

**Shapleigh Planning Board**  
**Minutes**  
**Tuesday, March 12, 2024**

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

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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. asked if there were any questions or correction for the minutes? There were none. The minutes were approved as read.*

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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 calculations 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.

Provided 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 feet 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.

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.*

On Tuesday, February 27, 2024, the board tabled the application to get a legal opinion to be sure they could act on the application, since they had no record of a permit being pulled within 1 year of the destruction of the camp by fire. The permit on record with the town was dated 12/22/2023.

The Planning Board received the following email dated March 6, 2024, sent via Michelle Rumney, Town Administrator, from Patrick Brady from the Bergen and Parkinson Law Firm, it read as follows:

*Thank you for sending these minutes along. I have reviewed the minutes and also spoken with Mike Demers. In sum, given that all parties appear to be acting in good faith in this instance and all parties have taken actions consistent with obtaining a permit during the appropriate time periods, we think that the Board can move forward with the application on a permit issued with an effective date that is in compliance with the ordinance despite the fact that because of a clerical error, the physical permit was not produced until December 2023.*

Steve F. stated that the first application was for Tyler Matthews and Don White to replace a structure on Blaneys Island. He stated that the Planning Board has received confirmation from the CEO and legal counsel that we are ok to move forward with the application. Steve asked if the plan was on file that was presented at the last meeting. Barbara stated it was in the file, and she also expanded the plan, so the board members could read the distance numbers, as they were hard to read on what the board was given. She stated the MDEP got a copy of the existing plan, as well as the survey plan, for their opinion.

Steve F. stated that the application is proposing a 40’ x 50’ structure, with an 8’ x 20’ outside deck, minimum setback of 30.8 feet. He stated the original structure showed 29 feet in front of the deck to the high-water-mark. Barbara F. stated that the rear of the camp appeared to be 42 feet to the high-water-mark. Barbara provided a copy of the MDEP email to Mr. Matthews.

Steve F. read the email from Colin Clark from the MDEP regarding how to review the application, the email was received just prior to the meeting this evening. Barbara F. asked for the MDEP’s opinion as to how to review a structure on an island, and provided the MDEP the documents the board members received for review. The email read in part as follows:

*The first thing the planning board (or its designee) will need to do is review where the existing structure’s footprint can be relocated to the greatest practical extent (GPE) not the proposed structure with the expansion. The best way to explain it is you are reviewing this almost like 2 separate applications 1. Where can the existing structure be located to meet GPE 2. After that location is determined the expansion can be reviewed and cannot be any closer than the closest point determined by the GPE review. I have included a diagram that we use in our trainings that shows this a bit better.*

*In terms of the diagrams you sent along the one with the existing should have more info documenting the distance on all sides of the water so the planning board can feel comfortable with the GPE location.*

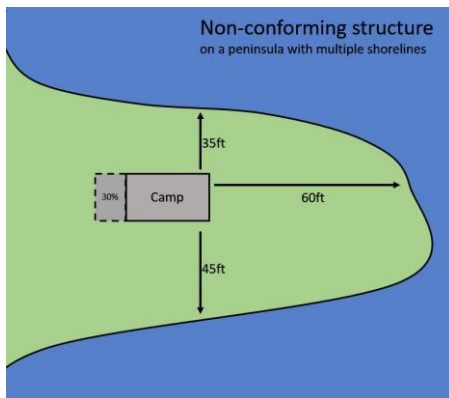
Additionally the 29ft line around the proposed structure indicates the closest point on the existing structure and that 29 ft. line is not GPE, so that line does not establish where a new structure could be built that is determined by the GPE. In my opinion it does not appear that they have met GPE with the proposed structure and the planning board (or it's designee) should make that determination before they file an application. I come to this conclusion based on the fact that the previous structure was 38ft wide including the uncovered deck and the proposed structure is 40 ft. + 8ft for the bump out off the back equaling 48 ft., therefore pushing the structure closer to the resource on one side that used to be 44ft away from the resource and now is moving closer to the resource. Based on the rule the structure cannot get closer to the resource on any side.

Here is a newsletter Q&A that speaks to this situation a little that may be helpful as well

There is an existing one-story camp measuring 15 feet in height located on a peninsula. The building setback from the lake is 35 feet on one side 45 feet on the opposite side and 60 feet from the tip of the peninsula. The setback standard is 100 feet. Can the building be expanded?

Yes, but the options are limited. The shoreland zoning law allows legally existing nonconforming structures to be expanded by increasing the height to the allowable limit in that zone or by expanding less than 30% of its footprint or footprint cap (the maximum amount of footprint allowed depending on the location of the non-conforming structure) based on the footprint that existed January 1, 1989 (the effective date of the law) and location of the structure. The law also states that no structure may be expanded to increase its nonconformity (e.g., moving closer to the water).

