



Town of Shelburne, Vermont

PLANNING COMMISSION MEETING AGENDA
SHELburne TOWN OFFICES, 5420 MAIN STREET
WEDNESDAY, AUGUST 11, 2021
IN PERSON MEETING; ZOOM OPTION DETAILS BELOW

PLEASE NOTE CHANGE FROM REGULAR MEETING DAY

Join PLANNING COMMISSION Zoom Meeting

<https://us02web.zoom.us/j/83296977420?pwd=YXlDMlRkMGZtL2xqcXRrZS91czNYdz09>

Meeting ID: 832 9697 7420; Passcode: 3MAgeD

Dial by your location

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Meeting ID: 832 9697 7420; Passcode: 418952

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|--------------------------------------------------------------------------------|------------------|
| 1. Call to order/roll call | 7:00 P.M. |
| 2. Approve agenda | 7:00 P.M. |
| 3. Approve meeting minutes of July 14, 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. Proposed zoning amendments, continued; including but not limited to: | 7:15 P.M. |
| Fences | |
| Boundary Line Adjustments | |
| Lot Mergers | |
| Subdivision Regulations | |
| Opportunities for Administrative Review | |
| DRB Review Process | |
| Sidewalk Requirements/"Sidewalk Fund" | |
| 7. Other business | 8:30 P.M. |
| 8. Adjourn | 8:30 P.M. |

**TOWN OF SHELBURNE
PLANNING COMMISSION
MINUTES OF MEETING**

July 14, 2021

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

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

STAFF PRESENT: Lee Krohn, Town Manager; Ken Belliveau, Interim DRB Coordinator.

OTHERS PRESENT: Mark Sammut, Anne Bentley, John Day, Mike Major, Allyson Myers, Fritz Horton, Joyce George, Don Rendall, Gail Albert, Chandler Noyes, Mike Schramm, Sean McFaden, Christine Haines, John Cocina, Dan York, Persis Worrall, Mike Ashooh, Kate Lalley, David Leckey, David Hall, Media Factory (Wendy).

AGENDA:

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes (6/9/21)
4. Disclosures/Potential Conflicts of Interest
5. Open to the Public
6. Joint Meeting with DRB and Town CBCs
7. Other Business/Correspondence
8. Adjournment

1. CALL TO ORDER

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

2. APPROVAL OF AGENDA

MOTION by Deb Estabrook, **SECOND** by Jason Grignon, to approve the agenda as presented. **VOTING** by rollcall: unanimous (6-0); motion carried.

3. APPROVAL OF MINUTES

June 9, 2021

Tabled to the next meeting.

4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST

None.

5. OPEN TO THE PUBLIC

- Joyce George urged publishing the simplifications made to the zoning regulations in the local newspaper and Front Porch Forum so the public is aware.

- Dan York thanked the Planning Commission for the work on the setback issue, noting the change in the regulation has allowed them to build their deck.
- Steve Kendall mentioned the following:
 - Resignation of Dean Pierce as Planning Director - A big acknowledgement is given of Dean Pierce's work with the Planning Commission and for the town for many years. Mr. Pierce will be missed and is wished the best in his future endeavors.
 - Megan McBride resigned from the Planning Commission – Megan McBride is thanked and wished the best.
 - Welcome to Marla Keene - Selectboard appointed Marla Keene to fill the vacancy on the Planning Commission.
 - Economic development report presented to the Selectboard – The report pointed to the need for reform and simplification of the regulatory process, but not loosening the process.

6. JOINT MEETING with DRB and Town CBCs

Decreasing Steps of Review to Include Conceptual Plan and Final Plan Reviews

Lee Krohn explained the efficiencies in time and money for both the town and applicants by having a conceptual review of a proposal where any issues are identified and input from the relevant town departments is sought then warning a Final Plan hearing on the application. The Final Plan hearing may or may not be continued (depends on whether the DRB needs more information to make a decision). The concept is simplifying the process, but not giving up substance or content in any way.

