

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 DEVELOPMENT REVIEW BOARD. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE BOARD.

**TOWN OF SHELBURNE
DEVELOPMENT REVIEW BOARD
MINUTES OF MEETING**

March 2, 2022

***Hybrid Meeting held in-person and by teleconference.**

- MEMBERS PRESENT:** Mark Sammut (Chair); Anne Bentley, John Day, Mike Major, Allyson Myers, David Hillman. (Zeke Plante was absent.)
- STAFF PRESENT:** Ken Belliveau, Interim DRB Coordinator; Adele Gravitz, Planning Director.
- OTHERS PRESENT:** Bryan Currier, Mike Gravelin, Susan McLellan, Dave Marshall, Corey Mack, Mark Lurvey, Donna Levin, Doug Durman, Tom Bolduc, Mary Kehoe, Anne Marie Curley, Gail Albert, Samuel Bloomberg, John Hammer, Scott McIsaac, Toby Richmond, Christine Patrin, Kay Kraushaar, Caitlyn Lott, Media Factory.

AGENDA:

1. Call to Order and Agenda
2. Approval of Minutes (2/16/22)
3. Public Comment
4. Disclosures/Potential Conflicts of Interest
5. Applications
 - Sketch Plan, PUD, One Lot, Single Family House & Three Duplexes, 913 Falls Road, A&M Construction (SUB22-01)
 - Conditional Use\Site Plan, Marina Access, Parking, Boat Storage, 4584 Harbor Road, SHM Shelburne, LLC (CU20-04R2\SP94-09R2)
6. Other Business
7. Adjournment

1. CALL TO ORDER and AGENDA

Chair, Mark Sammut, called the hybrid in-person and teleconference meeting to order at 7 PM. There were no changes to the agenda.

2. MINUTES

February 16, 2022

MOTION by John Day, SECOND by Mike Major, to approve the 2/16/22 minutes with correction to name spellings as needed. VOTING: 5 ayes, one abstention (David Hillman); motion carried.

3. PUBLIC COMMENTS

None.

4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST

Those participating in the meeting were asked if anyone had any concerns about the participation of any DRB member in any matter on the agenda. No concerns were raised.

5. APPLICATIONS

The function of the Development Review Board as a quasi-judicial board and the hearing procedure were explained. Individuals to give testimony before the DRB were sworn in.

SUB22-01: Sketch Plan for a one lot Planned Unit Development (PUD) consisting of an existing single-family house and three new duplexes at 913 Falls Road in the Shelburne Falls Mixed Use District, Village Design Review Overlay District, and Stormwater Overlay District by A&M Construction

Bryan Currier with O’Leary Burke Civil Engineering Associates and Mike Gravelin with A&M Construction appeared on behalf of the application.

STAFF REPORT

The DRB received a written staff report on the application, dated 3/2/22. Adele Gravitz reviewed the PUD in the Shelburne Falls Mixed Use District, noting the applicant needs to provide information on steep slopes and delineation of wetlands and floodplain. The 50’ PUD buffer needs to be shown on the peripheral boundary line and after the 2,500 s.f. for the existing single-family house is subtracted it needs to be determined if there is enough developable land for the proposal. One of the duplex buildings is at the top of a steep slope on the site. Review and input from Shelburne Historic Preservation & Design Review Committee is needed on how the proposal can meld with the area. The DRB should also consider if a landscape buffer is needed and to address pedestrian issues (sidewalk, path connection). The applicant should be asked to show the proposal in context to all the resources around it.

It was noted that due to the recent bylaw amendment Preliminary and Final reviews are combined into one review.

APPLICANT COMMENTS

Bryan Currier reviewed the site plan and noted the following:

- Clarification is needed on setback requirements and the peripheral buffer (Section 1930.3.A of the regulations indicates the peripheral buffer is equal to setbacks in the district and not 50’ which will present quite a challenge for the project) – Staff pointed out the property is in the Shelburne Falls Mixed Use District which is different from the Mixed Use District.
- Solar panels are not a problem to add.
- The construction will be to RBCS (residential building code standard) rather than LEED standard.
- A location map can be done.
- Sidewalk/paths will be addressed.
- Request is made not to require wetlands delineation since the construction is not near the Class 2 wetlands on the site or in the buffer – Staff recommended the applicant file a Project Review Sheet and ANR will determine if delineation is needed.
- A slope analysis will be provided.

