

Shapleigh Planning Board

Minutes

February 23, 2021

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

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

Alternate Ann Harris was unable to attend.

The minutes from Tuesday, February 9, 2021 were accepted as read.

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

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.

Conditional Use Permit – Replace Patio & Wall Removed 10/5/2020 – Map 40, Lot 50 (50 Loon Lane) – Nancy Lightbody, Property Owner & Applicant; Mr. Tom Kinney, Representing

Mrs. Lightbody was present for the review of the application via Zoom, along with the contractor, Tom Kinney, who is overseeing the project.

At a previous meeting it was established that Mrs. Lightbody was before the board for the replacement of a patio and wall that was removed on October 5th, 2020.

Provided along with the application, was a sketch plan of the property which depicted the lot dimensions, the location of the existing structure(s), patio area (2 patios & walls), and wellpoint in relation to the lot lines and waterline of Granny Kent Pond; a sketch plan which depicted in addition to the structure(s), patio and wellpoint, the area that was disturbed and the notation that the area will be graded, loamed and seeded; a copy of the Permit by Rule & Notice of Intent Acceptance Date of 11/12/2020, as reviewed by Lucien Langlois; a copy of the Subsurface Wastewater Disposal System Application, dated 12/6/1991, SE #121, Mark Truman; and a letter dated December 14, 2020 whereas Nancy Lightbody gave permission for Tom Kinney of Property Essentials LLC to discuss the project with the Planning Board and represent her in her absence.

The detailed description of the project was as follows: *Finish 18’ x 24’ patio with retaining wall at the rear of 50 Loon Lane adjacent to the home. Property had two patios and two retaining walls which extended from the home to the shoreline of Granny Kent Pond. They were removed on or about 10/05/2020.*

In addition, the following letter, dated December 14, 2021 was written to the board from Mrs. Lightbody. The letter reads as follows:

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Respectfully, I would like to submit the following with regards to the work being done at 50 Loon Lane in Shapleigh. As the current owner, I purchased the property in 2014. At the time of purchase, there were two patios and retaining walls in place. Based on the wear, condition of the patio (it was disintegrating) and how the wall was leaning, they had been in place for some time. However, there is no record with the Town as to the exact date of their installation.

The intent of the project was to replace the existing patio in its existing location on the south side of the home (with minor modification for safety / leveling) and replace the retaining wall – to stop the leaning and to make the area safe before it fell into disrepair.

The work being done is not adding any new structures or expanding the existing structures. In fact, we removed the stone patio that extended all the way to the water’s edge. Once the work is complete, the yard will be brought back to a natural state

including some minor landscaping work to help with the current runoff issue (from the top of the hill/road) caused by the slope of the land.

Our belief was that since we are replacing an existing patio – not adding a new patio – that we had the ability to replace what was existing without a permit. Once we were made aware of the towns concerns, we took immediate action to resolve the issue:

- Silt fencing was placed around the perimeter of the property
- We requested and were granted a Permit by Rule from DEP
- We are currently seeking an ‘after the fact’ permit from the Town due to the scope of the project

We are requesting a permit be issued so that the work can be completed. Not doing so would:

- make the lakefront side of the property unusable due to the slope
- increase the likelihood of erosion – given a retaining wall is necessary to stop dirt and other material from entering into the lake
- make the rear egress from the home difficult (the stairs landed on the patio) and caused a possible safety issue
- decrease the property value of the camp

Our family has been part of the Granny Kent and Shapleigh community for over 30 years. In addition to our camp, we have other family members in the area and on the lake. It has always been our intention to protect the land and not diminish the lake’s natural beauty. We feel that the work being done will enhance the property, protect the natural resource and allow it to be enjoyed for years to come.

Presented to the board was a letter dated January 4, 2021, written by Mrs. Lightbody, it read in part as follows:

We met with the Planning Board on December 22nd to review the work being done at 50 Loon Lane. As a result of that conversation, there were several requests for additional information / documentation. The information requested included:

Additional Fee – It was unclear on the application that the additional fee was needed at the time of submission. The additional \$750 fee was mailed on 12/31/20 and should be in your possession

Pictures of the property prior to and current state including the height of the current wall – see attached

Vegetation Plan – See attached

Engineering Certification if the proposed wall is over 4 ft. – The design and plans will be approved prior to the continuation of work – once the Conditional Use Permit is granted

DEP Shoreline Certified Contractor – A DEP Certified contractor will be on site for the remainder of the project – verified by CEO

Admittedly, there have been several missteps with this project. However, I submit that we have worked hard to come into compliance and to meet all requirements that have been asked by the Board.

I again respectfully ask that the Board issue the Conditional Use Permit so that the work can be completed. Approving the existing plan will benefit the lake by removing the stone, minimizing the run off and bringing it back to a natural state; creating a usable space for our family and ultimately increasing the value of the property for both us and the town.

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Along with the above letter there were the following pictures:

‘Existing Lower Patio’ with this description: ‘As you can see, the lower patio on the property extended all the way to the water’s edge and was severely sloping towards the lake. The stone has been removed, the area leveled and will be replaced with sand/grass (see vegetation plan)’.

