

Shapleigh Planning Board

Minutes

June 28, 2022

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

Steve Foglio (Vice Chairman) and Ann Harris were unable to attend.

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.

Public Hearing Began at 6:34 pm

Amendment to a Conditional Use Permit – 30’ x 150’ Storage Facility and 3,750 sq. ft. Building for Office Space / Business Storage – Shawn Woods, Applicant & Property Owner

Mr. Woods was in attendance for the public hearing.

Roger A. asked Mr. Woods to describe what he would like to do. Mr. Woods stated he wanted to add two additional accessory structures on the property. He said one was a 3700 sq. ft. garage for his business and the other was a 100+ x 30’ storage unit for rental space. Roger asked how much of the property would be occupied by structures? Mr. Woods stated they were at 15% lot coverage.

Mr. Woods stated that he maintained the parking spaces that previously existed and met the ordinance for the additional ones needed for both structures.

Roger A. asked if there were any questions for Mr. Woods? Roland L. asked if there would be any change with signage? Mr. Woods said no, they would be utilizing the same structure that is out there currently, they would just fill in the one blank space that was left (for Woods Construction). He said he would not be expanding the current sign structure.

Roland L. said that Mr. Woods had mentioned the lighting would be diffused downwards. Mr. Woods said that yes, for the storage units it would face down and onto the property, and not away from it.

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

The public hearing for Mr. Woods closed at 6:36 pm.

Conditional Use Permit – Garage Sale Business – Map 14, Lot 11 (217 Emery Mills Road) – Richard Hagman, Applicant & Property Owner

Mr. Hagman was present for the public hearing.

Roger A. asked Mr. Hagman to let the board know what he wanted to do. Mr. Hagman stated that he was proposing a garage sale business, asking for hours of operation from 9:00 am to 8:00 pm, 7 days a week as recommended. He stated that the lighting would be downward lighting, possibly two additional lights. He said he had two of the old green enamel barn lights that were given to him, so he wanted to put those up and take down the existing dusk to dawn light that is on the top of the barn. He said it wasn't functional and he thought it was ugly.

Mr. Hagman stated that based on his conversation with CEO Demers, he was required to have 8 parking spaces, and he believed he had enough area for 21 parking spaces.

Roger A. asked if there were any questions? There were no questions.

The public hearing closed at 6:38 pm.

The minutes from Wednesday, June 15, 2022 were accepted as written.

The Planning Board meeting started at 7:00 p.m.

Board members did a site inspection prior to this evenings meeting for all three applications being reviewed.

Amendment to a Conditional Use Permit – 30' x 150' Storage Facility and 3,750 sq. ft. Building for Office Space / Business Storage – Shawn Woods, Applicant & Property Owner

Mr. Woods was in attendance for the review of the application.

Originally provided in January of this year, was a Site Plan which depicted the lot dimensions; the location of Emery Mills Road and the entrance onto the road; the existing 40' x 116' building & 30' x 260' storage units; septic location; paved area, and location of a proposed 50' x 70' structure which was noted as being 70' from the right lot line. There also was a square area adjacent to the proposed new building which appears to be a future septic location.

Provided on June 15th were the following documents:

D1, drafted by Carl V. Beal, PE 5013, dated May 11, 2022, Sheet Title: Existing Drainage Plan – This plan included the existing structures.

D2, drafted by Carl V. Beal, PE 5013, dated May 11, 2022, Sheet Title: Proposed Drainage Plan – This plan in addition to the drainage details depicts a proposed 30' x 150' Storage Building & a 3,750 sq. ft. Building for Woods Construction.

D3, drafted by Carl V. Beal, PE 5013, dated May 11, 2022, Sheet Title: Drainage Details Plan – Details a Stone Level Spreader

C1, drafted by Carl V. Beal, PE 5013, dated May 11, 2022, Sheet Title: Site Plan – Depicts existing & proposed structures, and topography.

This evening provided was the following:

C1, drafted by Carl V. Beal, PE 5013, dated June 21, 2022, Sheet Title: Site Plan – Depicting existing conditions, proposed structures, topography and *existing and proposed parking spaces*.

The detailed description of the project is as follows: *50' x 70' storage facility w/office and shop space for Woods Construction*.

Roger A. opened the regular meeting by asking Mr. Woods what he intended to do. Mr. Woods stated he wanted to add two accessory structures, one would be a garage for his business – a 3700+ foot garage with a small office space to do paperwork. He said the other was a commercial rental building, units to lease to the public, consisting of 15 rental spaces.

Mr. Woods stated there would be no major lighting upgrades, he would be improving the landscaping and curb appeal for the building that is there now.

Roger A. began review of the Zoning Ordinance as follows:

Basic Performance Standards:

- 105-21** – Traffic. *Roger stated that traffic access to the site is safe. He said that the applicant added two more buildings, the proposed use of the buildings would not create much of an increase in traffic coming to the site.*
- 105-22** – Noise. *Roger stated due to the nature of the business, there would be no excessive noise created. Roger noted opposition to the motorcycle repair shop, so their hours to run the engines was limited. Mr. Woods stated he was not usually there during the day. Barbara F. noted there has never been a problem with noise at this location.*
- 105-23** – Dust, fumes, vapors and gases. *Roger stated this business will not create any dust, fly ash, fumes, vapors or gases which could damage human health, animals, vegetation or property, emitted beyond the lots lines. Mr. Woods agreed, citing the fact they do not have any storage tanks on site.*
- 105-24** – Odors. *Roger stated there will be no offensive or harmful odors perceptible beyond its lot lines, either at ground or habitable elevation for this business.*
- 105-25** – Glare. *Roger stated there will be no additional lighting creating a strong dazzling light onto neighboring properties, there are only lights being added to the storage building and they will shine down and onto the property, not facing off-site.*
- 105-26** – Stormwater runoff. *Roger stated the stormwater on site was evaluated by Carl V. Beal, PE #5103, and a plan was engineered to mitigate any storm event.*
- 105-27** – Erosion control. *Roger stated erosion control was also addressed by Carl Beal.*
- 105-28** – Setbacks and screening. *Roger stated no changes are being made to what exist at this time, and Mr. Woods stated he would be adding additional vegetation in the future.*
- 105-29** – Explosive materials. *Roger stated the only explosive tank is being used by Beadles Bait & Tackle and that will remain, and it is an approved propane tank.*
- 105-30** – Water quality. *Roger stated there is no chemicals or industrial waste stored outside.*
- 105-31** – Preservation of landscape; landscaping of parking and storage areas. *Roger stated parking is in existence, and any additional parking will not disturb what is in place at this time.*

