

***Shapleigh Planning Board***

***Minutes***

**Tuesday, October 10, 2023**

Members in attendance: Steve Foglio, (Chairman), Ann Harris (Vice Chairman), Madge Baker, Maggie Moody, and Norman Baker. Alternate Thomas Clement and Code Enforcement Officer Mike Demers were unable to attend.

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Minutes are not 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.

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***The Planning Board meeting started at 7:00 pm.***

- ***The Planning Board Chairman began the regular meeting with The Pledge of Allegiance.***

***Steve F. asked members if there were any questions or comments regarding the minutes? There were not any. Steve stated the minutes of September 26, 2023 were accepted as read.***

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- **Unfinished Business**

**Conditional Use Permit – New Structure / Creating a 2-Family Dwelling in the SD Using Existing Foundation – Map 27, Lot 14-4 (55 Point Road) – Craig & Melissa Cohen, Applicants & Property Owners** Mr. Cohen was present for the review of the application.

Provided along with the application, were two existing conditions pictures depicting the existing new foundation adjacent to the garage, and some of the existing vegetation.

Provided was a sketch plan of the lot depicting lot line measurements/delineations; the location of the driveway; existing garage; house; and foundation. The plan notes the garage as being 110’ from the high-water-mark, the foundation as being 108’ from the high-water-mark, and 76 feet from the side lot line. There is a notation that states there is 40’ between the house and garage. There is a notation that states the house is 35’ from the side lot line and 120’ from the high-water-mark. Burlington Way is also noted on the plan, which bisects the rear of the property.

Provided was a copy of the Subsurface Wastewater Disposal System Application for a 3 bedroom single family home / duplex, drafted by Kenneth Gardner, SE #73, dated 6/30/2023.

The application detailed description of the project is as follows: *Build on top of existing garage foundation. The new structure will be approx. 1944 sq. ft. of LS. (Living Space)*

On September 12, 2023, the Planning Board tabled the application to allow the applicant to come in with a more detailed plan depicting the roof line, entrances, and parking area. Mr. Cohen provided three drafted drawings via email of a proposed connection between the existing residence and garage with proposed living space, which included a walkway with roof over.

On September 26, 2023, the Planning Board agreed to send the plans to the town attorney to determine if the plans provided met the ordinance definition for a two-family dwelling or duplex. The board received the following legal decision:

**Subject:**RE: Shapleigh - Legal Opinion

**Date:** Thu, 28 Sep 2023 18:13:54 +0000

**From:** Legal Services Dept <[legal@memun.org](mailto:legal@memun.org)>

**To:** [townadmin@shapleigh.net](mailto:townadmin@shapleigh.net) <[townadmin@shapleigh.net](mailto:townadmin@shapleigh.net)>

Now, in looking at both the proposal and Shapleigh’s ordinance, I have the following thoughts:

Although I think there is some room for differing interpretations, after reviewing of your definition sections and doing some research into how “breezeway” connections are treated (both in other communities and in guidance documents on zoning in Maine, generally) I lean toward saying that this proposal likely does meet your definition of a duplex. My interpretation is largely based on how broadly defined “structure” and “building” are in your ordinance – as well as language in the definition of “accessory structure or use.”

Here’s how I get there: While some communities have specified that, to constitute a “duplex” or “two-family dwelling,” units must (for example) be separated by a shared wall or connected by a breezeway no longer than 20’, your ordinances are relatively broad. If we start with Shapleigh’s definition of two-family dwelling and then walk through the components of that definition, it seems to me that the breezeway being proposed here constitutes a “structure” under your definitions. In light of that fact and a lack of any language further explaining what a “single building” means, it appears to me that there is a strong argument that functionally connecting two previously separate buildings/structures through the addition of a connecting structure does create a single, connected structure.

### **DWELLING, TWO-FAMILY**

A single *building* containing two dwelling units, with a separate entrance for each. May also be referred to as a “duplex.”

### **BUILDING**

A *structure* for the support, shelter or enclosure of persons, animals, goods or property of any kind.

### **STRUCTURE**

*Anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind, or anything constructed or erected on or in the ground.* The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface wastewater disposal systems as defined in Title 30-A, Section 4201, Subsection 5; geothermal heat exchange wells as defined in Title 32, Section 4700-E, Subsection 3-C; or wells or water wells as defined in Title 32, Section 4700-E, Subsection 8.

Additionally, although I know that the “garage” will be too large to qualify as an accessory dwelling under your ordinances (which limit ADUs to 800 sf), it is telling to me that your general definition of “accessory structure or use” is as follows:

### **ACCESSORY STRUCTURE OR USE.**

A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. *A deck or similar extension of the principal structure*

*or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.”*

Because the proposed walkway/breezeway includes a roof, I think this definition can be read to mean that the garage building, once connected, will be considered part of the principal structure.