‘Retaining Wall’ with description: ‘Only a portion of the prior retaining wall was above grade. The wall consisted of 8” high blocks – 3 rows or 24” were above grade. 4 rows or 32” were below grade. The bottom row (footing) remains visible in the ground in the picture below. The wall that was removed was 56”. The new wall is 54” from the footing with an additional 3” finished cap – total height 57”

‘Upper Patio’ with description: ‘The exterior dimensions of the replacement patio are 24’ x 18’. It is supported by a 57” retaining wall. The retaining wall construction includes: Geogrid every 18 inches, all blocks are core filled and glued in place, the area was backfilled with ¾ crushed stone and the wall step back is 1 inch per level. The bottom two levels of the wall will be below grade. Details are outlined in the vegetation plan.

‘Vegetation Plan’ with description: ‘The vegetation plan will include grading, adding loam and seed to the area to the right of the house (used to access the rear of the property). Waterbars will be added to help reduce runoff. The lower undisturbed area to the left includes crushed stone to help runoff and drainage. The area where the prior patio was removed will be covered with 6-8 of site fill and top dressed with 4 inches of beach sand. It will cover the bottom two courses of the wall. The use of sand is preferred as it will improve drainage and run off – if anything, it will be less impactful to the lake (no chemicals or fertilizer from soil/grass). See attached vegetation plan.’

The attached vegetation plan depicts the existing camp and attached 18’ x 24’ patio, an area to the left of the camp from the water side with a notation ‘Add 4-6 inches of $\frac{3}{4}$ ” crushed stone over existing undisturbed grade – approximately 10 yards’; an area in front of the new patio with a notation ‘Replace previous patio with 6-8 inches of fill from the site. Add approximately 4 inches of screened beach sand or loam and seed.’; an area to the right of the new patio with a notation ‘Disturbed area from equipment – Regrade to remove track marks and other disturbances, -Add 4-6 inches of loam where necessary, -Add seed to grow grass back to its original state.’; and an area alongside the existing camp with a notation ‘Waterbar – 6 inches of $\frac{3}{4}$ crushed stone’.

Provided by the Code Enforcement Officer were pictures of the existing conditions and prior patio areas.

Received by an abutter within 500 feet of the property was the following letter:

In reference to letter received as an abutter to application for a Conditional use Permit for Shapleigh Tax Map 40, Lot 50 (Loon Lane). Nancy Lightbody, Applicant; John Lightbody.

I have several concerns regarding this application, first of which is the letter states applicant requests the ‘replacement of existing patio and retaining wall’ that were removed in October 2020.

The information provided in this letter is incorrect because as an abutter, I know they are requesting permit after the fact. This work was already done and completed at this site all at the same time removal was done in October 2020 (see enclosed pictures).

Work began approximately sometime late September with excavation done with backhoe and skid steer from street side to the shoreline of the property.

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This replacement is completely different from the original patio and retaining wall (see enclosed pictures). Enough earth was removed to allow for the cement replacement of wall with top patio to be much larger in width, depth and height.

Maine Erosion and Sedimentation Control a concern as no silt barrier was placed at the shoreline during wall/patio removal and earth excavation for placement of new one.

I would also ask if the Planning Board will be considering the Standards Applicable to Conditional Uses regarding this application.

Thank you for notification of this application and allowing me to express my concerns and comments.

Attached to the letter was the follows:

- A copy of the Town’s assessing dimensions of the existing camp, patio on road side, and patio on water side (which is depicted as 10’ x 24’ in size).
- Picture of the existing camp and what the prior patio looked like.
- 2 pictures of the new patio.
- Google picture of the existing camp and patio area prior to removal.

At the meeting held on January 12, 2021 a motion was made that the wall be moved, returned to its original location; and that the applicant comes back before the board with the new proposed height of the wall, and whatever adjustments they feel are necessary if they do run into plumbing; and also, a revised landscaping or replanting stabilization plan.

Provided by the applicant for this evening’s meeting were the following:

- Sketch Plan depicting the outer dimension of the wall measurements, those being 11’3” from the house toward Granny Kent Pond by 24 feet in width.

- Sketch Plan depicting the front wall that being 24' in width with a height of 3' 9", with 2' 4" showing at the finished grade.
- Sketch Plan depicting the side wall on the right, facing the camp from the water side, as being 11' 3" in width, with a height of 3' 9", showing 2' at the finished grade.
- Sketch Plan depicting the side wall on the left, facing the camp from the water side, as being 11' 3" in width, with a height of 3' 9", showing 1' 6" at finished grade.
- Revegetation / stabilization plan which depicts the lot dimensions those being 100' on the road, sides lot lines of 175' and 105', and 100' on the water; the existing camp; location of the new wall showing it as being 11' 3" from the camp; area on the left of the camp facing the road, having 3/4 inch crushed stone added for water retention; the area to the right of the camp facing the road, adding 3/4 inch crushed stone; area where the lower patio is removed and the area disturbed by equipment, both shall be regraded, loam added and area seeded.

At the initial start of the meeting Chairman Roger A. was having computer issues, so he asked Vice Chairman Steve F. to start the meeting. Steve began by asking the board if anyone had any changes to the minutes of the last meeting? There were none. The minutes were accepted as read.

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Steve F. stated the first item on the agenda was to review the after-the-fact Conditional Use Permit for Nancy Lightbody. Steve asked if the contractor Mr. Kinney had any new information for the board. Mr. Kinney stated that the board should have the updated plans for the retaining wall and the patio, with the new size of 11' 3".