Comments and suggestions by attendees included:

- Regulatory reform is needed with respect to the “blizzard of regulations” to which staff must comply. The regulations are overly complicated. There is conflict between the subdivision regulations and the zoning regulations.
- An insightful exercise to pinpoint where simplification is needed would be to count the number of applications before the town, read the applications, note the length of the applications and any redundancies within the application package.
- Staff should have more authority to make some decisions on a proposal before the application is reviewed by the DRB.
- A one-page checklist should be drafted delineating to the applicant what is needed to be in the application at each level of review (Conceptual, Final).
- Staff should have discretion on which town departments need to provide input on an application. Not all departments are applicable to all applications.
- There should be enough advance notice to town committees that are asked to provide comment on a proposal so the matter can be handled as part of a regularly scheduled committee meeting and not an extra meeting.
- More timely response is needed from department heads and committees with the letters on applications.
- The town plan must be accommodated by any proposal. The town plan is a guiding document. If a regulation is not clear and there is language in the town plan guiding a direction, then that is the spirit/intent of what should be followed.

- Staff should be able to confirm whether an application complies with the regulations and where there is flexibility. The DRB has statutory authority to interpret the applicable regulations and then deal with any issues or conflicting opinions.
- The DRB does take the town plan into consideration, but must uphold and adjudicate based on the regulations otherwise the town will lose upon appeal in court.
- The areas in the regulations that the Planning Commission has authority to change need to be identified. The public needs to better understand the roles of various boards/committees in order to appropriately direct their inquiries.
- There is agreement redundancy needs to be eliminated and the process streamlined. As a first pass, Preliminary Review can be eliminated, boundary line adjustments and mergers do not need to go before the DRB, and the sidewalk fund contribution from an applicant for their proposal should be at the discretion of the DRB.
- The goal is to get to the town vision in the town plan via implementation of the regulations/rules.
- A consultant may need to be hired to help with simplifying the regulations because the volunteers on board and committees do not have the time or expertise necessary for this task.
- The town has many regulations that do not make sense such as requiring street trees under power lines or sidewalks to nowhere. The rules need to be reviewed to make sure they make sense for the town.
- Enforcement of the rules is lacking.
- The regulation forcing houses to be built in the forest should be changed to locate the houses in an open field in order to maintain the forest for stormwater management and other benefits.
- Guidelines should be created to help the decision making process especially when dealing with waivers. Staff support is needed with drafting the guidelines.

7. OTHER BUSINESS/CORRESPONDENCE

Planning Director

There will be opportunity for input on the search and hiring for the position.

8. ADJOURNMENT

MOTION by Jason Grignon, SECOND by Deb Estabrook, to adjourn the meeting.

VOTING: unanimous (6-0); motion carried.

The meeting was adjourned at 9 PM.

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UPDATE for Planning Commission consideration, AUGUST 11, 2021

FENCES - revised per prior discussion –

Need to delete “fences” from the definition of Building or Structure (Section 2210.18)

Then: Create a new section under Article XIX, General Regulations:

Fences

Fences 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 located within the Village Design Review Overlay District require review and approval of the Historic Preservation and Design Review Commission. Otherwise, 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).

Then: Add a new section 1535.7: Fences to the list of subsequent administrative approvals for minor projects that are approved by the HPDRC.

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

Amend definition of Boundary Line Adjustment in Article II of the Subdivision Regulations to read: A change in the boundary between two adjoining lots or parcels where no new lots or parcels are being created. *Currently reads as a “division of land”... which has led some staff to require these simple boundary adjustments to be reviewed as if they were brand new subdivisions.*

While we are at it:

Amend definition of Legislative Body to read: The Selectboard of the Town of Shelburne. *Currently reads “Board of Selectmen”, which is no longer a relevant term.*

Then: retain or replace existing sections of the Subdivision Regulations as noted below:

300A: Boundary Line Adjustments – replace existing section to read:

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 the Officer’s sole discretion, if questions or concerns arise that are not resolvable at the administrative level. If referred for DRB review, then those notice and hearing requirements apply.

310A: Application materials: retain, but require only one copy of plans and materials, not three

320A: Planning Standards – delete

330A: Initial Review – delete

340A: Notice – delete

350A: Issuance of Decision – Decisions shall be issued in accordance with statutory requirements.

360A: Form of Mylar – retain

370A: Recording of Mylar – retain

380A: Retention of Jurisdiction – delete

LOT MERGER

Interestingly, I find no reference whatsoever to lot mergers in either the Subdivision Regulations or the Zoning Regulations. If these have required zoning permits before, it appears that these were *ultra vires* – outside of regulatory jurisdiction.

If there is a perceived need to require a zoning permit to merge lots, then I suggest we simply borrow from a simplified set of the relevant sections of Boundary Line Adjustments for ease and consistency.

