if there were any trees being removed? The other members saw no trees in the area of the wall.

Roger A. asked if the Board was ready for a motion?

Maggie M. moved for approval of the application to replace the existing wall(s) and stairs, leaving them in the exact location as the existing, as confirmed by a licensed surveyor, and the wall to be no greater than 4 feet in height, on Map 26, Lot 24 and per the stated conditions. Roland L. 2nd 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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**Findings of Fact**

- 1. The owner(s) of Shapleigh Tax Map 26, Lot 24 (235 16<sup>th</sup> Street Loop) are Benjamin & Phyllis Welch, mailing address of 160 Norton Road, Kittery, ME 03904 per Warranty Deed, BK 14775, PG 757, recorded 3/10/2006.
- 2. The property is located in the Shoreland District, and according to the Assessor's office, it contains .48 Acres.

3. Provided was a copy of the Town Tax Map depicting Lot 24, with a house, stairs, patio, stairs & wall sketched on the lot.
4. Provided was a sketch plan which showed where mulch will be placed between the house and the patio area. The stairs from the house to the patio were depicted with a notation that stated 'Concrete stairs uneven & difficult to walk on, replace w/even stairs made w/stone & pavers'. There is a small wall just above the patio area depicted, which is 2 feet in height and having 6' to the left of the stairs, and 18' on the right of the stairs. A notation states, 'Small retaining wall to be replaced'. The patio area had a notation that states, 'Remove old patio, install permeable patio'. From the patio area was another set of stairs toward the water, which had a notation that stated, 'Replace rotted stairs w/stone stairs'. The wall along the water to be replace was depicted as 4' in height for a distance of 22' in length to the left of the stairs facing the house from the water, 4' in height for a distance of 16' to the right of the stairs facing the house, and 2' in height for a distance of 36'. A 4 foot set of stairs from the patio area, between the 2 - four foot sections of wall was also on the plan.
5. Provided was a revised plan, dated 10/26/2021, which placed erosion control mulch between the retaining walls in an area being 12' x 22' in size. There shall not be a permeable patio installed between the new walls, as depicted on the original plan.
6. The application detailed description of the project was as follows: *Replacing RR tie retaining wall near water w/concrete wall. Replacing stairs from camp down to the water & two small walls built into hill. Replacing flat area w/pavers.*
7. The application as presented met the performance standards under §105-73 'Conditional Use Permits' as per the documentation provided and as presented with four conditions.
8. A notice was mailed to all abutters within 500 feet of the property on October 13, 2021. Meetings were held on Tuesday, October 12, 2021 and Tuesday, October 26, 2021. A site inspection was done by members on an individual basis prior to the meeting.
9. The Planning Board unanimously agreed to approve the Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining walls and stairs on Map 26 Lot 24, per the documents provided and as presented, with four conditions.
10. **The conditions of approval are as follows:**
  - 1) **The project, including soil stabilization shall be completed by May 30, 2022. If this date cannot be met a new date of completion must be established with the Code Enforcement Officer.**
  - 2) **Best Management Practices shall be kept in place until the project is completed which includes revegetation and complete stabilization of the area. There must be a person certified by the MDEP in erosion control practices on site during the project, and the person's MDEP certification number shall be given to the CEO during the permitting process.**
  - 3) **A licensed surveyor shall confirm in writing to the Code Enforcement Officer the location of the existing wall, and that the placement of the new wall is in the exact location as the existing.**
  - 4) **Existing wall / railroad ties shall not be taken to the Shapleigh Transfer Station, they will be disposed of at the proper facility.**

**Decision:**

The Conditional Use Permit for earth moving in the Shoreland District to replace the existing retaining walls, same length as existing and not to exceed 4 feet in height, and stairs on Map 26, Lot 24 (236 16<sup>th</sup> Street Loop), per the plans provided and as reviewed, with four conditions, was approved.

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**Amendment of a Private Way Plan (Removing Plan Note 7 Only) – Map 6, Lot 34G Approved under Lot 34E (40 Gertie Lane off of Nason Rd) – Brian White, Applicant; Roger Berube Builders, Property Owner**

The applicant, Brian White, pulled the application as Note 7 was no longer an issue, after discussing the matter with his attorney.

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**OTHER:**

The Planning Board held a workshop to discuss possible amendments to Shapleigh’s Ordinances. Topics reviewed are as follows:

**Workshop Notes on Ordinance Amendments – October 15, 2021**

Shoreland District – Remove No Alcohol Requirement

Subdivision Ordinance – Developer responsible to coordinate mail delivery system per post office specifications.

Minor Subdivision - Pavement ‘may’ be required instead of shall.

Look at Discrepancy in ordinance, one spot requires pavement for minor, one does not. Make necessary change.

Subdivision: Remove Sidewalk requirement; Remove Granite requirement – Both are always waived.

Currently 90 days to record plan for BPL. Steve suggest making it record prior to OC. Not sure, need to ask DEP if this can be changed.

Steve wants to consider giving walls to CEO. Currently reviewed under earth moving. Can that be changed or should it? Board also looks at revegetation, along with earth moving.

Steve wants the Board to consider a full blown survey when a structure is involved in a BPL, as most are in the SD and when the Board approves on the applicants say-so of measurements, they may or may not be correct. A survey would give accurate information to base the decision on. Mike agrees this would be best for records.

Mike wants to reduce the front yard requirement on non-conforming lots of record. Change 50 feet to 30 feet. There are additional stipulations which he will draft.

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**Growth Permits**

There are still several Growth Permits available.

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**The Planning Board meeting ended at 9:10 p.m.**

**The next Planning Board meeting scheduled will be November 14, 2021 and the meeting will be held IN PERSON at the Town Hall.**

**NOTE: The winter hours are in effect through March 30th; the meetings will begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.**

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  
Town of Shapleigh  
[planningBoard@shapleigh.net](mailto:planningBoard@shapleigh.net)