In terms of the question posed in the cover letter you attached to yesterday’s email, regarding changes to the design of proposed structures, that’s probably a question for your code enforcement officer. Some minor changes are sometimes permissible if the need for them becomes clear during construction and they don’t substantively change the project but significant changes to the design may well require an amendment to the approval to be sure that the changes are in keeping with the ordinances requirements. Again, the CEO is often best able to articulate the distinctions based on building codes and the like.

I hope this is helpful. However, if you have concern that it is not consistent with how Shapleigh has historically interpreted its ordinances or if you anticipate an appeal of any decision by the planning board, it likely makes sense to also consult with the town attorney to be sure they agree and are comfortable with this interpretation. Of course, if you have additional questions for me or want to talk this through, please let me know.

Best, Jen

**Jen Thompson, Staff Attorney**

**Legal Services Department - Maine Municipal Association - 60 Community Drive, Augusta, ME 04330**

Steve F. stated that the board is reviewing an application for Craig and Melissa Cohen for a 2-family dwelling in the Shoreland District, using the existing foundation, on Map 27, Lot 14-4, 55 Point Road. He said that he was not at the last meeting, the application was good, and the board was waiting for the legal opinion from the town attorney. Steve stated that the attorney did think the application met the criteria in the ordinance for a two-family dwelling, so the board can now move forward.

Steve F. asked if there were conditions set at the last meeting? Barbara F. did not believe so.

Steve F. asked Mr. Cohen if he had a time frame for his project? Mr. Cohen thought he would be starting fairly soon on the structure. He said he would like a two year time frame. He said once the structure is up, then he will begin working on the inside. Steve stated that what the Planning Board was focusing on the exterior of the structure, not the inside. He said the board wants the area around the new structure stabilized. He asked Mr. Cohen if he knew when that would be completed? Steve said that what the board is looking for is that the site is open for as little a time frame as possible. He said that during the foundation and frame construction, erosion control measures must be in place, but not while you are working on the inside of the structure. Steve asked if Mr. Cohen still thought it would take two years to complete the outside of the structure, or would it be done sooner? Mr. Cohen believed he would have the outside of the structure done by the end of the year. Steve asked if any replanting or revegetation could be done by June of next year? Mr. Cohen stated there would be no vegetation removed, the area is a sand pit. Steve asked Mr. Cohen if the project could be completed by June 1, 2024? Mr. Cohen stated that it could.

Steve F. stated that the board received photographs for preconstruction, the board will need photographs within 20 days of completion of the exterior of the new structure.

**Steve stated the following conditions:**

- 1) **Best Management Practices shall be used at all times until the project is completed, which includes the revegetation and stabilization of all areas disturbed by the project. The person doing the project shall be DEP certified in best management practices (unless the homeowner does the project in its entirety).**

- 2) **The project shall be completed by June 1, 2024. This completion date is not for the inside of the new structure(s), but does include stabilization of the area around the new structure that is disturbed by the excavation of the area. If this date cannot be met, the applicants shall come back before the board prior to the expiration date to amend the approval and set a new date of completion.**
- 3) **Photographs were provided for preconstruction of the shoreline, vegetation and development site. Post construction photos shall be required within 20 days of completion of the project, to both the Planning Board and Code Enforcement office. *These photos must show both the new structure and revegetation / stabilization of the area.***
- 4) **The new single family residence (located above the garage) shall be attached to the existing residential dwelling, sharing a common roof line, per the plan provided.**

Steve F. asked if there were any other comments or questions regarding the application? There were none. Steve stated he would entertain a motion to approve.

**Madge B. moved for approval of the Conditional Use Permit to build a two-family dwelling in the Shoreland District using the existing foundation, on Map 27, Lot 14-4, along with the stated conditions. Norman B. seconded the motion. By a vote of 5 – 0, the motion to approve was unanimous.**

Madge B. added that the important thing was to protect the water from the bare ground. Mr. Cohen stated he would put a silt fence up.

Nothing more was discussed.

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### **Findings of Fact**

1. The owner(s) of Shapleigh Tax Map 27, Lot 14-4 (55 Point Road) are Craig and Melissa Cohen, of 7 Patricia Drive, Hudson, NH 03051, per Warranty Deed, BK 17878, PG 529, recorded on 1/14/2019 at the York County Registry of Deeds.
2. The property is located in the Shoreland District, and according to the Assessor's office, it contains 1.9 Acres.
3. Provided was a sketch plan of the lot depicting lot line measurements/delineations; the location of the driveway; existing garage; house; and foundation. The plan notes the garage as being 110' from the high-water-mark, the foundation as being 108' from the high-water-mark, and 76 feet from the side lot line. There is a notation that states there is 40' between the house and garage. There is a notation that states the house is 35' from the side lot line and 120' from the high-water-mark. Burlington Way is also noted on the plan, which bisects the rear of the property. Picture of the existing conditions of the property were also provided.
4. Provided was a copy of the Subsurface Wastewater Disposal System Application for a 3 bedroom single family home / duplex, drafted by Kenneth Gardner, SE #73, dated 6/30/2023.