PUBLIC COMMENT

Gail Albert, SNRCC, stated the land abuts the LaPlatte River Nature Area so an agreement is needed to conserve the land that approaches that area or an open space agreement should be in place for the area where the parcels connect. Bryan Currier said the land will be conserved per the regulations.

Susan McLellan, Falls Road, asked if the existing house will remain and the height of the duplex buildings. Bryan Currier said the existing house will be renovated to be single family and the duplex buildings are two story.

There was discussion of the location of the duplex building relative to the slope. The applicant said they will try to pull the building back slightly from the contour line.

DELIBERATION/DECISION

Sketch Plan, PUD, One Lot, Single Family House & Three Duplexes, 913 Falls Road, A&M Construction (SUB22-01)

MOTION by John Day, SECOND by Anne Bentley, to finalize the record, close the hearing, and direct staff to prepare a decision to approve the Sketch Plan for SUB22-01 for a one lot PUD at 913 Falls Road in the Shelburne Falls Mixed Use District, Village Design Review Overlay District, Stormwater-Impaired Watershed Overlay District, and authorize the applicant, A&M Construction, to submit a Final Plat/Plan within six months of this decision subject to the following conditions:

- 1. The applicant shall submit an analysis of the buildable area showing at a minimum wetlands and slope analysis of areas on the subject property.**
- 2. The applicant shall show calculations that support proposed density for the subject property.**
- 3. The applicant shall show open space calculations and how open space land will be protected through appropriate legal mechanisms reviewed by the Town Attorney and approved by the DRB.**
- 4. Review by Shelburne Historic Preservation & Design Review Committee (SHP&DRC) is required (given subject property location and the request to remove a shed) before the applicant submits Preliminary/Final Plat to the DRB.**
- 5. The applicant shall show that duplex #3 is not on a slope that appears to be greater than 15% or the applicant can demonstrate that the regulation is not applicable.**
- 6. The applicant shall provide documentation of compliance with Section 520; projects in this overlay district that result in a change in impervious surface area that triggers a new or renewed individual state shall provide documentation that the project is either exempt or in compliance with EPR Chapter 22.**
- 7. The applicant shall demonstrate compliance with Section 530; projects in this overlay district that result in a change in imperious surface area shall either submit documentation that they are exempt from the requirements of EPR**

Chapter 22 or submit a copy of the Individual Stormwater Permit Application and attachments to the Town of Shelburne.
VOTING: unanimous (6-0); motion carried.

CU20-04R2\SP94-09R2: Conditional Use\Site Plan to relocate the main access drive, create a dedicated summer parking area, provide pedestrian pathways, redesign various boat access, storage and marina operations, and add new stormwater facilities including 30 s.f. of fill within mapped FEMA floodplain at 4584 Harbor Road in the Rural Zoning District and Lakeshore Conservation Overlay District by SHM Shelburne, LLC d/b/a Safe Harbor Shelburne Shipyard

Dave Marshall (CEA), Mark Lurvey (Shelburne Shipyard General Manager), Corey Mack (traffic consultant), Doug Durman (project architect), and Donna Levin (site lighting consultant) appeared on behalf of the application.

STAFF REPORT

The DRB received a written staff report on the application, dated 3/2/22.

Mark Sammut mentioned the relationship of federal and state jurisdictions and Shelburne's bylaws, and that the traffic study and site lighting reports have been submitted by the applicant.

APPLICANT COMMENTS

Dave Marshall reviewed changes to the site plan from the previous hearing to include:

- Moving the pedestrian path to the north side of the driveway for easier/safer access from the parking lot.
- Repurposing the area on the north side of the storage building.
- Screening of the site light at the entrance to the marina from Harbor Road to supplement existing screening.
- Adding more shielding to the lighting at the clubhouse.
- The DRB is asked to recognize that per Section 1825.2 installation of culverts in a flood overlay district are allowed.
- Per the traffic study there will be a modest increase in traffic. The number of boat slips will be increased by 9.2%. Recognizing there is an existing traffic situation on Harbor Road, Shelburne Shipyard is willing to pay 10% of the cost to improve pedestrian amenities.

John Day asked about available parking spaces if boat cradles are occupying spaces. Mark Lurvey said approximately 50 "dead" boats will be moved to the north lot which will free up those spaces.

