Town of Shelburne, Vermont

CHARTERED 1763

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INVITATION TO COMMENT ON ZONING AMENDMENTS

TO: DISTRIBUTION LIST
FR: SHELBURNE PLANNING COMMISSION VIA DEAN PIERCE, DIR OF PLANNING
RE: ZONING BYLAW AMENDMENT
DA: APRIL 27, 2020

On March 12, 2020, the Shelburne Planning Commission voted to conduct a public hearing on proposed amendments to Shelburne's Zoning Bylaw. The extent of the proposed changes is detailed in the attached memorandum. The day after the vote was taken, the Town announced a moratorium on public meetings through April 17. Thus, the date originally identified for the hearing by the Planning Commission came and went without a hearing. On April 23, the Planning Commission met and confirmed the earlier decision to hold a hearing; the new date selected for the hearing is May 28.

The meeting of which the hearing is part will begin at 7:00 p.m. To comply with Governor Phil Scott's 'Stay Home/Stay Safe' order the meeting will be conducted remotely using the Zoom online platform. It will also be possible to participate in the meeting via telephone. Those who plan to participate in the hearing are encouraged to also submit a written version of their comments in advance. (Details will be posted on the Town of Shelburne web site.)

It is not necessary to participate in the hearing to offer comments. Written comments may be submitted in advance of the hearing to Dean Pierce, AICP, Director of Planning and Zoning, 5420 Shelburne Road, PO Box 88, Shelburne, VT 05482. Please direct email to dpierce@shelburnevt.org.

MEMORANDUM

TO: RECIPIENTS
FR: DEAN PIERCE, ON BEHALF OF PLANNING COMMISSION
RE: HEARING ON PROPOSAL TO AMEND ZONING BYLAWS
DA: APRIL 27, 2020

BACKGROUND

On March 12, 2020, the Shelburne Planning Commission voted to conduct a public hearing on proposed amendments to Shelburne's Zoning Bylaw. The day after the vote was taken, the Town announced a moratorium on public meetings through April 17 (which has since been extended). Thus, the date originally identified for the hearing by the Planning Commission came and went without a hearing. On April 23, the Planning Commission met and confirmed the earlier decision to hold a hearing; the new date selected for the hearing is May 28. In addition, Staff was directed to distribute the proposed amendment and a "zoning change report" as required by statute. This memo and other materials were prepared in response to that directive.

PROPOSED MODIFICATIONS

The Planning Commission proposal would add fences and retaining walls to the list of structures allowed within certain PUD buffers (i.e., those in PUDs in the Mixed Use district). The change would also add a definition of "retaining wall" and a set of requirements relating to retaining walls generally. Finally, it would begin the process of making more consistent reference to PUD buffers (avoiding use of descriptors periphery and perimeter which Vermont's Courts have ruled are synonymous in the context of Shelburne's PUD requirements), thus simplifying the bylaw.

A list of the sections modified by the proposal is presented below.

Article	*Section*
XIX	*1930.7*
	1980.10 (new)
XXI	*2110*

The text of the language to be the subject of the hearing is presented in the documents attached. Language to be added to the bylaw is shown in color with underscore. Language to be deleted is shown in color with ~~strikethrough~~ (strikethrough). Highlights are an artifact and are not part of any proposal to change the bylaw.

ZONING CHANGE REPORT

A report prepared in accordance with 24 V.S.A. §4441(c) is also attached. This report describes how the proposal "Conforms with or furthers the goals and policies contained in the municipal plan…" and "Is compatible with the proposed future land uses and densities of the municipal plan."

1930 Planned Unit Developments. In accordance with 24 V.S.A., Section 4417, Planned Unit Developments (PUDs) are permitted in various zoning districts, as authorized by Articles III through XVIII describing the individual zoning districts. In addition to any specific purposes specified below, it is the intent of this section to implement the goals and objectives of the Town Plan, to encourage the orderly development of the land, to protect important scenic and natural features of the landscape, to encourage effective neighborhood design, and ensure the unified and integrated design of development projects.

1930.1 Review Process.

A. In accordance with the provisions of 24 V.S.A., Section 4417, and as may be specified in Article XX of these Regulations, the Development Review Board shall conduct public hearings to consider applications for Planned Unit Development approval. All PUDs shall be considered to be major subdivisions under the Subdivision Regulations.

B. The Development Review Board may conduct all development reviews associated with the development (e.g. site plan approval, planned unit development approval, subdivision approval) simultaneously.

C. Except as may be limited in Articles III through XVIII describing individual zoning districts, the Development Review Board may modify applicable area and dimensional requirements, excluding the periphery buffer, simultaneously with the approval of the subdivision plat.