5. Provided were three drafted drawings of a proposed connection between the existing residence and garage, which included a walkway with roof over. The applicant asked if this connector between the two structures would meet the definition of a two-family dwelling in the ordinance.
6. The Planning Board requested a legal opinion of ‘two-family dwelling’ to see if the proposed new attached walkway would allow the existing residence and proposed residence to meet the definition in the ordinance. The legal opinion stated in part that after reviewing the definition sections of Shapleigh’s Ordinance, and doing research into how “breezeway” connections are treated (both in other communities and in guidance documents on zoning in Maine, generally), the proposed structure likely does meet the definition of a duplex in the ordinance. The attorney, Jen Thompson, Staff Attorney from Maine Municipal Association, stated that her interpretation was largely based on how broadly defined “structure” and “building” are in Shapleigh’s ordinance – as well as language in the definition of “accessory structure or use.”
7. The application detailed description of the project is as follows: *Build on top of existing garage foundation. The new structure will be approx. 1944 sq. ft. of LS. (Living Space)*
8. The Planning Board concurred the application met the requirements under §105-42 – Multifamily dwelling units, Section A, based on the definition of a two-family dwelling and the legal opinion obtained.
9. The Planning Board concurred the application met the requirements under §105-46 – Sanitary provisions, as any modifications for the new residence to the existing septic system would need to be permitted through the Code Office prior to occupancy.
10. The Planning Board concurred the application met the requirement under §105-73.G – Standards applicable to conditional uses, per the plans provided with conditions.
11. A notice was mailed to all abutters within 500 feet of the property on September 29, 2023. Meetings were held on Tuesday, August 22, 2023, Tuesday, September 12, 2023, Tuesday September 26, 2023, and Tuesday October 10, 2023. A site inspection was done prior to the meeting on September 12<sup>th</sup>.
12. The Planning Board unanimously approved the Conditional Use Permit for a two-family dwelling, attaching the existing residential dwelling to the garage, which will house a second single family dwelling, on Map 27, Lot 14-4, per the plan provided, with four conditions.
13. **The conditions of approval are as follows:**
  - 1) **Best Management Practices shall be used at all times until the project is completed, which includes the revegetation and stabilization of all areas disturbed by the project. The person doing the project shall be DEP certified in best management practices (unless the homeowner does the project in its entirety).**
  - 2) **The project shall be completed by June 1, 2024. This completion date is not for the inside of the new structure(s), but does include stabilization of the area around the new structure that is disturbed by the excavation of the area. If this date cannot be met, the applicants shall come back before the board prior to the expiration date to amend the approval and set a new date of completion.**

- 3) Photographs were provided for preconstruction of the shoreline, vegetation and development site. Post construction photos shall be required within 20 days of completion of the project, to both the Planning Board and Code Enforcement office. These photos must show both the new structure and revegetation / stabilization of the area.
- 4) The new single family residence (located above the garage) shall be attached to the existing residential dwelling, sharing a common roof line, per the plan provided.

**Vote & Decision:**

By a unanimous vote of 5 – 0, the motion to approve was accepted; and to conclude, the Conditional Use Permit to approve the proposed two-family dwelling in the Shoreland District, located on Map 27, Lot 14-4, per the final plan provided, with four conditions, was approved.

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**Best Practical Location – Replace Structure in the SD – Map 23, Lot 9 (41 Starboard Lane) – Cass Shumsky, Applicant & Property Owner**

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

Provided along with the application were pictures of the existing structures on site.

Provided was a survey plan entitled ‘Plan Showing A Boundary Survey For Mark N. & Diane Hubert and Cass W. Shumsky, 52 Archibald Avenue, Methuen, Massachusetts 01844’, drafted by Dana A. Libby, PLS #1350, of Corner Post Land Surveying, Inc., located in Springvale, Maine, plan dated 11/30/2022. The plan showed in part that the lot was 13,907± Sq. Ft. in size; located on the lot are two homes each having a porch; patio; paved & concrete walkway; gravel parking area; and on the back side of the lot a garage. The plan also shows a right-of-way located between the garage area and the area where the two homes are located, the width of the ROW is noted as ‘No Deeded Width’. The house adjacent to the lot line of Map 23, Lot 10, owned by Roberts Family Revocable Trust of 2016, is 6.20 feet from the property line at its closest point, and 10.78 feet from the high-water-mark at its closest point. This is the home that is being replaced. The home closest to the lot line of Map 23, Lot 8, owned by Harland H. Eastman, is 3.34’ from the lot line at its closest point and 7.45’ from the high water mark; this home is remaining in place.

