

**Shapleigh Planning Board**  
**Minutes**  
**Tuesday, February 27, 2024**

Members in attendance: Steve Foglio (Chairman), Ann Harris (Vice Chairman), Madge Baker, Norman Baker, and Alternate Thomas Clement. Code Enforcement Officer Mike Demers was also in attendance. Maggie Moody was unable to attend, therefore Thomas Clement sat in as a regular member this evening.  
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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.  
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- ***The Planning Board meeting started at 7:00 pm.***
- ***The Planning Board Chairman began the meeting with the Pledge of Allegiance.***
- ***Steve F. stated the first item was for the reading of the minutes. He asked if there were any questions or comments? There were none. The minutes were approved as read.***

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**Unfinished Business:**

**Best Practical Location – Replace Structure / Members to Sign Final Plan for Recording – Map 23, Lot 9 (41 Starboard Lane) – Cass Shumsky, Applicant & Property Owner**

Mr. Shumsky was present for the review of the application. He was once again before the board, so members could sign an amended survey plan, which will then be recorded.

Provided this evening was an ***amended*** survey plan, entitled ‘Plan Showing a Boundary Survey for Mark N. & Diane Hubert and Cass W. Shumsky, 52 Archibald Avenue, Methuen, Massachusetts 01844, Property Located on Starboard Lane Shapleigh, Maine’ drafted by Jacob I. Bartlett, PLS #2513, dated amended 2/14/2024. The plan depicts the lot dimensions & the fact the lot is 13,907± Sq. Ft.; an existing garage; the location of Starboard Lane – a right-of-way, which runs through the lot; a concrete walkway, a paver walkway and patio; and two houses, both with a porch. The structure to be replaced is located 10’ 9 ¼” from the high-water-mark on the northern corner and 10’ 9 ¾” on the southern corner at its closest point, and 6’ 2 ¼” from Map 23, Lot 10, at its closest point. The abutting property owners are also noted on the plan, those being Harland H. Eastman, Tax Map 23, Lot 8, located on the southerly side of the applicants lot; Stephen E. Eastman & Helyn C. Hollidge, Tax Map 23, Lot 10A, located at the easterly side of the applicants lot; and Robert Family Revocable Trust of 2016, Tax Map 23, Lot 10, located on the northerly side of the applicants lot. Two notes were added to the amended plan, Plan Note 8 – Mousam Lake, and Plan Note 9 (which is listed at Note 7, but should be Note 9) – Surveyor’s Note. The Surveyor’s Note is as follows: *The surveying stamp heron is for plan revisions(s) listed as Revision C, dated 2-14-2024 and after. The original boundary determination was performed by Corner Post Land Surveying, Inc., prior to being a division of Sebago Technics, Inc. Sebago Technics, Inc. makes no representations or warranties regarding the boundary work performed by Corner Post Land Surveying, Inc. or any boundary determinations as depicted on this plan.*

Board members reviewed the plan provided. Barbara F. stated that members would need to vote to

approve the amended plan, since the distance to the high-water-mark on the new plan did not match the original approval. She said the new plan depicts the new distance to the high-water-mark as 10 foot 9 1/4 inches at the closest point, whereas on the original plan the distance to the HWM was 10.78 inches. She said that is the only difference on the plan with respect to setbacks.

Barbara F. stated there were also two notes added to the plan, but they did not affect the location of the structure. One note describing Mousam Lake, that it is a great pond and spoke about the low-water-mark, and the other was a Surveyor’s note. She read the note out loud (see above). She added that the last two notes were not numbered correctly, Note 7 was actually Note 9.

Steve F. stated that he would entertain a motion.

**Madge B. moved to approve the updated plan presented this evening, dated 2-14-2024, drafted by Jacob Bartlett. Ann H. seconded the motion. By a vote of 5 – 0, the motion to approve the amended survey plan was unanimous.**

Members signed the plan and gave it to Mr. Shumsky to record. Barbara F. asked Mr. Shumsky to provide her with the Book/Page/Date from the Registry of Deeds as soon as possible, and if he had any issues recording it to let her know.

Nothing further was discussed.  
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**Amendment to a CUP – Add 12’ x 20’ Storage Shed to Property for Mainely Rustic to Utilize – Map 19, Lot 13 (63 Emery Mills Road) – Sharon Tombarelli, Applicant; Roger Berube, Property Owner**

Ms. Tombarelli was present for the review of the application, along with Mr. Berube.

Provided along with the application was an aerial photograph of part of Lot 13, depicting the existing parking area, the structure used in part for Mainely Rustic, along with a storage building for Berube Builders. The approximate location of the 12’ x 20’ shed was written on the photo.

The application detailed description of the project is as follows: *Placing a 12’ x 20’ shed next to building for storage, 15’ from corner of building to side of shed. 65’ front lot line to beginning of shed, 64’ side shed to side road.*

The existing conditions that were part of the original Conditional Use Permit are still in effect and are as follows:

- 1) The hours of operation shall be 9:00 a.m. thru 7:00 p.m., seven days a week.
- 2) A maximum of 400 square feet shall be used to display outdoor furniture. This furniture is to be taken inside at the close of business in the evening and at no time shall it be displayed/placed in the parking area.
- 3) Signage for the new structure shall be permitted through the Code Enforcement Office.

This evening provided were pictures of the utility shed, along with the shed specifications, which are as follows: 4” x 6” Pressure Treated Skids; 2 x 4 Floor Joists 12” On Center, with 450 lbs. Point Load Rating; 5/8” Tongue & Grooved Engineered Decking; 3’- 9 Lite Exterior Entrance Door. A Drawing Sheet depicted each side of the structure with respect to length, width, location of door(s) and window(s), along with the size and location of the attached porch.

Provided were pictures of the existing parking area and buildings, and Ms. Tombarelli pointed to where the new shed would be located. A sketch of the parking area was provided as well. The sketch depicted the general location of Route 109; existing parking area(s), one being 100 feet long and the other being 55 feet long; the existing structure housing Mainely Rustic, with the location of the spotlight and front entrance door used to enter the building; and the general location of the new shed, outdoor light on the shed, and walkway from the shed to the parking area.

Steve F. stated the next item was for an amendment to a Conditional Use Permit for a storage shed for Mainely Rustic on Map 19, Lot 13. He said that at the last meeting the board was looking for additional information from Ms. Tombarelli. Ms. Tombarelli provided the board with pictures of what the shed would look like, information about the building, and she noted that the front door would be 36 inches wide. Ms. Tombarelli said that she created a sketch of the existing parking area, and explained to the board what was on the plan. She said she was not sure how many parking spaces were allotted for Mainely Rustic, so she just provided the size of the entire parking area. She pointed out the shed location and stepping stones to the shed. She showed the board three pictures, which showed the existing store, parking area, and an area where the new shed will be placed, kitty-cornered off the existing building. Steve asked about the spotlight for the parking area. Ms. Tombarelli showed him where it was located, and said she took a picture last night of the parking area, where she could show the board how much of an area is lit up. She said that she would still add an outdoor light to the shed, a motion light, so if someone is walking to the shed it will come on. She said it is unlikely that the shed would be open to the public after dark, because she only will use it for the summer, and she isn't at the store when it is dark. She wanted the motion light more for security purposes. She added that there would be lighting inside the shed. She asked the board if they needed anything else?

Madge B. asked if the board knew how many parking spaces were on site from the original approval? Barbara F. provided a copy of the parking plan from a previous business approval on Lot 13. The plan depicted a total of 27 spaces. Steve F. reviewed the ordinance, §105-43 'Off-street parking and loading', and stated 1 space was required for each 150 square feet or fraction thereof of floor area for retail. Madge thought they needed 2 more spaces. Madge was not sure how many were needed originally. Steve asked Mr. Berube what businesses were in the structure? Mr. Berube stated there was a psychic, Colleen Feeney. Ms. Tombarelli stated that Ms. Feeney was by appointment only. Steve said it looked like the existing space was around 2000 square feet. He said 13 would be required, and 2 for the shed. Steve asked if Ms. Tombarelli had any employees? She stated that she had one part time employee. Steve said that added one more space required. Steve believed there was enough existing parking to cover the addition of the shed. Ann H. stated that she did not think that the parking lot was ever full to date.