In this situation (see diagram below), the building is already too close to the resource on three sides, so expansions in those directions is not allowed. The only option left is to expand toward the base of the peninsula or to raise the roof to create a second-floor loft. Remember that the footprint or height of the structure may not be increased beyond the allowable standard for that area on the property.



I hope this is helpful

**Colin A. Clark**  
*Shoreland Zoning Coordinator in the Bureau of Land Resources*  
*Maine Department of Environmental Protection*

Steve F. said what they want the board to do is look at the previous structure and place it on the island, to the greatest practical extent. Barbara F. added that it can't be any closer than the existing.

Steve F. reviewed §105-4.D(7)(b) as follows: *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. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with §105-51.3. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:*

Steve F. stated that what the DEP is telling the board, that instead of looking at the proposed structure, they want the board to look at the previous structure. Mr. Matthews agreed, and said they also wanted the structure no closer than 29 feet on one side and no closer than 42 feet on the other side, and if you can expand on one side or the other great, if it can meet setbacks. Steve thought they would want the board to center it. Mr. Matthews said there is also the septic to consider, the leachfield is where it needs to go. Steve asked if the septic is already out there? Mr. Matthews stated that it was proposed. Ann H. asked if the existing septic tank failed? Mr. Matthews said that he had no idea.

Madge B. asked if there was any dimensions from the left side of the camp to the high-water-mark? Madge said she was speaking about the existing plan, not the new one. Madge thought the only way it can be moved is to the right, and that is where the septic tank will go. Madge said they may have to keep it where it is now.

Steve F. looked at the new proposed design and location. Madge B. said that is why she was curious about the distance on the left side of the existing camp, because the new plan shows 31.6 feet on that side. She said the board does not know what it is now, or what it was.

Steve F. said he had a greater concern with where the septic is, than where the structure is. Madge B. agreed that was important, but looking at best practical location, you have to look at all the relevant information. Steve said the septic will determine their ability to expand on the structure, based on its location. The board reviewed the septic design for a 2 bedroom system.

Steve F. asked if the board wanted to give a building envelope based on the original structure? Barbara F. thought they had to. Steve asked members to look at the new survey. Steve thought if he was looking at the email correctly, the board cannot set any part of the original structure any closer than 42 feet. Barbara believed that was correct, on the back side of the camp. Steve did not understand why Mr. Clark was saying the 29 foot mark did not matter. Barbara thought he was looking at the circle around the island on the new plan, and it looked like the new structure was placed based on the 29 feet, keeping it beyond the 29 feet. She said the existing structure is 29 feet on one side and 42 feet on the other, so you cannot go closer than 42 feet on that side of the structure. Steve said the applicant was not asking to go 29 feet. Barbara said he was going to 30 feet on the back side.

Steve F. said if the board is looking at this from Mr. Clark's perspective, if we are looking to make the existing structure as conforming as possible, then the board would center the structure between the old setback on each side. He said there is 29 and 42 feet. He said if the board wants to make that old structure as conforming as possible, we would move it 10 feet in one direction. Steve did not see a difference between what Mr. Clark was saying and what the applicant is proposing. Mr. Matthews agreed with Steve, saying Mr. Clark said 'don't go any closer on each side' but put it in the best spot, which is going closer on one side. Steve reread the email, *'The best way to explain it is you are reviewing this almost like 2 separate applications 1. Where can the existing structure be located to meet GPE.'* He said using simple math, 29 plus 42 is 71, so divide that by 2 and you get roughly 30 feet; he thought this is what they did. Madge B. said it was more than 30 feet. Steve stated it came up to 35.5 feet. Ann H. said he can't be

any closer on any part of the house than 35.5 feet. Steve thought if he turns the house he could meet that dimension. Ann said the board needs a new plan, showing the setbacks with the original house dimensions.

Steve F. stated that the applicant needed to plot on the existing survey, the previous structure, and if it works out correctly, it should be roughly 35.5 feet. He asked Mr. Matthews to show the setbacks, and it will determine the new setbacks for the new structure. Mr. Matthews asked if that was all he needed. Steve stated that he could not say that.

Mr. Joe Stanley said there is a unique situation from a surveyors’ perspective, only about 5 percent of the structure is there, if even that. He said he would use whatever records he could find, the town tax cards. Steve said that he could use the drawing the board had. Steve thought it was an appraisal that was done, maybe when the people bought it. Steve noted that it was not dated. Steve stated that any variation between the town tax card and the appraisal, the board has to defer to the town tax card. He said the board has to use Assessor over Appraiser.

