

Shapleigh Planning Board

Minutes

July 12, 2022

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

Ann Harris was 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.

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

The minutes from Tuesday, June 28, 2022 were accepted as amended. Madge B. was concerned that on page 4 under §105-34 Roger stated that there is a copy of the original DOT permit for Map 18, Lot 28 on file and she was not certain that was the case. She said she asked the question if there was one, and there was an assumption there was a permit. Madge asked if in fact there was a copy of the permit on file, and if not, the applicant could get one. Roger A. stated the original CU permit was for the White’s, and that the original business was permitted well over 30 years ago. (The actual date of the first approval for a business on this property was 1987.) Barbara F. asked if the entrance was grandfathered, due to the amount of time it has been in existence? Madge stated that in the record it states there is one, so she felt the record needed to be corrected. CEO Demers asked if there were any proposed changes to the business entrance? Madge said, no. CEO Demers stated that his opinion was that whatever is on file now, remains in place. Madge said if there is no DOT entrance permit, then she wanted the record to be amended. After continued discussion, members agreed to amend the minutes / record to remove the statement that a DOT entrance permit was on file. The record was amended as follows: **Roger A stated ~~there is an existing DOT entrance permit on file and there are no changes to the entrance being made and the existing access is safe.~~**

CEO Demers stated if there was a change to the entrance, then a new DOT permit would be required. Barbara F. said correct, and added if there had been no business for over a year, then a new permit would be required.

Conditional Use Permit – Replace Existing Retaining Wall – Map 34, Lot 40 (476 Cedar Drive) – Charles Starbird, Applicant; Dave Johnson, Property Owner

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

Provided along with the application was a sketch plan of the lot, which included the location of the house, stairs, and wall; a copy of a depiction of the proposed (2) 3 foot high block walls, being 1 foot apart, along with notes that stated ‘3/4” stone, 3” drainage pipe, drainpipe & leveling pad, with arrows showing where

each will be placed; a sketch plan depicting Wall #1 & #2 & 4' Stairway, existing duff & bushes, and where plantings and erosion control mix will be placed. Pictures of the existing wall were provided; a copy of the DEP Permit by Rule dated 6/15/2022; and a copy of the Subsurface Wastewater Disposal System Application, drafted by John Large SE #7, dated 4/17/1997.

Provided was a letter dated June 10, 2022, authorizing Mr. Starbird of C & D Landscaping to represent Mr. Johnson at all meetings dealing with permits for work located on his property at 476 Cedar Drive, Shapleigh.

A document entitled 'Project Description', read as follows:

Replacement of a retaining wall that is falling over from not being done correctly, and retaining wall block being deteriorated, and by the contractor splitting the lip off the back of the block to make it even, made it unsafe and a faulty wall. Would like to replace the wall with similar block, earth color, and have the retaining wall terraced to make it safer on the property. There will be no machine work down by the water, everything is being done by hand.

The current wall is 37' long by 6 foot high and the left side wall is 11' with about two foot wide set of stairs, would like to change it to 4 foot wide set of stairs to make it safer. The right side will be 11' terraced wall back to the house.

Erosion control will be hay bales, silt fence, and erosion control mix. Blueberries will be planted in front of the retaining wall with erosion control mix.

The application detailed description of the project is as follows: *A 6 foot retaining wall that is falling over done incorrectly. Move stone behind it and replace with new block, different design.*

Roger A. asked Mr. Starbird what he wanted to do. Mr. Starbird stated they have a retaining wall that is falling over, that was actually done by a civil engineer. He said if you look at the pictures of the wall, they cut the back of the blocks off to make them level in the front, so now the entire wall is being pushed forward. He stated that the owners wanted to reuse the existing blocks, but when he looked at them they were disintegrating, so he told the owner they cannot reuse them. He said he wanted to go up three feet with a wall, then step back a foot, and go up another three feet. He felt it would be safer. He noted the area was all sand, and the wall is approximately 8 feet from the foundation. CEO Demers stated he had an email in to Jeff Kalinich of the DEP asking if the wall can be built 6 feet tall in the aggregate and offset a foot or so. He was waiting for Mr. Kalinich to get back to him on it.

