

**St. George Planning Board  
St. George Town Office  
February 25, 2020 - 7 p.m.**

The Planning Board meeting was called to order at 7:00 p.m. Members present were: Anne Cox, Chair; Jane Brown, Michael Jordan, and Crystal Tarjick. (Absent were: Mary K. Hewlett, Alan Letourneau, and Ray Emerson) Also present: CEO Terry Brackett, Richard Bates, Matthew Elliott, and J.T. Loomis.

**Quorum:** Crystal Tarjick was elevated to voting status. A quorum was present.

**Conflict of Interest:** None.

**Adjustments to Agenda:** None.

**Review of the Minutes:**

**Planning Board Meeting** — February 11, 2020 – The minutes were corrected as follows:

Page 2 corrections: first full paragraph, line 2, correct to \$175,000

Line 4, change to read: ... less than 50% **of the value of the structure**, so the proposed project **is not required to comply** with the **requirements of the Floodplain Management Ordinance relating to the elevation of the structure above the base flood elevation.**

Paragraph 4, lines 3 & 4, change to read: ... **because** the **cost of the** proposed project is **less than 50% of the value of the structure** to the Floodplain Management Ordinance.

Paragraph 5, lines 3, 4, & 5, change to read: ... **Because** the work is repair and maintenance **costing less than 50% of the value of the structure**, the applicant does not need to elevate the **structure to meet the requirement of the Floodplain Management Ordinance.**

Page 3, paragraph 5, line 6, change to read: Jordan said **a further** constraint is **that** the applicant . . .

Page 5, 2<sup>nd</sup> full paragraph, line 2, place a period after Planning Board and delete the remaining part of the sentence.

A motion was made by Brown, seconded by Jordan, to approve the Planning Board minutes of February 11, 2020, as amended. The vote was 3-0. (Tarjick abstained) The motion carried.

**Public Comments:** None.

**Building Permits:**

**a. J.T. Loomis – 123 Mosquito Head Road / Map 209, Lot 027**

J.T. Loomis and Matthew Elliott of Elliott & Elliott Architecture, Blue Hill, Maine represented the property owners, Andrew and Ann Barrett. The application is to remove the existing buildings on site and construct a new residence and garage located at 123 Mosquito Head Road. The Shoreland Zone District is Residential. Floodplain Designation is AE11.

Loomis explained the proposed project. "The project is as of yet pretty undefined. The idea is that the property that was just purchased by our clients, the new owners, are going to be removing the existing buildings on the site and would like to build a new house and garage, and update the septic field, making it into a livable, year-round residence. Changing it from a seasonal to a year-round residence.

"What we are coming up against, and what we have been looking to clarify between the Planning Board and the DEP for the last month and one-half is what defines the wetland and whether or not we need to comply with the 75' setback. We have been back and forth about which maps we should be referencing and looking at the ordinance for the definition of a wetland, including (doing) site visits, and walks.

"The letter that was sent earlier describes what the homeowners believe is their kind of legal position as the ordinance is written. Which as we go back through this process and knowing what we have learned along the way, this position seems to make sense to us and do think it is consistent with everything that is documented. We just sort of like to make sure that we understand things properly and that we are all in agreement of that.

"Basically, what this lays out is in reference to the ordinance: what map is referred? The map that we are required to refer to determine whether this is a wetland that is large enough to be defined as a freshwater wetland as it is laid out in the ordinance. It doesn't appear that that is the case here even though this is probably a wetland. I think it's undeniable that there are wetlands in the area where the map says there are no wetlands but given that the ordinance references the map specifically when you refer to that map, there are no wetlands in that area. So, we think that that's what is meant to be taken from that ordinance and that would be the rule that we would adhere to."

Elliott: "The ordinance refers to two maps. One from the geological society which no longer maps wetlands. We have talked to them and they do not map wetlands. The other one is the National Wetlands Inventory. So, when you look at that map, the pond on this property shows up as a wetland but nothing else. The DEP says they do not have any requirements for a setback from this wetland. You can't disturb the wetland but there is no requirement for a setback. But what Terry has been saying is that there is potentially a 75' setback. But when you look at the two maps referenced that say this is how you determine that there is a wetland there, neither of them shows a wetland on this site. We think Terry has the ability to just issue this permit and that it is not a Planning Board issue, but our understanding is he'd like your guidance on this. It seems pretty clear to us if you read the ordinance and look at these two maps, one no longer exists and one does exist." The map that exists does not show wetlands on it. Therefore, there should be no setback to the wetland.