- 105-33** – Refuse disposal. *Roger A. asked Mr. Woods about refuse disposal. Mr. Woods stated they would not be generating any refuse on site. Any waste cans will be disposed of by him.*
- 105-34** – Access control on Route 109. *Roger A. stated there are no changes to the entrance being made. Madge B. asked if there was a copy of the permit in the file for Mr. Woods to reference. Roger stated there has been no change from the original approval and the business has always been in existence, so there needn't be another obtained. Roger noted that Mr. Hagman needed one because there hasn't been a business operating at that location for well over a year. Mr. Hagman stated there were people turning around in his parking lot all the time and there are no records of any accidents in that location. Madge said she was just wondering if there would be one in the file.*
- 105-43** – Off-street parking and loading. *Roger stated a parking plan was provided this evening showing the existing and new parking spaces.*
- 105-46** – Sanitary provisions. *Roger A. stated there is an existing State approved septic system on site for the existing building, and there is a copy of the septic design on file. Roger asked if there would be any sanitary provisions in the new building for Woods Construction. Mr. Woods stated that he did intend on putting a small bathroom in the building and will get a septic design to support that. CEO Demers asked if the bathroom would be open to the public? Mr. Woods stated that it would not. Mr. Woods added that they would use the existing water on site.*
- 105-47** – Signs and Billboards. *Roger A. stated that all signage must be permitted and approved through the Code Enforcement Office.*

Roger A. reviewed §105-73.G 'Standards applicable to conditional uses' findings of fact 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. *Roger stated, it will not, the new buildings are not in the Shoreland District and there is very little vegetation being removed, it is mostly dirt and some grass.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *Roger stated this is not applicable.*
- 3) The use is consistent with the Comprehensive Plan. *Roger stated it is, the Comp Plan is in favor of businesses on Rte. 109.*
- 4) Traffic access to the site is safe. *Roger stated this location has an approved entrance and meets the site distance requirement in both directions.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *Roger stated it is, the project is not in the flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *Roger stated a State approved septic system is on site, and any solid waste will be removed by the applicant.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *Roger stated there will not be any generated.*

- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger stated there is a stormwater plan designed by Carl V. Beal, PE 5013, drainage detail plan dated May 11, 2022.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger stated erosion was taken care of by Carl V. Beal, PE 5013, drainage detail plan dated May 11, 2022.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger stated there was, the Emery Mills Fire Hydrant is not far from this location.**
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors, and the like. **Roger stated there is existing vegetation, there is no noise, fumes, dust, odors and the like being generated. Any additional lighting being added will face downward and directed on the property. Mr. Woods stated he will be adding to the existing vegetative buffer in the future.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger stated they will with conditions.**

Madge B. asked if this would be opened 24 hours a day? Roger A. stated that it would be for the storage units. Maggie M. asked if this meant no matter what time of the day you come on site to store something, it will not matter? Madge agreed. Roger stated that he believed there were hours for Beadle’s and the motorcycle shop. He said with respect to the storage buildings, he didn’t see an issue with 24 hours a day. He asked Mr. Woods if he would be working on site at 6:30 am and then leaving. Mr. Woods agreed, stating that other than maintenance of vehicles, they would not be working on site. Roger asked if there would be stockpiling of soil or work materials? Mr. Woods stated that there would not be. Roger said he would like that as a condition, no stockpiling of materials on site. Roger asked if there were any other questions? There were none.

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

- 1) **The storage facility will be open 24 hours a day, 7 days a week.**
- 2) **There shall be no stockpiling of construction material on site.**
- 3) **All previous conditions for the motorcycle repair shop (SR Cycles) and Beadles Bait & Tackle Shop & boat motor repair, shall remain in effect.**

Madge B. moved for approval of the Amendment to a Conditional Use Permit for the 2 new structures on Map 18, Lot 28, per the plans provided and with the stated conditions. Maggie M. 2nd the motion. All members were in favor. By a vote of 4 – 0, the motion to approve was unanimous.

Nothing more was discussed.

Findings of Fact

- 1. The owner(s) of Shapleigh Tax Map 18, Lot 28 (146 Emery Mills Rd) is Shawn Woods, mailing address of P.O. Box 1806, Sanford, ME 04073. (No copy of the deed was provided.)
- 2. The property is located in the General Purpose District, and according to the Assessor’s office, it contains 3.6 Acres.

