

Shapleigh Planning Board

Minutes

September 13, 2023

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

Minutes are no verbatim unless in quotes “” – If the names 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 pm.

The minutes from Tuesday, August 23, 2022 were accepted as written.

Unfinished Business:

Conditional Use Permit – Earth Moving in the SD to Replace Block Retaining Walls with Landscape Timber Walls – Map 40, Lot 38 (19 Osprey Lane) – Kevin & Carol Whooley, Applicants & Property Owners Mr. & Mrs. Whooley were present for the review of the application. The contractor on the project was also present but his name was not given.

At the reviews that began in April 2022, the following information was provided:

- Photo of the original condition of the retaining walls 1 through 3, and the stairs going down toward the beach.
- Photo of the original walls with the following notations: Wall 1 – 22” Length x 6” Wide x 39” Height; Wall 2 – 22” Length x 6” Wide x 24” Height; Wall 3 – 22’ Length x 6” Width x 24” Height; 15 steps – 48” Width; Lower Landscape Timber Wall – Remove – Beach returned to Original Condition
- Sketch of existing property depicting the outline of the existing structures, including the retaining walls (sketch was hard to see, the only measurement that could be obtained was a notation that it was 21 feet between Retaining Wall 1 and Wall 3). There was also a notation for the location of the leach field.
- Page entitled ‘Conditional Use Permit Application Project Description’. Information written: Excavate and replace existing cinder block retaining walls with new landscape timber (6” x 6”).
 - 1) Wall 1 – 22’ Length x 6” Width x 39” Height
 - 2) Wall 2 – 22’ Length x 6” Width x 24” Height
 - 3) Wall 3 – 22’ Length x 6” Width x 24” Height
 - 4) Lower Beach Area Returned to Original Condition Grass/Sod Level to Grade

The application detailed description of the project was written as follows: *Replace existing retaining walls (cinderblock) with new landscape timber retaining walls, same height/width. Return lower beach to original.*

Provided this evening was a sketch plan drafted by Joseph Stanley PLS #2453, of LinePro Land Surveying, LLC, dated August 3, 2022, entitled ‘Sketch Showing Retaining Wall Locations Made for Kevin Whooley, 94 Hutchins Road, Medford, MA 02155 of Property Located on Osprey Lane, Shapleigh, Maine’. The names of two abutting properties were noted, those being Map 40, Lot 37, owner John H. Lang, Jr., and Map 40, Lot 39, owner Thomas G. Jones. The sketch depicted part of the subject property, and indicated the location of an existing boat house, concrete steps, and concrete block retaining walls. The high water mark was also located on the plan, and is as seen on June 7, 2022. There were two notes on the plan. Note 1 was the deed reference for the property. Note 2 read as follows: *The retaining walls shown hereon are as observed on June 6, 2022. There appeared to be active/ongoing construction at the site at that time, therefore this sketch may not reflect current site conditions. Where the two gaps are depicted in the existing concrete walls, it does appear that there were formerly concrete blocks at these locations which connected these wall sections together, but those gap areas had been recently removed by the time we performed our on-site measurements.*

Provided was a computer depiction of the existing structure and the general location of Wall #1, Wall #2, Riprap and Water. Provided was a document entitled ‘Retaining Wall Detail’, which depicted the location of Riprap, Rebar Stake, Perforated Pipe (located behind the new wall), the 6” x 6” Pressure Treated Timbers and how they will be stacked (a ½ setback with each row); the location of Filter Fabric, and Crushed Stone (which is noted as being a minimum of 12” in depth behind the new wall).

Provided was a document entitled ‘Amendment to original Plan documents submitted March 22, 2022 (second meeting 4/26/22) – Kevin and Carol Whooley, 19 Osprey Lane’. The following information was provided in this document:

1. Survey complete
2. Plan edits:
 - a. Lower wall at water line will be removedErosion Control Measures:
 - Riprap will be placed along shoreline
 - Level to grade
 - Sod/grass will be placed to reflect original condition
3. Wall 1 will be constructed on original footprint per Survey 22’ x 6” x 39”
 - a. Perforated pipe for drainage; crushed stone; filter fabric for erosion control and rebar stakes: strength
 - b. Covered with erosion mulch
4. Wall 2 will be constructed on original footprint per Survey 22’ x 6” x 24”
 - a. Perforated pipe for drainage; crushed stone; filter fabric for erosion control and rebar stakes: strength
5. Wall 3 will be constructed on original footprint per Survey 22’ x 6” x 24”
 - a. Perforated pipe for drainage; crushed stone; filter fabric for erosion control and rebar stakes: strength
 - b. Covered with erosion mulch
6. Stairs
 - a. 6’6” (this was a typo, the stairs will be 6” x the width that exists at this time, approx. 3 feet)
 - b. Stairs will be filled with erosion mulch
7. All debris will be moved out of town

Roger A. asked Mr. Whooley to let the board know what he wanted to do. Mr. Whooley stated that the board had done a site inspection, and after the inspection had requested additional information from him, which he provided to the board. He said this information included a survey of the site, and an update to what work will be performed. He stated they removed the replacement of the lower wall from the plan, the one at the water's edge, and instead will be placing riprap, along with sod/grass and mulch in that area. He stated the other 3 walls will be placed on their original footprint, and drainage and filter fabric will be placed behind the timber walls, along with rebar and perforated pipe. He stated the cement walls are being removed and replaced with 6" landscape timbers.

Roger A. asked if there were any questions? Roland L. stated the plan speaks of 3 walls, but the diagram only shows 2 walls. He asked Mr. Whooley to explain. Mr. Whooley, using a picture he had, said one of the three wall he was speaking of ran to the right of the stairs. Once Roland looked at the photo he understood what Mr. Whooley was addressing. It was noted there would not be a wall at the water edge.

Roger A. stated he was concerned that the information provided stated that the stairs will be 6'6", as this size was not allowed. Mr. Whooley stated that he was using 6" landscape timbers. Mrs. Whooley stated this was a typo, it should have said 6", which was not talking about the width of the stairs. Roger was glad to hear that because the stairs cannot exceed 6 feet in width. Mrs. Whooley stated the replacement stairs will be the same width as what they have now. Mr. Whooley thought they would be 36" in width.

Roland L. asked who was doing the work? Mr. Whooley stated that a contractor was doing the work, and noted the gentlemen sitting beside him was the person doing the job. (The gentleman's name was not given.) Roland asked if he was DEP certified in erosion control measures? The contractor spoke, saying he had taken the class, he just had to provide pictures of the jobsite for his certification.

Madge B. asked who checks for the certification? Roger A. stated that CEO Demers asked for the certification number in order for the person to get his building permit. Roger asked CEO Demers how he will get the contractors number? CEO Demers stated he would email the DEP to make sure the class had been taken. Steve F. thought the contractor was using this project to get his certification. CEO Demers agreed. Roger stated that it was up to the CEO to make sure he was certified.

Madge B. asked if the person that is certified would be on site during construction, and who would be checking to be sure he was there? Madge also wanted to know if the location is checked during the construction of the wall to be sure that what is required is in place? She wanted to be sure they would follow the rules during construction of the project. CEO Demers stated he was the one who made sure the BMP's were in place (Best Management Practices – erosion control measures). He stated he would either go to the site just prior to ground breaking, or he would check during the first inspection.

Madge B. reminded the board that photos must be taken when the project is completed and they need to be given to the board and CEO.

Madge B. said looking at the plans there would be no plantings of any kind, such as bushes after the project was completed. She said she looked at the plan and it showed riprap and mulch. She said again that no trees or bushes were going in. Roger A. stated there were no bushes or trees being removed. He said under Items #4 & #5 it said there would be erosion mulch. Steve F. thought that riprap in this location makes the most sense after going to the site.

Madge B. asked if the new walls would be higher than the soils behind them? Roger A. said they would be 3 foot walls, and he didn't see any reason why the ground couldn't be kept lower than the top of the wall, this way water would not go over the wall, as the wall would stop it. The contractor stated he could make the finished grade behind the wall 3" below the top of the wall. He said he had no issue with doing that.

Roger A. asked what the start date and end date of the project would be? The contractor stated, a start date of October 8, 2022 and an end date of November 8, 2022.

Roger A. asked if the end date of 11/8 included the placement of all the erosion mulch? The contractor stated that it did, and noted the mulch will be placed down during the entire process, not just at the end.

Roger A. asked where the existing concrete blocks (walls) would be taken? The contractor stated he would be taking the material to Lebanon (Maine).