Roland L. said they would be losing space with this. Mr. Starbird said they would. Roland said he understood the reasoning behind it. Mr. Starbird felt in this location it was best, and he noted some stairs also on site that are falling in, which he wants to make wider, 4 feet, which will be safer for the applicant.

Mr. Starbird said in front of the wall the applicant said they would plant whatever is best. Mr. Starbird said blueberries were his suggestion because of the sandy soil, it will help hold it in place. He said they would also use some erosion control mulch.

Mr. Starbird said he would need to take the existing stone out and put it up by the house, then place it back behind the wall. He said he didn't see any drainage in place, he would need to add that. Both he and CEO Demers thought perhaps this is why the wall failed, due to no drainage. Mr. Starbird stated there was no stones placed inside the wall either. Mr. Starbird said that from the base to the top, the wall has push out 7 to 10 inches.

Roger A. stated a site inspection would be done on July 26th at 6:30 pm. Members will meet on site. A notice to abutter shall be mailed as well.

Mr. Starbird asked if anyone had any questions? Madge B. said she wouldn't until after she saw the site. Roger A. asked the height of the wall? Mr. Starbird said currently it is 6 feet. Roger asked if it would stay at 6? Mr. Starbird said he wanted to have 3' & 3'. Roger stated that if it remained one 6 foot tall wall, it would need to be engineered. Mr. Starbird said he understood, and he added that the safest option, because the applicant had grandchildren, was two 3 foot walls.

Maggie M. asked if there was an official planting plan. Roger A. told her they received a planting plan, which would be blueberries and erosion control mix. Mr. Starbird agreed. CEO Demers stated that Mr. Starbird is now DEP certified.

Nothing further was discussed.

Growth Permits

Map 1, Part of Lot 41 (Simon Ricker Road) – New Home – J. Lawrence. GP #18-2022

Roger A. stated this lot is over 2 acres in size and has 200 feet of road frontage. A copy of the survey for the lot was provided, along with the deed.

Map 5, Part of Lot 25 (Owls Nest Road) – New Home – D. Shaw GP #19-2022

Roger A. stated the lot is 4.66 acres in size and has greater than 200 feet of road frontage. A copy of the survey for the lot was provided, along with the deed.

Other Business:

The board started talking about lot size and density. Roger A. opened by stating that years ago there was talk at the State level about having smaller lots in village areas and larger lots, 5 acres in size, away from the village area. He said the concern at that time was around sewerage, there would need to be town sewerage in each village area and there was concern as to how they would be connected, or because of the distance – the amount of money it would cost - it was not feasible. Roger said another idea with respect to central sewerage was to put it on the waterfront lots, to try to protect the water quality. Roland L. noted that with conventional treatment plants, there needs to be a body of water to discharge it into, and who wants to be at the receiving end of that. Roger added that now there is also a concern with PFAS in the sludge, where do you put it?

(https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html) Roger said in the past the town was against sludge because of the heavy metals in it. He said the town didn't want it spread in Shapleigh. Roland L. said at one time there were huge piles of sludge stored on the back of the blueberry plains, which he thinks eventually got spread out.

Roger A. said the board can talk about the accessory dwelling unit requirement that was just passed by the legislature. Steve F. asked if anyone knew where this legislation would go? Madge B. thought it was too early to try to change the ordinance, she believed there would be further discussion on it. She said if the town has to amend the ordinance we could, then change it as changes occur if we want to. Steve thought the board already amended the ordinance to allow for 2 dwellings. Madge said that in her opinion it did not meet the current mandate. She said to her surprise and amazement, the new legislation can require you to put 'two' accessory dwellings on a single family lot. Steve asked if it was 3 total? Madge said it was. She said that our ordinance doesn't allow that, it only allows for 1 accessory dwelling unit. Madge added, that like CEO Demers, she was concerned with a non-conforming lot. She said no one has addressed this, and they have to. Steve said if you have a tiny lot, for example a tenth of an acre, this is not going to work. Steve said you can't have more than 10% lot coverage, which would trump that. Madge said the building will have to meet some kind of standards, so she didn't think it would be allowed down to certain non-conformities. She said you could have an acre lot that currently doesn't conform and not exceed the 10%. CEO Demers said that right now it is one dwelling for almost 2 acres, except for non-conforming lots of record. He said the board could put it down to 1 acre. Madge said that currently we allow two dwelling units on 2 acres. CEO Demers said we could reduce the lot size down to 40,000 sf. Roger said that they also have to meet sewerage requirements. Madge said if you allow three dwelling units, you would need 60,000 sf. Roger said that you also have to show you can meet the sewerage. CEO Demers said that was if you are creating a new lot, but for an existing non-conforming lot, the minimum requirement for sewage disposal doesn't apply, as long as the system can be designed. Roger said there was also the concern with meeting the setback to the well. Madge thought this requirement for 2 accessory dwelling units would not last.