The application detailed description of the project is as follows: *I would like to demolish the existing home and rebuild the exact style of home of the exact same size in the exact same spot using current building standards.*

This evening, the applicant provided a revegetation plan for the area around the proposed new structure. The new vegetation consists of Black-eyed Susan’s, Dogwood, Hay Scented Fern’s, Lavender, Sky Pencil Holly, Fragrant Daylily, Porcupine Grass, grass/sod, & Armstrong Red Maple. Stone, and pavers were also noted on the plan for the walkway(s), located on both sides of the house.

Steve F. stated the next application is for Mr. Shumsky, to replace a structure on Map 23, Lot 9, 41 Starboard Lane. Mr. Shumsky stated there were existing dogwoods and wild grasses. Ann H. asked if there was a stump next to the house that was coming out. Mr. Shumsky said that she was correct and he pointed out the location on the plan.

Ann H. asked if it was decided if the front wall would be replaced? Madge B. stated it was up to Mr. Shumsky. Mr. Shumsky thought he could do the one-time go in front of the wall with 6 inches of

concrete. He said if the wall isn't stable enough during excavation, while they are pouring concrete, it could be stabilized. He added that he did not think anyone has done it the one time yet. Madge B. thought the wall would need to be permitted if they are going to replace it. Ann agreed, and if they wanted to take and have the wall replaced, at the same time as the house, now would be the time to address it. She added that Mr. Shumsky did not ask the board to replace the wall, Mr. Shumsky stated he didn't want to mess with the wall at this time. He thought the wall was stable. He said if during the construction, the wall became unstable he would go for the one time patch of 6 inches of concrete behind the wall. Board members had never heard of that being allowed. Mr. Shumsky stated that the previous Code Officer told him this was allowed when he asked what could be done with the existing wall. He said he could do this one time, and if it didn't work, he would have to replace the wall. Abutter, Michael Roberts, stated that this was not currently allowed in Shapleigh or Acton.

Steve F. asked Mr. Shumsky when he was going to be doing the project? Mr. Shumsky stated he was waiting for the surveyor to come to give the official height of the structure. He said he was also waiting for the architectural prints for the structure. Steve stated he wanted to caution him on timing, with respect to the wall. He said the board could take up the potential to replace this wall while he was in the planning phase of the structure, and he did not have to do the wall if it was not necessary. He said if they get into the project, and the wall fails, there will be a time issue to permit a new wall. He said he would have to come back before the board and it would be a two meeting process. Madge B. added that he would need a DEP permit as well. Steve said if a permit was in place, he could move forward if he needed to. Mr. Shumsky stated he would consider it.

Steve F. asked who would be doing the dirt work? Mr. Shumsky stated he was having someone from New Hampshire come in to do it. Madge B. asked if they had to be DEP certified? Ann H. stated that they did. Mr. Shumsky stated that as the homeowner it says he does not have to be certified. Ann said that he was not doing the work. Mr. Shumsky stated that he could dig the hole. Ann said that the board will let the CEO deal with making sure who does the work is certified to do the work.

Mr. Shumsky stated that he could file for a DEP permit for the wall. He said he wanted to use the concrete blocks if he does replace it. Steve F. asked how tall the wall was? Mr. Shumsky stated it was about 3 feet in height. Madge B. stated that if he wanted to replace the wall the board would need plans for the new wall. Ann H. asked Mr. Shumsky if he wanted to wait for the approval, until he had some plans for the wall? Madge thought the board could approve the new structure, then he could get approval for the wall if that is what he wanted to do. Steve said he could come back, because it is a separate application. Steve was concerned with logistics if he wanted to replace the wall after the new structure was in. Mr. Shumsky stated that he would probably use the barge guy and do it from the water.

Madge B. stated that the board had approved the location of the new structure at the last meeting, leaving it where it currently is. Steve F. asked if there were any trees coming down? The board said there was just one stump coming out.