Chair Cox: "So we've got a map over there (on the wall) that shows it as a wetland."

Elliot: "Right. So that is a Conservation Commission map. Which is not referenced in your ordinance."

CEO Brackett: "That map over there (on the wall) says it is from the National Hydrographic Dataset (NHD) and the Watershed Boundary Dataset (WBD). Both are U.S. Geological Survey projects."

Elliott: "Right. When we talked to the USGS, we spoke to a lawyer and they said we no longer map this sort of thing, so we refer to the other map now."

CEO Brackett: "We also do field checks and I am saying there is a wetland there."

Elliott: "There is a wetland there. We're not looking to build in the wetland. We understand there is a wetland there but it's the setback issue that we're concerned about in terms of how far you have to set back from this particular wetland now."

Elliott: "We don't want to disturb the wetland. We are not looking to build in a wetland. We want to stay out of there. We are not looking for any of that sort of stuff, but it is the setback issue that comes into play, here. In no way are we disputing that there is a wetland on that property."

Loomis: "The wetland has been delineated and we are not disputing any of that."

Elliott: "We had a wetland specialist go out there and say this is the edge of the wetland. Do not go in front of it. The DEP says do not go in front. We don't want to do any of that sort of stuff. It comes to the definition, the setback from that wetland that we are trying to understand, here."

Chair Cox: "You probably know that a month ago or a couple of weeks ago, this property also came before us for a bridge over the pond and in that information the wetland was called a Wetland of Special Significance."

CEO Brackett: "I believe it was, yes."

Loomis: "This is still a Wetland of Special Significance?"

Chair Cox: "So, it is a Wetland of Special Significance?"

Elliott: "Because of its location in the Shoreland Zone."

Chair Cox: "I believe our ordinance asks us to do and that is where I am confused about and willing to figure this out. It says that we have to be building 75' from a wetland."

Elliott: "So, if you look at the definition of your freshwater wetlands in your ordinance, page 59. Where it says freshwater wetlands. It is probably worth you just reviewing those points, there."

Chair Cox: "Freshwater wetland. Yes. And that is where you've got the National Wetlands Inventory Map and the Maine Geological Survey Freshwater Wetlands map. One of which doesn't exist anymore."

Loomis: "Exactly."

Elliott: "According to the Geological Survey, they say we now refer to the National Wetlands Inventory Map."

Loomis: "Like we say, the pond shows up there. There's another pond close by. There's another wetland close by, but this is the information that we get when we refer to that map from the NWI which is up-to-date as of October of last year."

Elliott: "That is what their current mapping is showing as of last year when they updated it. Which again, we know there are wetlands there and we're not trying to say that there are not wetlands there. We're just saying that according to ordinance, the setback requirement shouldn't apply to this wetland."

Chair Cox: "Because?"

Loomis: "Because it's not mapped."

Chair Cox: "Because it's not mapped."

Elliott: "Which is how you define it in your ordinance. And there is also a question for us whether it's actually 10 acres or not. And I know you did some walking and stuff and we've done some area take-offs. We're not really sure that we feel that our client should have to map the entire wetland across six or seven properties, here, but it looks pretty clear to us that the general size of it and we can show you this looking from a google earth image, is less than that and maybe even less than what we've mapped because a stream doesn't count as part of the wetland and we think when it goes through this little neck, here, it would be called a stream."

Loomis: "Or even just a drainage way kind of thing."

Chair Cox: "Well, it's probably because its been probably modified and stuff, so there's the property."

Elliott: "But you can see, the area at the upper right-hand corner, how much that area..."

Loomis: "So, that yellow line defines about a six-acre area. So, it falls under the 10 acres..."

Chair Cox: "And, doesn't keep going this way?"

Elliott: "Again, we haven't mapped this but when you look at vegetation types which is usually pretty clear on the (unintelligible). You can see where there are trees here now. They don't tend to grow in the wetlands, so this is not an accurate... We have not delineated this wetland, but we are trying to get a sense of are we close or not?"

Loomis: "Exactly."

Elliott: "And it appears to us without having our clients have to pay someone to delineate this entire thing, that we are probably under that amount. But, the basic position is like, if you're saying in the ordinance, 'Look at this map to determine that' that map clearly does not show any wetland there and so if that's what the ordinance is asking us to do, we feel like that's our burden of..."

Loomis: "That criteria has been met."

Elliott: "Right. The DEP (unintelligible) us, and we don't want to build in the wetlands. We're not asking to build in the wetland area and the DEP would kick in at that point."

Loomis: "Not building or not alter them at all, I mean."

