



# Town of Shelburne, Vermont

PLANNING COMMISSION AGENDA

THURSDAY, FEBRUARY 10, 2022

7:00 P.M.

MEETING WILL BE FULLY REMOTE VIA ZOOM

Join Shelburne Planning Commission

<https://us02web.zoom.us/j/82741199766?pwd=WHhqVWlraWJyUnpiVXV5alZsVFRCQT09>

Meeting ID: 827 4119 9766

Passcode: pbb5w6

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

Meeting ID: 827 4119 9766

Passcode: 472423

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|---|------------------|
| <b>1. Call to order/roll call</b>                               | <b>7:00 P.M.</b> |
| <b>2. Approve agenda</b>  | <b>7:00 P.M.</b> |
| <b>3. Approve meeting minutes of January 27, 2022</b>           | <b>7:00 P.M.</b> |
| <b>4. Disclosure related to potential conflicts of interest</b> | <b>7:05 P.M.</b> |
| <b>5. Public comments on matters not on the agenda</b>          | <b>7:10 P.M.</b> |
| <b>6. Updates: Follow-up items</b>                              | <b>7:15 P.M.</b> |
| <b>7. Standalone Covid-related bylaw vote</b>                   | <b>7:45 P.M.</b> |
| <b>8. Other business</b>  | <b>8:30 P.M.</b> |
| <b>9. Adjourn</b>   | <b>9:00 P.M.</b> |

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**

**January 27, 2022**

**\*Hybrid meeting held in-person and via teleconference.**

**MEMBERS PRESENT:** Steve Kendall (Chair); Marla Keene, Jean Sirois, Deb Estabrook, Jason Grignon. (Neil Curtis and Stephen Selin were absent.)

**STAFF PRESENT:** Adele Gravitz, Planning Director; Nini Anger, Executive Assistant to the Town Manager.

**OTHERS PRESENT:** Members of the public participating in the meeting included Gail Albert, Joyce George, Pete Serisky, Robilee Smith, Donna Fialkoff, Media Factory.

**AGENDA:**

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes (1/13/22)
4. Disclosures/Potential Conflicts of Interest
5. Open to the Public
6. Updates
7. Interim Zoning Bylaw for COVID
8. Other Business/Correspondence
9. Adjournment

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**1. CALL TO ORDER**

Chair, Steve Kendall, called the hybrid meeting to order at 7 PM and held roll call.

**2. APPROVAL OF AGENDA**

**MOTION** by Deb Estabrook, **SECOND** by Jean Sirois, to approve the agenda as presented. **VOTING: unanimous (5-0); motion carried.**

**3. APPROVAL OF MINUTES**

*January 13, 2022*

**MOTION** by Marla Keene, **SECOND** by Jean Sirois, to approve the minutes of 1/13/22 with the removal of the bulleted item in the Priorities for 2022 list that reads: "Address the four items submitted by Shelburne Natural Resources Committee...". **VOTING: unanimous (5-0); motion carried.**

#### **4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST**

None.

#### **5. OPEN TO THE PUBLIC**

Pete Serisky, resident, asked about the interim zoning bylaw discussion. Steve Kendall explained the discussion will cover whether to make permanent the interim bylaw put in place May 25, 2021 during COVID which expires June 30, 2022. Mr. Serisky also asked about the concerns that have been expressed about form based code and if a study will be done on possible changes, noting a petition with 120 signers has been submitted in support of addressing form based code. Steve Kendall said nothing has been discussed yet. The work plan for the Planning Commission must be developed first and the tasks may or may not include a study of changes to form based code. Adele Gravitz added the entire bylaw will be reviewed, not just form based code, and this will likely be part of the regulatory reform summit that is under consideration.

Gail Albert, resident, urged involving other town boards, committees, and commissions in the regulatory reform conversation.

#### **6. UPDATES**

The following was noted:

- Remote/virtual meetings are allowed. The Selectboard will let boards/committees/commissions decide for themselves how to hold their meetings.
- The Planning Commission decided to hold virtual meetings at this time.
- Protocol for meetings will be Planning Commission will hold discussion first and then comments from non-Planning Commission members can be voiced.
- The Selectboard adopted the zoning amendments submitted by the Planning Commission.
- There is discussion of holding a regulatory reform summit. Both the Planning Commission and Selectboard support holding a summit.
- Staff is gathering cost information on using *Shelburne News* for outreach on agenda items and development applications.
- Vermont Dept. of Housing and Community Development is the sponsor of the bylaw modernization grants. More grant applications were received than could be funded.
- The Planning Commission will be discussing whether the COVID interim bylaw should be made permanent which will require going through the public hearing process. The interim bylaw expires in June.
- The individual who was to speak to the Planning Commission about bylaws will speak at the regulatory reform summit.
- Adele Gravitz and Marla Keene are working on an analysis of form based code.
- Adele Gravitz is meeting with Gail Albert and Don Rendall to discuss Shelburne Natural Resources Committee priorities.
- Lee Krohn is working on the terms for Planning Commission members to ensure staggered terms are restored.