3. Provided was a sketched Site Plan which depicted the lot dimensions; the location of Emery Mills Road and the entrance onto the road; the existing 40' x 116' building (noted as 40' x 110' on the final plan) & 30' x 260' storage building; septic location; paved area, and location of a proposed 50' x 70' structure which was noted as being 70' from the right lot line. There also was a square area adjacent to the proposed new building which appears to be a future septic location.
4. Provided were the following:
 - D1, drafted by Carl V. Beal, PE 5013, dated May 11, 2022, Sheet Title: Existing Drainage Plan – This plan included the existing structures.
 - D2, drafted by Carl V. Beal, PE 5013, dated May 11, 2022, Sheet Title: Proposed Drainage Plan – This plan in addition to the drainage details depicts a proposed 30' x 150' Storage Building & a 3,750 sq. ft. Building for Woods Construction.
 - D3, drafted by Carl V. Beal, PE 5013, dated May 11, 2022, Sheet Title: Drainage Details Plan – Details a Stone Level Spreader
 - C1, drafted by Carl V. Beal, PE 5013, dated May 11, 2022, Sheet Title: Site Plan – Depicts existing & proposed structures, and topography.
 - C1, drafted by Carl V. Beal, PE 5013, dated June 21, 2022, Sheet Title: Site Plan – Depicting existing conditions, proposed structures, topography, and *existing and proposed parking spaces*.
5. The original detailed description of the project is as follows: *50' x 70' storage facility w/office and shop space for Woods Construction. (30' x 150' Storage Facility was added after the application was initially presented.)*
6. The application as presented met the requirements under Article V – Basic Performance Standards, per the documentation provided and as presented with three conditions. The lot size meets the minimum required, and lot coverage does not exceed 20%; there are no prohibited uses on site; there is safe access to and from Rte. 109 – site distances are met; there shall be no excessive noise, dust, fumes, vapors or gases, odors, or glare from the 2 proposed new structures; stormwater runoff and erosion control was engineered by Carl V. Beal, PE #5013; setbacks and screening are in existence; there are no explosive materials; there was a parking plan presented & existing vegetation will remain and be added to; refuse will be taken care of by the applicant; water quality will not be affected by the proposed activity and any additional plumbing shall be permitted through the Code Enforcement Office (there is no public bathroom facilities being added).
7. The application as presented met the performance standards under §105-73 'Conditional Use Permits' as per the documentation provided and as presented with three conditions. The proposed new use will not have an adverse effect on aquatic life or wildlife; the lot is not located within the Shoreland District; the use is consistent with the Comprehensive Plan which promotes business on Rte. 109; traffic access to the site is safe; the lot is not located within the flood zone; solid waste shall be removed by the applicant & any sanitary provisions shall be permitted through the Code Enforcement Office; there is no hazardous waste associated with the proposed uses, a stormwater plan was provided, drafted by Carl V. Beal, PE #5013, which also handled erosion control; there is a fire hydrant located near the proposed uses for fire protection; there are existing buffer strips, and additional landscaping is proposed by the applicant.
8. A notice was mailed to all abutters within 500 feet of the property on June 17, 2022. Meetings were held on Wednesday, June 15, 2022 and Tuesday, June 28, 2022. A site inspection was done by members prior to the meeting on June 28th. A Public Hearing was also held on June 28th prior to the meeting.

9. The Planning Board unanimously agreed to approve the Amendment to a Conditional Use Permit for the addition of a 30' x 150' storage building & 3,750 sq. ft. building for Woods Construction on Map 18 Lot 28, per the documents provided and as presented, with three conditions.

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

- 1) **The storage facility will be open 24 hours a day, 7 days a week.**
- 2) **There shall be no stockpiling of construction material on site.**
- 3) **All previous conditions for the motorcycle repair shop (SR Cycles) and Beadles Bait & Tackle Shop & boat motor repair, shall remain in effect, they are as follows:**

Beadles

1. **The total number of items waiting for repair shall be limited to three. The number of boats for sale on site shall remain ten. The total number of items on site for this business shall be thirteen.**
2. **Repair vehicles shall remain in the designated area directly adjacent to the repair building as drawn on the plan.**
3. **Items for repair shall be limited to boats, ATV's and lawnmowers.**
4. **The hours of operation shall be from 5:00 a.m. thru 7:00 p.m., seven days a week.**
5. **No motors shall be run / tested between 7:00 p.m. and 7:00 a.m., seven days a week.**
6. **All waste oil, gasoline and antifreeze shall be collected in approved containers. All antifreeze shall be removed from site by an approved waste collection agency.**

SR Cycles

1. **Used tires shall be kept in one of the empty storage facility containers.**
2. **The scrap metal shall be stored inside and removed from site at least three times a year.**
3. **The hours of operation shall be 8:00 a.m. thru 9:00 p.m., six days a week. Closed on Sunday.**
4. **There shall be no more than 30 vehicles for sale parked outside, which includes motorcycles, scooters, ATV's, dirt bikes, snowmobiles, trailers and utility trailers.**
5. **The conditions of approval for Beadles Bait and Tackle Shop and the Storage Facility shall remain in place.**
6. **Any signage shall be permitted thru the Code Enforcement Office.**

Decision:

The Amendment to a Conditional Use Permit for the addition of a 30' x 150' storage building & 3,750 sq. ft. building for Woods Construction on Map 18 Lot 28, per the documents provided and as presented, with three conditions, was approved.

Conditional Use Permit – Garage Sale Business – Map 14, Lot 11 (217 Emery Mills Road) – Richard Hagman, Applicant & Property Owner

Mr. Hagman was present for the review of his application.

Provided along with the application was a copy of the Subsurface Wastewater Disposal System Application for a 3 bedroom single family dwelling, drafted by Brian W. Howard, SE #196, dated 1/8/2005. Also provided this evening was a parking plan showing an area 35' x 121' in size for parking, it was noted 8 parking spaces were required per the ordinance and this area exceeded that number.

The detailed description of the project is as follows: *Conditional Use Garage Sale Business*

Roger A. asked Mr. Hagman to let the board know what he wanted to do for the record. Mr. Hagman stated that he wanted to run a garage sale business, and he would like to propose hours of operation from 9:00 am to 8:00 pm, 7 days a week. He said there was a question about lighting, and noted there would likely be 2 lights added and they will be down light, and the existing dusk to dawn light will be removed at some point. He said he was currently waiting for an electrician.

Mr. Hagman stated that he and CEO Demers discussed that there were 8 parking spaces required, and he believed there was enough square footage for 20+ cars.