Roger A. came back on line after having audio issues.

Roger A. stated that with this application, because there was no expansion, §105-4.D(1) would not apply. Roger said this was only a replacement of what was existing. He stated that under §105-4.D(5) 'Removal, reconstruction or replacement' because it was in the shoreland district, and was removed by more than 50%, it required Planning Board review under a Conditional Use Permit.

Roger A. stated that §105-39 'Earth removal and filling for activities other than mineral exploration and extraction' would apply, where it states that any removal and filling of greater than 10 cubic yards of earth also requires a Conditional Use Permit in the shoreland district for earth moving.

Roger A. stated that the board received the new plans from the applicant. Roger stated that on the revegetation plan it states that there will be loam and seed placed in front of the camp where the patio closest to the water will be removed. He asked the applicant if this was true? Mrs. Lightbody was not sure what Roger was asking. Roger said at the bottom of the revegetation plan, near the water, it says replace patio with 6 – 8" of fill from the site and add loam and seed. He asked where the small patio is at the water's edge, is that going to be removed, and replaced with loam and seeded? Mrs. Lightbody stated, "That's correct". Roger said, ok.

Roger A. stated that the plan shows that the wall will be 3'9" at the very tallest, and 18" on one sidewall. He asked if this was true? Mrs. Lightbody was not sure what Roger was asking, she said he had the plans in front of him, she could have Tom Kinney speak to them regarding the dimensions of the patio and wall heights on each side. Roger agreed he had the plan and said it showed the wall height as 3' 9" and on one side it would be 18". He asked Tom Kinney if this was true? Mr. Kinney stated the height of the wall would be 45" overall, and that's facing Granny Kent Pond. He said one side would be 18" and the other side would be 24". He said if you are facing Granny Kent Pond the left side would be 24" and the right side 18". Roger said, ok.

Roger A. stated that he was trying to be specific, so the CEO will know exactly what he is inspecting.

Roger A. stated that the disturbed areas for the equipment would be regraded to remove track marks, and place 4 – 6" of loam and seed it, to return it to the original state. Mr. Kinney stated, "That is correct".

Roger A. asked if anyone had any question they would like to ask at this time? No one had any questions.

Roger A. stated the conditions of approval would be as follows:

- 1) There shall be no structure installed over the patio area. The patio is all that is permitted now and in the future.

Roger asked about a time frame? Mrs. Lightbody said she would like to have a date pushed out and would probably finish the job sooner. She said the project was weather dependent. She believed the project would be completed by July 1, 2021, but she wanted to ask Mr. Kinney his opinion. Mr. Kinney had no issue with this date, and believed the project would be finished sooner than July 1st. Madge B. asked if Roger was speaking about all the re-planting as well, being done by July 1? Roger said he would push it out to September 1, 2021 to

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have everything completed, including the revegetation and stabilization as stated on the plan. Roger said if it isn't completed by that time, the applicant will have to come back to the board to discuss why it wasn't completed. Mrs. Lightbody said that was fine.

- 2) The project shall be completed by September 1, 2021, including the revegetation and stabilization of the area. If it is not completed by that date, the applicant shall have to come back before the Planning Board to explain why and set a new date of completion.
- 3) Best Management Practices shall be kept in place until the project is completed, which includes the revegetation and stabilization.
- 4) Contractor on site overseeing the project must be DEP certified in erosion control practices.

Madge B. stated that CEO Demers had a concern regarding the patio, and that it not be enclosed in any way. She said that she believed that was what Roger was speaking about when he said that nothing could be built on the patio. Roger A. agreed. Madge asked if they could put a fence around the patio? She said that because it was above grade, you wouldn't want anyone to fall off of it. Roger stated that if any fencing was required it would be up to CEO Demers, whether he feels it is high enough that fencing is required. Madge agreed. Roger said he was only talking about adding a building over the patio. Madge said she understood, stating that that would be adding enclosed space.

Madge B. stated that when she did the site visit, she saw a lot of earth that had been moved. She asked if when they are finished if the area had to be leveled off or graded so it is a gradual grade from the patio down to the water? She said that what she saw she didn't understand. Roger A. asked Mr. Kinney to address it. Mr. Kinney said if you look at the plan, there is a grading plan along with the vegetation plan. He noted that something under construction did not look like it will when finished. He stated that Madge was looking at it halfway through the project, not from a final standpoint. He said he did understand what Madge was concerned about. Madge stated, "So it will be graded down from the patio". Mr. Kinney stated, "Yes, correct. The dimensions are in the plan." Madge said she saw the plans but admitted to not being good at reading them. He said he understood.

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

Roger A. asked if anyone wanted to entertain a motion at this time.

Madge B. made the motion to approve the after-the-fact Conditional Use Permit to replace the existing patio / retaining wall, same size as existing (24' x 11'3") and remove the patio closest to the high water mark and revegetate on Map 40, Lot 50, per the final plans provided with the stated conditions.