DEFINITION OF SUBDIVISION

While we are in this section, I suggest that this simply read: The division of any lot or parcel of land into two or more lots or parcels of land. The term does not include condominium conversions that solely change forms of ownership of lots or parcels of land or structures.

NOTE: The existing definition includes a statement similar to both the first and second sentences above. That existing definition also includes many other actual land uses such as shopping centers and multi family housing which do not in themselves constitute subdivisions, but which would be reviewed under other applicable zoning bylaws.

1900.11: ADMINISTRATIVE REVIEW – suggested as a replacement for the entire existing section

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, where no material changes from those previously approved plans are proposed, and where no relevant zoning bylaws have changed would otherwise alter the approvability of those plans;

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.

Increases in building size and/or site coverage totaling less than 5000 sq ft or 3%, whichever is smaller.

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 the Officer's sole discretion, if questions or concerns arise that are not resolvable at the administrative level.

1910 CONDITIONAL USES – clarify opportunity for administrative review

Suggest changing 1910.3 (Exemption from conditional use review) to now read as follows:

Within a given zoning district, a change from one conditional use to another conditional use may be approved administratively, if found by the Administrative Officer to be a minor, non-material change in size or the nature of conditional use related impacts that can reasonably be anticipated as compared with the previously approved conditional use and as authorized as described in Section 1900.11.

The Administrative Officer retains the authority to refer any such application to the Development Review Board at the Officer's sole discretion, if questions or concerns arise that are not resolvable at the administrative level.

This both expands/strengthens in part and contracts in part the options for administrative review, while as in other sections, always retaining the right to refer to the DRB.

There had also been discussion about a similar approach to minor changes to subdivisions, but I'm not sure right now where that would go, and might effectively already be addressed by allowing administrative review of boundary line adjustments...

SUBDIVISION REGULATIONS, ARTICLE VIII, PLANNING STANDARDS:

Suggest deleting references in Section 800 (5) to compliance with the Comprehensive Plan. It is backwards to have a zoning or subdivision bylaw require conformance with a town plan; the bylaws are supposed to be a way to help implement the plan. Town plans are not regulatory documents.

Suggest reconsidering the reference in Section 800 (10) to "construction costs exceeding 2 million dollars" as a threshold determinant for requiring a fiscal impact analysis. \$2M is no longer the significant project cost that it used to be. If 50 dwelling units is the truly useful threshold here, then stick with that as related to potential impact; construction cost really has nothing to do with potential fiscal impact.

SECTION 810: SITE PRESERVATION, LANDSCAPING AND GRADING AND EXCAVATION

As I understand it, NRCC has expressed great concern about what is thought to be a requirement to site new homes within forested areas or tree cover, and not out in the field or at edges of wooded areas. They seek greater protection of forested blocks of land, rather than requiring homes, driveways, etc to be forced into the woods.

While I share that concern, I have not yet found any such reference a requirement in the subdivision regulations that warrants revision. To be sure, there is often an implicit presumption in Shelburne and in Vermont that new development should be hidden from view, and this may be what causes subdivision plans to either be proposed in that manner or sought by neighbors.

Indeed, Section 810 (1), Existing Features, appears to read that preserving site amenities and/or natural resources such as trees... shall be effected... through harmonious design and appropriate construction methods.

Perhaps an additional statement somewhere in this section such as:

Consideration shall be given to limiting intrusion into existing tracts of forestland, such that new development is designed primarily upon land that is already open or that has already been cleared.

DRB REVIEW

There was clear consensus between the PC and DRB to change the current “three-step” process for subdivisions to a two-step process. This approach retains Sketch Plan Review, and then essentially combines Preliminary and Final Plan Review into a single process. As noted previously, this in no way decreases the depth and thoroughness of review. All substantive standards will still be upheld, and the overall review process can take as few or as many hearings as needed to ensure that those standards are satisfied. However, it will save considerable time, effort, and expense for all parties, and will also help to ensure that any desirable or necessary input from all involved is received earlier in the overall review process. Interestingly,

Article III: Sketch Plan would remain “as is” for the most part.

I do suggest eliminating Section 300 (2) which requires applicants to research adjoining landowners and submit addressed envelopes. It is far simpler and more efficient for Town staff to do this work, and then we know that all of the proper parties have been identified and notified.

Section 320: Classification would no longer be needed, for there will no longer be distinction between minor and major subdivisions. Interestingly, it appears that minor subdivisions can already proceed from sketch to final plan review, so we’re now just adopting that existing approach for all subdivisions.