Roger A. began review of the Zoning Ordinance as follows:

Basic Performance Standards

- 105-21 – Traffic. *Roger stated that traffic access to the site is safe, you can see in both directions when pulling out.*
- 105-22 – Noise. *Roger stated this business was only sale of items, there is no noise generated by this activity.*
- 105-23 – Dust, fumes, vapors and gases. *Roger stated this business will not create or emit any dust, fly ash, fumes, vapors or gases.*
- 105-24 – Odors. *Roger stated there will be no offensive or harmful odors associated with this business.*
- 105-25 – Glare. *Roger stated no land use or establishment shall be permitted to produce a strong dazzling light or reflection of that light beyond its own lot lines onto neighboring properties, or onto any Town way so as to impair the vision of the driver of any vehicle upon that Town way. All such activities shall also comply with the applicable Federal and State regulations. Roger stated the lights Mr. Hagman was proposing will meet this criteria.*
- 105-26 – Stormwater runoff. *Roger stated nothing is being changed on the exterior of the buildings that would create a stormwater issue. The building and parking area have been in existence for some time.*
- 105-27 – Erosion control. *Roger stated erosion control is the same, there are no changes being made to the property for the proposed business.*
- 105-28 – Setbacks and screening. *Roger stated no changes are being made to what exist at this time.*
- 105-29 – Explosive materials. *Roger stated there are no explosive materials held or generated on site.*
- 105-30 – Water quality. *Roger stated there is no chemicals or industrial waste stored outside.*
- 105-31 – Preservation of landscape; landscaping of parking and storage areas. *Roger stated parking is in existence, and the existing vegetation will remain in place.*
- 105-33 – Refuse disposal. *Roger A. asked Mr. Hagman about refuse disposal. Mr. Hagman stated that he would take any refuse off site himself.*
- 105-34 – Access control on Route 109. *Roger A. stated that because this business does not have an entrance permit and there has been no business operating in this location for over a year, a new MDOT permit will be required. CEO Demers stated he would get the information to Mr. Hagman on how to apply. Madge B. asked if the permit dealt with the width of the entrance? Roger stated that the MDOT will tell Mr. Hagman if he has to reduce the size*

of the entrance. Mr. Hagman did not see why they would have him change what is in existence and has been for years. CEO Demers said that because he is not making a new curb cut, chances are it will remain the same.

105-46 – Sanitary provisions. *Roger A. stated there is an existing State approved septic system on site for the existing building, and there is no public bathroom for this business.*

105-47 – Signs and Billboards. *Roger A. stated that all signage must be permitted and approved through the Code Enforcement Office. Mr. Hagman was not sure what he wanted for signage but would talk to CEO Demers about what is allowed.*

105-57 – Garage sale business. Garage sale businesses as defined in Article III of this chapter, may be conducted as a conditional use, subject to the below standards.

- A. Adequate off-street parking shall be provided in such a manner that the visibility of drivers along the public roads is not reduced. *Roger A. stated this condition can be met.*
- B. A maximum of two signs, each not exceeding three square feet in area, may be erected on the operator's property. *Roger A. stated signage is through the CEO.*
- C. All display tables shall be cleared and removed to a location not visible from the road at the end of each business day. *Roger A. stated this would be a requirement.*
- D. All relevant provisions of this chapter must be complied with.

Roger A. reviewed §105-73.G 'Standards applicable to conditional uses' findings of fact 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. *Roger stated, it will not, no changes are being made to the exterior of the building or property.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *Roger stated this is not applicable.*
- 3) The use is consistent with the Comprehensive Plan. *Roger stated it is, the Comp Plan is in favor of businesses on Rte. 109.*
- 4) Traffic access to the site is safe. *Roger stated this location can meet the site distance requirement and it will obtain a MDOT entrance permit from the State. Madge B. thought it would be best to put something in the conditions about not backing out onto Rte. 109. Roger stated that they would also put a condition that there shall be no parking along Rte. 109. Mr. Hagman noted that he would not allow it. Madge said that the board would normally put that as a condition. Maggie M. asked about going one way in, and one way out. Mr. Hagman stated that no business on 109 had one way in or out. Madge did not believe the board was requiring that.*
- 5) The site design is in conformance with all municipal flood hazard protection regulations. *Roger stated it is, the project is not in the flood zone.*
- 6) Adequate provision for the disposal of all wastewater and solid waste has been made. *Roger stated a State approved septic system is on site, and any solid waste will be removed by the applicant.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *Roger stated there will not be any generated.*

- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. **Roger stated there are no changes being made to the property that would create a stormwater issue, there are no existing issues.**
- 9) Adequate provisions to control soil erosion and sedimentation have been made. **Roger stated there are no changes being made to the property which would create an erosion issue. There is existing vegetation in place to help mitigate erosion.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **Roger stated there was, the Emery Mills Fire Hydrant is not far from this location.**
- 11) The provisions for buffer strips and on-site landscaping provide adequate protection to neighboring properties from detrimental features of the development, such as noise, glare, fumes, dust, odors, and the like. **Roger stated there is existing vegetation, there is no noise, fumes, dust, odors and the like being generated. The two proposed lights will face downward, not onto Rte. 109 or the neighboring property.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **Roger stated they will with conditions.**

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

- 1) **The hours of operation may be 9 am through 8 pm, 7 days a week.**
- 2) **A State of Maine DOT Entrance Permit for a Business is required prior to operation. A copy to be provided to the Code Enforcement Officer.**
- 3) **There shall be no parking on State Route 109. No one is allowed to back out onto Route 109 from the parking area.**

Roger A. asked if there were any other questions or comments? There were none.

Madge B. moved for approval of the Conditional Use Permit for a garage sale business on Map 14, Lot 11, per the information provided and with the three stated conditions. Maggie M. 2nd the motion. All members were in favor. By a vote of 4 – 0, the motion passed unanimously.

Nothing more was discussed.