Steve F. stated it appeared the new location is no closer than 10.78 feet to the high-water-mark. *On September 26<sup>th</sup>, the board approved the proposed location of the new structure, leaving it where the existing structure sits, no closer than 10.78 feet from the high-water-line and no closer than 6.2 feet from the Lot line of Map 23, Lot 10 at its closest point.*

Steve F. asked when the project would be completed. Mr. Shumsky stated within 2 years. He said once the erosion control measures are put into place, they will be removing the house. Steve asked if that was this fall. Mr. Shumsky stated it was. Steve said the board was not expecting him to replant during the winter, so he asked if he thought he would be done with revegetation by June? Steve added that erosion

control had to be in place until the revegetation is done. Mr. Shumsky stated that he believed they would be done with the ground work and revegetation by June of next year. Steve asked if June 30<sup>th</sup> would work? Mr. Shumsky stated that it would.

Steve F. listed the conditions of approval as follows:

- 1) **Photographs were received for preconstruction of the shoreline, vegetation and development site. Post construction photos shall be required within 20 days of completion of the project, to both the Planning Board and Code Enforcement office. *These photos must show both the new structure and revegetation / stabilization of the area.***
- 2) **A licensed surveyor shall confirm in writing that the placement of the new structure(s) is correct per the specifications approved by the Planning Board, and provide this information to the Code Enforcement Officer. The new structure shall be no closer than 10.78 feet from the high-water-line and no closer than 6.2 feet from the Lot line of Map 23, Lot 10 at its closest point.**
- 3) **Best Management Practices shall be used at all times until the project is completed, which includes the revegetation and stabilization of all areas disturbed by the project. The person doing the project shall be DEP certified in best management practices (unless the homeowner does the project in its entirety).**
- 4) **The project including the approved revegetation plan, shall be completed by June 30, 2024. If this date cannot be met, the applicants shall come back before the board prior to the expiration date to amend the approval and set a new date of completion.**
- 5) **All debris from the existing structure shall be removed, taken out of the Town of Shapleigh, and disposed of at the proper facility.**
- 6) **The plan provided shall be recorded within 90 days of the approval date at the York County Registry of Deeds, otherwise the approval becomes null and void.**

Steve F. stated that the board members needed to sign the plan, but there was no signature block on the plan presented. Barbara F. added that the Registry will not accept a folded plan, so the plan the board has cannot be used. Madge B. said the board can approve it, but he will have to provide the board with a new plan with a signature block. The board can sign it, and he can record after that within 90 days.

Steve F. asked where Mr. Shumsky would be taking debris? Mr. Shumsky thought he would be taking it to Turnkey (Waste Management) in Rochester, NH.

Abuter, Michael Roberts, asked if he could speak? The board allowed it. Mr. Roberts stated that he wanted to state that he was not opposed to the project. He said his comment for the record was in regard to Starboard Lane, and the right-of-way from Starboard Lane onto Mr. Shumsky's property. He said it is usually maintained in good shape, and with construction vehicles going in and out he asked if it could be made as smooth as possible when the construction is completed. Mr. Roberts noted it was not as smooth as typical at this time, due to all the rain. Mr. Shumsky agreed to Mr. Roberts request.

Mr. Roberts also asked, with regards to the homeowner being the general contractor, if there is no requirement to have the work in the Shoreland District be done by someone certified? Steve F. stated that was not what he mentioned. He said what was said was, if the homeowner is 'physically' doing the work themselves, they do not have to be Shoreland certified by the DEP. He said if anyone, other than the homeowner, is physically doing the work, they do need to be Shoreland certified. He said it was a condition by the board of the requirement, and that is where it ends for the Planning Board. He said if it isn't the case, that is the Code Officer's issue. Mr. Roberts said that he was not saying it would not be the



case. He said he was here when the board was talking about the barge, and at that time he asked who watches out for the lake. Steve stated that there was a State level of certification, he said if someone was working from the barge, they have to be certified. Mr. Roberts said right now, he was asking who watches out for the lake? Steve stated, “The Code Officer”. Steve added that also the people who live on the lake.

**Madge B. made the motion to approve the best practical location to replace the structure on Map 23, Lot 9 (41 Starboard Lane), rebuilding the structure on the footprint of the house that is being removed, with the stated conditions. She stated that the reason for this location, is that there is no room on the lot to move the structure and still have a functioning licensed subsurface wastewater disposal system, as well as the location of the right-of-way that has to be kept open. Maggie M. seconded the motion. By a vote of 5 – 0, the motion to approve was unanimous.**

Nothing further was discussed.