1930.2 General Standards.

A. A site plan shall be submitted to the Development Review Board with a preliminary subdivision plat application showing the location, height and space of buildings, building envelopes, open spaces, parking spaces, streets, driveways, landscaping, and all other significant or unique physical features (including but not limited to waterways, wetlands, flood plains, fields, forested areas and tree-lines, and topography), accompanied by a statement setting forth the nature of all proposed modifications, changes, or supplementations of area and dimensional requirements of the applicable zoning regulations. The site plan must contain sufficient detail to allow the Development Review Board to assess the relationship of the proposed development to the site's natural features, and compatibility with surrounding lands.

B. All Planned Unit Developments shall be subject to Site Plan Review in accordance with applicable portions of Section 1900 of these Regulations.

C. In determining the number of units which may be developed within the residential portion of a PUD, the Development Review Board

shall consider, as an upper limit, the number which could be developed in conformance with the zoning and subdivision regulations for the district in which the project is located. In making this determination the Development Review Board shall consider only developable land as defined in Article XXI of these Regulations. When determining the size of any area occupied by a slope of 15 percent or more, the Development Review Board shall use the "bare earth" Lidar data compiled by Earthdata International for the Chittenden County Metropolitan Planning Organization in 2004, and apply the lidar data at its original grid cell resolution using a methodology calculating the maximum amount of elevation change between each cell and its neighbors. (The Shelburne Zoning office shall provide applicants with Lidar data and/or slope area calculations based on this approach upon request.) Residential density in PUDs shall be calculated on a gross density basis.

D. Where a district boundary line divides a lot being developed as a PUD, the Development Review Board may allow the development of a single PUD with a total density based on the allowable density of each district.
E. The proposal shall be an effective and unified treatment of the development possibilities on the project site, and the proposed development plan shall make appropriate provision for the preservation of streams and stream banks, steep slopes, wet areas, soils unsuitable for development, forested areas, agricultural land, significant views, and unique, natural and man-made features.
F. The proposal shall be consistent with the Town Comprehensive Plan and all applicable bylaws.
G. The proposal shall be consistent with all evaluation standards set forth in the Shelburne Subdivision Regulations.
H. The proposal shall provide for the appropriate allocation, distribution, preservation and maintenance of open space and/or agricultural and forestry lands. Design that allows for contiguous open space areas is encouraged.
I. The proposed design shall provide for the economy and efficiency of street, utility, and public facility installation, construction and maintenance.
J. Except in the Rural District, proposed PUDs shall be connected to municipal water and sewer service systems, and such systems must be capable of accommodating increased flows due to the proposed development.
K. The development shall be compatible with neighboring properties.
L. The Development Review Board may require phased construction of the development in order to stay consistent with the Town's desired rate of growth, and in accordance with the Town Plan and any duly adopted Capital Budget and Program.

M. The development may be subject to requirements regarding traffic.
N. In a PUD containing residential development, the dwelling units permitted may, at the discretion of the Development Review Board, be of varied types as allowed in the district in which the PUD is located, and may be located in buildings connected by ground level or elevated covered walkways, or underground tunnels.

. . . [several intervening sections]

1930.7 Planned Unit Developments-Commercial and Planned Unit Developments—Mixed Use in the Mixed Use District. Planned Unit Developments-Commercial (PUD-C) and Planned Unit Developments—Mixed use (PUD-MU) may be allowed in the Mixed Use District in accordance with the following:

A. Purpose: The PUDs in the Mixed Use District are intended to encourage high quality design of commercial development that achieves the purposes set forth for this district, and to provide a pleasant entry to the Town of Shelburne.

B. Design Standards:

1. Buildings and Building location: The use of multiple buildings is encouraged, and no single building may have a footprint that exceeds the limits established for the district in which the PUD is located. Buildings shall be located in clusters which, in conjunction with landscaping and land form, create pleasant and functional spaces within the site. Buildings connected by a walkway shall be considered separate buildings.
2. Road Access: Direct access from Shelburne road shall be minimized. A PUD-C or PUD-MU which has frontage on a cross road shall be required to use the cross road for access and no curb cut on Shelburne Road shall be allowed. A PUD-C or PUD-MU which does not have frontage on a cross road, and which has no more than 300 feet of frontage on Shelburne Road, may have one curb cut (no more than three lanes) on Shelburne Road. A PUD-C or PUD-MU which does not have frontage on a cross road, and which has between 300 and 1,000 feet of frontage on Shelburne Road, may have no more than two curb cuts (each no more than three lanes) on Shelburne Road. A PUD-C or PUD-

MU which does not have frontage on a cross road, and which has more than 1,000 feet of frontage on Shelburne Road, may have no more than three curb cuts (each no more than three lanes) on Shelburne Road. For the purpose of this section, a cross road is any preexisting public road, private road, or right-of-way intersecting with Shelburne Road and having a right-of-way width of at least 40 feet.