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

- 1) The project shall be completed by September 1, 2021, including the revegetation and stabilization of the area. If it is not completed by that date, the applicant shall have to come back before the Planning Board to explain why and set a new date of completion.**
- 2) Best Management Practices shall be kept in place until the project is completed, which includes the revegetation and stabilization of the site.**
- 3) Contractor on site overseeing the project must be DEP certified in erosion control practices.**
- 4) There shall be no enclosed structure placed over the approved patio now or in the future.**

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Maggie M. 2nd the motion. All members were in favor. By a vote of 5 – 0, the motion passed unanimously.

Roger A. stated that Mrs. Lightbody would now need a building permit from CEO Demers.

Mrs. Lightbody stated, “For a point of clarification, the next step is to get a building permit from Mike. I assume Mike I can do it remotely; I don’t need to come up.” CEO Demers stated that was fine. Mrs. Lightbody asked if she notified CEO Demers once work begins? CEO Demers stated, “Not when work starts, well obviously don’t start reconstruction until the permit is issued. I will know that it is active then. And then the next time will be the final inspection.” Mrs. Lightbody said ok, and asked if she could reach out to his office later in the week? CEO Demers stated that was fine. She asked CEO Demers if she had to fill out any forms before she contacted him. He stated she did not, he would use the Conditional Use Permit application to obtain information and then attach the paperwork from Barbara F. Mrs. Lightbody stated she would contact CEO Demers and said she appreciated everyone’s time.

Nothing further was discussed.

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**Based on the application and supplemental material provided, along with Planning Board review, the following are the findings for §105-73.G regarding the above application:**

**§105-73.G ‘Standards applicable to conditional uses’**

*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. ***Replacing the lower patio and revegetating the area, as well as adding crushed stone on either side of the camp will help to mitigate stormwater issues, and protect aquatic life by help to keep stormwater runoff out of Granny Kent Pond.***
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. ***Replacing the deteriorating lower cement patio with vegetation will help conserve the shoreline.***
- 3) The use is consistent with the Comprehensive Plan. ***It is, the Comp Plan wants to protect the lakes.***
- 4) Traffic access to the site is safe. ***Access is safe for the intended project.***
- 5) The site design is in conformance with all municipal flood hazard protection regulations. ***This project is not in a flood hazard zone.***
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. ***There is no wastewater associated with this project. Solid waste, that being the remaining cement patio block, shall be taken off site and out of Shapleigh.***
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. ***This is not applicable, none generated by this activity.***
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. ***The walls shall be built per the plans and information provided, so as to adequately process stormwater, and keep it from going onto adjacent properties or into Granny Kent Pond as best possible.***
- 9) Adequate provisions to control soil erosion and sedimentation have been made. ***Best Management Practices shall be kept in place until the project is completed, including revegetation.***

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- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. ***This is not applicable for this project.***
- 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 are no trees being removed and any vegetation disturbed shall be replaced. There is no glare, fumes, dust, odors and the like associated with the project which will have a limited duration once commenced.***
- 12) All performance standards in this chapter applicable to the proposed use will be met. ***They shall with conditions.***

**The conditions of approval are as follows:**

- 1) **The project shall be completed by September 1, 2021, including the revegetation and stabilization of the area. If it is not completed by that date, the applicant shall have to come back before the Planning Board to explain why and set a new date of completion.**
- 2) **Best Management Practices shall be kept in place until the project is completed, which includes the revegetation and stabilization of the site.**
- 3) **Contractor on site overseeing the project must be DEP certified in erosion control practices.**
- 4) **There shall be no enclosed structure placed over the approved patio now or in the future.**

### The Findings of Facts

1. The owner(s) of Shapleigh Tax Map 40, Lot 50 (50 Loon Lane) are John C & Nancy L Lightbody of 18 Oakridge Drive, Saugus, MA 01906.
2. The property known as Map 40, Lot 50 is located in the Shoreland District and according to the Assessor the property contains .32 acres.
3. The Conditional Use Permit application as presented to replace the existing patio was after-the fact, with work on the project started prior to obtaining a permit.
4. The application description reads as follows: *Finish 18' x 24' patio with retaining wall at the rear of 50 Loon Lane adjacent to the home. Property had two patios and two retaining walls which extended from the home to the shoreline of Granny Kent Pond. They were removed on or about 10/05/2020.*
5. Provided was a sketch plan of the property which depicted the lot dimensions, the location of the existing structure(s), patio area (2 patios & walls), and wellpoint in relation to the lot lines and waterline of Granny Kent Pond; a sketch plan which depicted in addition to the structure(s), patio and wellpoint, the area that was disturbed and the notation that the area will be graded, loamed and seeded; a copy of the Permit by Rule & Notice of Intent Acceptance Date of 11/12/2020, as reviewed by Lucien Langlois; a copy of the Subsurface Wastewater Disposal System Application, dated 12/6/1991, SE #121, Mark Truman; and a letter dated December 14, 2020 whereas Nancy Lightbody gave permission for Tom Kinney of Property Essentials LLC to discuss the project with the Planning Board and represent her in her absence.