Steve F. reviewed §105-43 in its entirety and believed that section of the ordinance was met. Madge B. stated that at the last meeting Steve went through the standards for a conditional use, as well as the conditions.

Madge B. asked if the structure was going to sit on gravel? Mr. Berube stated they would put down filter fabric, crushed stone, then 4 x 8 x 16 cement block(s). Steve F. asked CEO Demers if that would be ok? CEO Demers did not state he had an issue.

**Steve F. reviewed the conditions for the permit as follows:**

- 1) Any signage shall be through the Code Enforcement Office.**
- 2) There shall be no flammable materials stored within the shed.**
- 3) The shed must sit within the building envelope, meeting all setback requirements.**
- 4) The hours of operation will remain the same; 9:00 am thru 7:00 pm, seven days a week.**

- 5) Any required interior lighting, exterior lighting, or other safety features must be permitted through the Code Enforcement Office, and an occupancy permit must be obtained prior to occupancy.
- 6) Remaining existing condition(s) of Mainely Rustic are still in place - A maximum of 400 square feet shall be used to display outdoor furniture. This furniture is to be taken inside at the close of business in the evening and at no time shall it be displayed/placed in the parking area.

Steve F. asked board members if they had any other conditions, questions or concerns? There were no comments. Steve asked if she wanted to change her hours of operation? Ms. Tombarelli stated that she did not, that even though she was not open 7 days a week, she was asked to put down any potential hours.

Steve F. stated he would entertain a motion.

**Tom C. made the motion to approve the amendment to a Conditional Use permit to add a shed for Mainely Rustic on Map 19, Lot 13, with the stated conditions. Ann H. seconded the motion. By a vote of 5 – 0, the motion to amend the Conditional Use Permit was unanimous.**

Nothing further was discussed.

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**The Findings of Facts**

- 1. The owner(s) of Shapleigh Tax Map 19, Lot 13 (63 Emery Mills Road) is Roger Berube Builders, Inc., mailing address of P.O. Box 14, Springvale, Maine 04083, per Warranty Deed - Book 14288, Page 266, dated 11/15/2004, registered at the York County Registry of Deeds.
- 2. The property is located in both the General Purpose District and Shoreland District, and according to the Assessor’s office, it contains 3 acres.
- 3. Provided was an aerial photograph of part of Lot 13, depicting the existing parking area, the structure used in part for Mainely Rustic, along with a storage building for Berube Builders. The approximate location of the 12’ x 20’ shed was written on the photo.
- 4. Provided were pictures of the utility shed, along with the shed specifications, which are as follows: 4” x 6” Pressure Treated Skids; 2 x 4 Floor Joists 12” On Center, with 450 lbs. Point Load Rating; 5/8” Tongue & Grooved Engineered Decking; 3’- 9 Lite Exterior Entrance Door. A Drawing Sheet depicted each side of the structure with respect to length, width, location of door(s) and window(s), along with the size and location of the attached porch.
- 5. Provided were pictures of the existing parking area and buildings, the applicant pointed out where the new shed would be located. A sketch of the parking area was provided as well. The sketch depicted the general location of Route 109; existing parking area(s), one being 100 feet long and the other being 55 feet long; the existing structure housing Mainely Rustic, with the location of the spotlight and front entrance door used to enter the building; and the general location of the new shed, outdoor light on the shed, and walkway from the shed to the parking area.
- 6. The application detailed description of the project is as follows: *Placing a 12’ x 20’ shed next to building for storage, 15’ from corner of building to side of shed. 65’ front lot line to beginning of shed, 64’ side shed to side road.*

7. The application as presented met the Basic Performance Standards in the Zoning Ordinance. The board noted for this application, most of the standards have already been approved for this site, as other permitted businesses exist at this time. Traffic access to the site is safe; there is no noise associated with the proposed use; there is no dust, fumes, vapors or gases; no odors; no glare from lighting onto adjacent properties or Emery Mills Road; there is no additional setback or screening required, the shed sits well off the road; there are no explosive materials being stored inside the shed; the shed does not affect water quality; there is no additional refuse associated with the shed; and there is existing access onto Route 109.
8. The application met the standards under §105-43 ‘Off-street parking and loading’; the board agreed there is adequate parking on site with the addition of the shed. Two additional parking spaces are required for the new structure, and 17 for the existing businesses. There is a total of 27 parking spaces available at this time.
9. The application as presented met the performance standards under §105-73.G & H ‘Conditional Use Permits’ as per the documentation provided and as presented with conditions. The proposed use shall not have an adverse effect on aquatic life or wildlife; the proposed use is not in the Shoreland District; the use is consistent with the Comprehensive Plan which encourages businesses along State Route 109; traffic access to the site is safe for this location, minimum site distances are met in both directions; the lot is not located within the flood zone; there are no additional facilities required; the main function of the shed is for storage, any sales from the shed will not produce any waste; the parking area is in place, no vegetation is being removed, therefore no stormwater plan was required; the location has been previously approved for fire protection; there is existing vegetation and there shall be no lighting facing onto the road or neighboring properties, and there are no fumes, dust, odors and the like beyond the lot lines; there is no noise associated with this business. Hours of operation are to remain the same for Mainely Rustic. All performance standards shall be met with six conditions.
10. A notice was mailed to all abutters within 500 feet of the property on January 26, 2024. Meetings were held on Tuesday, January 23, 2024, Tuesday, February 13, 2024, and Tuesday, February 27, 2024. A public hearing was held on Tuesday, February 13<sup>th</sup>, prior to the regularly scheduled meeting.
11. The Planning Board unanimously approved the amendment to the Conditional Use Permit to place a 12’ x 20’ shed on the property to be used by Mainely Rustic, on Map 19, Lot 13 (63 Emery Mills Road), with six conditions.
12. **The condition(s) of approval are as follows:**
  - 1) **Any signage shall be through the Code Enforcement Office.**
  - 2) **There shall be no flammable materials stored within the shed.**
  - 3) **The shed must sit within the building envelope, meeting all setback requirements.**
  - 4) **The hours of operation will remain the same; 9:00 am thru 7:00 pm, seven days a week.**
  - 5) **Any required interior lighting, exterior lighting, or other safety features must be permitted through the Code Enforcement Office, and an occupancy permit must be obtained prior to occupancy.**
  - 6) **Remaining existing condition(s) for Mainely Rustic are still in place - A maximum of 400 square feet shall be used to display outdoor furniture. This furniture is to be taken inside at the close of business in the evening and at no time shall it be displayed/placed in the parking area.**

**Motion; Vote; Decision**

After careful consideration and a review of all material presented to the Board, a motion was made on Tuesday, February 27, 2024, to approve the amendment to the Conditional Use Permit to place a 12' x 20' shed on the property to be used by Mainely Rustic, on Map 19, Lot 13 (63 Emery Mills Road), with six conditions. By a unanimous vote of 5 – 0, the amendment to the Conditional Use Permit was accepted and approved, with six conditions.

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**Best Practical Location – Place New Foundation Under Existing Structure or Place a New Foundation and Replace the Existing Structure – Map 43, Lot 43 (29 Pine Cone Drive) – Tyler Matthews, Application; Steve Smith, Property Owner**

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

Provided along with the application, was part of a survey plan, which depicted the 'Existing & Proposed' house. The plan showed a deck attached to the house, two concrete pads, chimney and steps. The measurement from the deck to the high-water-mark was written as 29.1 feet, the measurement from the foundation to the high-water-mark was written as 35.8 feet. The building overhang was noted on the plan, and there was a blue highlight along the overhang, with a notation that stated 'gutters or dripline trench @ rooflines'. The distance to the side lot lines and rear lot line was also noted as follows: distance to Map 43, Lot 42 is written as 11 feet at the closest point; distance to Map 44, Lot 1 is written as 5.1 feet at the closest point; and the distance to the rear lot line is written as 14.1 feet.

Provided was a copy of part of a survey plan, which was entitled 'Tree'. On the plan it showed the general location of 4 trees in relation to the existing structure that are to be removed, and the general location of where 4 trees will be planted.

Provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by Mark A. Truman, SE #121, dated 5/5/2010, which was the revised plan of the plan dated 5/5/2007. The system appears to be for 4 bedrooms and serves *two camps*, although only Map 44, Lot 1 is noted on the application.