Allyson Myers asked about green space in the design. Ken Belliveau noted a building that is not historic does not need a permit for demolition. The areas around the building were turned into impervious area without a permit. The stormwater management plan will account for this impervious space. The property owner also brought in fill without contacting the town to determine whether a permit was needed. The regulations can provide direction on whether additional landscaping is needed. The DRB can cover

previous actions by the property owner under the current review. Dave Marshall agreed there was work done without a permit so the application is for a partial “after-the-fact” permit to correct the malady in the past.

Mike Major asked about the driveway gate hours of operation and creating a choke point on Harbor Road. Dave Marshall said the gate will operate with a car pass to separate patrons and operations.

PUBLIC COMMENT

Members of the homeowners association and residents of the nearby neighborhoods to the shipyard made comments including the following:

Tom Bolduc said the neighbors have been trying to schedule a Zoom meeting with Safe Harbor to discuss their plans for the shipyard (maintain historic activity levels or have an intensification of activities and service).

Anne Marie Curley expressed concern about the following:

- Wetlands and the need for a wetlands assessment by ANR
- The road through the wetlands and if there is another option
- Precedent by the applicant of doing work without a permit
- Inaccuracies about invasive species (cattails indicate wetlands and are not an invasive species)
- Safe Harbor not putting the environment ahead of business concerns and the town needing to be the guardian of the environment

The DRB noted that the board follows the rules outlined in the town’s bylaws which include requirements for any necessary state or federal permits.

Toby Richmond spoke about the square footage of the parking lot being increased with loads of gravel that were trucked in without the Act 250 permit being amended. The Act 250 permit for the shipyard has not been amended since 1995 so there is pause with the applicant’s honesty and integrity with the project. Also, the traffic assessment that was done was based on a traffic study done in June 2009 which is inadequate with regards to the residents’ traffic concerns and does not address safety concerns during the busiest months of the year at the shipyard. A complete traffic study by the town, applicant, and Act 250 needs to be done as well as a wetlands study. Regarding the widening of the road, it was very difficult to get the town’s highway department to stripe a crosswalk and place a barrel so it is questionable that the highway department agreed to widen the road and put in a sidewalk. There will be more conflicts with pedestrians and vehicles, and seven homes along the road will be impacted. The new traffic study should consider the number of construction trucks in/out of the site, increase in number of people working at the site, and the increase in customers to the site. Concerns that have not been addressed by the applicant include:

- Increased contact between motorists and non-motorists due to the higher traffic volumes, increased parking/boat storage, and valet service.
- Delivery trucks to the site (wastewater, gas supply)

- Traffic backup across the crosswalk
- New entrance by neighborhood roads and the crosswalk
- Traffic leaving the site at dusk when the road is heavily used by pedestrians
- Road ownership issue is not settled

Mary Kehoe referred to considerations per the town's regulations that the DRB needs to cover with the application and asked that the public be given time to submit evidence or have a technical review done to provide more information on the application than just what the applicant submits. The following concerns/questions were expressed:

- There is concern about a project of this size in a residential neighborhood. The scope is not consistent with growth. The parking lot will be the largest in town - Dave Marshall explained the parking lot is storage area for boats and parking spaces. Mark Lurvey said "dead" boats will be removed from the parking area. The boat storage area will not be expanded
- There is concern of conflict of patrons with vehicles in the parking lot – Dave Marshall said there will be striped crosswalks to assist the pedestrians.
- Increase in the footprint of buildings – Dave Marshall said the footprint will increase from 6.4% to 8.3%.
- Wetlands and cutting vegetation in the setback needing a permit within the 102' contour (Section 1760) – Dave Marshall said there are a couple of trees to be removed which will be mitigated with the landscape plan. Green space will be converted into roadway.
- Adverse impact on any historical site or building (the shipyard itself is an historic site) – Dave Marshall said the proposed structures are located away from historic structures. The new building supports the marina use.
- Request for an independent study with respect to traffic and wetlands for a \$5 million expansion of the shipyard on the most narrow point of Shelburne Point in the middle of a residential neighborhood that will impact a significant historical site. The DRB needs to be able to conclude whether the application creates an unsafe or unhealthy condition. The only evidence the DRB has before it now is the application by the applicant and the 2009 traffic study – Corey Mack, traffic consultant, explained how the existing traffic study was used to validate what is on the site and formulate an estimate of traffic. With 17 additional boats, the associated increase in traffic is four trips per peak hour. The amount of traffic generated is less than the VTrans threshold requiring a traffic study. The amount of delivery truck traffic does not change. The sidewalk on the north side of the access road will be good. There are no sight distance issues.
- The DRB can accept hearsay testimony from a reliable source. Shelburne Fire Chief said he has concerns about the parking lot and being able to maneuver fire vehicles so more evidence/information is needed.
- Residents and members of the homeowners association request the application be rejected until a study is done and more information comes to the fore so the DRB can come to the conclusions and make the decision it must make under the bylaws.