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6. Provided were the following pictures:
  - ‘Existing Lower Patio’ with this description: ‘As you can see, the lower patio on the property extended all the way to the water’s edge and was severely sloping towards the lake. The stone has been removed, the area leveled and will be replaced with sand/grass (see vegetation plan)’.
  - ‘Retaining Wall’ with description: ‘Only a portion of the prior retaining wall was above grade. The wall consisted of 8” high blocks – 3 rows or 24” were above grade. 4 rows or 32” were below grade. The bottom row (footing) remains visible in the ground in the picture below. The wall that was removed was 56”. The new wall is 54” from the footing with an additional 3” finished cap – total height 57”
  - ‘Upper Patio’ with description: ‘The exterior dimensions of the replacement patio are 24’ x 18’. It is supported by a 57” retaining wall. The retaining wall construction includes: Geogrid every 18 inches, all blocks are core filled and glued in place, the area was backfilled with ¾ crushed stone and the wall step back is 1 inch per level. The bottom two levels of the wall will be below grade. Details are outlined in the vegetation plan.
  - ‘Vegetation Plan’ with description: The vegetation plan will include grading, adding loam and seed to the area to the right of the house (used to access the rear of the property). Waterbars will be added to help reduce runoff. The lower undisturbed area to the left includes crushed stone to help runoff and drainage. The area where the prior patio was removed will be covered with 6-8” of site fill and top dressed with 4 inches of beach sand. It will cover the bottom two courses of the wall. The use of sand is preferred as it will improve drainage and run off – if anything, it will be less impactful to the lake (no chemicals or fertilizer from soil/grass). See attached vegetation plan.
7. Provided was a sketch plan entitled ‘Vegetation Plan’ which depicted the existing camp and attached 18’ x 24’ patio, an area to the left of the camp from the water side with a notation ‘Add 4-6 inches of ¾” crushed stone over existing undisturbed grade – approximately 10 yards’; an area in front of the new patio with a notation ‘Replace previous patio with 6-8 inches of fill from the site. Add approximately 4 inches of screened beach sand or loam and seed.’; an area to the right of the new patio with a notation ‘Disturbed area from equipment – Regrade to remove track marks and other disturbances, -Add 4-6 inches of loam where necessary, -Add

seed to grow grass back to its original state.’; and an area alongside the existing camp with a notation ‘Waterbar – 6 inches of ¾ crushed stone’.

8. Provided by the Code Enforcement Officer were pictures of the existing conditions and prior patio areas. In addition, members located pictures of existing conditions from 2014 from a real estate listing of the property, which included pictures of the patio area.
9. Provided for the final review of the application were the following:
  - Sketch Plan depicting the outer dimension of the wall measurements, those being 11’3” from the house toward Granny Kent Pond by 24 feet in width.
  - Sketch Plan depicting the front wall that being 24’ in width with a height of 3’ 9”, with 2’ 4” showing at the finished grade.
  - Sketch Plan depicting the side wall on the right, facing the camp from the water side, as being 11’ 3” in width, with a height of 3’ 9”, showing 2’ at the finished grade.
  - Sketch Plan depicting the side wall on the left, facing the camp from the water side, as being 11’ 3” in width, with a height of 3’ 9”, showing 1’6” at finished grade.
  - Revegetation / stabilization plan which depicts the lot dimensions those being 100’ on the road, sides lot lines of 175’ and 105’, and 100’ on the water; the existing camp; location of the new wall showing it as being 11’ 3” from the camp; area on the left of the camp facing the road, having ¾ inch crushed stone

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added for water retention; the area to the right of the camp facing the road, adding ¾ inch crushed stone; area where the lower patio is removed and the area disturbed by equipment, both shall be regraded, loam added and area seeded.

10. The application required Planning Board review as a Conditional Use Permit under §105-4.D(5) ‘Removal, reconstruction or replacement’ because it was in the shoreland district, and was removed by more than 50%. The application and material presented met the requirements in this section.
11. The application required Planning Board review as a Conditional Use Permit under §105-39 ‘Earth removal and filling for activities other than mineral exploration and extraction’ because any removal and filling of greater than 10 cubic yards of earth in the shoreland district also requires a Conditional Use Permit for earth moving. The application and material presented met the requirements in this section.
12. The application as presented met the performance standards under §105-73 ‘Conditional Use Permits’, with conditions.
13. A notice was mailed to all abutters within 500 feet of the property on December 30, 2020. Meetings were held on Tuesday, December 22, 2020, Tuesday, January 12, 2021, and Tuesday, February 23, 2021 via Zoom due to Covid-19. A site inspection was done by members on an individual basis.
14. The Planning Board unanimously agreed to approve the Conditional Use Permit to replace the existing patio / retaining wall(s), same length and width as existing (24’ x 11’3”), with a height no greater than 3’ 9”, and remove the lower patio closest to the water and revegetate the area, per the plans presented, on property known as Tax Map 40, Lot 50, with four conditions.
15. **The conditions of approval are:**
  - 1) **The project shall be completed by September 1, 2021, including the revegetation and stabilization of the area. If it is not completed by that date, the applicant shall have to come back before the Planning Board to explain why and set a new date of completion.**
  - 2) **Best Management Practices shall be kept in place until the project is completed, which includes the revegetation and stabilization of the site.**
  - 3) **Contractor on site overseeing the project must be DEP certified in erosion control practices.**
  - 4) **There shall be no enclosed structure placed over the approved patio now or in the future.**
16. **Additional requirement:**
  - **A building permit must be obtained from the Code Enforcement Officer, prior to the construction of the new wall.**

### **Decision:**

**The Conditional Use Permit to approve the Conditional Use Permit to replace the existing patio / retaining wall(s) with a new patio/wall(s) the same length and width (24’ x 11’3”) as the existing, and no higher than 3’9”, as well as remove the patio closest to the high water mark and revegetation the**



**area, per the information presented, on property known as Tax Map 40, Lot 50 with four conditions, was approved.**

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Best Possible Location – Replace Existing Structure – Map 21, Lot 32 (89 24th Street) – Tyler Matthews, Applicant; Dan & Laura Lajeunesse, Property Owners

Mr. Matthews was present via Zoom for the review of the application.