Provided was a letter of authorization, which stated that Tyler Matthews, DBA Lake Living Consultants, could act on behalf of Steven A. Smith, for permits and building, for property located at 27 and 29 Pine Cone Drive, dated 1/22/2024.

Pictures of the existing structure were provided at the meeting held on Tuesday, February 13, 2024.

The application detailed description of the project was as follows: *Plan to lift the house & put it back down on a new foundation, but if rot & mold are present we may have to just tear it down.*

Steve F. stated the next application was for 29 Pine Cone Drive, place new foundation under the existing structure or replace the structure and place a new foundation. Steve asked Mr. Matthews if they made a determination as to whether or not they would be replacing the structure? Mr. Matthews stated, no. He said he was 99% sure they would just be lifting the structure and not replacing it.

Steve F. reviewed §105-4.D(3) 'Foundations', Section (a), *'Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and the new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Subsection D(7) Relocation, below'*. Steve

thought this would apply to both applications for Mr. Smith. Steve stated the foundation for this structure was 35.8 feet back from the high-water-mark.

Steve F. reviewed §105-4.D(7)(a) ‘Relocation’, ‘*A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming*’. Steve asked Mr. Matthews if he was leaving it in the same spot, picking it up and putting it down. Mr. Matthews said, yes.

Steve F. asked if he was cutting four trees, and replacing them with four trees? Mr. Matthews said, correct. Steve reviewed §105-4.D(7)(b)[1] ‘Trees, woody vegetation and ground cover’, [a] ‘*Trees removed in order to relocate a structure must be replanted with at least one native tree, six feet in height, measured from the base of the trunk to the top of the tree, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Steve stated he was not removing more than five trees. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Trees shall be planted greater than five feet from the side lots lines, and shall create a well-distributed stand of trees. These replanted trees shall be flagged with fluorescent tape no less than 18 inches in length which shall not be removed except by the Code Enforcement Officer upon inspection*’.

Steve F. reviewed §105-4.D(7)(b)[1][b] ‘*Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed*’.

Steve F. reviewed §105-4.D(7)(c), ‘*All approved plans shall require confirmation in writing by a licensed surveyor that the placement of the structure is correct per the specifications approved by the Planning Board.*

Steve F. asked the board if there was any discussion? Madge B. asked if the board was reviewing both applications at once or just 29 Pine Cone Drive? Steve said just 29, picking up the structure and putting it back down. He asked what the foundation was going to be? Mr. Matthews thought, due to the water table being high, it would be a six foot foundation. Steve added, concrete foundation, and said for the record, he did not care if it was 6 or 8 feet high. Madge agreed.

Steve F. asked Mr. Matthews if anyone checked the septic system to see if it was working? Mr. Matthews said no, but said it was a fairly new system.

Steve F. asked if there was anything else to review for this application? Madge B. stated that the board needed to make a decision on location, that we don’t want it moved. She said we are dealing with best practical location, and she felt findings needed to be made for the record. She stated that the finding would be that there will be less disturbance if the structure is left where it is, and there is no way the structure can be located where it will be conforming. She said the finding is that the board is of the opinion that it is better not to move it, because it will cause less disturbance. Steve said the only thing he could see would be to turn it 5 degrees, so the 5 foot setback to the side lot line would be less non-conforming. Madge agreed that it would go from 5 feet to 10 feet. She asked if there was any thought

about doing that? Steve asked Mr. Matthews if they turned the structure 5 feet would it matter? Mr. Matthews said, no. He said his only concern was the fact he didn't have the measurement for the opposite side, so he didn't want the board to set the other measurement for the side lot line. Mr. Matthews said, looking at the neighboring house, turning it would make it parallel to that house and the property line, and he did not have a problem with that. Steve said it seemed to make sense, providing it did not require the cutting of anymore trees. Mr. Matthews stated that it would not. Madge said it would make it approximately 10 and 11 feet on the front of the structure to the side lot line and 10 and 11 feet on the back. She added that it would make the structure a little more conforming. CEO Demers thought the critical measurement was the high-water-mark. Madge said it would be more conforming if you straighten it. CEO Demers said he understood, but he didn't want to paint him in a corner, setting the figures in stone, vs if the applicant is for same place. He asked what the distance was to the high-water-mark. Steve said that to the porch it is 29.1 feet. CEO Demers said that was what the board was considering. Barbara F. believed the board could consider the entire structure, since it was entirely non-conforming. Steve stated that the board needs to make the structure as conforming as possible. CEO Demers disagreed. He said the Planning Board is going to set the building to the greatest practical extent to the high-water-mark. Madge said that if the board straightens it, it will increase the setback, making it more conforming.

Steve F. reviewed, once again, §105-4.D(3) 'Foundations', Section (a), *'Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and the new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Subsection D(7) Relocation, below'*.

Madge B. and Ann H. stated that if the structure was turned so it lined up with the side lot lines, it could be moved farther from the water. Steve F. stated that they do not want to get too far back to the rear lot line either. Ann agreed. Tom C. agreed, stating if you pivot one corner it would move the structure away from the water on one side, while the other corner would stay the same distance from the water. Steve said they might gain 5 feet, and that he liked the idea of straightening it out more for the homeowner.

Board members agreed that keeping the structure no closer than 10 feet to the side lot line and no closer than 35.8 feet from the high water mark, would give him enough wiggle room, while making the structure more conforming.

Steve F. reviewed §105-4.D.(7) 'Relocation', (b) *In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems and the type and amount of vegetation to be removed to accomplish the relocation.* Steve asked Mr. Matthews where the location of the septic system was? Mr. Matthews was not certain. Ann H. asked if both houses shared a septic system? Mr. Matthews stated that they did, noting some of the system was on this lot, but most of it was on the adjoining lot. Steve reviewed the septic design provided to the board. Steve said if the board turns the structure, it may make the septic system illegal. He said right now there is 14 feet between the corner of the bed and the edge of the camp. Ann H. asked exactly where the septic is located, as the design says 'proposed'? Ann also asked if the shed was still on site. Mr. Matthews said it was there now, but will be removed. Steve asked CEO Demers how close he can be from the septic bed to the foundation of the camp? He asked if it was 20 feet? CEO Demers looked up the information, and he read 20 feet from a new system, and 10 feet if the site evaluator places it. CEO Demers asked what it was currently? Steve said, 14 feet. He said it can't go any closer, and asked if a new foundation can go under it without an ok from the septic designer? CEO Demers said, yes.



Steve F. stated that based on the location of the septic system, he felt the structure needed to stay where it was. The other members agreed. Steve asked Mr. Matthews if the septic system was in the location on the plan? Mr. Matthews believed it was.

Steve F. reviewed §105-4.D(7) 'Relocation' once again, and stated that the HHE-200 (Subsurface Wastewater Disposal System Application) was adequate to meet the ordinance.

Norman B. asked for clarification, that the applicant planned to lift the house and if there is no rot present, he will put it back down in the existing location on a new foundation. Steve F. stated that he was correct. Madge B. added that they should not move it because of the location of the septic system. Norman asked what happened if there is mold present? Tom C. stated that they will put in a new foundation and a new building. Mr. Matthews stated it would be the same exact spot. Norman said, ok.

Steve F. asked if there was any further discussion on this application? Madge B. said, no. She noted that she believed it was worth reviewing to try to make it more conforming. Steve agreed.

**Steve F. stated the conditions of the permit 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) **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 / including the four trees to be planted.***
- 3) **A licensed surveyor shall confirm in writing that the placement of the new structure 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 29.1 feet to the high-water-line from the deck; no closer than 35.8 feet from the front right corner of the foundation to the high-water-line (corner closest to Map 44, Lot 1); the front right corner of the foundation is 10.6 feet and rear right corner 5.1 feet, from the Lot line of Map 44, Lot 1 at its closest point; the front left corner of the foundation to the lot line of Map 43, Lot 42 is set at 11 feet; and the distance to the rear lot line is 14.1 feet.**
- 4) **The approved revegetation plan, which includes 4 trees to be replaced no further from the water than the existing trees being removed, shall be completed by July 1, 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. *These replanted trees shall be greater than 5 feet from the side lot line and shall be flagged with fluorescent tape no less than 18 inches in length which shall not be removed except by the Code Enforcement Officer upon inspection.***
- 5) **A survey plan shall be provided to the Planning Board with a signature block as soon as practical; no construction shall begin until the plan is signed by the board. This plan shall be recorded within 90 days of the approval date at the York County Registry of Deeds, otherwise the approval becomes null and void.**

Norman B. made the motion to accept the plan as written, keeping the structure in the exact same location as the existing, with conditions. Tom C. seconded the motion. By a vote of 5 – 0, the motion to approve with conditions was unanimous.