Madge B. said she was reading what Maine Municipal said and what they encourage the towns to do is to document in the minutes what the board is doing. She said municipalities need to review land use regulations for consistency and she thought this was not an issue. She said it also speaks of the Maine Human Rights Act Prohibitions and she noted she had no idea what that says. She said the board can do this and accomplish something.

Madge B. asked Steve F. what an affordable house would be for low income, what is it supposed to cost? Steve F. said with low income housing, you can qualify for certain things through the State or Federal, and there are grants. He said it is based on median income in the area you are working in. He said for Shapleigh it would be the median income for the town, and so many of the dwelling units in a subdivision would have to be affordable based on those calculations. He said there are a lot of hoops to jump through. He said there was low income housing in Alfred, Cuddy Westcott's old field across from Shaker Pond, those are rented. He said those people qualified for those types of grants.

Steve F. said the problem with this is, he didn't know what was in it for the developer. Madge B. said she agreed with him. She thought if the board addresses it, they can show that there is nothing that is going to be on the market, and not because of zoning. Steve said that the market dictates what the developers do with their own land. He said it is not the Federal government and they don't like that. He said that he would love

to see more affordable housing for young folks starting out, or elderly folks trying to retire. He said he could fill 40 subdivisions right now with that need, but it isn't how it works.

Roland L. asked if the fact that the Town has 2 growth permits available for Habitat for Humanity, does that address this in any way? Madge B. said that it was another piece of information that is good to get into the discussion. Madge said the record should say that the town has 2 growth permits for Habitat for Humanity and it should be factored in for the town's efforts to have more affordable housing available in town.

Madge B. said another thing that has come up when we have these sort of discussions about affordable housing, is the fact that the town owns some land on Mann Road. She said at one point the board had said that the land should be set aside for affordable housing. She said she believed the land is still there. Roger A. said the land was still there but no one wants to use it. Madge said that the land is still available and it could be used. Roger said if you are looking at Cuddy Westcott's area with the apartments, that is a subdivision in the Town of Shapleigh. He said in order to go through the subdivision there are costs and parameters and the town is not going to subsidize any of those costs. He said either the State or Federal government would have to come in and pick up the cost, such as giving the developer 100 or 200 hundred thousand dollars, or some sort of grant to be able to build low income housing. Maggie M. asked if in a case like this, could someone develop the land but the town still owns the land, so they pay the town through the rent. Roger believed that typically the land is transferred over to the developer. Madge agreed. Roger said that often there are tax breaks for the developer to be able to encourage the low income housing. Maggie said it was like a TIF (Tax Increment Financing), Roger agreed and said if they take Federal money, the property has to be running a minimum of 10 years.

Maggie M. noted that the Governor didn't end up signing this legislation, and it was not an overwhelming yes to no. She said the vote was very close. Madge B. believed the statute would not stand as written, so this is why she didn't think the board should spend a lot of money, such as hiring the town attorney yet, to interpret. Steve F. agreed, this was something to keep an eye on, how things are playing out. He said there are going to be towns upset about this, and other towns, like us, who are trying to get to work on this. He said if the town votes to keep this legislation, and it gets pulled, there is nothing stating that the town can't keep it in place. Madge agreed. He wondered if this wasn't the plan all along, because some towns are pushing in this direction, while others are not; those that like it can keep it. Madge stated that the town has been moving in the direction the statute calls for. Madge said the board made it easier to locate a business, and made it easier to have a second family on a lot. She said it doesn't make sense to put 3 dwelling units on a single family lot. Steve agreed. Steve asked how many permits for duplexes have been issued since the board enacted the ability to have a second dwelling unit. CEO Demers believed it was less than 10 true duplexes. He said there were a few others around town that are grandfathered into it. Steve said there wasn't a lot of applications for a duplex. CEO Demers said that no, for the most part people like their 2 acres and the one dwelling. He said you don't get a lot of problems on a lot of this size, but you do get problems when the lot is 50 feet of shore frontage and you are elbow to elbow.