Along with the application, provided was a letter stating Mr. Matthews could represent Dan & Laura Lajeunesse before the Planning Board.

Provided were square foot calculations that depicted the main camp as having 1705 sf, and an outbuilding having 536 sf, for a total of 2241 sf, with a lot size of .17 acres or 7406 sf. This showed there was approximately 30.25% existing lot coverage which exceeds the maximum lot coverage allowance of 10% in the shoreland district.

Provided was a land survey plan showing existing conditions done by Joseph Stanley, MPLS #2453 of LinePro Land Surveying, dated 2/1/2021. The plan depicted the location of the outbuilding which was 1.7' from 24th Street at the closest point, and 11.1' to the nearest lot line. The plan depicted the main camp as being 4.3 feet to the nearest lot line and the attached deck being 13.3' at its closest point to Mousam Lake.

Provided was an 'existing conditions' plan which in addition to the locations of the main camp and outbuilding, it also depicted the location of the septic tank and chamber system. Exact distances to the main camp and side lots lines from the septic tank or chambers were not noted on this plan.

Provided was a 'proposed' plan which depicted the new structure / house and showed it as being 10' from the nearest lot line and 16' from the high water mark of Mousam Lake. Also on the plan was a stormwater dripline trench noted along the sides of the new structure.

Provided was a 're-vegetation' plan which depicted areas around the new proposed structure / house that were shaded in green. No actual type of vegetation was listed.

Provided was a copy of the Subsurface Wastewater Disposal System Application, dated 5/21/2002, done by John Large, SE #7, with an approved installation date of 6/21/2002. In addition, a Replacement System Variance Request form was provided as approved on 5/28/2002 by the Shapleigh Code Enforcement Officer.

Provided by CEO Demers was an email dated 2/19/2021 that stated the following:

You should have received a packet for BPL application at [89 24th Street](#) and I would like to share a couple minor concerns with you. First I will say that the two structures on this lot are legally existing non-conforming structures. There are tax records dating back to 1980 on both. One concern is the declared existing square foot on the lot may not be what is actually there. The steps should not be considered as structure and two feet of the deck may be an illegal addition because at one point it was an 8' patio. Now the 10' deck cantilevers over the retaining wall and the area of concern is highlighted in the attachment.

The assessors page shows total structure at 1910 sf and the application declared is 2241 sf. The applicant may be accounting for overhangs too but this number needs to be nailed down because the lot coverage is 20%-30%.

In summary...

- Structure may be replaced SF for SF
- Steps should not be counted as SF
- Illegal expansions should not be counted as SF
- Overhangs may be counted as SF

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Roger asked Mr. Matthews to let the board know exactly what he intended to do. Mr. Matthews began by referring to the survey plan he provided which showed 2 structures on the property. He said there was a back

building along the street and a camp with a deck. He said they wanted to tear down the camp and deck, then build a new structure in its place. He stated that he met with CEO Demers regarding what he can and cannot do. He said he was already over on lot coverage, so there can be no expansion. He added that the footprint was grandfathered, so they are building the new house right there.

Roger A. stated that the Assessor had the deck as being only 8 feet, there did not appear to be a permit that allows the deck to be 10 feet. Roger said this being the case, it would reduce the square footage. Mr. Matthews agreed, and said he remembered CEO Demers mentioning it.

Roger A. stated that it appeared the structure was being shifted away from the water a little. Mr. Matthews agreed and said he tried to move it back but because of the location of the septic tank he is limited.

Steve F. asked if they were going to try to leave the existing retaining wall and use it as the foundation? Mr. Matthews said they would not use it as the foundation but it holds back several feet of elevation, so he thought leaving it in place was beneficial. Steve asked if the house was going to have a full foundation under it, or just crawl space? Mr. Matthews said he was guessing it would either be crawl space or a slab on grade. He said he wasn't sure what the water level was. Steve asked if it would possibly be slab on grade for the entire structure? Mr. Matthews said, "Possibly. There is no way it can have a full foundation, I know that. Maybe a crawl space." Steve said, ok. He said he was just wondering if Mr. Matthews was going to cut into the retaining wall and use it for a daylight section in the front, and let the retaining wall be on each side. He couldn't see the elevation. Mr. Matthews said he did not think so, he thought the structure would sit on top and below the retaining wall would be the beach and lower area. Steve asked if it was going to be house right up to the retaining wall, or would there be a deck on the front? Mr. Matthews stated that he hadn't gotten that far with the homeowners with respect to design. He guessed there would be some type of deck. Steve said he didn't know how old or well built the retaining wall was, and wondered if it would satisfy structurally any building. Mr. Matthews said the wall was in good condition at present, but when construction starts, who knows.