Nothing further was discussed.

**Findings of Fact**

1. The owner(s) of Shapleigh Tax Map 43 Lot 43 (29 Pine Cone Drive) is The Steven A. Smith Revocable Living Trust u/t/a/ dated June 1, 2023 with an address of 456 Wentworth Road, Brookfield, NH 03872, per Warranty Deed, BK 19307, PG 715, recorded 9/7/2023 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 .09 Acres.
3. Provided was part of a survey plan, which depicted the ‘Existing & Proposed’ house. The plan showed a deck attached to the house, two concrete pads, chimney and steps. The measurement from the deck to the high-water-mark was written as 29.1 feet, the measurement from the foundation to the high-water-mark was written as 35.8 feet. The building overhang was noted on the plan, and there was a blue highlight along the overhang, with a notation that stated ‘gutters or dripline trench @ rooflines’. The distance to the side lot lines and rear lot line was also noted as follows: distance to Map 43, Lot 42 is written as 11 feet at the closest point; distance to Map 44, Lot 1 is written as 5.1 feet at the closest point; and the distance to the rear lot line is written as 14.1 feet.
4. Provided was a copy of part of a survey plan, which was entitled ‘Tree’. On the plan it showed the general location of 4 trees in relation to the existing structure that are to be removed, and the general location of where 4 trees will be planted.
5. Provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by Mark A. Truman, SE #121, dated 5/5/2010, which was the revised plan of the plan dated 5/5/2007. The system appears to be for 4 bedrooms and serves *two camps*, although only Map 44, Lot 1 is noted on the application.
6. Pictures of the existing structure were provided at the meeting held on Tuesday, February 13, 2024. (These pictures meet the preconstruction photo requirement under §105-3.E.)
7. The application detailed description of the project was as follows: *Plan to lift the house & put it back down on a new foundation, but if rot & mold are present we may have to just tear it down.*
8. 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 not met, as a partial survey was provided. A full survey shall be required as a condition of approval.
9. 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 due to the location of the existing subsurface wastewater disposal system; due to the small size of the lot, not moving it will create less disturbance; and there is no place on the lot where it could be located to make it conforming. The board members agreed to the tree removal plan provided.

10. The board members concurred the application met the requirements under §105-46 ‘Sanitary provisions’, as the applicant provided a State approved Subsurface Wastewater Disposal System Application for two camps and a total of 4 bedrooms, plan dated 5/5/2010.
11. The Planning Board had no issue if the structure needs to be replaced, due to rot and/or mold, the foundation and a new structure will be located in the exact same location as existing.
12. A notice was mailed to all abutters within 500 feet of the property on February 14, 2024. Meetings were held on Tuesday, February 13, 2024, and Tuesday, February 27, 2024. A site inspection was done by members on an individual basis.
13. The Planning Board vote was unanimous, 5-0, to approve the Best Practical Location for a new foundation under the existing structure, and the possible replacement of the existing structure as well; placing the foundation no closer to the high water mark, or the side and rear lot lines than the existing structure, on Map 43, Lot 43, per the plans provided, with five conditions.
14. **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) **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 / including the four trees to be planted.***
  - 3) **A licensed surveyor shall confirm in writing that the placement of the new structure 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 29.1 feet to the high-water-line from the deck; no closer than 35.8 feet from the front right corner of the foundation to the high-water-line (corner closest to Map 44, Lot 1); the front right corner of the foundation is 10.6 feet and rear right corner 5.1 feet, from the Lot line of Map 44, Lot 1 at its closest point; the front left corner of the foundation to the lot line of Map 43, Lot 42 is set at 11 feet; and the distance to the rear lot line is 14.1 feet.**
  - 4) **The approved revegetation plan, which includes 4 trees to be replaced no further from the water than the existing trees being removed, shall be completed by July 1, 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. *These replanted trees shall be greater than 5 feet from the side lot line and shall be flagged with fluorescent tape no less than 18 inches in length which shall not be removed except by the Code Enforcement Officer upon inspection.***
  - 5) **A survey plan shall be provided to the Planning Board with a signature block as soon as practical; no construction shall begin until the plan is signed by the board. This plan 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 Practical Location to place the new foundation under the existing structure, the same distance to the high-water-mark, and same distance to all lots lines on Map 43, Lot 43, per the plan provided, with five conditions was accepted and approved.**

**Conditional Use Permit – Replace Structure Placing it 100’ from High Water Line and 25’ from Pine Cone Drive – Map 44, Lot 1 (27 Pine Cone Dr.)-Tyler Matthews, Applicant; Steve Smith, Property Owner**

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

Provided was part of a survey plan, hand written on it ‘Existing’. The plan depicted the existing house, building overhang, chimney, and steps. The distance from the high-water-mark to the existing structure is written as 34’. The 100 foot setback to the high-water-mark was also noted on the plan, along with a shed that is also beyond the 100 foot setback.

Provided was part of a survey plan, hand written on it ‘Proposed’. The proposed location of the new structure is beyond the 100 foot setback to the high-water-mark, and approximately 25 feet at its closest point to Whippoorwill Lane and Pine Cone Drive. The plan also notes the ‘Dripline trenches @ all roof driplines’. The plan depicts that where the old house is located the area will be revegetated. *The type of vegetation is not noted.*

Provided was part of a survey plan, hand written on it ‘Trees’. The plan depicts the existing structure that will be replaced, along with the existing shed. The plan notes there will be one dead tree removed and one tree will be planted.

Provided was a letter of authorization, which stated that Tyler Matthews, DBA Lake Living Consultants, could act on behalf of Steven A. Smith, for permits and building for property located at 27 and 29 Pine Cone Drive, dated 1/22/2024.

Provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by Mark A. Truman, SE #121, dated 5/5/2010, which was the revised plan of the plan dated 5-5-2007. The system appears to be for 4 bedrooms and *serves two camps*, although only Map 44, Lot 1 is noted on the application.

The detailed description of the project is as follows: *Tearing down the existing house and building a new house 100’ back from the water and 25’ from the road.*

Steve F. stated the next review is for 27 Pine Cone Drive, it is a complete tear down and rebuild. Steve said the entire structure is being taken down, set behind the power lines, and is beyond the 100 foot setback to the high-water-line. He said it was on the corner of Whippoorwill Lane and Pine Cone. He stated the setbacks will be 25 feet to Whippoorwill and 25 feet to Pine Cone. Ann H. asked what the setback was from the structure to the side lot lines? Steve stated that it appeared to be outside of the 10 foot minimum. Mr. Matthews agreed, stating he had the total of 30 for both sides.

Steve F. stated that the plan shows there is 1 dead tree to be removed and one tree to be replanted. He said that the entire structure is outside of the 100 foot mark to the high-water-line.

Steve F. reviewed 105-19.D Front yards. Whichever of the two methods for determining front yard setbacks (specified in the table in §105-18) yields the greater distance shall apply. *When a lot fronts on the shore and on a road or right-of-way, both the shoreland setback of 100 feet and the front setback as defined in § 105-18 shall be met, except on nonconforming lots of record, in which case the setback may be no less than 25 feet from the property line or road. This reduction shall require a conditional use permit from the Planning Board. All conditional uses approved relating to setbacks shall require confirmation, in writing, by a licensed surveyor that the placement of the structure is correct and the plan shall be recorded in the York County Registry of Deeds within 90 days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.*

Steve F. then reviewed §105-51.3 “Revegetation requirements”, Section A, as follows: *When revegetation is required as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.* Steve stated that the new structure is outside the 100 feet, but the area affected is in the shoreland zone. He asked the board members if they were ok with the revegetation plan? Madge B. stated that the plan only shows revegetation for where the house was, and it just says that it will be replanted. She did not feel it was a plan; it is just an agreement that it has to be revegetated. She said it states, ‘Old house location revegetated’. She said the ordinance says the vegetation ground cover must consist of similar native vegetation or ground cover. She said she assumed Mr. Matthews would be glad to say there probably wasn’t much on the lot to begin with. She said, however, it needs to be replanted. She stated the ordinance goes on to say that the vegetation may consist of grass, shrubs, trees or combination thereof. She said she would expect something. Mr. Matthews stated that he could add grass, because it is all grass around it. Madge said the board would want to see the grass where the old camp was. She noted it is hard to see where the old camp was, and she believed some work will need to be done to make sure something will grow there. Steve agreed that there are sandy soils in that location. She added that it’s also because there was a camp there. Steve asked what the camp was on? Ann H. stated that there is nothing there, it was torn down. Mr. Matthews stated that it was cement blocks. Ann asked Mr. Matthews if he was going to do ground prep where it was located? Mr. Matthews said that to stabilize it, loam and seed will be put down. Madge agreed that it would need some loam. Ann stated that a condition should be that it will be loamed and seeded to match the existing ground cover.