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**Findings of Fact**

- 1. The owner(s) of Shapleigh Tax Map 14, Lot 11 (217 Emery Mills Rd) is Richard B. Hagman, mailing address of 363 West Street, Reading MA 01867, per Quit-Claim Deed with Covenant, registered at York County Registry of Deeds, Book 16961, Page 999, recorded 1/30/2015.
- 2. The property is located in the Shoreland District, and according to the Assessor’s office, it contains 1.09 Acres.
- 3. Provided was a copy of the Subsurface Wastewater Disposal System Application for a 3 bedroom single family dwelling, drafted by Brian W. Howard, SE #196, dated 1/8/2005.
- 4. The detailed description of the project is as follows: *Conditional Use Garage Sale Business*

5. The application as presented met the requirements under Article V – Basic Performance Standards, per the documentation provided and as presented with three conditions. The lot is a lot of record and lot coverage does not exceed 20%; there are no prohibited uses on site; there is safe access to and from Rte. 109 – site distances are met – DOT approval is required for the new business, because there has been no approved business on site within the past year; there shall be no excessive noise, dust, fumes, vapors, gases, odors, or glare from the proposed new business; there are no changes being made to the site to create stormwater runoff or erosion; screening is in existence and will remain; there are no explosive materials; there was a parking plan presented & the minimum 8 space requirement can be met; refuse will be taken care of by the applicant; water quality will not be affected by the proposed activity.
6. The application as presented met the requirements under §105-57 ‘Garage sale businesses’ with three conditions. There is adequate off-street parking; signage shall be through the Code Enforcement Office; display tables shall be cleared and removed to a location not visible from the road at the end of the day.
7. The application as presented met the performance standards under §105-73 ‘Conditional Use Permits’ as per the documentation provided and as presented with three conditions. The proposed new use will not have an adverse effect on aquatic life or wildlife; no changes are being made to the exterior of the structures; the use is consistent with the Comprehensive Plan which promotes business on Rte. 109; traffic access to the site is safe – a DOT entrance permit for the new business shall be required; the lot is not located within the flood zone; solid waste shall be removed by the applicant; there is no hazardous waste associated with the proposed use; the structures have been in existence and no changes are being made to create an erosion or stormwater issues; there is a fire hydrant located near the proposed use for fire protection; there are existing buffer strips.
8. A notice was mailed to all abutters within 500 feet of the property on June 17, 2022. Meetings were held on Wednesday, June 15, 2022 and Tuesday, June 28, 2022. A site inspection was done by members prior to the meeting on June 28th. A Public Hearing was also held on June 28<sup>th</sup> prior to the meeting.
9. The Planning Board unanimously agreed to approve the Conditional Use Permit for a garage sale business on Map 14 Lot 11, per the documents provided and as presented, with three conditions.
10. **The conditions of approval are as follows:**
  - 1) **The hours of operation may be 9 am through 8 pm, 7 days a week.**
  - 2) **A State of Maine DOT Entrance Permit for a Business is required prior to operation. A copy to be provided to the Code Enforcement Officer.**
  - 3) **There shall be no parking on State Route 109. No one is allowed to back out onto Route 109 from the parking area.**

**Decision:**

**The Conditional Use Permit for a garage sale business on Map 14 Lot 11, per the documents provided and as presented, with three conditions, was approved.**

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**Conditional Use Permit – Replace Walls & Stairs – Map 30, Lot 19 (12 Totte Rd) – Adam Dixey, Applicant & Property Owner**

Adam Dixey was present for the review of the application.

Provided along with the application were pictures showing the existing deteriorating walls and stairs; a layout of the footprint of the existing structure; a copy of the town tax map depicting Lot 19 and the surrounding lots; and a copy of the deed, showing Adam B. Dixey as owner, registered at York County Registry of Deeds on 7/16/2021, Book 18737, Page 72. Also provided was the mortgage boundary survey showing the lot dimensions, location of a tree on the property, the location of the retaining walls and stairs to be replaced, and noted on the plan was that one area was 13 feet in width comprised of wall-stairs-wall, and another area to be replaced was 17 feet in width comprised of a retaining wall.

Provided on June 15th was information from Ideal Concrete Block Company on pavers. One pamphlet was titled ‘Alta Wall’, one ‘Keystone Compac III Straight Split’, and one ‘A Contractor’s Guide to Installing Segmental Retaining Wall Systems’.

Provided this evening was the Design & Construction Manual for ReCon Retaining Walls, An In Depth Guide for Specifiers, Engineers and Installers. Mr. Dixey stated that he will be using North Shore Granite.

The detailed description of the project is as follows: *Replace existing retaining walls and stairs. Walls and stairs will be replaced with stacking concrete blocks.*

Roger A. asked Mr. Dixey to let the board know what he intended to do for the minutes. Mr. Dixey stated he would be replacing the existing sections of wall that he showed the board at the site visit, and the stairs, with North Shore Granite blocks, which allows him to build a wall up to 12 feet in height without any engineering or geogrid mat.

Roger A. said all the rocks being removed are going to Acton. Mr. Dixey said, “Yes”. Madge B. said, “So you take the rocks you have away”. Mr. Dixey said, “Yes, rocks and concrete”.

Roger A. asked about the survey for where the actual wall is. Mr. Dixey stated that Joe Stanley said he would come to the site next week (LinePro Land Surveying). He asked CEO Demers if he could start once he got the survey? CEO Demers said it depended on what the board said this evening.

Roger A. said with respect to the front wall, stabilization will be bark mulch. Mr. Dixey stated that yes, he would also put that and some sort of plants across the front.

Roland L. stated with respect to the mystery abutter next door, when he replaces the section of wall next to that property, he would need to be careful not to do anything that would cause the neighbors wall to deteriorate quicker, and he didn’t know how to do that. Mr. Dixey said there was a spot where there is nothing there, he will try to make it level. He said that was the hardest part of the project, was to try to figure out how to deal with that area. He said it would be better than what it is now. Roland said he wanted for the record to mention this, because he didn’t want the neighbor to say that now that Mr. Dixey’s wall is repaired, his wall is collapsing more. Mr. Dixey said he was going to take a lot of pictures before he starts, and the pictures will show he made the area better.