Madge B. stated that she still would like to know what the distance was from the left side of the camp to the high water mark. Barbara F. stated they may never know, the camp is not there. Madge did not want the left side of the camp to be any closer than what existed. She said they were able to do the other distances to the high-water-mark, why can’t they do that figure. Mr. Stanley asked what she was speaking about. Madge showed Mr. Stanley, using the plan. Mr. Matthews stated that existing means pre-burnt-down, place that on the plan. Steve stated that it needs to be the greatest practical extent. Mr. Matthews added, ‘with the septic system in play’. Steve said yes, and asked if there was a replant plan. Madge noted there was nothing there but sand. Steve said that whatever they would replant with, show it on the plan. Madge said they need to stabilize the soil somehow. Steve agreed, asking that Mr. Matthews show how he was going to stabilize the soil. Madge said the board doesn’t want to see just bare ground; she did not care if they put pine spills back.

Norman B. said the proposed new house is 2000 square feet, he asked how many square feet the existing house was? He asked if the expansion had been taken. Steve F. said the expansion is through the Code Office. He said that number is determined by the Code Officer, what the board is looking at is what was legally existing there prior to 1989. He said they can expand on that.

Steve F. asked if there was a motion to table?

**Madge B moved to table the application pending further information. Ann H. seconded the motion. By a vote of 5 – 0, the motion to table was unanimous.**

Nothing further was discussed.  
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**Best Practical Location – Replace Structure – Map 34, Lot 44 (49 Chestnut Road) – Joseph Stanley, Applicant; Daniel Allen, Property Owner**

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

Steve F. said the next application was a Best Practical Location for Daniel Allen, Joseph Stanley is the applicant for Map 34, Lot 44, 49 Chestnut Road. He asked Mr. Stanley to let the Planning Board know what he wanted to do.

Provided along with the application was a Letter of Authorization stating that Mr. Daniel Allen grants permission to Joe Stanley to act as his agent in all aspects in order to obtain any and all necessary permitting from the Town of Shapleigh for his property located at Map 34, Lot 44, dated 3/5/2024.

Provided was a copy of a Shoreland Septic Systems Registration Form from 1997, where the then homeowner stated there was a 500 gallon septic tank, that was approximately 58 feet from the water with (2) 3 x 25 foot trenches, approximately 45 feet from the high-water-mark. (This is not a State approved septic design.)

Provided were four pictures of the existing property, which depicted the existing structure, trees on site, and a patio adjacent to the structure. Also on site were metal poles, used for (2) Shelter Logic Buildings in the summer.

Provided was a plan entitled ‘Plan Showing a Proposed Building Location Made for Melissa Allen, 20 Packard Farm Road, North Yarmouth, ME 04097 of Property Located on Chestnut Road in Shapleigh, Maine’, drafted by Joseph L. Stanley PLS #2453, plan dated March 5, 2024. The plan depicts Lot 44, showing the location of the Existing Camp, along with the Building Overhang, Deck and Steps; the location of (2) Shelter-Logic Buildings; a private way off of Chestnut Road going through the property; a Shed to be removed; the approximate location of the Septic; a Storage Bin; and a row of Pine Trees. The plan states the Building Height is 13.2 feet; the distance from the structure to Map 34, Lot 43 at the closest point is 14.1’; the distance from the building to the high-water-mark at its closest point is 37.8’; the distance from the building to Map 34, Lot 44 is 11.5’ at the closest point; and the distance from the building to the edge of the road is 35.2 feet at the closest point. The plan shows the location of three abutting properties: Map 34, Lot 41; Map 34, Lot 42; Map 34, Lot 43; and Map 34, Lot 44. Also on the plan is a Best Management Practices Diagram for the Houselot Development, and the Site Map (which shows the property is on a peninsula). Plan Note 11 states Lot Coverage by Structure is as follows: Existing Lot Coverage by Structure: 894 Square Feet = 9.1%; Proposed Lot Coverage by Structure: 960 Square Feet = 10%.

The application detailed description of the project is as follows: *Tear down & rebuild camp.*

Mr. Stanley introduced himself, that he was representing the Allen family, and the structure is located on Chestnut Road. He said it was on a private road that heads south off Cedar Drive on Square Pond. He said this is a unique property, it is situated on a peninsula. He said they recently completed a boundary survey and located all the features on the property, including the existing camp, along with its deck. He said they are here for a greatest practical extent application, but he did not believe there was much direction they can head with this structure.