There was public comment on the volume of pedestrians, bikes, and traffic in the area during the summer months, and conflict with vehicular traffic. Tom Bolduc stressed the priorities for the neighbors are traffic, water quality, and not having a dramatic change to the area.

Christine Patrin spoke about the “dead” boats in boat storage and the 30,000 s.f. metal building not being “pretty on the Point”, people turning their cars around in the neighborhood, Safe Harbor’s spokesperson, Jason Hewitt, saying something different from the proposal, lights from the shipyard impacting the beach and star gazing (light pollution and headlights on the beach do not fit with the ambiance of the neighborhood), questioning how the runoff from the road will “improve” the wetlands, and the additional traffic from people coming to the marina. Dave Marshall explained the runoff will be treated before going into the wetlands which is an improvement. Donna Levin reviewed the site lighting that includes a shielded light by the entrance with zero output on Harbor Road, a new light in the office area/clubhouse which is controlled and will not be on after hours, and safety, not security, lighting. There is virtually no lighting on the majority of the site and the lighting will be timer controlled. Dave Marshall added relocating the driveway to the south eliminates the long run along Harbor Road so there is no net impact on the beach. Doug Furman, architect for the project, described the 30,000 s.f. textured metal building which is divided into retail store/office space (75’x 45’ with a pitched roof) and maintenance/storage space. The building has more of a barnlike appearance than a metal building.

John Hammer expressed displeasure at the shipyard removing old growth trees without town permission, and noted any traffic into the shipyard will bisect Harbor Road. Large boats will likely block the road when making the turn. The new gate with key access could cause traffic backup. There will be a substantial amount of traffic in the area. The traffic study needs to examine this. Dave Marshall said a test with a large truck was done and the truck made the turn. Corey Mack stated that a congestion analysis was not done because the amount of traffic is not a congestion issue. An assessment of wait time at the gate and the queue that forms was done. No issue was found.

Kay Kraushaar questioned how the DRB can make a determination without independent, unbiased information from experts rather than just relying on information presented by the applicant. An independent technical review should be done per Section 2070.2 to ensure the safety of residents and protect the wetlands and water quality.

Scott McIsaac echoed the points and issues stated previously and urged the DRB to follow Articles I and III of the zoning code. Also, per Article XVII the DRB must make affirmative findings in all areas noted in the relevant articles before issuing a permit. The owner of Harbor Road needs to be clarified for the access before expansion is allowed. Moving the entrance to where it is now would solve many problems.

Eric Dalton pointed out in June school is out and children will be on the road and crossing the road when there will be an uptick in traffic from the shipyard. The DRB must do due diligence with the traffic study.

Samuel Bloomberg stated the DRB should reject the 12-year-old traffic study which did not consider congestion because since that time there have been new homes built in the area, there is an increase in the number of boats at the shipyard, and there is an increase in traffic from employees and service vehicles. More information on the plans for the future of the shipyard from Safe Harbor is needed. There are many questions to be addressed.

Gail Albert asked about toxicity from the septic being transported from the site, and runoff from impervious surfaces and boat washing drainage. Dave Marshall said the runoff from boat washing is collected and removed from the area. There is no toxicity from the transported septic.

Caitlyn Lott expressed concern about noise from traffic which has increased over the years and pollution from combustion fumes with people stopping their cars at the entrance to the shipyard. Many people come to the beach to gather and enjoy the view, but there is no public parking there.

DELIBERTATION/DECISION

Conditional Use\Site Plan, Marina Access, Parking, Boat Storage, 4584 Harbor Road, SHM Shelburne, LLC (CU20-04R2\SP94-09R2)

MOTION by John Day, SECOND by Mark Sammut, to go into deliberative session to discuss a date and time that is mutually agreeable to the DRB to discuss the application with the caveat staff may be asked to be present. VOTING: unanimous (6-0); motion carried.

6. OTHER BUSINESS

None.

7. ADJOURNMENT

The regular meeting was adjourned and deliberative session began at 11:02 PM.

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