Roger A. said the reason Mr. Dixey is before the board was because he was moving greater than 10 cubic yards of rocks and fill (§105-39.D 'Earthmoving in the Shoreland District'). Roger said they (the walls) should go back to where they sit today. Mr. Dixey said, "Except for the stairs". Roger said the stairs will be moved to the left, from where they saw them today. Mr. Dixey agreed.

Roger A. said there wasn't a lot of BMP that can be used in this location (Best Management Practices). Madge B. said she was going to ask what happens with BMP in this location. CEO Demers said that he believed what would have to happen, was across the street down near the water, there would have to be something put in place. He said, "Just so any water leaving and crossing the road will gather across the street. I will work with him on it." Madge said, "Ok". She said Mr. Dixey already told the board that one of the reasons he wants to do this is because the water comes across his property and heads down toward the water. CEO Demers stated that Mr. Dixey owns both sides of the road, so if he sets up the silt screen downhill from the construction, it will be fine. Roger agreed he couldn't put anything on his side of the road. CEO Demers agreed, and he said he cannot put it in the road, so it will go on the opposite side of the road. Roger agreed.

Madge B. said the board did not have any kind of vegetation plan. Roger A. concurred, and said there was only a small area near the house itself. Madge said that he would disturb above the wall as well, even on the left hand side. CEO Demers said that he could have anything he wants up there, because technically anything behind the retaining wall is stabilized, so the area will be stabilized. He said it could be mulch, grass or trees. Madge said that Roger was suggesting that the condition be any bare ground behind the wall has mulch. Roger said that it could be mulch and he would turn it over to CEO Demers to make sure the area has something put in place. Madge said that the board will condition that the revegetation plan is mulch. Roger added that CEO Demers will also have to make sure the surveying is done before the project is started, because it is a condition in the ordinance.

Roger A. said the only other thing the board needed is a time frame on when Mr. Dixey plans to get started and when the project will be completed. Mr. Dixey thought he could give a window of July 15<sup>th</sup> to October 15<sup>th</sup>. He believed that would be enough time.

Roger A. said the conditions of the permit would be as follows:

- 1) The survey to locate the wall must be completed prior to starting the project.
- 2) Bark mulch and plantings shall be placed behind the wall, near the road, and in all areas disturbed by the project; stabilization plan to be approved by the Code Enforcement Officer.
- 3) Project start date shall be July 2022 and date of completion to be October 15, 2022, which includes all stabilization of the disturbed area with mulch and plantings.

Madge B. said the ordinance states that the 'smallest amount of bare ground shall be exposed for the shortest time', so once he starts, the board wants him to complete it as soon as possible. Mr. Dixey agreed that would be what he does, because otherwise it would be a problem. Madge said that the board also wants BMP below the project, across the street. Madge said she didn't want Mr. Dixey to think she was against the project, citing the fact it will be better than it is now. She just wanted to be sure the area was stabilized properly and the project was done quickly. Mr. Dixey said that he understood.

Roger A. said that condition #4 would be: Best Management Practices shall be put into place across the street, to prevent runoff from going into the water.

Mr. Dixey asked if he should just ask CEO Demers what he suggests he use. Roger A. said, “Yes”. Mr. Dixey asked about using hay. CEO Demers said that hay would work.

Roger A. asked if there were any other questions or comments? There were none.

**Roland L. made the motion to approve the conditional use permit to replace the existing retaining walls and stairs on Map 30, Lot 19, per the plans provided and as discussed, with the four conditions. Maggie M. 2<sup>nd</sup> the motion. All members were in favor. By a vote of 4 – 0, the motion to approve was unanimous.**

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

- 1) The survey to place the location of the wall on the property must be completed prior to starting the project.**
- 2) Bark mulch and plantings shall be placed behind the wall, near the road, and in all areas disturbed by the project; stabilization plan to be approved by the Code Enforcement Officer.**
- 3) Project start date shall be July 2022 and date of completion to be October 15, 2022, which includes all stabilization of the disturbed area with mulch and plantings.**
- 4) Best Management Practices shall be kept in place across the street until the project is completed in its entirety; completion includes the stabilization of the area with mulch and plantings.**

**§105-73.G ‘Standards applicable to conditional uses’ findings of fact are as follows:**

- 1) The use will not have an adverse impact on spawning grounds, fish, aquatic life, birds, or other wildlife habitat. *It will not, it will help to stabilize the area to protect spawning grounds, fish, and aquatic life.*
- 2) The use will conserve shore cover and visual, as well as actual, access to water bodies. *The use will help to protect shore cover, by stopping erosion. BMP shall be used until the project is completed.*
- 3) The use is consistent with the Comprehensive Plan. *It is, the Comp Plan wants to protect the Shoreland District.*
- 4) Traffic access to the site is safe. *This does not pertain to this project. Access is available for the intended project.*
- 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. *All debris from the existing walls and stairs shall be taken out of Shapleigh and brought to Acton.*
- 7) Adequate provision for the transportation, storage and disposal of any hazardous materials has been made. *There will not be any generated.*
- 8) A stormwater drainage system capable of handling fifty-year storm without adverse impact on adjacent properties has been designed. *The wall will be constructed per the engineered plans from the block company, best management practices shall be kept in place until the project is completed.*

- 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. Plans to be approved by the Code Enforcement Officer.**
- 10) There is adequate water supply to meet the demands of the proposed use and for fire protection purposes. **N/A 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. **The limited amount of noise is only during construction of the wall and stairs. There is no glare, odors and the like created. Dust will be minimal and only during the construction of the wall & stairs.**
- 12) All performance standards in this chapter applicable to the proposed use will be met. **They will with four conditions.**

