Town of Shelburne, Vermont

PLANNING COMMISSION MEETING AGENDA
WEDNESDAY, JUNE 9 2021
VIRTUAL/REMOTE MEETING -- LOGIN/CALL IN DETAILS BELOW

PLEASE NOTE CHANGE FROM REGULAR MEETING DAY

Join PLANNING COMMISSION Zoom Meeting WEDNESDAY JUNE 9 7:00 P.M.

https://us02web.zoom.us/j/84629359126?pwd=Q0NHRW1rL2U0Wm03OHc1RS9YYXFPUT09

Meeting ID: 846 2935 9126
Passcode: Q0Rpz6

Dial by your location
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
Meeting ID: 846 2935 9126
Passcode: 678183

1.	**Call to order/roll call**	**7:00 P.M.**
2.	**Approve agenda**	**7:00 P.M.**
3.	**Approve meeting minutes of May 26, 2021**	**7:00 P.M.**
4.	**Disclosure related to potential conflicts of interest**	**7:05 P.M.**
5.	**Public comments on matters not on the agenda**	**7:10 P.M.**
6.	**Continued work on zoning amendments – the "second bundle"**	**7:30 P.M.**
7.	**Other business**	**8:25 P.M.**
8.	**Adjourn**	**8:30 P.M.**

A VIDEO RECORDING OF THE MEETING IN ITS ENTIRETY IS AVAILABLE THROUGH VERMONTCAM.ORG. THE WRITTEN MINUTES ARE A SYNOPSIS OF DISCUSSION AT THE MEETING.MOTIONS ARE AS STATED BY THE MOTION MAKER. MINUTES SUBJECT TO CORRECTION BY THE SHELBURNE PLANNING COMMISSION. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE COMMISSION.

TOWN OF SHELBURNE
PLANNING COMMISSION
MINUTES OF MEETING
May 26, 2021

***Meeting held via teleconference.**

MEMBERS PRESENT: Steve Kendall (Chair); Jason Grignon (Vice Chair); Megan McBride, Jean Sirois. (Stephen Selin, Neil Curtis, Deb Estabrook were absent.)
STAFF PRESENT: Lee Krohn, Town Manager.
OTHERS PRESENT: Mark Sammut, Joyce George, Don Rendall, Dawn, Media Factory (Wendy).

AGENDA:

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes (5/12/21)
4. Disclosures/Potential Conflicts of Interest
5. Open to the Public
6. Zoning Amendments "2nd Bundle"
7. Other Business/Correspondence
8. Adjournment

---

1. CALL TO ORDER

Chair, Steve Kendall, called the teleconference meeting to order at 7 PM.

2. APPROVAL OF AGENDA

MOTION by Megan McBride, SECOND by Jean Sirois, to approve the agenda as presented. VOTING: unanimous (4-0); motion carried.

3. APPROVAL OF MINUTES

May 12, 2021

Postponed due to lack of a quorum present at the 5/12/21 meeting.

4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST

None.

5. OPEN TO THE PUBLIC

None.

6. ZONING AMENDMENTS ("2nd Bundle")

Fences

There was discussion of proposed language for fences that allows a four foot high fence without a permit, up to an 8' high fence with administrative approval, and over 8' high fence requiring DRB review. There was also discussion of the location of a fence relative to the public sidewalk or property lines, and fence materials. Staff will research distance from the right-of-way and setback from a public sidewalk. There was agreement a fence

that is agreed to by both property owners could be located on the boundary line between their lots. Also, state wildlife corridor maps should be referenced to avoid impact by fences.

Boundary Line Adjustment (BLA)
The Planning Commission agreed with the intent of the language for administrative approval of BLAs, and that the statement allowing referral of a proposal to the DRB for review need only be stated once in the bylaws, not repeated under each section.

Lot Merger
It was suggested that zoning boundaries should be aligned with parcel boundaries to avoid confusion, and language should be added to address a lot bisected by different zoning districts. Is development governed by the regs for each portion of a lot in each district; do the rules of the more restrictive zone prevail, or the less restrictive zone? Staff will research the regulations for guidance on which district prevails with a merger.

Section 1900.11 - Administrative Review
There was discussion of allowing administrative review for building size expansion or site coverage based on a cap of 5000 s.f. or a percentage of the building/coverage. Staff will provide several actual examples to provide clarity. It was noted state stormwater regulations could impact any expansion and need to be considered.