Chair Cox: "You just want to build closer than 75' from the wetland."

Elliott: "Because this a very small lot and it becomes a very tiny buildable area."

Chair Cox: "There's the pond right there."

Tarjick: "How close. How far over the 75' setback would you be building?"

Elliott: "We haven't designed this yet because we don't know how close it can be?"

CEO Brackett: "They talked about going 50' beyond. Up to 25' from the wetland."

Tarjick: "But nothing has been set in stone?"

Elliott: "No, and as far as we know there is no requirement for that. The DEP has no requirement for a setback (whatever) from this, but we've gone down that thing. The DEP is like, no, you can't alter it, but you can build as close as you want to it. So, we're not actually here for a building permit because we don't have a building yet but we're here to try to figure out what..."

Loomis: "What is going to be accepted."

Elliott: "Because if the 75' setback is enforced, there is a very small buildable piece of this lot at that point when you look at road setbacks, side yard setbacks, that setback. Anyway."

Chair Cox: "There also is, I believe we've got some language that says if you tear down a nonconforming building, you may rebuild 30% more conforming as much as is practicable. So, there is that as much as is practicable."

Loomis: "But as far as we know, those buildings are not nonconforming because they are outside the setbacks."

Chair Cox: "But they're not outside the 75'? We did a 75' from it."

Elliott: "Right. If the 75' is considered."

Loomis: "From the wetland, yes. Exactly, but the position here is that there shouldn't be a setback from that wetland."

Chair Cox: "Right. But if we said we really feel like there should a setback and the building is currently a bit non-conforming..."

Loomis: "If the 75' setback is applied to the current building, it is definitely nonconforming."

Chair Cox: "Right. Then you'd be able to, as I was trying to read things. You'd be able to rebuild in the general vicinity. Not being more nonconforming, so the front edge, the leading edge of the existing building."

Elliott: "We can (unintelligible) understand but what we don't quite understand is what in your ordinance applies here for the 75' setback because as we read it, specifically, there seems like nothing that requires a 75' setback from this wetland which is there, and we're not going to build in it but we don't see anything in your ordinance that requires a 75' setback. But Terry was, I don't know if anxious is the right word, but he was just like 'I'm not sure about this (unintelligible)'."

Chair Cox: "I think we're clear if we establish, I mean, clearly there's a hole in terms of the mapping issue."

Elliott: "So you may want to change your mapping from that map to something else and the other maps at some point, but I am assuming you don't do that retroactively?"

Chair Cox: "Exactly. So, we're just going to say that we've got a problem and we don't have clarity as to what is a wetland in this place. And if we had that, which we're not going to because we don't have it, but if we had it, then we would have to require the 75' setback."

Elliott: "If there were 10 acres (unintelligible)."

Loomis: "Or if the ordinance referred to a different map."

Chair Cox: "Right."

Elliott: "And it would have to be 10 acres at that point."

Loomis: "And it would have to be 10 acres in order for this to (unintelligible)."

Chair Cox: "So, in truth, you're contending that this isn't 10 acres and that if we said, 'Well we really think it is, you should and we could put the burden of proof on your clients to go and prove it. But because we do not have a map that draws it out even though on the ground it may or may not be a case, because we don't have the map that shows it, then we're tied. We can't do anything. Right?'"

Brown: "Right."

Tarjick: "I think because our ordinance doesn't reference a map that shows it's a wetland. That we can't enforce whatever else we have in the ordinance."

Chair Cox: "Whatever else we feel that we have in the ordinance. So, because of that, then..."

Tarjick: "And we now know that we need to update the map."

Chair Cox: "You better believe it. We do have other maps that we have depended on, but we don't have (unintelligible)."

Tarjick: "Have them put it in there." Chair Cox asked Jordan what his sense on that.

Jordan: "Well, I think the ordinance defines the kind of waterbody that you can't build closer than 75' and so, I mean, we're obviously required to apply the definitions in the ordinance. And if that is the map. That is one of the two maps, in question, then it's clearly... meets that part of the standard. So, the question is what do you do when the other map is not in existence anymore? Or available?"

Tarjick: "There is nothing to reference."

Jordan: "There are no historical copies?"

Loomis: "Well, they say that they reference that map now because it's more accurate or..."

Elliott: "So, if you called them and said what's a wetland, they would say go check this website and it will show you what we think applies as a wetland. So."

Jordan: "They used to make a map, right? Are there historical copies of the maps that they once made?"

Chair Cox: "They're probably the ones we have right there."

CEO Brackett: "If that map right there shows a wetland, that land hasn't changed in five years. It's still got to be a wetland."

