Town of Shelburne, Vermont

PLANNING COMMISSION MEETING AGENDA
WEDNESDAY, MAY 26, 2021
VIRTUAL/REMOTE MEETING -- LOGIN/CALL IN DETAILS BELOW

PLEASE NOTE CHANGE FROM REGULAR MEETING DAY

Join PLANNING COMMISSION Zoom Meeting WEDNESDAY, MAY 26, 7:00 P.M.

https://us02web.zoom.us/j/82990674834?pwd=dkpsVkx5MFcvWFFPeGdES0NUUW4rZz09

Meeting ID: 829 9067 4834
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Passcode: 524621

1.	**Call to order/roll call**	**7:00 P.M.**
2.	**Approve agenda**	**7:00 P.M.**
3.	**Approve meeting minutes of May 12, 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 12,2021

***Meeting held via teleconference.**

MEMBERS PRESENT: Steve Kendall (Chair); Jason Grignon (Vice Chair); Megan McBride, Stephen Selin, Neil Curtis. (Deb Estabrook and Jean Sirois were absent.)
STAFF PRESENT: Lee Krohn, Town Manager.
OTHERS PRESENT: Gail Albert, Joyce George, Don Rendall.
AGENDA:

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes (4/22/21)
4. Disclosures/Potential Conflicts of Interest
5. Open to the Public
6. Follow Up: Fences
7. Zoning Amendments "2nd Bundle"
8. Appointment to Housing Subcommittee
9. Other Business/Correspondence
10. Adjournment

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1. CALL TO ORDER

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

2. APPROVAL OF AGENDA

MOTION by Jason Grignon, SECOND by Neil Curtis, to approve the agenda as presented. VOTING: unanimous (5-0); motion carried.

3. APPROVAL OF MINUTES

April 22, 2021

MOTION by Stephen Selin, SECOND by Jason Grignon, to approve the minutes of 4/22/21 with correction to the number of members present for votes to reflect Neil Curtis not present until the public hearing on bylaw revision/regulatory reform (agenda item #6). VOTING: unanimous (5-0); motion carried.

4. DISCLOSURES/POTENTIAL CONFLICTS OF INTEREST

None.

5. OPEN TO THE PUBLIC

None.

6. FOLLOW UP: Fences

Proposed language for administrative review of fences was reviewed. Essentially, fences less than four feet in height would be exempt from needing a permit. Fences four feet to

eight feet in height could be administratively approved. Fences greater than eight feet in height would need review by the DRB. There was discussion of review of a fence based on location and criteria for fences in certain areas of town. Sensitive areas and wildlife corridors need to be protected. Staff will draft further language for consideration by the Planning Commission.

7. ZONING AMENDMENTS: "2nd Bundle"

Boundary Line Adjustment (BLA)

Staff recommendation is to handle BLAs administratively. BLA can be done provided no new lots are created or nonconformance created or increased. Staff will investigate how zoning districts are defined (i.e. by property lines or measurement from center of road). Jason Grignon stressed administrative approval of a BLA should include the requirement the BLA is recorded in the town records so the tax maps can be updated.

There was discussion of lot mergers. It was noted requiring a permit to merge lots is not the practice by all towns. It was suggested the requirement be that deeds be updated, the property map be updated, and the town be notified when a merger has occurred.

Minor Changes to Site Plan (Non-Material Changes)

Staff recommendation is minor, non-material changes to a site plan needs only administrative review.

Consolidate/Simplify Review

Staff recommendation is to have sketch plan review and then go to project review. If the project is complicated the review can be continued until all the information that is needed is provided. Jason Grignon stated review by Shelburne Natural Resources Committee (SNRCC) should be part of the process. Lee Krohn suggested a joint review be held at the sketch plan stage. Gail Albert, SNRCC, said the regulations need to be updated so that suggestions from the committee are more than just suggestions.

There was mention of forming a prioritized list for the Planning Commission to address including natural resources items and town plan recommendations. It was suggested a joint meeting with the Planning Commission, DRB, and SNRCC be held to compile a list. Having a unified bylaw was also mentioned. Jason Grignon said the town was not awarded a grant to hire a consultant to help with the task of developing a unified bylaw for Shelburne.

The Planning Commission reviewed the language in Article III.A (BLA), Sections 300.A and 305.A. There was agreement the language presented by staff was acceptable. There was discussion of potential criteria to be used by the DRB to review BLAs (Section 330.A). Following discussion, the Planning Commission agreed with combining the language in Section 305.A for BLA and lot merger for administrative review.

At the next meeting the Planning Commission will discuss Sections 810, 1910, 1911, 1930, administrative review of site plans and land uses. Staff will provide language for review.

8. APPOINTMENT TO HOUSING SUBCOMMITTEE

The consensus of the Planning Commission is to support the Selectboard appointment of Amy Southward to the Housing Subcommittee.

9. OTHER BUSINESS/CORRESPONDENCE

TRB

The ordinance needs to be amended to shift the jurisdiction to the Selectboard.

Meeting Schedule

Until further notice Planning Commission meetings will be the 2nd and 4th Wednesday of the month so there can be administrative support provided.

10. ADJOURNMENT

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

The meeting was adjourned at 9:16 PM.

RScty: MERiordan

Suggestions for Planning Commission consideration, May 26, 2021

FENCES

Shall be installed wholly within an applicant's property, and not on the property boundary. No other setback requirement applies, unless:

> Otherwise prescribed in an underlying subdivision or PUD permit;
> Must be placed at least X 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 fiberglas, barbed/razor/ribbon wire, broken glass, or other similar materials, nor of pointed metal unless by a governmental entity. 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)

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).

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.

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.

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…

NOTE: I'm not sure where this falls in the zoning ordinance, as Section 810 is the list of permitted uses in the Village Center District. I'm sure you know what's intended here. Since I have not been involved in this prior conversation, I have attached the relevant pages from the April 8 memo on this topic. This appears to be the new regulations sought by NRCC to further tighten restrictions related to certain natural resources.

As you, 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; for example, setbacks for fences and accessory structures. It is very confusing for landowners, applicants, and staff alike to offer simple clear answers to these frequent questions when there are different potential answers for the same properties. Does one go by the standard, stated setback for that zoning district, or are there slightly or significantly larger setbacks imposed for various reasons within subdivisions? By way of extreme example, you'll recall the strange saga of the Burris fence case, where the PUD rules there require a 75-foot setback for all structures; and since that relevant definition of structure included fences, that exceedingly large setback requirement also encompassed fences. That simply makes no sense for reasonable use of land.

A tangible example is in the Deer Run and adjoining neighborhoods. Standard zoning says one thing, but the original subdivision approval appears to require a larger than normal setback, which also appears to have been amended or waived for a number of individual landowners over time. It's an odd paradox to approve a subdivision with relatively small lots, and then to impose a larger than normal setback, limiting significantly typical residential uses and structures.

Related to this are 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.

Anyway, if you do choose to pursue discussion of the "Section 810" matter, I will need to follow along with you as to the intent, purpose, priority, and location within the zoning ordinance.

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 all have had or now do have meetings on Wednesday evenings (with the PC and DRB on alternate Wednesdays), I'm hoping this is easier to achieve in the near future. Let's try to make that happen.

Thank you. I hope you find this information helpful in advancing these conversations.

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