Site Plan Review
There was discussion of going to a two step review process (Sketch to Final) rather than three steps to save time, cost, and resources for all parties. Preliminary Plan requirements would be combined with Final Plan requirements. Also, review of a proposal by Shelburne Natural Resources Committee should occur at Sketch Plan. It was suggested the requirement of letters from all town departments and when these letters should be submitted should be reconsidered and letters from departments pertinent to the proposal only should be required. It was also suggested the number of applications that need to be completed for a project should be winnowed down, and the applications themselves simplified. Staff will draft language for review.

7. OTHER BUSINESS/CORRESPONDENCE

First Bundle of Zoning Bylaw Amendments
Staff reported the Selectboard approved the first bundle of zoning bylaws amendments submitted by the Planning Commission.

Sidewalk Fund
The Planning Commission supports the concept and will add the item to a future agenda for discussion.

Housing Subcommittee Work
The Housing Subcommittee will be drafting regulations for accessory development units and duplexes over the summer. The Planning Commission is urged to attend the June 7, 2021 committee meeting to provide input.

8. ADJOURNMENT

MOTION by Megan McBride, SECOND by Jason Grignon, to adjourn the meeting. VOTING: unanimous (4-0); motion carried.

The meeting was adjourned at 9:14 PM.

RScty: MERiordan

UPDATE for Planning Commission consideration, JUNE 9, 2021

FENCES - *revised per prior discussion* -

May be installed up to and upon a property boundary, where that boundary line is known with reasonable certainty. While it may be advisable to install a fence slightly within one's property to allow for maintenance on both sides, no other setback requirement applies, unless:

Otherwise prescribed in an underlying subdivision or PUD permit;
Must be placed at least five feet back from a public sidewalk.

Fences shall be installed so that the smooth or finished side faces out toward adjoining properties.

Fences shall not:

Interfere with sight distances at intersections with streets, driveways, or other passageways;
Interfere with nor block natural drainage flows or surface water;
Interfere with mapped wildlife corridors;
Be constructed of corrugated metal or fiberglass, barbed/razor/ribbon wire, broken glass, or other similar materials. Chain link fences shall have closed loops or other protective material at the top.

Fences up to four feet tall that meet these criteria are exempt from permitting. Fences between four and eight feet tall require an administrative zoning permit; fences more than eight feet tall require DRB review (although fences up to ten feet tall to enclose tennis, basketball, or other similar facilities may be approved administratively).

ARTICLE IIIA: BOUNDARY LINE ADJUSTMENTS *(revised and simplified from the April 8 memo, and further revised per prior discussion)*

300A/305A

Boundary line adjustments may be approved administratively where:

No new lots are created;
No new nonconformance is created;
No conditions of prior approvals are violated (building envelopes, PUD buffers, and the like).

The Administrative Officer retains the authority to refer any such application to the Development Review Board at their sole discretion.

-OR-

The ability to approve these administratively is not a mandate; the Administrative Officer may refer such applications to the Development Review Board at their sole discretion if questions or concerns arise that are not resolvable at the administrative level.

A new survey plat which includes all elements required by local and state laws, and any other documentation needed to effectuate this transaction between property owners, is required before a zoning permit may be issued.

330A: delete
340A: delete
360A: delete
380A: delete

NOTE: the question was asked whether zoning district boundaries are drawn according to property lines. According to the zoning district map published online at

Map-of-Zoning-Districts (shelburnevt.org)

It appears that districts are drawn following roadways, and perhaps also property lines. However, whether these were done before or after the fact of certain developments such as subdivisions cannot be determined conclusively from this map. Furthermore, if two adjoining landowners wish to adjust a common property line for their own mutually beneficial reasons, is it really within our jurisdiction to suggest that they cannot do so, irrespective of where a zoning boundary may lie? I think not.