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

- 1) Best management practices shall be kept in place until the project is completed, including complete stabilization of the area. The contractor shall provide proof that he obtained his license in erosion control measures to the Code Enforcement Officer.**
- 2) Photographs are required post construction of the shoreline, vegetation and development site, to both the Planning Board and Code Enforcement Office.**
- 3) The project has a start date of October 8, 2022, and shall be completed by November 8, 2022, which includes the construction of the new walls and complete stabilization of the entire disturbed area. If this date cannot be met, a new date of completion must be established with the Code Enforcement Office.**
- 4) The existing wall material shall be taken out of Shapleigh.**

Madge B. moved for approval of the conditional use permit for earth moving in the Shoreland District in order to replace the concrete retaining walls with landscape timber walls on Map 40, Lot 38, per the plans provided and as discussed, with the four conditions. Maggie M. seconded the motion. The motion to approve was 5 – 0, therefore it was unanimous.

Roger A. told Mr. Whooley he could now obtain his building permit.

Nothing further was discussed.

§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.*
- 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 plans provided and the top of the walls shall be 3 inches above finished grade; 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. Contractor to obtain his DEP certification during this project.*
- 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.*

~~~~~

**Findings of Fact**

- 1. The owner(s) of Shapleigh Tax Map 40, Lot 38 (19 Osprey Lane) are Kevin and Carol A. Whooley, of 94 Hutchins Road, Medford, MA 02155, per Warranty Deed, BK 18445, PG 496, recorded 11/10/2020.
- 2. The property is located in the Shoreland District, and according to the Assessor’s office, it contains .15 Acres.
- 3. Provided was a photo of the original condition of the retaining walls 1 through 3, and the stairs going down toward the beach; photo of the original walls with the following notations: Wall 1 – 22” Length x 6” Wide x 39” Height; Wall 2 – 22” Length x 6” Wide x 24” Height; Wall 3 – 22’ Length x 6” Width x 24” Height; 15 steps – 48” Width; Lower Landscape Timber Wall – Remove – Beach returned to Original Condition. Sketch of existing property depicting the outline of the existing structures, including the retaining walls (sketch was hard to see, the only measurement that could be obtained was a notation that it was 21 feet between Retaining Wall 1 and Wall 3). There was also a notation for the location of the leach field. Page entitled ‘Conditional Use Permit Application Project Description’. Information written: Excavate and replace existing cinder block retaining walls with new landscape timber (6” x 6”). Wall 1 – 22’ Length x 6” Width x 39” Height; Wall 2 – 22’ Length x 6” Width x 24” Height; Wall 3 – 22’ Length x 6” Width x 24” Height; Lower Beach Area Returned to Original Condition Grass/Sod Level to Grade.

4. Provided was a sketch plan drafted by Joseph Stanley PLS #2453, of LinePro Land Surveying, LLC, dated August 3, 2022, entitled ‘Sketch Showing Retaining Wall Locations Made for Kevin Whooley, 94 Hutchins Road, Medford, MA 02155 of Property Located on Osprey Lane, Shapleigh, Maine’. The names of two abutting properties were noted, those being Map 40, Lot 37, owner John H. Lang, Jr., and Map 40, Lot 39, owner Thomas G. Jones. The sketch depicted part of the subject property, and indicated the location of an existing boat house, concrete steps, and concrete block retaining walls. The high water mark was also located on the plan, and is as seen on June 7, 2022. There were two notes on the plan. Note 1 was the deed reference for the property. Note 2 read as follows: *The retaining walls shown hereon are as observed on June 6, 2022. There appeared to be active/ongoing construction at the site at that time, therefore this sketch may not reflect current site conditions. Where the two gaps are depicted in the existing concrete walls, it does appear that there were formerly concrete blocks at these locations which connected these wall sections together, but those gap areas had been recently removed by the time we performed our on-site measurements.*
5. Provided was a computer depiction of the existing structure and the general location of Wall #1, Wall #2, Riprap and Water. Provided was a document entitled ‘Retaining Wall Detail’, which depicted the location of Riprap, Rebar Stake, Perforated Pipe (located behind the new wall), the 6” x 6” Pressure Treated Timbers and how they will be stacked (a ½ setback with each row); the location of Filter Fabric, and Crushed Stone (which is noted as being a minimum of 12” in depth behind the new wall).