Steve F. asked Mr. Matthews what his time frame was for this project, an end date for replanting? Mr. Matthews stated July 1, 2024.

**Steve F. stated 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) 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 / including the tree to be planted.***
- 3) The revegetation plan, which includes 1 tree to be replaced no further from the water than the existing tree being removed, and revegetating the area where the removed camp was located with loam and seed, shall be completed by July 1, 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.**

- 4) 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 25 feet to Pine Cone Drive or Whippoorwill Lane.
- 5) A survey plan shall be provided to the Planning Board with a signature block as soon as practical; no construction shall begin until the plan is signed by the board. This plan 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. asked if this property was still owned by the same person as 29 Pine Cone Drive? Mr. Matthews stated, yes.

Steve F. asked if there was any further discussion for the project? There were no comments. Steve stated he would entertain a motion.

**Tom C. made the motion to accept and approve the permit to place the structure per the plans submitted, with the stated conditions. Ann H. seconded the motion. By a vote of 5 – 0, the vote to approve was unanimous.**

Nothing further was discussed.  
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**Findings of Fact**

- 1. The owner(s) of Shapleigh Tax Map 44, Lot 1 (27 Pine Cone Drive) is The Steven A. Smith Revocable Living Trust u/t/a/ dated June 1, 2023 with an address of 456 Wentworth Road, Brookfield, NH 03872, per Warranty Deed, BK 19307, PG 715, recorded 9/7/2023 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 .33 Acres.
- 3. Provided was part of a survey plan, hand written on it ‘Existing’. The plan depicted the existing house, building overhang, chimney, and steps. The distance from the high-water-mark to the existing structure is written as 34’. The 100 foot setback to the high-water-mark was also noted on the plan, along with a shed that is also beyond the 100 foot setback.
- 4. Provided was part of a survey plan, hand written on it ‘Proposed’. The proposed location of the new structure is beyond the 100 foot setback to the high-water-mark, and approximately 25 feet at its closest point to Whippoorwill Lane and Pine Cone Drive. The plan also notes the ‘Dripline trenches @ all roof driplines’. The plan depicts that where the old house is located the area will be revegetated. *The type of vegetation is not noted.*
- 5. Provided was part of a survey plan, hand written on it ‘Trees’. The plan depicts the existing structure that will be replaced, along with the existing shed. The plan notes there will be one dead tree removed and one tree will be planted.

6. Provided was a copy of the Subsurface Wastewater Disposal System Application, drafted by Mark A. Truman, SE #121, dated 5/5/2010, which was the revised plan of the plan dated 5-5-2007. The system appears to be for 4 bedrooms and *serves two camps*, although only Map 44, Lot 1 is noted on the application.
7. The detailed description of the project is as follows: *Tearing down the existing house and building a new house 100' back from the water and 25' from the road.*
8. A notice was mailed to all abutters within 500 feet of the property on February 14, 2024. Meetings were held on Tuesday, February 13, 2024, and Tuesday, February 27, 2024. A site inspection was done by members on an individual basis.
9. The application as presented met the performance standards under §105-73 'Conditional Use Permits' as per the documentation provided and as presented with conditions. The proposed new structure will not have an adverse effect on aquatic life or wildlife, it is being moved greater than 100 feet from the high-water-mark; Best Management Practices (BMP) shall be used during placement of the structure to prevent runoff onto Pine Cone Drive & Whippoorwill Lane and the surrounding properties; the area where the existing structure is being removed will have loam brought in and the area shall be seeded; the Comprehensive Plan does not directly address this at present but does want safe and healthy growth, the new structure will meet the ordinance standards; there was no concern for traffic noted; there is a working septic system in place for this structure; there are no hazardous materials associated with the application; there shall be no additional stormwater going into the water or onto adjacent properties during placement of the structure or once the project is completed, and required BMP shall be approved by the Code Enforcement Officer; the project takes place near the lake and fire protection was not addressed for this project; the revegetation, including grass and the replacement of one tree shall be completed by July 1, 2024; and there is no glare, odors and the like produced by this project; all performance standards shall be met with five conditions.
10. The board members reviewed 105-19.D Front yards. When a lot fronts on the shore and on a road or right-of-way, both the shoreland setback of 100 feet and the front setback as defined in § 105-18 shall be met, except on nonconforming lots of record, in which case the setback may be no less than 25 feet from the property line or road. This reduction shall require a conditional use permit from the Planning Board. All conditional uses approved relating to setbacks shall require confirmation, in writing, by a licensed surveyor that the placement of the structure is correct and the plan shall be recorded in the York County Registry of Deeds within 90 days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void. *The application as presented met the requirements, placing the structure 25 feet from the right-of-way. The plan must be recorded within 90 days of approval.*
11. The Planning Board unanimously agreed to approve the Conditional Use Permit for the 25 foot setback to Pine Cone Drive and Whippoorwill Lane to construct a new residential structure in the Shoreland District, greater than 100 feet from the high water mark, on Map 44, Lot 1 per the plans provided, with five conditions.
12. **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) 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 / including the tree to be planted.*
- 3) The revegetation plan, which includes 1 tree to be replaced no further from the water than the existing tree being removed, and revegetating the area where the removed camp was located with loam and seed, shall be completed by July 1, 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.
- 4) 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 25 feet to Pine Cone Drive or Whippoorwill Lane.
- 5) A survey plan shall be provided to the Planning Board with a signature block as soon as practical; no construction shall begin until the plan is signed by the board. This plan 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 25 foot setback from Pine Cone Drive and Whippoorwill Lane to construct a residential structure in the Shoreland District, greater than 100 feet from the high-water-mark, on Map 44, Lot 1 per the plan(s) provided, with five conditions, was accepted and approved.

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**Best Practical Location – Replace Structure Destroyed by Fire – Map 36, Lot 26 (1 Blaneys Island) – Tyler Matthews, Applicant; Don White, Property Owner**

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

Provided along with the application, was a Letter of Authorization which stated that Tyler Matthews of Lake Living Consultants could act on behalf of Don White for property located at 1 Blaneys Island, for planning, permits and building; it was dated 1/10/2024.

Provided was part of a plan that provided the dimensions of existing structures on Map 36, Lot 26. The plan depicted a 12’ x 16’ shed, and hand written from the shed were calculation to the high-water-mark of 54 feet, and 23 feet. The plan also depicts the dimensions of what was a camp, those dimensions are 30’ x 20’ with a 16’ x 12’ bump-out for a bedroom. There is also an attached 16’ x 20’ covered porch and an 18’ x 30’ uncovered deck, with a 16’ x 6’ uncovered deck bump-out. Measurements handwritten from the high-water-mark to the bedroom bump-out are 46 feet (Note the camp is 4 feet closer to the high-water-mark but it is not noted on the plan). The distance from the uncovered deck to the high-water-mark is hand written as 29 feet to the high-water-mark. *Note, this is only on the side of the deck, the distance to the camp on the rear to the high-water-mark is approximately 42 feet.* Also handwritten on the plan is ‘Proposed = 29’; Existing (pre-fire) = 29’.

Provided were lot coverage calculations. They are noted as follows: Shed = 192 sf; House 792 sf; Covered Deck = 320 sf; Uncovered Deck = 636 sf; Total 1940. 1940 / 34, 848 = 5.5%



Provided was the subsurface Wastewater Disposal System Variance Request, drafted by Kenneth Gardener, it was not dated. Attached was the Subsurface Wastewater Disposal System Variance Application, drafted by Kenneth Garner, SE #73, dated 10/10/2022, for a 2 bedroom house.