LOT MERGER

On a related note, we'd discussed lot mergers, and whether or why these require zoning permits at all, when there is nothing taking place upon the land. If we wished to clarify this, it seems to me that a brief statement might be all that's needed, to the effect that while a zoning permit is not needed, some form of appropriate notice to the Town is required (amended deeds, plat, etc… to P&Z and Assessing)…

1900.11: ADMINISTRATIVE REVIEW – simplified from the April 8 memo

Minor, non-material amendments to previously approved land development may be reviewed and approved administratively. "Non-material" means project elements proposed to be modified that do not undermine nor negate conditions deemed necessary in prior approvals to satisfy bylaw requirements. These may include, but are not limited to:

> Relocation of site improvements or accessory structures, as long as all other relevant requirements (setbacks, site coverage limitations, etc) remain satisfied;

Reapproval of plans previously approved by the DRB that may have expired, and where no changes from those previously approved plans are proposed;

Approval of plans showing minor adjustments based on "as built" field measurements after construction that do not create material changes to underlying requirements or conditions of approval;

Minor changes to approved landscaping plans, such as substitution of species or materials that will still satisfy the qualitative and functional purposes intended. *NOTE: I do not recommend the cost/value criterion proposed on April 8, as it is a poor substitute for the more important qualitative aspects of landscaping and site design.*

Increases in building size and/or site coverage totaling less than 5000 sq ft or 3%, whichever is smaller. *NOTE: prior PC discussion questioned whether these allowances were too large. Where did they come from to begin with?*

Changes in use of buildings or sites, where all other site or permitting requirements remain satisfied.

The Administrative Officer retains the authority to refer any such application to the Development Review Board at their sole discretion.

-OR-

The ability to approve these administratively is not a mandate; the Administrative Officer may refer such applications to the Development Review Board at their sole discretion if questions or concerns arise that are not resolvable at the administrative level.

1910 CONDITIONAL USES and 1065 SUBDIVISION APPROVAL CONDITIONS

Administrative review of minor, non-material changes to previously approved land development is authorized as described in Section 1910.11.

Should this also include as above:

The Administrative Officer retains the authority to refer any such application to the Development Review Board at their sole discretion.

-OR-

The ability to approve these administratively is not a mandate; the Administrative Officer may refer such applications to the Development Review Board at their sole discretion if questions or concerns arise that are not resolvable at the administrative level.

NOTE: these are intended to create internal consistency with that other section. However, it begs the question of how many other places in the bylaw might also need such a statement. Might be better if 1910.11 included instead a "catch all" statement to the effect that, "Notwithstanding any other requirements in the Zoning Ordinance for DRB review, administrative review of minor, non-material changes to previously approved land development is hereby authorized if the following criteria are satisfied…"

SECTION 810, which the PC wished to pursue…

This appears to be the new regulations sought by NRCC to further tighten restrictions related to certain natural resources in Section 810 of the Subdivision Regulations. As noted before, and as you know, I am not in favor of pursuing yet more regulation before we make better and clearer sense of the myriad regulations already in place, but it's your call what priorities to pursue. From my perspective, I think we'd do better to continue simplifying, streamlining, and making more internally consistent many aspects of existing rules.

Here, Section 810(1), describes at length various standards in existing Act 250 language and attempts to incorporate them into our own regulatory review process. I do not recommend this approach for at least two reasons: it references external standards not our own, and for which applicants, staff, and reviewing boards must search elsewhere; and if these external standards change over time, then it creates *de facto changes in our own rules without going through our own legislative process.* Far better to incorporate the language or standards in clear, explicit text. Further, certain existing language presumes that we are still doing 'on the record' review – "admit as evidence" as one example.

Much of the rest of this text seeks to leverage significantly difficult hurdles that could be used to stop or significantly downsize proposed development otherwise lawful under the bylaws. If that is our intent, then this existing language will surely serve that purpose. However, we should still review it anew to ensure it still reflects community will and standards – generally, and specifically with regard to the requirement to plant shade trees along both sides of streets or private ways. Is this a sensible requirement in every single case? Does it mean that every landowner must plant trees along both sides of their driveways? And as occurs in many places, referencing other standards in other documents such as the zoning ordinance makes for complicated and convoluted process for all parties. While not seeking to be duplicative throughout these regulatory documents, it can be much clearer to simply state what we require. Ultimately, of course, the better approach is to integrate zoning and subdivision into a single document (and process).

I will again attach the relevant pages from the prior April 8 document you had reviewed, as I was not involved in that prior discussion or intent to yet further strengthen the regulatory restrictions already in place.

Please note also my prior concern about regulatory statements here and elsewhere in the zoning ordinance that require conformance with the Town Plan. This is a backwards approach to land use regulation. The Plan itself is supposed to be the overall, guiding framework; with the zoning ordinance and other tools intended to be the methods by which the Plan is implemented.