Maggie M. said that some towns are not geared toward low income housing. She said in Sanford you can have apartments and everything is in walking distance for what you need. Steve F. agreed, they have services. Maggie said if you are in the country, and you don't have a car and are in low income housing, you are stuck. She added that we do not have a bus service. Madge added that Mann Road is a terrible location for housing, she didn't know if it could be worse. She said the Comprehensive Plan looked at low income

housing and asked the town to set it aside.

Nothing more was discussed on this topic.

Growth Areas

Madge B. said Steve's idea about growth areas fits in with this statute. Steve F. said his idea was more about planning, than changing what exists at this time. He said he was trying to look 20 years from now and what might work. Madge asked if there were soils information for the town, so we can focus on what businesses might work on Rte. 109. Steve asked if she was speaking about where there is ledge, things like that? Madge said, yes. Steve said he didn't know how accurate the town's website was, noting it was accurate on Owl's Nest Road.

Steve F. thought the density in the area he was looking at (Rte. 109) was there. He said the property across the street from his business was a little over an acre, and the existing structure was not in good repair. He asked what would the town like to go there, what would be good? He didn't think a bar, restaurant or ice skating rink, but what would work? He said it would be nice that whatever we need, that we go out of town for, that it be in town. He said he had no answers, he was just trying to open the conversation. He asked what can the board do to make that area the highest and best use that it can be?

Maggie M. said we can't predict what someone who bought it will do with it. Steve F. agreed, the lot is fairly close to Rte. 109, so it will probably be a house. He asked if we need another house there, yes, but wouldn't it be great if there were two apartments upstairs and a business downstairs? Madge B. thought it would be good. Madge thought this was an excellent example of something the board should think about changing in the ordinance. She said we don't do anything with combination residences of living and business. Steve thought this was where the future was at. Steve said a multi-use building option might work. He noted the barbershop up the street which had a barbershop downstairs and an apartment upstairs. He thought if the quilt shop was ever torn down, maybe that would be an option for them. He said the income can help the businesses when it might be slow in the wintertime. He said he just didn't know how to write this into an ordinance.

CEO Demers said that you just have to create a mixed use district, any lot that touches Rte. 109, and allow a particular use. Steve F. asked how it is regulated, because we don't want just any type of business. Madge B. asked if it would just need 20,000 sf per dwelling unit? CEO Demers stated that on an existing non-conforming lot, if a system can be designed, you can have it. He said the minimum lot size rules do not apply to a non-conforming lot of record. He said many of the lots we are talking about pre-date the ordinance. He added that he could see down the road, someone buying several lots and combining them for whatever use they were intending. Madge asked if it would be helpful to know what the lot sizes are along 109? Steve thought most of them were greater than an acre. Madge asked how dense an acre should be? Two dwelling units and a business? Steve said the reoccurring theme is the septic system, and noted that you can put your septic system under the parking lot, which is where his is for his office. He said it's not the most affordable but it is durable, works well, and keeps the system up towards the road, so with anything on the side by the

river, you are not worrying about the septic contamination. He said the well could go out back and the septic along the road. CEO Demers said he hasn't seen a lot in Shapleigh that could not support a septic system. Madge B. said that now a home occupation and a residence is allowed on 2 acres. Roger A. agreed that a business and a residence is allowed on a 2 acre lot. Madge thought the board could start with a residence and business being allowed on 1 acre.

Steve F. spoke about the speed limit and hoped if there became more of a main street feel, it would slow people down. Steve thought it would be cool if you could ride your bike 'safely' from the camps to Emery Mills 'Village'. CEO Demers said what the board needs to do is designate the area as mixed use and figure out what would be allowed for 'uses'. He said it would be its own district with the underlying Shoreland District on one side of the road, and General Purpose on the other, but the top layer would be mixed use. Steve said he didn't want to restrict the Shoreland District because you could have a little café with a balcony overlooking the river. He said with a lot of that topography, which is steep, he didn't see anyone hurting the area near the river.