Provided at the meeting were pictures of the camp and deck, prior to the fire. Also provided were pictures post fire of the area.

The application detailed description of the project is as follows: *Existing house burnt down from a structure fire. Would like to build a new single family house.*

Provided this evening was a ‘Setback Plan Made for Lake Living Consultants, 706 West Shore Drive, Acton Maine 04001 of Property Located on Blaneys Island in Shapleigh, Maine’, drafted by Joseph L. Stanley, PLS #2453, dated 2/27/2024. The plan depicted the proposed 40 x 50’ house, with 8 x 20’ deck. The *proposed* house has setbacks to the high-water-mark set as being 31.6’ from the northeast corner of the structure; 30.5 feet from the northwest corner of the structure; 36.8 feet from the southwest corner of the structure; and 30.8 feet from the deck to the high-water-mark. Also shown on the plan was a line depicting 29 feet to the high water mark all around the entire island, the existing shed, with covered porch, and several wood decks.

Steve F. stated the next application is to replace a structure destroyed by fire on Map 36, Lot 26 on Blaneys Island.

Steve F. stated that for the record, he and Madge B. did a walk through with Mr. Matthews. He said it is a fire burnt structure and there is nothing left of it on the island. He said the structure was not very big. Steve said that Mr. Matthews had a plan to present to the board.

Ann H. stated that she wanted to be sure that another structure could be built, given the time frame of when it was burnt down, according to the ordinance. Steve F. stated that what is called for is that a permit be pulled, and work started within 1 year. Ann said she didn’t read that in the ordinance.

Steve F. reviewed 105-4(D)(5), ‘Removal, reconstruction or replacement’, *‘Any nonconforming structure which is removed or damaged or destroyed, regardless of the cause, by more than 50% of its Town-assessed value before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within one year of date of said damage, destruction or removal and provided that such reconstruction or replacement must be in compliance with all water body, tributary stream or wetland setback requirements to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this chapter. In no case shall the structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Subsection D(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total amount of footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replaced in accordance with Section (D)(7)(b) below’.*

Steve F. stated that there is a permit on file for the applicant for shortly after the fire. Ann H. asked what the date of the fire was? Ann stated she wanted it for the record. The board believed it was June of 2022. Steve said that it was stated by CEO Demers that the applicant came in shortly after the fire for a permit. Mr. Matthews agreed. Ann was not sure it was the next day, because the board was told they were waiting

for the insurance settlement. Steve reviewed the minutes of the last meeting, they read as follows: *Steve F. asked what the date of the fire was? Road Commissioner Stevens said he had pictures of the fire date stamped in his telephone. Steve said he just wanted it for the record. Mr. Matthews said it was June 2022. Steve said he was getting a permit 10 days later on July 1, 2022.*

Ann H. said the fire was in June of 2022, and the homeowner pulled a permit from the CEO on July 1<sup>st</sup> of 2022. Steve said the minutes stated that the permit was issued for ‘Demo remains from fire site, prep for rebuild, other permits required, PBR, septic plan, planning board, no permit fees due to fire’.

Norman B. asked if this was the only place on the island, the only structure? Steve F. stated, yes. Ann H. stated that you have to get to the island by water, the board got to the island on the ice. Norman said he was unable to go, Ann said she did not go either. Madge B. said there is a shed on site that did not burn.

Ann H. said the permit was pulled on July 1, 2022, and then the permit is good for one year to start, which is July 1, 2023. She said the applicant did not start reconstruction by July 1<sup>st</sup>. Steve F. said the demo was done. Ann said it was not the start of the rebuild but the start of the demo. Steve said we need to ask CEO Demers for clarification, his permits are good for one year to start, and 18 months in total? Ann said she understood that, he got a permit, but it says the permit is good for one year to start. CEO Demers said you can extend a permit, but the permit was pulled, that is the bottom line. Ann said she understood, but it says the permit is good for one year to start, which means it should be started in July of 2023. CEO Demers said he got a substantial start the first year, the demo, now he is coming in to finish up the permitting process, through a best practical location. Ann said it has to be completed by July of 2024. CEO Demers said no, he will get a new building permit. Ann said the building permit says ‘two years to complete’. CEO Demers said all the permits are in place. Ann thought the board was contradicting the ordinance. Steve asked if there was a copy of the permit. CEO Demers said he gave it to him at the last meeting.

Ann H. did not feel it made sense, with the dates, that the ordinance was being followed. Barbara F. provided a copy of the building permit, she obtained it from the Town Administrator, who got it from the Town’s records. Steve F. read the permit, he stated it was Permit Number 2023-1940, issued to Donald White, to demo the remains from fire prep site for rebuild. Other permits required, PBR, septic, Planning Board. No town permit fee due to fire. He stated the permit was issued 12/22/2023. Ann stated that is a different date than what is on record. The minutes stated the permit was pulled July 1<sup>st</sup> of 2022. CEO Demers thought it was a reprint. Barbara stated that this was in Trio (the towns permitting system) when the permit was created. Ann said she wants to be sure the dates are correct. Steve said that what he has in his hand says 12/22/2023. Ann said the fire was in June 2022, he had a year to pull a permit, which would be by July 2023. She said he pulled it 12/22/23, so he did not pull it within the year, because it would have had to be done by July of 2023. Steve said she was correct. Ann asked what the board should do from here, because this goes against the ordinance. Mr. Matthews asked if there was something that if there was a fire you didn’t have to worry about all this stuff?

Madge B. thought the thing to do would be to refer it to the town attorney. Ann H. agreed, because of the dates. Madge said she understood. Steve F. asked Mr. Matthews if he had any evidence that he had a permit within a year of the fire? Mr. Matthews said he did not, he just started working with Mr. White. Steve asked CEO Demers for the file on this property. CEO Demers did not produce the file.

Norman B. asked what the consensus was of the board members that did go to the site review, as the best practical location. Steve F. said it was extremely limited. Norman said it looked like the structure was on the widest part. The board agreed that trying to turn it would not gain anything. Norman thought it looked like it was facing west, which was a good direction to face.

CEO Demers said he would talk to the town attorney.

Mr. Matthews asked what this meant? The board stated they would table the application to get clarification. Steve F. stated that the board did not have evidence that a permit was pulled within a year of the fire. Ann H. added that the board did not want him to start to build and then find out he could not finish. Mr. Matthews asked if he had to come back? The board said that he did, after they get an opinion from the attorney. Mr. Matthews noted that at the last meeting he asked the board what else they needed, and the board said the surveyed plan. He said that now the board is asking for additional information, which he could have had. Ann H. said if the board gets the ok from the town attorney, then they can go forward with a decision.

Steve F. stated that at the last meeting the board was under the assumption that the permit was pulled in July of 2022. He said the date on the permit is December 2023. He said that puts the pulling of the permit after 12 months from the fire. He said there is nothing that the board can do. He said if there was a way to make this work, the board will do it.

Barbara F. stated that she needs to get a copy of the minutes done for the attorney, and CEO Demers can speak with him.

**Madge B moved that the board table the application and send the question from the board, to the town attorney. She stated that the question is, that according to the ordinance, a permit was not pulled within a year, and therefore we cannot act on the application. Is this correct? Ann H. seconded the motion. By a vote of 5 – 0, the motion to ask the town attorney’s opinion was unanimous.**

Nothing further was discussed.

**Discuss Front Yard Setback Ordinance - §105-19.D**

Steve F. stated that he asked Barbara F. to put this on the agenda. He said that at the last meeting the board voted to deny an application. Ann H. asked if he was speaking about Mr. Theriault’s application. Steve stated that was correct. Mr. Theriault was in the audience. (The application being referred to is: *Conditional Use Permit – Reduce Front Lot Setback for Existing Structure on Non-Conforming Lot of Record – Map 42, Lot 23-1 (39 Royal Coachman Way) – Ted Theriault, Applicant & Property Owner.*)

Steve was referring to the following: §105-19.D - *Whichever of the two methods for determining front yard setbacks (specified in the table in §105-18) yields the greater distance shall apply. When a lot fronts on the shore and on a road or right-of-way, both the shoreland setback of 100 feet and the front setback as defined in § 105-18 shall be met, except on nonconforming lots of record, in which case the setback may be no less than 25 feet from the property line or road. This reduction shall require a conditional use permit from the Planning Board. All conditional uses approved relating to setbacks shall require confirmation, in writing, by a licensed surveyor that the placement of the structure is correct and the plan shall be recorded in the York County Registry of Deeds within 90 days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.*

Steve F. stated that he believed the board made the wrong decision in denying the application. He said he read 105-19.D several times, and that even though the ordinance speaks about waterfront lots, he did not feel it was specific to waterfront lots. He said he feels this way, because the board has already used it

to make a non-waterfront lot buildable on Totte Road. He said they set a garage within 25 feet of Totte Road, and utilized this piece of the ordinance. He said that the way ordinance reads, perhaps the amendment is not right the way it is written, and he noted he cannot recall what the exact intention was. He said the board amended it 3/11/2022, so we could make lots more buildable, and more in conformance. Ann H. asked about the fact Mr. Theriault's situation is a corner lot, she was referring to Section F, which states that corner lot yards abutting roads shall have a minimum depth of 50 feet from each right-of-way or 105-19.D above.