Steve F. said he didn't think steps counted toward square footage. He asked the others what they believed? He didn't think they could count the steps. Roger A. agreed. CEO Demers agreed and stated that steps should be discounted from the square footage that will be replaced, and if the new structure requires steps to gain access to the structure, it doesn't count against the lot coverage either. Mr. Matthews stated, "Ok, perfect".

Roger A. stated that if there was going to be a deck on the exterior of the building, that would count, so it is part of the square footage. Mr. Matthews agreed.

Madge B. stated she was confused by the square footage. She said with what was sent to her, there were two calculations. She thought one was the square footage for the existing building and she thought the other for the new building and they were quite different. She asked for further explanation. Steve F. asked if she was speaking about the white pieces of paper. Madge said, yes, and one was 1700 something and the other 2100 something. Steve said one was 2241. He said what the applicant was talking about was that they were at 30% lot coverage now, so there will be no expansion of the new structure. Madge asked why there were two numbers? She said one was 1705 and the other 2241, she was concerned because they cannot increase it to 2200. Roger A. stated that the larger number includes the dimensions of the outbuilding. Madge said, ok. Roger said the new building would still be 1705 square feet. Madge thanked Roger.

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Madge B. asked if they would be doing a site visit? Roger A. said they could, and asked members if they wanted to do it individually or as a group? Steve F. asked if Mr. Matthews could have the location of the septic tank marked for the site visit? Mr. Matthews believed he could. He asked if they wanted the tank and chambers or just the tank. Steve stated, "Just the four corners of the tank". Mr. Matthews said, ok. Steve thought that based on the septic design they could figure out the location of the chambers. Steve said he was asking because he was wondering if it was possible to center the structure on the lot. Mr. Matthews stated that on the sideline that was not conforming he made the new location conforming, which he thought was good enough. He believed that with the new location he was cutting it close with the septic system, but he made sure to get the 10 feet off the side lot line.

Steve F. thought a site visit would be helpful, and that getting it more centered on the lot for things such as fire protection, if it could be further from an abutting building, it would be good. Steve said he didn't know what was there at present.

Roger A. stated a site inspection would be done on Monday, March 1 at 4:00 pm. A notice to abutters will be mailed as well. The next review of the project will be Tuesday, March 9th at 6:30 pm.

Nothing further was discussed.

Growth Permit(s)

Roger A. stated the board had a Growth Permit to be reviewed for Map 7, Lot 16-3A. He stated that from the original subdivision back in the early 70's, then sold to Northwoods, there were 3 lots. He said Map 7, Lot 16, lots 1 – 3 were not to be divided again. He said at present there is a growth permit application on lot #3, they split the lot and the owner is looking for a growth permit.

Roger A. stated there was a deed, which he hadn't seen yet. He said he emailed CEO Demers earlier in the day noting that for the original division it was stated the lots were not to be divided. He said it was up to the owner of the lot to ensure they could divide the lot and create a building lot.

Roger A. stated another provision in this subdivision is that lots 1 thru 3 are for a single family dwelling only. He stated that by dividing the lot, it would create 2 single family dwellings. He said again, he didn't feel the division was supposed to be done.

Roger A. stated that whoever the lawyer was that bypassed that restriction, that is a problem for the homeowner to rectify. He said the lot could possibly meet the criteria of a building lot, but there may be a deed restriction preventing it from being done.

CEO Demers asked Roger if he was saying, that on the parent lot of lots 1, 2 and 3, there's a deed restriction saying that that parent lot may not be divided. Roger agreed. CEO Demers asked if Roger had something that he has not seen? Roger asked Barbara F. if she sent anything to CEO Demers. Barbara stated she did not have an actual 'plan' of the original subdivision. CEO Demers stated that he did some research and the verbiage he read was 'it shall not be divided without Planning Board approval', and he felt the subdivision had Planning Board approval. CEO Demers asked if they look and honor the deed restriction, or do we say the town standards are 200 feet of frontage and 80,000 square feet? He asked if it was incumbent on the board to enforce that or is that

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for the property owner to come to us and get approval? Roger said it was up to the property owner to show that they can divide it. Barbara asked if any re-division of a subdivision came back to the Planning Board? CEO Demers stated the subdivision he saw, took in lots 1 and 2 and it specifically said lot 3 was not subject to the conditions and limitations of the subdivision. Steve F. asked if they were trying to divide lot 3 now? CEO Demers stated, "Correct".

Maggie M. stated the information she read said that you could build a house but only one side could, because of the original size of the lot. She believed one of the parties could build a house, not both. Maggie was referring to a letter received from CEO Demers which read in part as follows:

This office represents the Back Lot Owner's Association, LLC (the "Association"), which owns land on Square Pond in Shapleigh, Maine, specifically, Lot 9 as appears on the 1942 and 1972 plans for "the Indian Village" subdivision.

It is the Association's position that only one single family residence may be constructed on Tax Map 7, Lots 16A, 16B, 16-1, 16-2, and 16-3. Each of the deeds to these parcels included the right to use Lot 9 for picnicking, sunbathing and swimming in Square Pond, and for no other purposes. Significantly, a further restriction in those deeds specified that only one single-family residential home could be developed on each of the benefitted parcels.