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Findings of Fact

1. The owner(s) of Shapleigh Tax Map 30, Lot 19 (12 Tote Rd) is Adam B. Dixey of 30 Sewall Street, Marblehead, Massachusetts 01945, per the Deed of Sale by Personal Representative (Testate) (Maine Statutory Short Form), BK 18737, PG 72, recorded 7/16/2021.
2. The property is located in the Shoreland District, and according to the Assessor's office, it contains .10 Acres.
3. Provided were pictures showing the existing deteriorating walls and stairs; a layout of the footprint of the existing structure; a copy of the town tax map depicting Lot 19 and the surrounding lots; and a copy of the deed, showing Adam B. Dixey as owner, registered at York County Registry of Deeds on 7/16/2021, Book 18737, Page 72. Also provided was the mortgage boundary survey showing the lot dimensions, location of a tree on the property, the location of the retaining walls and stairs to be replaced, and noted on the plan was that one area was 13 feet in width comprised of wall-stairs-wall, and another area to be replaced was 17 feet in width comprised of a retaining wall.
4. Provided was information from Ideal Concrete Block Company on pavers. One pamphlet was titled 'Alta Wall', one 'Keystone Compac III Straight Split', and one 'A Contractor's Guide to Installing Segmental Retaining Wall Systems'. Also provided was the Design & Construction Manual for ReCon Retaining Walls, An In Depth Guide for Specifiers, Engineers and Installers. Mr. Dixey stated that he will be using North Shore Granite.
5. The detailed description of the project is as follows: *Replace existing retaining walls and stairs. Walls and stairs will be replaced with stacking concrete blocks.*
6. A notice was mailed to all abutters within 500 feet of the property on June 17, 2022. Meetings were held on Wednesday, June 15, 2022 and Tuesday, June 28, 2022. A site inspection was done by members prior to the meeting on June 28th.
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. The proposed new walls and stairs

will not have an adverse effect on aquatic life or wildlife; the project will help to conserve shore cover by stopping stormwater from entering the lake; the use is consistent with the Comprehensive Plan which wants to protect the waterbodies from stormwater / erosion; traffic access to the site is safe for the intended project; the lot is not located within the flood zone; rocks and cement will be removed by the applicant & shall be taken out of Shapleigh; there is no hazardous waste associated with the proposed project; the walls will be constructed per the engineered plans from the block company and will help prevent stormwater from entering the lake, erosion control measures shall be approved by the Code Enforcement Officer; the project takes place near the lake and fire protection is not a requirement for this project; there is limited noise and dust from the construction of the walls which shall be completed by October 15, 2022, there is no glare, odors and the like produced by this project; all performance standards shall be met with four conditions.

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 30 Lot 19, per the documents provided and as presented, with four conditions.

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

- 1) **The survey to place the location of the wall on the property must be completed prior to starting the project.**
- 2) **Bark mulch and plantings shall be placed behind the wall, near the road, and in all areas disturbed by the project; stabilization plan to be approved by the Code Enforcement Officer.**
- 3) **Project start date shall be July 2022 and date of completion to be October 15, 2022, which includes all stabilization of the disturbed area with mulch and plantings.**
- 4) **Best Management Practices shall be kept in place across the street until the project is completed in its entirety; completion includes the stabilization of the area with mulch and plantings.**

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 30, Lot 19 (12 Totte Rd), per the plans provided, with four conditions, was approved.

Growth Permits

Map 5, Part of Lot 25 (Owls Nest Road) – New Home – S. Foglio

GP #17-2022

Roger A. stated there was a survey plan and deed provided, which showed there was 200 feet on the road, and the lot met minimum requirements for a legal lot in the ordinance, as it is 1.84 acres in size.

Other:

CEO Demers began by stating he had a tough time with the surveyor requirement on existing retaining walls. He stated that the language the board is referencing is §105-4.D ‘Nonconforming structures’ (7)(C), and asked if this was correct? Roger A. said it could be that reference or it could be §105-4.D(9) ‘Low retaining walls in the Shoreland District’ (h). CEO Demers said the Planning Board can interpret this ordinance as they see fit, but he said where the board had been approving walls without the requirement of a survey for years, so he’s trying to figure out where this language came from and what the intent was. He said the 9(h) refers to a new low retaining wall, he said he had no issue with that. He said 7(C) refers to a structure that is going through best practical location, because it is from section 5, ‘removal, reconstruction or replacement’. He said he comes to (5)(a), which refers you to D(7)(b), where the Planning Board is determining whether the building reconstruction or replacement meets setbacks to the greatest practical extent. He said D(7) talks about the structure where all approved plans shall require confirmation in writing by a licensed surveyor that placement of the structure is correct. He said this is what is being referenced when going to the replacement retaining walls, but he did not think it applies. He said the Planning Board can read and interpret the ordinance how they see fit. He felt this requirement was slowing people down, it only requires 2 stakes, and he didn’t feel a surveyor should be required. He said in Chapter 1000, which is the DEP bare bones ordinance, there is no mention of a survey. He said this was a local addition that the town put in, and he said again he didn’t know what the original intent was. He felt it was holding people up.

Roger A. said the original intent was to prevent people from putting up walls that were not on their property, which had happened in the past. Madge B. agreed. Roger said in light of this, they required the applicant to show where the property line was. He said there were walls on Mousam, across from Totte Road, on 17th Street, there is not a lot that doesn’t have an issue with where the boundary lines are. CEO Demers believed that border disputes were not something the Planning Board and Code Office should get involved with. Roger said the board did not get involved, but when they come in for the wall replacement the board requires a surveyor depict where the wall is located, because there are too many issues with the side property lines. Roger said people have complained that a neighbor is on their land to the board. Roger said in light of this the board requires the property to be surveyed before they come to us, before the board approves the location. CEO Demers agreed that the board can require anything from the applicant, but where the ordinance says all approved plans ‘shall’ be required, he didn’t feel that verbiage applies to the replacement retaining wall. He stated that the Planning Board could still require it if it is in question, an issue with the side property lines. He felt again that this was holding people up.