#### **7. INTERIM ZONING BYLAW for COVID**

There was discussion of the following:

- The interim bylaw as a standalone bylaw versus being incorporated into the existing bylaws.

- Clarifying the language pertaining to food trucks owned by a restaurant or hired by a restaurant to operate on restaurant property.
- Leaving the interim bylaw as written except for removing COVID references.
- Identifying where there are conflicts between the interim bylaw and the existing zoning bylaws relative to outdoor seating, outdoor merchandise display, outdoor provision of services, temporary signs, temporary tents.
- Remove language relative to temporary signs from the interim bylaw because the town does not have the resources to do enforcement. The Planning Commission will add review of the regulations on signs to the work plan

Staff will find out:

- Why the interim bylaw is a standalone document rather than incorporated into the existing bylaws.
- If there is the possibility of having more time to make the interim bylaw permanent.
- What the guidelines are on conflict with adjoining land uses (i.e., noise restrictions, air pollution restrictions, smell pollution restrictions, others).
- Whether there have been any incidents of abuse of the interim bylaw.

## **8. OTHER BUSINESS/CORRESPONDENCE**

### *Form Based Code*

Steve Kendall will get further clarification from the Town Manager on what the Selectboard wants the Planning Commission to do with form based code. The Planning Commission can look at how the character districts relate to each other and then see how to prevent what has created the concern with the code.

## **9. ADJOURNMENT**

**MOTION by Jason Grignon, SECOND by Marla Keene, to adjourn the meeting. VOTING: unanimous (5-0); motion carried.**

The meeting was adjourned at 9:06 PM.

## MEMO

TO: SHELBURNE PLANNING COMMISSION  
Adele Gravitz, Planning Director  
Ken Belliveau, Interim DRB Coordinator

RE: COVID-RELATED INTERIM ZONING BYLAW

FROM: LEE KROHN, AICP, TOWN MANAGER

DATE: JANUARY 20, 2021

As we all know, when COVID first came to light, grave concerns arose about how businesses would survive as various mandates, closures, and other restrictions came into existence. As a Town response, we quickly adopted an interim zoning bylaw allowing greater flexibility for outdoor business activities than otherwise permissible. As the first year of COVID flowed into a second year, we readopted that interim bylaw for a second year.

This bylaw is reaching its legal end of life, and will expire on June 30, 2022. As there is no clear or unique statutory path to adopting an interim bylaw permanently, it must go through the 'normal' process starting with the Planning Commission and working its way back to the Selectboard. We had discussed this recently with the PC, which supported permanent adoption but likely in modified form. I believe that the Selectboard will also be very supportive of this, and I am bringing that question to them at their January 25<sup>th</sup> meeting to gauge that support to learn whether both PC and SB are on the same page.

Presuming mutual interest, and given the array of process and timing required for hearings, notices, and discussion, this will need to be fast-tracked if we wish to get something in place before the interim bylaw expires. To help that process along, please find attached the interim bylaw as it presently exists, and a separate set of notes or first working draft of this bylaw in modified form, reflecting suggestions made by several of us in those recent conversations and other questions.

I hope you find this information helpful; always glad to talk further.

**Interim Bylaw Amendments**  
**Town of Shelburne**  
**Adopted by the Selectboard on June 30, 2020**  
**Readopted/extended by the Selectboard on May 25, 2021**

INTERIM BYLAW AMENDMENTS

A. Enactment and Authority

The Town of Shelburne has adopted these Interim Bylaws in accordance with and as authorized by the Vermont Municipal and Regional Planning and Development Act, 24 V.S.A. Chapter 117, §4415, Interim Bylaws.

1. Purpose

The purpose of these Interim Bylaws is to protect the general public health and welfare and provide for orderly physical and economic growth of the Town of Shelburne during the current period of the COVID-19 pandemic. These bylaws are intended to facilitate businesses to promote their services and products, and to support social distancing during the period of time covered by these bylaws.

2. Applicability

These Interim Bylaws shall apply to all restaurants, retail and service establishments and all other businesses that depend on walk-in customers throughout the Town of Shelburne.

3. Specific Provisions

- A. Restaurants currently approved for outdoor seating may increase the amount of outdoor seating and expand the area devoted to seating beyond the area previously approved on their property or another commercial property, including mixed use properties, without needing a permit; in order to support social distancing during the current period of the COVID-19 crisis. In addition, restaurants currently not permitted for outdoor seating, may provide it to their customers on their property or on another commercial or mixed use property with permission of the owner, without a permit during the effective period of these Interim Bylaws. Restaurants may also make use of food trucks to provide walk-up service on their property.

Outdoor seating is exempt from the setback requirements of the underlying zoning districts and may use the public sidewalks, but shall not interfere with pedestrian travel by maintaining a 5-foot wide continuous pathway; and shall not reduce the number of on-site parking spaces by more than 50%. At no time shall outdoor seating or food trucks interfere with pedestrian or emergency access.