6. Provided was a document entitled ‘Amendment to original Plan documents submitted March 22, 2022 (second meeting 4/26/22) – Kevin and Carol Whooley, 19 Osprey Lane’. The following information was provided in this document:
  1. Survey complete
  2. Plan edits:
    - a. Lower wall at water line will be removed  
Erosion Control Measures:
      - Riprap will be placed along shoreline
      - Level to grade
      - Sod/grass will be placed to reflect original condition
  3. Wall 1 will be constructed on original footprint per Survey 22’ x 6” x 39”
    - a. Perforated pipe for drainage; crushed stone; filter fabric for erosion control and rebar stakes: strength
    - b. Covered with erosion mulch
  4. Wall 2 will be constructed on original footprint per Survey 22’ x 6” x 24”
    - a. Perforated pipe for drainage; crushed stone; filter fabric for erosion control and rebar stakes: strength
  5. Wall 3 will be constructed on original footprint per Survey 22’ x 6” x 24”
    - a. Perforated pipe for drainage; crushed stone; filter fabric for erosion control and rebar stakes: strength
    - b. Covered with erosion mulch
  6. Stairs
    - a. 6’6” (this was a typo, the stairs will be 6” x the width that exists at this time approx. 3 feet)
    - b. Stairs will be filled with erosion mulch
  7. All debris will be moved out of town

7. The application detailed description of the project was written as follows: *Replace existing retaining walls (cinderblock) with new landscape timber retaining walls, same height/width. Return lower beach to original.*
8. A notice was mailed to all abutters within 500 feet of the property on April 13, 2022. Meetings were held on Tuesday, April 12, 2022, Tuesday, April 26, 2022 and Tuesday, September 13, 2022. A site inspection was done by members prior to the meeting on April 26th.
9. 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; the existing block wall will be removed and shall be taken out of Shapleigh; there is no hazardous waste associated with the proposed project; the walls will be constructed per the plans provided and will help prevent stormwater from entering the lake, as the top of the wall will be 3 inches above finished grade; erosion control measures shall be approved by the Code Enforcement Officer and the contractor shall acquire his DEP certification during this project; 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 November 8, 2022, there is no glare, odors and the like produced by this project; all performance standards shall be met with four conditions.
10. The Planning Board unanimously agreed to approve the Conditional Use Permit for earth moving in the Shoreland District to replace the existing walls & stairs, on Map 40, Lot 38 (19 Osprey Lane), per the documents provided and as presented, with four conditions.
11. **The conditions of approval are as follows:**
  - 1) **Best management practices shall be kept in place until the project is completed, including complete stabilization of the area. The contractor shall provide proof that he obtained his license in erosion control measures to the Code Enforcement Officer.**
  - 2) **Photographs are required post construction of the shoreline, vegetation and development site, to both the Planning Board and Code Enforcement Office.**
  - 3) **The project has a start date of October 8, 2022, and shall be completed by November 8, 2022, which includes the construction of the new walls and complete stabilization of the entire disturbed area. If this date cannot be met, a new date of completion must be established with the Code Enforcement Office.**
  - 4) **The existing wall material shall be taken out of Shapleigh.**

**Decision:**

**The Conditional Use Permit to replace the existing walls (all walls under four feet in height) & stairs, on Map 40, Lot 38 (19 Osprey Lane), per the documents provided and as presented, with four conditions, was approved.**

\*\*\*\*\*

**Growth Permits**

**Map 8, Part of Lot 12-2A (Ross Corner Rd) – New Home – S. Foglio**

**GP #26-2022**

Roger A. stated the lot exceeded the minimum requirements in the ordinance, exceeding the minimum road requirement and having 3.39 acres.

\*\*\*\*\*

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

\*\*\*\*\*

The Planning Board now meets the 2<sup>nd</sup> and 4<sup>th</sup> 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.

Also visit [www.Shapleigh.net](http://www.Shapleigh.net), there is a calendar of events, and you will find Planning Board information there including schedules, the agenda, and minutes of the meetings.

Respectfully submitted,  
Barbara Felong, Land Use Secretary  
Town of Shapleigh [planningboard@shapleigh.net](mailto:planningboard@shapleigh.net)