3. Access to adjacent lots: Access between lots in a PUD-C shall be encouraged, thus allowing shared use of parking as well as travel between lots without the need to re-enter Shelburne Road. Connections between lots in the PUD-C shall be located to readily serve parking areas. Connections to adjacent residential areas shall be designed to discourage through traffic.
4. Parking: Parking shall be encouraged to be located behind or beside buildings, but not in front of buildings. Parking in front of buildings shall not be in the ~~perimeter~~ periphery buffer. Parking shall be designed to serve the entire development and not be assigned to specific buildings. The Development Review Board may reduce the number of spaces required if a careful analysis of shared parking justifies such reduction. Parking areas shall be divided by appropriate islands and/or landscaping so that no double or single banked bay of parking contains more than 20 spaces.
5. Landscaping: The PUD application shall contain a written statement of the goals and objectives of the landscaping and a discussion of how the landscape plan addresses those goals and objectives. At a minimum, landscaping shall be used to create attractive front yards, augment the visual appearance of buildings, create and reinforce views, define spaces internal to the site, and separate pedestrian from vehicular areas. At least one curbed, landscaped island shall be provided for every twenty parking spaces, and may be located at the end of a parking aisle or internal to the parking area.
6. Pedestrian access: Convenient and pleasant pedestrian access shall be provided from the sidewalks along Shelburne Road to building entries, from parking areas to building entries, and between buildings. In addition, connections between the proposed development site and adjacent commercial and residential areas shall be designed to encourage, and provide a pleasant environment for, pedestrian and bicycle travelers.
7. Building design: Buildings shall be designed to be consistent with the purpose of the Mixed Use District, to create visual interest, and to generate a sense of human

scale. Fenestration, varied roof lines, and other architectural treatments shall be used to break up blank facades. Facades facing streets or parking areas shall be designed to incorporate glass in the form of windows or window-like features in a significant portion of their façade area (including entries). A significant portion of the buildings' total foundation perimeter shall be treated with plants and shrubs.

C. Setbacks and Dimensional Requirements:

1. Minimum total area of development - 2 acres.
2. Minimum frontage - 150 feet.
3. Minimum front yard PUD buffer width~~setback~~ – As specified for front yard setbacks in the district in which the PUD is located.
4. Minimum side and rear yard~~s pertaining to the periphery of the~~ PUD buffer width - 50 feet.
5. Minimum side and rear yard PUD buffer width where the PUD abuts non-residential properties - 20 feet
6. ~~This~~ Side and rear yard PUD buffer~~s zone~~ must be kept free of buildings, structures, parking and roadways other than driveways and must be landscaped, screened or protected by natural features so that adverse effects on surrounding areas are minimized. Paths, ~~and~~ sidewalks, fences, and retaining walls with an average height less than 4 feet ~~-~~shall be allowed in the periphery buffer with the approval of the DRB as part of PUD approval or amendment. Retaining walls allowed in the buffer shall also comply with the requirements of Section 1980.10.

~~5. Minimum side and rear yards where the PUD abuts non-residential properties shall be 20 feet~~

~~6~~7. Maximum total building coverage - 30 percent.
~~7~~8. Maximum total lot coverage - 50 percent. If a PUD extends beyond the boundary of the Mixed Use District, the total lot coverage on the land within the Mixed Use District shall not exceed 50 percent, and the total lot coverage on the land outside of the Mixed Use District shall not exceed the maximum allowed in that zoning district.

D. Uses.

1. Permitted uses as set forth in Section 1010 of these regulations.
2. Conditional uses as set forth in Section 1020 of these regulations.

New paragraph in miscellaneous section

1980.10 Retaining Walls

A. Except where further restricted elsewhere in this bylaw, no retaining wall shall exceed twelve (12) feet in height at any point.
B. Terracing of retaining walls is allowed. In a terraced retaining wall system, if two (2) retaining walls are separated by a distance at least one times (lx) the height of the higher of the two (2) walls, the walls shall be considered as separate walls; if two (2) retaining walls are separated by a distance less than one times (lx) the height of the higher of the two (2) walls, the walls shall be considered as a single wall.
C. Retaining walls greater than four (4) feet in height shall not be located within ten feet of a property line, with the exception that portions of such walls which measure four (4) feet in height or less than four (4) feet shall not be subject to this requirement.
D. In areas zero to two (2) feet from a property line, retaining walls two (2) feet high are allowed, with a maximum height at any point of two (2) feet. Retaining walls more than two (2) feet from a property line may be three (3) feet high, with a maximum average height at any point of three (3) feet. Multiple walls not meeting the requirements of 1980.10.B, shall be measured in height as a single wall.
E. Conditional Use approval shall be required for any retaining wall 8 feet in height or more to be located within any required yard setback.
F. Retaining walls constructed and/or permitted prior to the adoption of these regulations shall be allowed to remain in their existing state; however, significant changes or alterations to such walls shall be made in conformity with these regulations. The repair and routine maintenance, as determined by the Administrative Officer, of nonconforming retaining walls shall be allowed without requiring conformity with this section.