Section 330: Review Checklist should be revised to eliminate reference to “conformity with the Town Comprehensive Plan”. Explanation was given above for this in another section.

Section 340: Effect of Sketch Plan Action – delete reference to preliminary plan.

Article IV: Minor Subdivision Application and Procedure – delete entire section.

Article V: Major Subdivision Application and Procedure – delete entire section.

Article VI: Application Submission Requirements – Section 600 is retitled ‘submission requirements’; the first sentence changes “preliminary plans” to ‘subdivision plans’; Section 610 is retitled simply “Final Plat”; and

Incorporate Sections 560: Final Plat Hearing and 570: Decision into appropriate locations, and delete reference to the Planning Commission in Section 560 and anywhere else it might appear (clearly a leftover reference to the ‘old days’, predating formation of the DRB).

SIDEWALK REQUIREMENTS

As has been discussed and agreed, what has been said to be a nearly “absolute” requirement for sidewalks should be changed so that in cases where they may not make sense, there is an alternate provision for contribution to a sidewalk/path reserve fund to give the Town greater fiscal ability to build new sidewalks or paths in more appropriate locations.

Section 910 of the Subdivision Regulations require sidewalks per Section 1900.7 of the zoning bylaws.

Section 1900.7: Pedestrian Circulation and Bicycle Accommodation Requirements

Upon further review, I find this a more interesting and complex yet perhaps more easily resolved issue than has been represented in the past.

1900.7 A requires sidewalks in certain specified zoning districts (Village Center, Village Residential, Shelburne Falls Mixed Use, Museum, and Mixed Use) where it makes perfect sense. These areas are either the village core where sidewalks are appropriate and necessary, or (as with Mixed Use) where we’re trying to create opportunities for pedestrian access – and where these areas have relatively high density residential developments behind the mixed use districts along RT 7. Further, sidewalks are also required in the Commerce and Industry North, which itself might be questionable, given the types of land uses in that district, except that if connection could be made to other adjoining high density residential areas, then there is alternate connectivity to RT 7. So the sidewalk requirement in subsection A appears to make perfect sense.

1900.7 B may be the area of concern regarding the requirement for the proverbial “sidewalk to nowhere”. This section requires sidewalks in the Residential and Commerce and Industry South zoning districts. Although requiring sidewalks in residential areas may make sense on the surface, the residential district covers a wide-ranging geographic area where the issue has come up before. One example was a one-lot subdivision in a rural area along Spear Street, where the landowner was initially told that he had to build 600’+- of sidewalk along the frontage of his property. This was truly a part of Town where sidewalks are extremely unlikely to ever be built, and where Spear Street already has wide shoulders on both sides of the road. Further, there was no logical place to build a sidewalk, as it would have required extensive and costly removal of extensive trees/vegetation and other materials that others wanted to remain. This was a case where the landowner would have contributed equivalent funds to a municipal sidewalk/path reserve fund if one had existed at the time. In this particular case, which is not the only one in recent times, the DRB did have the ability under the bylaws to allow for an “alternative facility” to satisfy the requirement.

Although a ‘sidewalk fund’ amendment might apply generally, if there were concerns about applying it too broadly, perhaps it could be tested in this subsection first where the issue has been the most challenging. Suggested language for consideration follows:

Where it can be demonstrated that sidewalks are unnecessary, or where it is unlikely that further sidewalk connectivity will occur via public or private investment, and where even an “alternative facility” is unlikely to ever be needed, then the DRB may instead require an equivalent cost to be contributed to a municipal sidewalk/path reserve fund. The amount of that contribution shall be determined by and equal to a cost estimate to construct an otherwise required sidewalk as submitted by the landowner and prepared by a qualified engineer or contractor.

1900.7 C applies to the Rural and Conservation Districts. While sidewalks are not required there, deeded easements for bike/ped access can be required upon a finding that site-generated demand will exist.

Note also that **1900.7 D** allows the DRB to require provisions for bike/ped connectivity, including deeded easements, in all zoning districts where site-generated demand may exist. Other than the one suggested amendment above, it seems that there are otherwise sufficient opportunities throughout to ensure that all-important opportunities exist for continued build out of bike/ped connectivity in some form.

Thank you. I hope you find this information helpful in advancing these conversations, and making progress toward warning a public hearing to consider adopting these helpful changes into our zoning and subdivision bylaws.