Steve F. asked the board to look at the definition of a non-conforming lot of record. Steve stated that he believed Section D applied to all non-conforming lots. Steve referred the board to §105-4.B Definitions. *Non-conforming lots of records – A single lot of record which, at the effective date of adoption or amendment of this chapter, does not meet the frontage, width or depth requirements of the district in which it is located.* Steve said what he noted was 'of the district in which it is located'. He said this non-conforming lot of record is not just being tied to shoreland zoning, and he pointed out that there are not that many cases.

Madge B. stated that with the Totte Road situation, is it wasn't a principal structure. She said she thought there was a difference between a principal structure and a garage. She said she thought the setback for a garage was different. Steve F. asked if it was? Barbara F. did not think so. Madge said if you look, they talk about setbacks for principal structures, and she did not think of a garage as being a principle structure. She said sheds are not a principle structure and we allow sheds closer than the setback requirement. Steve agreed that there was a piece in the shoreland that talks about sheds. Madge said again, she thought of the garage as not a principal structure, that was her mistake.

Steve F. said he based the findings on this piece of the ordinance, and with the climate we are in with all these towns being forced to look at ADU's and more densely packed-in property, this is an avenue that could make more lots buildable. He noted older subdivisions. Madge agreed, but said she was not in favor of it when it's in the shoreland. Ann H. said she understood Steve's point of view, but wanted to be sure we were not going against the existing ordinance. Steve said he thought the board did. He said that the board voted to deny a permit, a permit that should be an after-the-fact permit, because the structure is already there, but it should be approved. Ann asked why? Steve stated, because it is a non-conforming lot of record. Ann said that not only was it a non-conforming lot, but it was also on a corner lot, so Section F applies. Steve said it allows for 25 feet. Ann asked about the 50 feet? Steve said that was 50 feet of depth, which they have. Steve said they were well beyond the 25 feet, they have 48 feet. Ann said she did not think that was an issue, but wanted to be sure the board didn't issue a permit that was not allowed. Steve agreed, that if the board didn't think he was reading the ordinance correctly, then it should not be issued.

Steve F. stated that Mr. Theriault has 48 feet and if he is reading Section D correctly, he is allowed an after-the-fact permit down to 25 feet. Steve asked Ann to read the ordinance again. She believed that it may apply to not just the Shoreland. Steve agreed it did not say it clearly, but he felt the intent of the amendment to this ordinance was to allow the reduction to the setback on all non-conforming lots, keeping in mind, there are not that many non-conforming, non-waterfront lots in the town. CEO Demers said, "Except for in Pine Springs." CEO Demers noted that the original road setback in Pine Springs was 25 feet. Ann said she understood what they were saying, but because there is still some doubt, couldn't the board have the town attorney look at it, to say for sure that as long as it is non-conforming it does not matter if it is or is not in the shoreland? Steve said he had no issue with that if it is what the board wants to do. He felt it covered all non-conforming lots, that the board should amend their decision, and then look more closely at this ordinance for next years zoning amendments.

Steve F. stated that if you take it one step further, what is the difference between a non-conforming lot of record that does have waterfront and one that doesn't? He asked why we would bother to separate them, when the non-conforming lot of record says nothing about waterfront? Madge said that she read it that with lots in the waterfront, the board wants to push the structure back from the water, whereas we do not do that outside of the Shoreland District. She said in that case, we are creating the problem for the land owner, they did not create it, in which case it doesn't fit a variance, because you are going for a variance from a Planning Board decision. She said that is why she sees it as applying to the shoreland. CEO Demers said it was the reason he proposed the change, is so you don't have to go for a variance. He said one of his training sessions was if you don't like the ordinance then change it. He felt with this change in the ordinance, you are not getting a variance, you are getting a conditional use. Madge agreed.

Steve F. said that he believed that this means the board will allow it sometimes. He said it would be no different if Mr. Theriault wanted to put a motorcycle shop in, the board would allow it, if we think it will not mess with the shoreland, the neighbors, etc. He said that is why the board agreed to go with the conditional use route, so it was not a guaranteed ok.

Mr. Theriault asked to speak. He said that the original issue that was discovered was when David Hughes went out there and he did the MLI on the property, and he looked at the current town setbacks, and saw that they were 50 feet. He said they had no way of knowing there was anything written here saying that non-conforming lots were subjected to 25 foot setbacks. He felt if it was written clearly, he didn't think he would be before the board. Ann H. said she understood, and so she wanted to be sure they were correct, so if this ever went to court, the board would have the correct documentation and decision on record. Mr. Theriault said it was not too many years ago that when he went to CEO Demers talking about a piece of property for sale, he was told he could not build on it, because it did not meet setbacks. He said that was the beginning of this, so CEO Demers came up with the concept of doing something on non-conforming lots. He thinks it is a good idea that needs clarification. Ann agreed. Mr. Theriault said if this was cleared up, so a surveyor could find it, it would be easier.

Ann H. said the original surveyor surveyed the property, then a permit was pulled to build, then the builder built the structure. She asked if when the permit was pulled, did the person think there was 50 feet? Mr. Theriault stated that he sent Sebago Tech to the site to find the front line, as requested by CEO Demers. He said the front line was flagged by Sebago Tech. He said the pins for the structure were set, and he noted that he added five feet. He said after the foundation hole was dug, the foundation was poured, the house was built, then nothing was thought about until the house was under contract. He said the lender and the title company, sent out David Hughes, and found an issue with the setback. He said it does meet setbacks, but he needs something from the town that he can file, so when the title company does their research, they will see the setback issue was cleaned up. CEO Demers said that if he had applied for a permit for a reduction for the front setback, he would already have the paper he needed. Mr. Theriault stated that he would have gone through this process. CEO Demers said, correct. CEO Demers stated that the setback is 50 feet, the MLI person is correct, however there is a conditional use that can be issued. He said that is why he is here now. Ann asked if after the concrete is poured, shouldn't it be surveyed again? CEO Demers stated, not in most cases. She said that you don't need to know you meet setbacks. CEO Demers said no, not if you are meeting dimensional setbacks. He said that on the application he was meeting the 50 foot setback, so I would not require a survey.

Steve F. asked the board where they were at, stating the board could change their mind. Steve said he would like to put it to a vote.

**Tom C. made the motion to revisit the decision by the Planning Board to deny the after-the-fact Conditional Use Permit application to reduce the front lot line setback for the existing structure on a non-conforming lot of record on Map 42, Lot 23-1, based on this evening's discussion regarding §105-19.D.**

Norman B. asked what the motion was. Steve F. stated that the motion is to agree that §105-19.D applies to all non-conforming lots of record, and not just waterfront lots of record. Barbara F. stated that is not what Tom stated, he was asking to revisit the decision. Steve asked if there was a second to revisit the decision?

**Ann H. seconded the decision to revisit the decision by the Planning Board. Ann H., Tom C., and Norman B. voted to revisit the decision. Madge B. was opposed. By a vote of 3 – 1, the motion to revisit the decision was upheld. Steve was not a voting member on this application.**

Steve F. stated the board needed to address the after-the-fact permit, as there was a fee involved. He asked what the fee was? Barbara F. stated the fee was 4 times the application fee. Steve asked to see the fee schedule, and CEO Demers provided it to him.