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**The Findings of Facts**

1. The owner(s) of Shapleigh Tax Map 23, Lot 9 (41 Starboard Lane) are Mark N. Hubert and Diane Hubert, both of 52 Archibald Avenue, Methuen, MA 01844; and Cass W. Shumsky of 52 Archibald Avenue, Methuen, MA 01844, per Warranty Deed, recorded at the YCRD, BK 17329, PG 685, recorded on 9/27/2016.
2. The property known as Shapleigh Tax Map 23, Lot 9 is located in the Shoreland District and according to the Assessor the property contains .36 acres.
3. The Best Practical Location application was presented to replace the existing structure with a new structure, keeping the proposed structure 10.78’ from the high-water-mark, and no closer than 6.2’ to the property line of Map 23, Lot 10.
4. Provided were preconstruction photos of the property showing the existing structure and vegetation.
5. Provided was a survey plan entitled ‘Plan Showing A Boundary Survey For Mark N. & Diane Hubert and Cass W. Shumsky, 52 Archibald Avenue, Methuen, Massachusetts 01844’, drafted by Dana A. Libby, PLS #1350, of Corner Post Land Surveying, Inc., located in Springvale, Maine, plan dated 11/30/2022. The plan showed in part that the lot was 13,907± Sq. Ft. in size; located on the lot are two homes each having a porch; patio; paved & concrete walkway; gravel parking area; and on the back side of the lot a garage. The plan also shows a right-of-way located between the garage area and the area where the two homes are located, the width of the ROW is noted as ‘No Deeded Width’. The house adjacent to the lot line of Map 23, Lot 10, owned by Roberts Family Revocable Trust of 2016, is 6.20 feet from the property line at its closest point, and 10.78 feet from the high-water-mark at its closest point. This is the home that is being replaced. The home closest to the lot line of Map 23, Lot 8, owned by Harland H. Eastman, is 3.34’ from the lot line at its closest point and 7.45’ from the high water mark; this home is remaining in place.
6. Provided was a revegetation plan for the area around the proposed new structure. The new vegetation consists of Black-eyed Susan’s, Dogwood, Hay Scented Fern’s, Lavender, Sky Poncil Holly, Fragrant Daylily, Porcupine Grass, grass/sod, & Armstrong Red Maple. Stone, and pavers were also noted on the plan for the walkway(s), located on both sides of the house.

7. The application detailed description of the project is as follows: *I would like to demolish the existing home and rebuild the exact style of home of the exact same size in the exact same spot using current building standards.*
8. The application required Planning Board review as a Best Practical Location under §105-4 ‘Nonconformance’. The Planning Board members agreed the application as presented, will meet all the criteria in the ordinance with conditions, as the structure shall be no closer than the existing to the high-water-mark and side lot line(s). The proposed location is best practical as there is no room on the lot to move the structure and still have a functioning licensed subsurface wastewater disposal system, and the location of the right-of-way has to be kept open. A revegetation plan was provided and approved by all members.
9. Planning Board members agreed the requirements under §105-3 – Basic requirements, Section E, Photographic record required was met, as pre-construction photographs were provided, and post-construction photographs shall be provided per the conditions of permit. Section F, which requires a full survey be provided at the time of application, was met, as a full survey was provided.
10. A notice was mailed to abutters within 500 feet of the property on September 13, 2023. Meetings were held on Tuesday, September 12, 2023, Tuesday, September 26, 2023, and Tuesday October 10, 2023. A site inspection was done by members prior to the meeting on September 26th.
12. The Planning Board vote was unanimous, 5-0, to approve the Best Practical Location for the replacement of the existing structure on Map 23, Lot 9 (41 Starboard Lane), placing the proposed structure 10.78’ feet from the high-water-mark at it closest point, with six conditions.
13. **The conditions of approval are as follows:**
  - 1) **Photographs were received for preconstruction of the shoreline, vegetation and development site. Post construction photos shall be required within 20 days of completion of the project, to both the Planning Board and Code Enforcement office. *These photos must show both the new structure and revegetation / stabilization of the area.***
  - 2) **A licensed surveyor shall confirm in writing that the placement of the new structure(s) is correct per the specifications approved by the Planning Board, and provide this information to the Code Enforcement Officer. The new structure shall be no closer than 10.78 feet from the high-water-line and no closer than 6.2 feet from the Lot line of Map 23, Lot 10 at its closest point.**
  - 3) **Best Management Practices shall be used at all times until the project is completed, which includes the revegetation and stabilization of all areas disturbed by the project. The person doing the project shall be DEP certified in best management practices (unless the homeowner does the project in its entirety).**
  - 4) **The project including the approved revegetation plan, shall be completed by June 30, 2024. If this date cannot be met, the applicants shall come back before the board prior to the expiration date to amend the approval and set a new date of completion.**
  - 5) **All debris from the existing structure shall be removed, taken out of the Town of Shapleigh, and disposed of at the proper facility.**
  - 6) **The plan provided shall be recorded within 90 days of the approval date at the York County Registry of Deeds, otherwise the approval becomes null and void.**

**Vote & Decision:**

By a unanimous vote of 5 – 0, the motion to approve the Best Possible Location, to replace the existing structure per the plan presented was accepted. In conclusion, the Best Practical Location application to replace the existing structure on Map 23 Lot 9 (41 Starboard Lane), placing the new structure 10.78 feet from the high-water-mark at its closest point, per the plan provided with six conditions, was approved.