Jordan: "Well, let's look at that map." Chair Cox: "Yes, because it is pretty extensive."

CEO Brackett: "It's the first one, yes."

Chair Cox: "So this is the general area and what this is showing is wetland going back in here and then connecting up to there. So, it's showing significant wetlands."

Elliott: "I do think there is perhaps a question about this area through here and (unintelligible) if that's a stream which in the definition of this is that a stream that connects two wetlands, their not contiguous sort of thing. But with that said, I guess we're wondering why if you went to the geological survey now and they're saying use this map which is the map on the table, why would we go back to an older map that they are no longer referencing to. They've made that decision not to use this map anymore. I don't know why they made that decision, but they are now saying, don't use this map, use these maps. So, I understand this is an (unintelligible) historic thing; wetlands don't change. I'm sure they didn't go out and survey all this. They did it aerially."

Loomis: "It's also not clear where this came from. It looks like that is sort of an amalgamation of different sources (unintelligible) that somebody has kind of put together."

Chair Cox: "Well it says it's nonregulatory and it's from the National Wetlands Inventory (unintelligible). Which is what this is."

Loomis: "So there is conflicting information. We're (unintelligible) how this whole thing came up because when Terry sent me the information on that map, I went to the NWI website and the information wasn't the same. So, we said, 'What do we do now?'"

Elliott: "So, it seemed like we used the most recent map. Whether it's, I don't know whether it's more accurate or not, but..."

Loomis: "And the ones that defined by the ordinance."

Jordan: "Is this the (unintelligible) map that fits the (unintelligible) ordinance (unintelligible) in the first two?" Chair Cox: "No." Jordan and Cox looking at the wall map.

Brown: "What map did we use for the bridge?"

Chair Cox: "DEP dealt with that."

Loomis: "It is sort of a different issue because it was a crossing of a wetland."

Elliott: "It does appear that the house that was built next door didn't meet these requirements for whatever that's worth or not."

Loomis: "And that's addressed in the letter, also."

Jordan: "The other thing I suggest you think about is that your definition says that it is covered if it is shown on both (of the) maps."

Tarjick: "Right."

Jordan: "It's shown by the National Wetlands Inventory map and the Maine Geological Survey suggesting that it has to be shown on both."



Chair Cox: "On both."

Jordan: "And we know it's not shown on the National Wetlands Inventory map, so even if we don't know if the map on the wall is the right map or the wrong map..."

Tarjick: "It needs to be on both of them for that to apply."

Jordan: "Yes. It doesn't say or."

Chair Cox: "I agree." Brown: "I do." Tarjick: "Me, three."

Chair Cox: "All right. So, I don't know what we do? Do we just?"

Loomis: "Well, there is nothing done yet, I don't think. As long as everybody agrees that we don't think that the setback applies, then we'll do the design work and we will comply with all the regulations and not build beyond the wetland point but are able to build within that setback area. So that's what we'll design towards and when we're ready, we'll come back and get the building permit."

Chair Cox: "And we probably won't see you because..."

Loomis: "We'll just deal with Terry, right?"

Chair Cox: "Unless you decide you wanted to push the envelope some more."

Elliott: "No." Loomis: "No, we're not looking to push envelopes. Elliott: "And we're not looking to affect wetlands or any of that sort of stuff."

Chair Cox: "It will be pretty, won't it?" Elliott: "It will be beautiful. Sure, it will be, beautiful. Our clients have said it needs to fit into the neighborhood. That is their number one thing."

Elliott: "I don't know if the Board can have a discussion with Terry and say in reviewing this, this is your opinion."

A motion was made by Tarjick, seconded by Jordan, that the Planning Board does not believe there is a 75' setback due to the fact that the definition states that it must be on both of the maps, the National Wetlands Inventory map and the Maine Geological Survey Freshwater Wetlands map, and the wetland does not occur on the National Wetlands Inventory and therefore cannot occur on both maps. The vote was 4-0. The motion carried.

Loomis: "And it doesn't show up on either of the maps, essentially. This one doesn't exist, and it doesn't show up on the other one."

**b. Tenants Harbor Fisherman's Co-op, 12 Commercial Street / Lot 104, Lot 005**

Neither the applicant nor a representative was present to discuss this application, therefore this application was not acted upon.

There was no further business to come before the Board. On a motion by Jordan, seconded by Tarjick, it was voted 4-0 to adjourn the meeting at 7:31 p.m.

Respectfully submitted,

Marguerite R. Wilson  
Planning Board Recording Secretary