Roland L. thought in some cases requiring the survey was overkill and did hold some projects up. CEO Demers felt it was an undue burden on the applicant. Roland added, “And expense.” Roland said that there were some that the board will look at where they might question, and at that time exercise the option of requiring the survey. CEO Demers thought perhaps they could work on some new language where the survey is optional. Roland said he agreed with that. Roland said that some applicants would use not having the requirement as an opportunity to extend their frontage. Madge B. agreed. Roland felt there needed to be some way of monitoring it, especially if there is a significant curve, something other than a straight line, which would lend itself to ‘let’s just get another foot or two, that would be nice to have’. Roland was not sure if the survey accomplished preventing that situation or not. He felt with the disrepair of some walls, and the willingness of people to replace them, the town should try to remove as many roadblocks as are practical, but not give them free reign. Roland said it was difficult to get a surveyor in right now, along with finding it hard to get materials. He thought it would be good to have the option of not requiring the survey in certain

locations. He said that if during the site inspection, there was something in question, we could require the survey. Barbara F. was curious how the board would know if something was in question or not?

Madge B. said the board would have to justify their decision to not require the survey in writing. Madge said if you do not require the survey, you have to explain why you required it here but not there. Roland L. said the language says ‘shall’, it doesn’t say ‘will’ or ‘must’. Both Madge and Roger stated that ‘shall’ meant it was mandatory. CEO Demers agreed, and said you would have to change it to ‘may’ to have it optional. Madge said that now the board has to require it, if you change it to ‘may’, the board has got to state in writing for the record why they are not requiring it. Roger noted that if you do not require some to do it, and require others, the person who is required to have a survey will want to know why the other person was exempt. CEO Demers felt that each property was unique and each application was different. Roger said if you change the requirement from shall to may, then you have to specify with each application why you required it or do not require it. Madge agreed. CEO Demers said you could say ‘we don’t know where the property line is’ and ‘we feel you are going to expand it in the future’. Madge stated that the board doesn’t know where the property line is, so they cannot expand on that. CEO Demers did not see where it states a structure cannot be replaced if it is on your property, that is between the neighbors. He said it says that if the structure exists today it can be replaced. Madge said the board doesn’t want to go there, replacing a structure that isn’t on the property. She felt it would put the town in court. CEO Demers disagreed, saying it was up to the homeowner to provide the correct information and if he did not and was on someone else’s property it goes back on him, not the board or CEO. Roger did not agree, he felt the board had to do due diligence to be certain what they were permitting was legal. CEO Demers felt if the neighbors do not come in to complain, then again it is on the homeowner if it isn’t correct. Madge did not feel the board can approve things that might be questionable without further information.

Roland L. asked the other board members if they felt a survey must be done every time? Maggie M. said, “Unless they have proof that a survey has already been done, and can prove it.” CEO Demers stated that for most building applications he asks for a plot plan, and asks them to state the distances. He said if the distance is less than what was stated, it is on the property owner that built the place, it isn’t on his office, he has the paperwork that states what is going to be built, they are liable. He felt the board was just the paper collector, just give me the plot plan. He didn’t feel it needed to be a survey in his opinion.

Madge B. said she wanted to keep the town out of court. Roland L. asked Madge if she felt if it went to a may instead of ‘shall’ it would end up in court? Madge said, “We could send it there if we do not give a reason for requiring one or not requiring one. We would be making a mistake that could be challenged in court.” Roger A. agreed, and added that was why he tried to treat everyone that comes before the board the same, so everything is black and white. He said there are no grey areas to be contested. Roger noted that he did not like it that the board changed the pavement requirement in subdivision from shall to may, he was not in agreement because it treats people differently. Madge believed changing this requirement would open the town up more to a legal issue, than the subdivision roads. Roland thanked Madge and Roger for their opinion, but he still felt it was important to get the walls built. CEO Demers thought if treating everyone the same is the goal, then he would eliminate the survey requirement. Madge said they can keep talking about it. Barbara F. believed it was added because there were issues with boundary lines in the shoreland district, and she recalls a wall that was built on someone else’s property, which may have triggered this change. CEO Demers said he knew of one too but the neighbors were fine with it. Barbara said this wasn’t the case with

the wall she was speaking about. The board felt it was great when both neighbors rebuild a wall at the same time.

Roland L. asked, “If an applicant comes fourth and says I’ve talked to DEP, I have a undercut situation from waves, and the DEP grants them the erosion wall, when they come before the board, we would still require a survey, so they are only in their area?” Roger A. said if the DEP is going to allow the new wall, and there wasn’t a structure there, since there is no replacement structure, we don’t require the survey. We only require it with a replacement structure. Roland asked if this would have similar property line issues? Roger said it was guaranteed that you could. CEO Demers said that a wall is before the board for earthmoving, so those standards are what should apply. Madge B. said the board can look at this at another time, but she didn’t want to review it further this evening. Maggie M. said if the DEP approves a wall and applies their own standards, then they override the board. CEO Demers said that they did not override the board. Maggie thought the DEP was more powerful than the town. Roger did not agree, the town has home rule and can apply their own set of standards. CEO Demers said the board can only do what is in the ordinance, and a new retaining wall not having to do with erosion, must meet the dimensional setbacks. He said, a new retaining wall that is necessary and required for erosion, does not have to meet dimensional setbacks. He said that they will have to do riprap before a wall, but if the DEP approves the wall through the individual permit, the language exists in the ordinance that we can approve it. Roger said that if he gets a DEP permit to replace his wall, and he then comes before the Planning Board, the Planning Board may require more than the DEP. CEO Demers said if something comes to his office that is approved by the Planning Board but he doesn’t feel he can approve it, he won’t approve it. Roger agreed with that.

Nothing further was discussed.

The Planning Board meeting ended at 8:15 p.m.

The Planning Board now meets the 2nd and 4th Tuesday of each month at 7:00 pm, 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 7:00 p.m. Public hearings are held at 6:30 pm, just prior to the meeting.

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