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**Conditional Use Permit – Sale of Company Apparel Utilizing Garage – Map 4, Lot 45C (29 Walnut Hill Road) – Matthew Taggart, Applicant & Property Owner**

Mr. Matthew Taggart was present for the review of the applicant. Mrs. Taggart (Megan) was also present.

Provided along with the application, was a copy of the town tax map showing the location of Lot 45C, along with a site plan. On the site plan, depicted is the location of the existing 4 bedroom house with attached deck, and garage; the pool; septic tank & leachfield; well; shed; 270’ driveway and spaces provided to park 5 vehicles. The length of the driveway was noted as being 270’ in length, the house/garage is located 222’ from Walnut Hill Road, and there is 350’ of road frontage. The parcel is 4.9 acres in size.

The application detailed description of the project is as follows: *Using garage space to sell company apparel. Hours of operation – Monday thru Sunday, 0800 to 1800. (8:00 am to 6:00 pm)*

Steve F. stated that the next application was for Mr. Taggart, for the sale of company apparel on Map 4, Lot 45C, 29 Walnut Hill Road. He asked Mr. Taggart to let the board what he wanted to do.

Mr. Taggart stated they wanted to utilize the garage to create an experience for the apparel company, as a family oriented business. He said Megan designs all the apparel. He said they wanted it to be a fun experience, bring out the press, and let people pick out the design they want and press it there. He said they came up with the idea from another company they watched in Massachusetts, who grew their company out of their garage. He said they wanted to grow their company.

Mr. Taggart stated that they have the parking, and an area to turnaround. Madge B. asked if they were talking about any construction? Mrs. Taggart said, no. Steve F. said they were utilizing what is there now.

Madge B. asked if this was a home occupation? Steve F. did not think it met the definition of Home Occupation; he said it is not technically in the house. Steve looked at the definition of Home Occupation, it read as follows: *An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; carried on by a member of the family residing in the dwelling unit; clearly incidental and secondary to the use of the dwelling unit for residential purposes. This shall not be interpreted to include telecommuting.*

Steve F. said the public would be coming in, so he did not think it was a home occupation. Madge B. said she lived near them, and said they have a lot of site distance. Steve asked if the site distance was on the plan? Mrs. Taggart stated that from Back Road to their driveway it was about 675 feet. Madge agreed and said again that they had good site distance.

Steve F. said that the plan was showing 5 parking spots. Madge agreed they had plenty of space. Steve said that it did not appear there was any lighting that would go onto the road and impede traffic. Madge said that the house sets back quite a distance from the road, so she did not believe they would light up the neighborhood. Mrs. Taggart agreed and said they were using the normal lighting currently on the house. Ann H. asked if they were operating out of the shed? Steve F. said that they were using the garage. Mrs.

Taggart said they thought about using that. She added that the garage had electricity. Mr. Taggart added that the garage was already lighted.

Steve F. said besides offstreet parking and loading, which it appears the applicant can meet, would there be a porta-potty on site? Mrs. Taggart stated that there would not. Steve added that no one would be eating or drinking while making a shirt.

Steve F. stated the board can review §105-73.G at the next meeting. He asked the applicant(s) what they would do with their trash? Mrs. Taggart stated they would have a garbage can if someone wanted to throw trash in it. Steve said from there it would go to the dump. The applicant agreed.

**Steve F. said a site visit would need to be done prior to the next meeting, on the 24<sup>th</sup> of October at 6:00 pm. A public hearing will be held at 6:30 pm prior to the meeting, which will begin at 7:00 pm. A notice to abutters will be mailed as well.**

Nothing further will be discussed.

**Other:**

**Conditional Use Permit for a Retaining Wall on Map 33, Lot 22 (90 Treasure Island Road), property owner Stephen Indingaro – Final Revegetation Picture**

Barbara F. stated that Mr. Indingaro provided the required pictures, and there are now 8 Junipers as the board required planted behind the new wall. The board members agreed that he now meets the conditions of his approval, and revegetation plan.

Planning Board Budget for 2024. Board members agreed there was no need to increase the budget for 2024, but instead re-allocate funds; adding \$1000 to legal fees based on current requirements, and reduce the supply budget by the same amount, based on expenses for 2023.