- B. Outdoor Displays of Merchandise: Any business holding a valid permit to operate a retail store or restaurant may erect a display of goods offered for sale, or a display which is designed to promote the sale of goods, including produce, products, goods, equipment, prepared food or commodities, outside a building without meeting the area restrictions provided in the Shelburne Zoning Regulations. Outdoor displays of merchandise shall not interfere with pedestrian travel by maintaining a 5-foot wide continuous pathway and shall not reduce the number of on-site parking spaces by more than 50%. At no time shall outdoor displays interfere with emergency access.
- C. Temporary signs: Any business holding a valid permit to operate in Shelburne may put up temporary signs on their property for the duration of this interim bylaw with the purpose of promoting the business. This is in addition to any existing, permitted signs. No more than one sign per business up to 32 s.f. in area and 8' in height. Additional signs not to exceed 12 s.f. Temporary signs must not interfere with public access or safety and at no time shall interfere with emergency access.

- D. Outdoor Provision of Services: Any service establishment may provide their service outdoors on their property in order to support social distancing. Outdoor provision of services shall be permitted to use the public sidewalks but shall not interfere with pedestrian travel by maintaining a 5-foot wide continuous pathway and shall adhere to the setback requirements of the underlying zoning district; and shall not reduce the number of on-site parking spaces by more than 50%. At no time shall the provision of services interfere with emergency access.
- E. Temporary Tents for Outdoor Seating, Displays of Merchandise or Provision of Services: Temporary tents may be erected without needing a permit provided they comply with the following provisions:
  - a) Any tent erected shall not interfere with pedestrian or emergency access and shall not reduce the number of on-site parking spaces by more than 50%.
- F. In no case shall any combination of these provisions interfere with emergency services or reduce the number of parking spaces currently in existence by more than 50%.
- G. Any entity conducting business outdoors under this interim bylaw shall ensure that it has adequate and appropriate insurance coverage pertaining to this outdoor business activity.
- H. All other provisions of the Shelburne Zoning Regulations shall remain in effect during the period of these Interim Bylaws.

#### 4. Effective Period

These Interim Bylaws shall remain in place from the date of adoption by the Selectboard and as permitted by Executive Order of the Governor of the State of Vermont until June 30, ~~2021~~ **2022**.

#### 5. Enforcement

Enforcement of these Interim Bylaws shall be as provided for in 24 V.S.A. Chapter 117, §4451, and the Shelburne Zoning Regulations.

**Possible permanent version of the interim bylaw allowing outdoor business activities**  
**Early first draft, January 20, 2022**

1. Purpose

The purpose of this bylaw is to protect the general public health and welfare, enhance community vitality, and provide for orderly physical and economic growth of the Town of Shelburne, by allowing commercial establishments to conduct business outdoors, and in more flexible manner.

2. Applicability

This bylaw applies to all restaurants, retail, and service establishments and all other businesses that depend on walk-in customers throughout the Town of Shelburne. NOTE: Do we need the “walk in customers” provision, or should this just apply generally?

3. Specific Provisions

Restaurants may create areas for outdoor, seasonal dining in front, side, or rear yard areas that do not conflict with adjoining land uses, public sidewalks, or other required parking spaces or traveled ways. Reasonable provision shall be made for separation between dining areas and areas reserved for motor vehicle travel. Dining areas shall not interfere with pedestrian travel or emergency vehicle access. No additional parking shall be required for outdoor seating beyond what is or has been required for regular, year-round indoor dining. Fees must be paid for water and sewer allocations for any additional outdoor seats, but pro-rated at 50% of the normal rates since these outdoor seats are only usable for roughly half of the year.

Minimum setback from property lines?

Suggest administrative permits be required, with simple, limited guidelines.

Outdoor Displays of Merchandise: Do we want to continue allowing this? Very few actually did this; not sure how practical it is for most retailers. Uniquely, Aubuchon does this all the time here and at all of their stores, whether actually permitted or by “creep”.

Regarding temporary signs: I suggest we re-examine existing provisions for temporary signs generally, to create a single set of appropriate guidelines/provisions/restrictions. Most sign ordinances (likely including ours) do not comply with the Reed decision of the U.S. Supreme Court, requiring that all temporary signs be regulated in identical manner, and not distinguish between owner/use/content/allowable timeframes for display. Whether we can or should do this now, or at another time, is up to you. For now, for purposes of this ‘outdoor business’ bylaw, I do not recommend maintaining special provision for temporary signs that’s different than our general provisions.

Outdoor Provision of Services: Similarly, do we want to continue allowing this? Not sure if anyone actually tried this. Some likely transitioned to Zoom; others requiring more hands-on approaches likely modified their spacing and safety practices.

If this and/or outdoor retail are thought helpful, I’m not opposed myself; and perhaps just allowing for it sends a positive, helpful message, even if used very little.

Temporary Tents for Outdoor Seating, Displays of Merchandise or Provision of Services: Temporary tents may be erected on site, as long as it does not interfere with required parking or pedestrian or emergency access. NOTE: This is a simplified version of this existing provision, if we wish to keep it.

All other provisions of the Shelburne Zoning Regulations shall remain in effect during the period of these Interim Bylaws.

#### Enforcement

Enforcement of these Interim Bylaws shall be as provided for in 24 V.S.A. Chapter 117, §4451, and the Shelburne Zoning Regulations.