Mr. Stanley said the current structure is 37.8 feet away from the water, and 35 feet from the edge of the road, and there is another camp that has a right-of-way down through this property. He said the structure on the property does meet the 10 foot minimum on the side setback but it does not meet the 30 foot combined setback. He said they are limited in all directions, the water, the road, and the side lot lines. He said the structure is somewhat centered where it is now. He said based on this, we have proposed a building in the same location, taking the limited amount of expansion where they could.

Mr. Stanley stated that he did submit some pictures of the site, if they rebuild in the same location, he did believe there would be no need to remove trees. He said in one of the pictures, in the back, there is a pine tree that sits maybe 12 to 15 feet off the building. He said the lot is very flat, so there is no opportunity for a walkout basement, he felt it would be a slab on grade. He said, therefore, they were not proposing any movement of the building or any tree cutting. He said they were not proposing any revegetation.

Ann H. asked if they moved it more toward the road, would it give them greater side setbacks? Mr. Stanley stated that the closer they go to the road, the more narrow it gets. He noted it is prohibitive that they push it back. He said there is an existing septic system in the driveway as well. Ann asked where the easement was that he was speaking about, that people can use. Mr. Stanley showed her using the plan. He said he showed a width of 35 feet but he wouldn't call it gravel, it is more like pine spills with some tire tracks. He said that is also the area that gets plowed when they come here in the winter.

Steve F. said the existing structure setbacks shown on the plan are 37.8 feet; 11.5 on the south side; 14.1 on the north side, and from the edge of the road 35.2 feet. He said none of them are changing, except the proposed setback for the front of the camp is increasing. Mr. Stanley said, by 1 inch. Mr. Stanley said they were on the limit with lot coverage, so there is no opportunity to go larger than what is proposed on the plan.

Steve F. reviewed §105-4.D(7) Relocation as follows:

- (a) *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 F. asked if they were going to put in a new septic? Mr. Stanley stated that yes, but they were hesitant to get a new design until they saw the board's ruling on the building location. He said he did instruct them that it is a requirement before they get a building permit. He also told them that if it was a major issue for the board that they might have to work diligently to get one before the next meeting, if the board needed to see that design, rather than making it a condition of approval. Steve wondered if the board had to determine if it met today's rules, because the board has not done that. He said the board has required septic designs. He said for final approval he would like to see a design, and then they could check that box off. Mr. Stanley said he struggles with wanting to order the septic design, before knowing where the building can be located. The board understood. Mr. Stanley said that he is pushing to let it be a condition of approval, that one must be submitted, but let it be designed around the best practical location. He said they would hate to do it, then the board says they want the building somewhere else, and they have to pay again to have someone go out again.

Steve F. said the board can go look at this. He didn't think there was a lot of room to work with. Ann H. asked if the board has to look at this one? Madge B. said the board usually does. Steve said members can go on their own.

Mr. Stanley asked if the board would be ok with making it a condition of approval that a septic design is submitted to CEO Demers, that meets the State standards; or do you want a septic design by the next meeting? Steve F. read the ordinance again, '*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*'. Steve asked if it did? Barbara F. did not believe so. Mr. Stanley stated that he submitted with the application, a Shoreland inventory that was on file, but no design of any sort. Steve stated that if the board cannot demonstrate that the sewage system meets the requirements of State law, then we would need to see a design. Mr. Stanley said he understood. Steve stated he had 2 weeks to come up with a design. Mr. Stanley said he already let Ken Gardner (Site Evaluator) know this might be coming.

Steve F. asked if there were any further questions? There were none.

**A notice to abutters will be mailed. Members will do a site inspection on their own.**

Nothing further was discussed.

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**Growth Permits**

**Map 5, Lot 43-D (Hooper Road) – New Home – Ridley #03-2024**

This is a legally existing lot meeting the minimum lot requirements in the ordinance, 1.86 acres in size with 200 feet of road frontage.

**Map 3, Lot 32A (Simon Ricker Road) – New Home – Berube #04-2024**

This is a legally existing lot meeting the lot requirements in the ordinance, 9.11 acres in size with 630 feet of road frontage.

**Map 3, Part of Lot 32A (Simon Ricker Road) – New Home – Berube #05-2024**

This shall be a legal lot meeting the minimum lot requirements in the ordinance, Lot 32A will be split in half, this lot having approximately 300 feet of road frontage and 4 ½ acres, according to the applicant.

**Map 3, Lot 22B (Off Hooper Road) – New Home – Howard/Petzold – New Home #06-2024**

This is a legal lot meeting the lot requirements in the ordinance, 3.15 acres in size with road frontage on an approved private way of 336.2 feet, as well as over 200 feet on Simon Ricker Road.

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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