Nothing more was discussed.  
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**Growth Permits**

Growth Permits are available.  
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**The meeting adjourned at 7:45 pm.**

**Workshop on Possible Ordinance Amendments held prior to this evenings meeting.**

The following amendments were discussed. These changes are preliminary. There will be additional discussions, followed by public hearings prior to Town Meeting held in March 2024, where voters will be asked to vote on the proposed changes.

*Definition amended for a clear understanding of what the Town of Shapleigh believes is allowed as a two-family dwelling in the ordinance.*

§105-15. Definitions

Dwelling, Two-Family – ~~A single building containing two dwelling units, with a separate entrance for each. May also be referred to as a ‘duplex’.~~

Dwelling, Two Family – **A two-family dwelling unit, for occupation by not more than two families, is one building with two units that are either stacked vertically or side-by-side, sharing a common wall with living space on each side, having a separate entrance for each unit.**

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*Note 3 is amended to meet the State of Maine requirements of an accessory dwelling unit.*

§105-17. Land uses.

Notes:

<sup>3</sup>~~Additional~~ Detached dwelling units in excess of one on a single lot shall require review and approval by the Planning Board. A site plan certified by a registered land surveyor, licensed in the State of Maine, showing all existing and proposed structures, and other pertinent information relating to the possible division of land, shall be submitted to the Planning Board. The Planning Board shall determine that the property and all structures can meet the current zoning and setback requirements if the property were to be divided. **This does not apply to accessory dwelling units (ADU’s).**

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*The State rules regulating access onto State roads will be per the State requirements at the time of application.*

§ 105-34. Access control on Routes 109 and 11.

~~A. Land lying on Routes 109 and 11 may be divided into lots, but all vehicular movements to and from the highway shall be via a common driveway or entranceway serving adjacent lots or premises. All lots of record existing at the time of the ordinance amendment shall be allowed direct access to Routes 109 and 11, provided that minimum safe sight distance standards can be met.~~

B. All lots accessing Routes 109 and 11 must obtain an MDOT entrance permit. For all conditional use permits requiring access, the applicant shall provide proof of an MDOT entrance permit prior to obtaining approval.

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*The existing requirement in the ordinance exceeds the State requirement, therefore members agreed, at the request of an applicant, to amend the ordinance to reflect what would best serve the Town of Shapleigh, and meet State guidelines. The board will further discuss this amendment.*

§105-37. Campgrounds.

I. A campground shall provide water and sewerage systems, sanitary stations and convenience facilities in accordance with the regulations of the State Plumbing Code and State of Maine Department of Human Services. ~~In no case shall less than one toilet, lavatory and shower be provided for each sex for every 10 camping and tent sites.~~

**In no case shall there be less than one toilet / lavatory for every 20 sites, and one shower for every 30 sites for each sex provided for all camping sites. OR**

In no case shall less than one toilet, lavatory and shower be provided for each sex for every ~~10~~ **20** camping and tent sites, **which includes RV sites.**

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*This amendment is for clarity on what the intention is for individual campsites in the Town of Shapleigh.*

§105-38. Individual private campsites not associated with campgrounds.

EXISTING:

- A. One campsite per lot existing on the effective date of this chapter, or 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted.
- B. When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.

ALTERNATIVE for Clarity:

- A. **One individual private campsite is allowed on an existing legal lot of record in the General Purpose District. One campsite is allowed on an existing legal lot of record or 30,000 square feet of lot area, whichever is less, in the Shoreland District.**
- B. **When an individual private campsite is proposed on a lot in the General Purpose District, that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure. When the individual private campsite is proposed on a lot in the Shoreland District, that contains another principal use and/or structure, the lot must have the minimum lot dimensional requirements for a principal structure and/or use and 30,000 square feet of lot area for the individual private campsite.**

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*The board believes YCS&WCD is the best choice to be sure that shoreline stabilization measures put into place will have lasting benefit to the lake and shoreline. They can also educate homeowners on measures to mitigate future stormwater issues, while on site. YCS&WCD is in agreement, for a fee to cover travel & time, to do this for the town. The fee is to be discussed further after speaking with YCS&WCD.*

§105-51.3. Revegetation requirements.

- A. The property owner must submit a revegetation plan, prepared with and signed by a qualified professional **in shoreline stabilization**, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is, to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- C. If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted **to the Planning Board for approval.** ~~with any renewal or new permit application.~~ **Upon completion of the revegetation and shoreline stabilization, York County Soils & Water Conservation District (YCS&WCD) shall inspect the site to be certain all stabilization activities are completed as presented, and provide the inspection report to the Code Enforcement Office and Planning Board.**

**F. Fee. A one-time fee of \$100 shall be collected for the final inspection fee for the 3<sup>rd</sup> party inspection by YCS&WCD for the inspection of all revegetation plans required for shoreline stabilization.**

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The Planning Board 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)