On or about March 22, 2019, the then-current owners of Lot 16-3 (Debra St. Laurent and Bruce Picard) conveyed a portion of that lot to John and Paula Berg. The deed to the Bergs included the grant of the easement over Lot 9 as well as the restriction to one single family residence. As

set forth in the enclosed letter to these parties, it is the Association's position that only the Bergs may construct a home on their parcel in light of the deed restriction limiting Lot 16-3 to one single-family residence. Stated another way, the construction of two homes on what was originally Lot 16-3 would violate the restriction set forth in the deed form Northwoods.

David S. Sherman, Jr. of Drummond Woodsum Attorneys at Law

CEO Demers said that another way to read it is one single family dwelling per lot and if you create a new lot that meets the dimensional requirements of the town, then I don't see why you can't have the two structures. Barbara F. asked if the town doesn't have the answer, can they get a legal opinion at the property owners' expense?

Barbara F. asked what the letter he provided referred to? CEO Demers stated there was an easement over certain lots for people to sunbath and picnic. He said now the Back Lot Association owns the right-of-way's and they are trying to limit the number of people that have deeded easement over them. He said their concern is if you put a subdivision on the back lot, instead of one property owner having access, you have four or five. He felt they had a legitimate gripe, but he didn't think that had anything to do with the town. He believed it was a civil matter. Roger A. agreed and said that is why he brought it up, so the new owners can get it rectified.

CEO Demers believed that as far as the town was concerned, if you have 80,000 sf and 200 feet of road frontage and its not part of a subdivision originally, then you can get a growth permit. Roger agreed. CEO Demers felt the board had no legal authority to enforce deed restrictions. Madge B. agreed the board did not enforce deed restrictions. Roger agreed it was a civil issue but he felt it was better to get it resolved prior to moving forward.

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Roger A. stated his other concern was whether or not both parcels will have the required 200 feet of road frontage. CEO Demers said lot 3 was what was leftover from the other lots getting cut off. He said the old Stone Post Road plan had 1300 lineal feet plus or minus, and it is actually 1700 lineal feet. He said by cutting the one lot off, the remainder lot has sufficient road frontage. He said he could understand there being confusion when there is a plan showing there isn't enough frontage. Roger said that because we have the recorded subdivision plan that shows 196.37 and 115.75, then 36.76, it does not equal the required 400 feet. CEO Demers said someone made a mistake. Roger said the board can't grant the permit until someone shows a plan depicting the correct road frontage. CEO Demers agreed and said if the newly created lot can prove they have 200 feet, he didn't see why the board couldn't accept that and give the growth permit. He said the remainder lot, if they come before the board, then they have to prove they have 200 feet. Roger and Madge both agreed you cannot create a non-conforming lot. Roger said the board can't grant people A, even if they have 200 feet of road frontage, when they took that piece away from the mother lot, and the mother lot now is a non-conforming lot.

CEO Demers asked if the board is requesting that the applicant not only show they have 200 feet of road frontage, but the lot it came from also has to show they have 200 feet + of road frontage? Both Roger and Madge said, yes.

Steve F. stated the road frontage was on Stone Post Road. He asked if CEO Demers knew the status of Stone Post Road? Madge B. said it was an unimproved road. Steve agreed, noting it was a 4-wheeler trail and the deed for the applicant shows the frontage is on Stone Post. CEO Demers said that Stone Post Road is a public road, the Town of Shapleigh has a 50 foot easement over that road and it was adopted not that long ago.

Roger A. stated the board would hold the growth permit until the applicant can show that both lots have the required road frontage. CEO Demers stated that he would contact the applicant and let them know what the board is requiring and it isn't a full lot survey, just the fact that both lots have 200 feet of road frontage plus. Steve F. stated looking at the deed it appears it was surveyed in 2014, so it should be easy to get the information. CEO Demers agreed.

Nothing further was discussed.

Other:

Roger A. stated after the last meeting he went the next day to the town office to sign the growth permit for Ted Theriault, Map 41, Lot 33 and in reading the deed he noticed that both lots 5 and 15A had been combined in the deed. He said; therefore, the deed is fine, it reflects there is only one lot.

Barbara F. stated she had corresponded with Davis Bartlett and she believed the subdivision would be coming back before the board at the next meeting.

Steve F. asked who would make sure Mr. Matthews had the right numbers for the next review of the structure replacement? CEO Demers stated he would go to the site visit with the board and make sure the numbers are correct.

Nothing further was discussed.

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

NOTE: The winter hours are in effect as of November 1st; the meetings now begin at 6:30 p.m. and any scheduled public hearing begins at 6:00 p.m.

The next Planning Board meeting scheduled will be via Zoom on Tuesday March 9, 2021 at 6:30 p.m. See the Town website, www.shapleigh.net to obtain the link details, or use the information below.

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

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

- **Join Zoom Meeting**

<https://us02web.zoom.us/j/88005967573?pwd=OWxLdWM5eTZ5V28yL05VdWdVSmFjQT09>

- **If calling in:** Find your local number: <https://us02web.zoom.us/j/88005967573?pwd=OWxLdWM5eTZ5V28yL05VdWdVSmFjQT09>

Zoom Meeting ID: 880 0596 7573 Passcode: 860338 (For all links)

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

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, 207-636-2839, x4.

Respectfully submitted,

Barbara Felong, Land Use Secretary

Town of Shapleigh

planningBoard@shapleigh.net