To suggest or require the opposite is taking this in reverse, and giving the general policy statements in the Plan regulatory authority they are not intended to have. Further, they offer non-specific guidance to applicants as they seek to achieve regulatory compliance, and generalized opportunity for project opponents to claim lack of compliance without clarity of 'just cause'.

You'll recall, I'm sure, the JAM Golf decision, where South Burlington lost a major court case over regulations that were deemed void for vagueness. As just one example of our own, the economic development section of the new town plan calls for appropriate types of development in appropriate locations. This might sound nice in theory or concept, but what does it really mean? How can I know if I satisfy that policy? Some might suggest that the new VIP tire store is entirely appropriate as a further aspect of the strip development along Shelburne Road; others might deride it as exactly what we'd hoped we would not see there.

DRB REVIEW

As you'll recall, I had suggested simplifying DRB review from three steps (sketch, preliminary, final) into two steps (sketch and final, if you will) as a way to save all parties (applicants, landowners, and interested parties, as well as Town staff and DRB) considerable time, effort, and expense; simplifying process without giving up on any standards or values sought to be protected. A suggestion was made that perhaps this might benefit from discussion jointly with the DRB, and perhaps also NRCC. Since that joint discussion has not yet occurred, do PC members have further thoughts on this?

Please note also that at its last meeting, the DRB asked that the PC reconsider the differing approaches to setback requirements that exist in various processes. The application before the DRB last week was a case in point, heard many times before and coming up again. The standard setback in the residential district is 15 feet. However, in the Farmstead and Deer Run neighborhoods, those subdivisions were approved with 35 foot setback requirements. Doing so creates complications for all parties as to which setback applies. If one wasn't aware that prior approvals had these different standards, it can be difficult for anyone to even know. This same complication exists elsewhere in Town, with sometimes even more widely varying or restrictive requirements (remember the Burris 75 foot setback fence issue?).

In neighborhoods like Farmstead and Deer Run, it's even more curious and paradoxical. There, subdivisions were apparently approved as PRDs/PUDs, with smaller than normal lots created and larger blocks of contiguous open space set aside as the density for these lots. This can be a very sensible

approach to residential development, in minimizing overall land disturbance, creating more of a neighborhood feel, and creating more usable and/or aesthetically pleasing open space. However, then simultaneously imposing significantly larger setbacks within each of these lots squeezes the usable land area on each lot, and makes it harder for landowners to use their land for typical residential purposes.

The DRB asks that setback requirements be consistent throughout zoning districts in order to eliminate the confusion that it creates, and as one more way of making our rules internally consistent and predictable.

From my own perspective, please be aware that similar internal inconsistencies exist in other areas, as well. As just one current example: in at least one subzone of form based code along RT 7, a 40' wide right of way is prescribed for street design. While public works and fire are concerned about the adequacy of access in such a right of way, that's for another day. My question here is this: since the land behind and outside of the form based code district itself requires a 60' wide right of way, what is the form based landowner to do when their land can also be used to access the land to the rear outside of the form based district?

Applying the 60' requirement to the front parcel does not comply with form based code, and may make it hard to develop as form based code intends, but maintaining a 40' right of way may well be inadequate to serve both lots. While compromise is not always the right answer for any need, having conferred with the landowner and our public works and fire departments, I have suggested that perhaps a 50' wide right of way on both subject lots might serve all needs in reasonable manner. We'll see how it all plays out when applications are actually received and reviewed.

As for the "sidewalk fund" issue, to which the PC and DRB seem to agree, this will require changes to both zoning and subdivision regs, as again, these are unfortunately interwoven between Section 910 (subdiv) and 1900.7 (zoning). One requires sidewalks per the other; and the other allows an "alternative facility" in some districts but not others. It may also require changes in the public works specifications, which may require specific materials that are not always appropriate. In concept this is fairly simple; I just have not had time to propose specific language that can be inserted consistently. I think we all agree conceptually – require sidewalks where they make sense, where they fit into or will interconnect within an overall connectivity master plan for public and private investment; and allow contribution to a sidewalk reserve fund where it doesn't make sense and/or where it would be a 'sidewalk to nowhere' unlikely to ever be practical or useful in an overall master plan. I know this isn't what we'd write into bylaws, but just confirming concepts.

There were a number of other topics discussed at the last meeting, but I simply haven't had time to research or consider those further in time for this week's meeting.

Thank you. I hope you find this information helpful in advancing these conversations as best we can under current circumstances.