Steve F. asked if the board agreed this was an after-the-fact application? The board members agreed, this was an after-the-fact permit. Mr. Theriault was not in agreement. Steve stated that if he had come to the board prior to building the house, for a permit for a reduction in the setback, it would not be an after-the-fact permit. Mrs. Theriault stated that this was a non-conforming lot, which allowed 25 feet. Ann H. said the board was talking about pulling a permit. Mr. Theriault admitted it was his fault, he should have watched the concrete guy. He said he didn't think about it until he tried to sell the house. CEO Demers said it wasn't like he built the house without a permit. Steve asked what the after-the-fact conditional use permit fee was, \$1000 or \$250 times 4? Barbara stated that was correct.

Steve F. asked the board again if they felt this was an after-the-fact permit? Mr. Theriault felt if the ordinance was written right, he didn't think there would be an after-the fact. Steve F. stated that the board issues a conditional use permit for people who comply with this piece of the ordinance. He said he would come before the board, no different than the previous applicant, for a permit, before you build. Steve stated that Mr. Theriault had already built, and he built without the conditional use permit in place. He said at this point, the board has said, they are willing to issue the after-the-fact permit, but you still have to pay the after-the-fact permit fee. Mr. Theriault asked how he would have known that this would have come into play? Steve asked him what his original application said for his setback? Mr. Theriault stated, 50 feet. Steve asked where he ended up? Mr. Theriault asked what the permit should have said? Steve said 50 feet. Mr. Theriault said the permit should have said 25 feet. Steve said that no, if he came before the board, they could have issued a permit for 25 feet. Mr. Theriault said he didn't know back then. Steve said they could not fix that. CEO Demers added that the original building permit was taken out before this was part of the ordinance.

Ann H. asked if the surveyor should have known this? Steve F. stated that the foundation wasn't set by a surveyor. He said if it had been, Mr. Theriault would not be here.

Mr. Theriault continued to express his unhappiness. Steve F. stated that he could go to the Board of Appeals if he would rather, if he did not want the Planning Board to reverse their decision. He said that he asked Barbara to put this back on the agenda, because he felt the board made the wrong decision, based on the ordinance. He said three of the board members agreed with him. He said again, he could go to the Board of Appeals, or to the Selectmen, or pay the after-the-fact fee and walk out with a conditional use

permit, it was his choice. Steve asked Mr. Theriault what he wanted to do? Mr. Theriault agreed to the conditional use permit.

Steve F. read from the current Permit Fee Schedule, which states at the top of the document that ‘After-the-Fact Permits Shall be Charged 4X the Normal Permit Charge but No Less than \$150’. Norman B. asked what ‘no less than \$150’ meant. Barbara F. stated that some permit fees are only \$25, so they had a minimum fine of \$150.

Barbara F. stated the vote was to revisit the decision, there still needed to be one more vote to approve.

**Tom C. made the motion to reverse the decision to deny the application for an after-the-fact conditional use permit to reduce the front setback on an existing structure, of a non-conforming lot of record, on Map 42, Lot 23-1 (39 Royal Coachman Way), based on §105-19.D; making the motion to approve the after-the-fact application to allow the new setback to the front lot line, per the plan provided. Norman B. seconded the motion. Norman B., Tom C., and Ann H. voted to approve the application per the plan provided. Madge B. voted to deny. By a Vote of 3 – 1, the motion to approve was upheld. Steve was not a voting member on this application.**

Steve F. stated Mr. Theriault needed to bring a copy of the plan to the board, so it can be signed, and then recorded within 90 days of today. Barbara F. stated this would be a condition of approval.

Mr. Theriault asked what he needed to do next? Barbara F. stated he needed to bring the plan, showing the setback to the structure, to her. The plan needed a signature block and the surveyors stamp on it. He would also have to bring the after-the-fact fee to her for processing.

Nothing further was discussed.

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**Findings of Fact**

1. The owner(s) of Shapleigh Tax Map 42, Lot 23-1 (39 Royal Coachman Way) is Waters Edge Land Development, LLC, a Maine Limited Liability Company, of Shapleigh, County of York and State of Maine, per Warranty Deed, BK 18557, PG 187, recorded 2/12/2021 at the York County Registry of Deeds.
2. The property is located in the General Purpose District, and according to the Assessor’s office, it contains .67 Acres.
3. Provided along with the application was a copy of the town tax map depicting Map 42, Lot 23-1, which bordered on Royal Coachman Way.
4. Provided was a copy of what is entitled ‘As-built Building Sketch of Lot 1, Royal Coachman Way, Shapleigh, Maine for: Waters Edge Land Development, LLC, P.O. Box 62, Shapleigh, ME 04076’, drafted by Sebago Technics of South Portland, Maine. The plan depicted the constructed building and proposed septic location. *The setback from the front lot line is written as 48.1 feet on one corner and 50.4 feet on the other.* The setback from the structure to the rear lot line is written as 35.4 feet and 39.8 feet. General Notes: 1. Field work was performed by Sebago Technics, Inc. on January 23, 2024. 2. Boundaries shown hereon are based upon a plan titled ‘Pine Springs Development Corp, Shapleigh Maine, West Shores Section 4-W’ dated June 17, 1976 by John Large and Recorded at the York County Registry of Deeds in Plan Book 81, Page 31. 3. The purpose of this plan is to show the

relationship of the constructed building with the boundary lines of Lot 1. Handwritten on the plan was ‘Issue: 48.1 Ft’.

5. Provided was a copy of the Subsurface Wastewater Disposal System Application, for a 3 bedroom single family house, drafted by Gary M. Fullerton, SE #355, dated 1/11/2021.
6. The application detailed description is as follows: *Front Lot Line reduction for a non-conforming lot.*
7. A meeting was held on Tuesday, February 13, 2024, where the Planning Board denied the permit and sent the applicant to the Board of Appeals. On Tuesday, February 27, 2024, the board was asked to revisit their decision by the Code Enforcement Officer and Planning Board Chairman.
8. The applicant stated he brought in a survey company a year ago to flag off the front line, they set the stakes to the foundation from the staked front line. The applicant stated they dug the hole, put in the foundation, put up the structure. When the property was resurveyed, the applicant was told they were 2 feet too close to the front boundary line.
9. The board members reviewed 105-19.D Front yards. *When a lot fronts on the shore and on a road or right-of-way, both the shoreland setback of 100 feet and the front setback as defined in § 105-18 shall be met, except on nonconforming lots of record, in which case the setback may be no less than 25 feet from the property line or road. This reduction shall require a conditional use permit from the Planning Board. All conditional uses approved relating to setbacks shall require confirmation, in writing, by a licensed surveyor that the placement of the structure is correct and the plan shall be recorded in the York County Registry of Deeds within 90 days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.*
10. The Planning Board determined the applicant obtained a permit to build a structure, built the structure, and then after a final survey, discovered the structure was 1.9 feet too close to the front lot line setback of 50 feet. The applicant then applied for an after-the-fact permit for a front lot line setback reduction for the 1.9 feet. The board acknowledged the lot was in the General Purpose District and the lot was a non-conforming lot of record.
11. The majority of the Planning Board agreed that the application of §105-19 ‘Notes to Table on Dimensional Requirements’, Section D, allowed for the reduction to the front lot setback for this application, as this section applied to all non-conforming lots of record, not just lots in the Shoreland District. All Planning Board members agreed this was an after-the-fact permit, as the structure was already in place when the application was presented to the board.
12. On Tuesday, February 27, 2024, the majority of the Planning Board members *voted to approve* the after-the-fact Conditional Use Permit to reduce the setback to the front lot line as shown on the plan provided.

**Decision:**

**By a vote of 3 – 1, the majority of the Planning Board members approved the after-the-fact Conditional Use Permit for a reduction of the setback to the front lot line of 1.9 feet on Shapleigh Tax Map 42, Lot 23-1.**

- An after-the-fact permit fee shall be paid to the Town of Shapleigh.



- A surveyed plan shall be provided to the Planning Board with a signature block prior to recording, as soon as practical.
- Per Shapleigh Zoning Ordinance §105-19.D, 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. The applicant shall provide the date of recording to the Planning Board, as well as Book & Page, showing the condition is met.

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**Growth Permits**

**Map 12, Part of Lot 31 (619 Newfield Road) – New Home – W. Cordray**

**#02-2024**

This is a legal lot of record, meeting the requirements for lot size and road frontage.

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**The Planning Board meeting adjourned at 8:50 pm.**

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