Addition to Definitions section Article XXI

2110.1 _ Retaining Wall - A wall or terraced combination of walls used at a grade change to hold soil and other earth material at a higher position. Retaining walls may be attached to or independent from other structures. The exposed side of a retaining wall shall be known as a "face". The area between a lower wall and a successive higher wall shall be known as a "terrace." Does not include Lakeshore Erosion Control Structure.

Planning Commission Reporting Form
for Municipal Bylaw Amendments

Shelburne Planning Commission—approved March 12, 2020

This report is in accordance with 24 V.S.A. §4441(c) which states:

> *"When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection concerning bylaw amendments and subsection 4384(c) of this title concerning plan amendments.…. The report shall provide (:)*
>
> *(A) brief explanation of the proposed bylaw, amendment, or repeal and ….include a statement of purpose as required for notice under §4444 of this title,*
>
> *(A)nd shall include findings regarding how the proposal:*
> 1. *Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing:*
> 2. *Is compatible with the proposed future land uses and densities of the municipal plan:*
> 3. *Carries out, as applicable, any specific proposals for any planned community facilities."*

Brief explanation of the proposed bylaw amendment.

The Planning Commission proposal would if approved modify Planned Unit Development (PUD) buffer requirements for commercial and mixed use PUDs in the Mixed Use zoning district. More specifically, it would expand the list of structures allowed in buffers to include [fences and] retaining walls with an average height of [four] feet or less. The proposal also adds a definition of retaining wall.

Purpose

The Planning Commission has developed the change in response to recommendations made by a Shelburne property/business owner. The owner expressed frustration at the lack of flexibility or accommodation of retaining walls in PUD buffers, particularly when the retaining walls are proposed as part of stormwater management facilities that will help improve water quality. The purpose of the proposed changes is to support best land use practices in the interest of the community. The Commission believes the proposed changes address the issues expressed by the owner while also reflecting the policy input and prerogatives of the Commission.

Findings regarding how the proposal conforms with or furthers the goals and policies contained in the municipal plan, municipal including goals and policies pertaining to the availability of safe and affordable housing

Under state law, the Zoning Regulations must be "in conformance with" the Plan. To be "in conformance with" the Plan, the bylaw must: make progress toward attaining, or at least not interfere with, the goals and policies contained in the Plan; provide for proposed future land uses, densities, and intensities of development contained in the Plan; and carry out any specific proposals for community facilities, or other proposed actions contained in the Plan.

The Planning Commission herby finds that the proposal conforms with or furthers the goals and policies contained in the municipal plan. Such policies include but are not necessarily limited to the following:

4. Facilitate development review and permitting to the extent permitted by law for commercial and industrial development in areas designated for such uses in the Land Use section of this Plan. Establish expedited review process for development projects implementing key objectives of Comprehensive Plan.
15. Manage stormwater and other impacts of growth and development so that they do not exacerbate impaired waterways or degrade water quality so that additional waterways are classified as impaired due to stormwater.
1. Take active steps to attract appropriate types and sizes of businesses to Shelburne and utilize local, regional and state organizations for assistance. Explore using tools such as revolving loan funds, tax incentives, tax rebates, and tax stabilization agreements to attract such businesses.

Planning Commissioners find that the proposal would positively address and advance the foregoing language. They believe that:

- By judiciously expanding the list of features allowed within PUD buffers—with DRB review—in the Mixed Use District, the Town is improving the development review process in an area planned for commercial and industrial development.
- By making a change that would provide greater flexibility to developments attempting to better manage stormwater, the Town is contributing to the improvement of the Munroe Brook watershed, which is impaired due to stormwater.
- By improving local regulations the Town is enhancing its ability to attract and retain business development.

Commissioners also recognize the potential for the proposal to promote other Comprehensive Plan goals and objectives.

Findings regarding how the proposal is compatible with the proposed future land uses and densities of the municipal plan

The default development densities authorized by the zoning bylaws are not affected by the proposal. Thus, in conclusion, the Planning Commission finds that the zoning amendment proposal that is the subject of this report would be entirely compatible with the Comprehensive Plan.

Findings regarding how the proposal carries out, as applicable, any specific proposals for any planned community facilities.

The proposed amendment does not directly carry out specific proposals for any planned community facilities. In addition, the proposed amendment does not conflict with any specific proposals for planned community facilities.

Findings regarding how the proposal affects housing.

The proposed amendment does not directly affect requirements relating to the development of housing. The Commission finds that the proposal would not negatively affect the formation of housing.