Madge B. believed this was a good place to start. Steve F. said he was nervous about not thinking about the 'down side'. He said he didn't want to be part of a board that put something in place and down the road had to say 'that was wrong'. CEO Demers said this won't happen overnight, and if we come across issues we can change it. He added that any business would still be a conditional use, with standards. Madge thought there would still be a traffic hurdle on 109 if you start adding entrances. Steve didn't think they would be creating a ton of lots, but he was mindful of what Roland had said about potential accidents. Roland L. thought it was possible, if businesses were added, that the State might see fit to reduce the speed limit. Steve said that he would want this to be part of the changes. Roland said that along with that would be appropriate enforcement to change the mindset of people. Roland thought the conversation had a lot of potential.

Steve F. said it also comes down to character. Roland L. stated that everyone has seen what happened in Springvale, it looks nice. They noted the contractor and what great work he did. Roland said it was a nice mix of small business and apartments. Madge B. said that he had done it right. All the board agreed. Roland added that he also did a nice job in Sanford with old buildings that he took over.

Maggie M. stated that it was only 45 mph from the S-curve until Teds, it was less than a mile. She said if they eliminated that and kept it 35, it would be better. CEO Demers asked what the speed limit was on the Sanford side? Members stated that it was 35 mph.

Madge B. said that they start the mixed use zone at the Sanford boundary and she asked if they run the zone to the foot of the lake? CEO Demers and Steve F. thought so. Madge said she was a bit nervous about doing this if they have to add an additional dwelling unit. CEO Demers said they could restrict it in the Shoreland District.

Steve F. asked if there is someone that has done this before that is smarter than us, that we could hire to come in and speak with us? Madge B. said she felt they should hire Southern Maine Regional Planning because they do this work all the time. Steve said the board has the ideas, but he wants to be sure they are doing it right. Madge said that the board should have them come in for one session and go from there. Roland L. thought they may have worked with a community that has done something similar. Madge said that of course they have. Madge thought we could have the Selectmen approve one visit. Barbara F. stated

that she would contact Lee Jay Feldman, find out what it would cost, and if necessary put in for it for our budget next year. The board members agreed.

CEO Demers added that the board also needs an updated zoning map. He said there are inconsistencies between the two zoning maps we have, but likes that he has both, so he knows why some decisions were made in the past. He spoke about an issue regarding wetlands associated with a great pond, and that association, wetlands associated with a great pond or river, are considered to be part of the great pond or river. He showed an approved subdivision on Hodgdon road with a 100 foot setback, and not the 250 from the wetland. He said because of the verbiage regarding the association between the wetland and the great pond, there is a building envelope within 100 feet of the wetland. He said there was another like this in Carpenters Cove. He added that the board will be seeing the Growth Permit applications for them, and he wanted them to know they were buildable lots. He said this was the point about updating the official zoning map to include the reserved lands, updated roads, etc. Roland L. asked if he was just talking about a paper copy, or also a digital. CEO Demers said he would like a digital copy so he can post on the website. He said the paper copy is priceless because it shows why things happened in the past. He thought both were needed.

Steve F. said going back to Rte. 109, does it make sense to keep the river side the Shoreland District? CEO Demers said there would always be the underlying zone of Shoreland, just like if something is General Purpose, and there is a wetland on it, there is a potential overlay of Resource Protection on it. He said it could be mixed use but Shoreland Zoning would still apply. Roger A. thought everything on the left hand side would be Shoreland. Steve said there were varying depths, noting the one across the street was around 330 feet deep. He didn't think it would be a detriment to the river if they were cognizant of what was allowed, such as no gas stations in the Shoreland District. Madge said we could prohibit them on that side. CEO Demers said they could go through the ordinance and see what they would or would not allow in the mixed use area.

Barbara F. stated she will reach out to Southern Maine for help on what the board is trying to accomplish.

Nothing more was discussed.

The Planning Board meeting ended at 8:20 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
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