FROM APRIL 8 MATERIALS
RE: SECTION 810 SUBDIV. REGS

Criterion 8 A -AKA statute on which portions of 810 are based

(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas.

(A) Necessary wildlife habitat and endangered species. A permit will not be granted if it is demonstrated by any party opposing the applicant that a development or subdivision will destroy or significantly imperil necessary wildlife habitat or any endangered species; and

(i) the economic, social, cultural, recreational, or other benefit to the public from the development or subdivision will not outweigh the economic, environmental, or recreational loss to the public from the destruction or imperilment of the habitat or species; or

(ii) all feasible and reasonable means of preventing or lessening the destruction, diminution, or imperilment of the habitat or species have not been or will not continue to be applied; or

(iii) a reasonably acceptable alternative site is owned or controlled by the applicant which would allow the development or subdivision to fulfill its intended purpose.

Criterion 8 A Guidance (Act 250)

Criterion 8(A) – Wildlife and Endangered Species Habitat All projects should be designed to avoid necessary wildlife habitat and endangered species habitat. If a project cannot be so designed, it must pass three tests regarding the necessity for the project as described in the statute. Critical wildlife habitat and endangered species can be identified by the ANR Vermont Fish & Wildlife Department Vermont Natural Heritage Inventory on a site specific basis. The habitat must be identifiable and critical to a species during any period in its life. Typical habitats identified by the Vermont Fish & Wildlife Department or other state agencies include: - deer wintering areas, which include, among other characteristics, dense evergreen tree cover and steep southern facing woodlands; - bear feeding areas, which include, among other characteristics, any remote stands of beech trees, remote wetlands above 1500 feet in elevation; - salmonid spawning areas, found in streams and rivers with gravel bottoms; - small mammal and bird feeding and breeding areas (wetlands).

Definitions referenced in 810

(5) "Endangered species" means those species the taking of which is prohibited under rules adopted under chapter 123 of this title. [See info Endangered and threatened species lists below]

(12) "Necessary wildlife habitat" means concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods.

§ 5402. Endangered and threatened species lists (also see https://vtfishandwildlife.com/conserve/endangered-and-threatened-species)

(a) The Secretary shall adopt by rule a State endangered species list and a State threatened species list. The listing for any species may apply to the whole State or to any part of the State and shall identify the species by its most recently accepted genus and species names and, if available, the common name.

(b) The Secretary shall determine a species to be endangered if it normally occurs in the State and its continued existence as a sustainable component of the State's wildlife or wild plants is in jeopardy.

(c) The Secretary shall determine a species to be threatened if:

(1) it is a sustainable component of the State's wildlife or wild plants;

(2) it is reasonable to conclude based on available information that its numbers are declining; and

(3) unless protected, it will become an endangered species.

(d) In determining whether a species is threatened or endangered, the Secretary shall consider:

(1) the present or threatened destruction, degradation, fragmentation, modification, or curtailment of the range or habitat of the species;

(2) any killing, harming, or over-utilization of the species for commercial, sporting, scientific, educational, or other purposes;

(3) disease or predation affecting the species;

(4) the adequacy of existing regulation;

(5) actions relating to the species carried out or about to be carried out by any governmental agency or any other person who may affect the species;

(6) competition with other species, including nonnative invasive species;

(7) the decline in the population;

(8) cumulative impacts; and

(9) other natural or human-made factors affecting the continued existence of the species.

(e) In determining whether a species is threatened or endangered or whether to delist a species, the Secretary shall:

(1) use the best scientific, commercial, and other data available;

(2) at least 30 days prior to commencement of rulemaking, notify and consult with appropriate officials in Canada, appropriate State and federal agencies, other states having a common interest in the species, affected landowners, and any interested persons; and

(3) notify the appropriate officials and agencies of Quebec or any state contiguous to Vermont in which the species affected is known to occur. (Added 1981, No. 188 (Adj. Sess.), § 2; amended 2015, No. 145 (Adj. Sess.), § 20.)

"Undue adverse impact" on rare and irreplaceable natural areas

First determine whether the project will have an adverse effect

> Possible indicators: Will it be in harmony with its surroundings? Will it "fit" the context within which it will be located?

If it is determined the project will have an adverse effect, evaluate whether the adverse effect is "undue."

> Possible indicators:
>
> Does the Project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
>
> Does the Project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
>
> Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings?

What is a clear, written community standard?

> Possible sources: town plans, open land studies, and other municipal documents