

**St. George Planning Board
St. George Town Office
March 10, 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 Alan Letourneau. (Mary K. Hewlett, Ray Emerson, and Crystal Tarjick were absent.) Also present: CEO Terry Brackett, Richard Bates, Josh Miller, Peter Miller, and Ira (Tad) Miller.

Quorum: A quorum was present.

Conflict of Interest: None.

Adjustments to Agenda: None.

Review of the Minutes:

Planning Board Meeting — February 25, 2020 – The minutes were corrected as follows:

Page 2 - add quotation marks at the beginning of paragraphs 2, 3, and 4.

Page 4, paragraph 4, line 3, change to read: ...there are **not** wetlands there.

Page 4, paragraph 8, line 4, remove the parenthetical and change to read: ...the entire wetland **across** six or seven properties...

Page 9, paragraph 3, line 1, change to read: "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..."

Page 9, last paragraph, the motion, line 4, change to read: ...and the wetland **does not** occur on **the National Wetlands Inventory and therefore cannot occur on both maps**.

A motion was made by Jordan, seconded by Brown, to approve the minutes of February 25, 2020, as amended. The vote was 3-0 (Letourneau abstained). The motion carried.

Public Comments: None.

Site Plan Review:

a. Tenants Harbor Fisherman's Co-op, 12 Commercial St. / Map 104, Lot 005

Josh Miller, Peter Miller, and Tad Miller were present. The application is to install a freezer container unit on-site for storing frozen bait for day to day use. The property owner is A & R Enterprises. Existing Use: Lobster Fishing Wharf. Proposed Use: Lobster Fishing Wharf with bait freezer. Shoreland Zone District is Limited Commercial. Floodplain Designation is AE12.

CEO Brackett said that Josh Miller had contacted him approximately one month ago inquiring about placing a freezer unit at the Tenants Harbor Fisherman's Co-op behind the East Wind Inn. Brackett said the Co-op does not meet the setbacks from the Highest Annual Tide Line in the Limited Commercial Zone for the freezer unit. He and Miller discussed several different approaches to the project. Miller decided to apply to the Planning Board for the bait freezer unit in the Limited Commercial Zone as his application indicates.

CEO Brackett stated, since Miller had turned in the application, he had spoken with Chair Cox regarding the possibility of creating a new property zone within the Shoreland Zone that would allow restaurants and fishermen to co-exist. Brackett explained that he had discussed the option with Bill Najpauer from MidCoast Economic Development District prior to the last Planning Board meeting and Bill mentioned some towns were just changing portions of lots in the SLZ and DEP appeared fine with it. Brackett contacted Colin Clark at DEP and Clark appeared okay with the option.

CEO Brackett explained that Josh was at the meeting to represent the Co-op's permit application and they had a couple of options. They could continue with the application as is or withdraw the application and ask the Planning Board to re-zone a portion of the Co-op property, Map 104-Lot 005. A discussion ensued between the Planning Board and Josh and his uncles.

Jordan stated he was not sure the Planning Board could not approve this application as it is. A similar setback issue came up in 2018 in the application of Look East Investments (the East Wind End) for a storage unit within the 75-foot setback in a limited commercial district. In that case the Planning Board denied the application because it could not conclude that the unit was a functionally water-dependent use and therefore exempt from the water-body setback requirement under section 15.B.1.a of the Shoreland Zoning Ordinance. On appeal, the Board of Appeals disagreed with the Planning Board's interpretation and apparently decided that any structure used in a water-related industry, such as fishing, is itself a functionally water-dependent use. Members of the Planning Board may agree or disagree with this interpretation, but Jordan expressed the view that the Planning Board is required to follow the precedent set by the Board of Appeals unless it is overturned in court.

Brackett felt the Board of Appeals was wrong on that decision. He sent the information to DEP which never acted; they did not want to get involved in it. Jordan felt they were wrong, also.

Brackett said if the zone is changed back to CFMA, the Planning Board will not have to deal with the setback from the HAT line in this case. Jordan said he was in favor of changing the zone back and it would help a little bit in the future as the Co-op may be able to do other projects at the site without having to deal with the setback from the HAT line. Chair Cox thought that was a long-term plan.

Letourneau said the unit in the Babb/Deutsch application was allowed (by Board of Appeals) so a container on site for storing frozen bait for day to day use would seem to also be allowed because of its water-dependent use. Jordan said yes. Chair Cox said a precedent was set.

Josh and his uncles decided to pursue the permit, as the time constraint is a little shorter than the re-zoning option would be.

Brackett said the issue of noise might come up at a Public Hearing. He stated Josh ensures him the bait freezer unit is quiet enough that it will not create an issue with the East Wind Hotel. Miller said he researched the issue of noise level and decibels for hotels and motels and 70 decibels appeared to be the norm. Miller said 70 decibels is similar to the sound of a home

refrigerator. Miller has provided Brackett a statement on his permit application that he plans to purchase a unit with a noise level of less than 70 decibels.

Brackett asked if the unit would sustain freezing temperatures if it was on a timer and did not run it at night. Miller said he would have to look into that but shrouds were sometimes used in cities to keep noise level down, so he could either buy or build a shroud to mitigate the noise.

Letourneau asked, "Should the Planning Board do both (approve the application and proceed on the zoning change)?" He liked the two-part process. Chair Cox asked should we approve the application based on the precedent of the Appeals Board and change the zoning?

Josh Miller said he would love to do both and see it go through because that might expedite the process in the future.

Jordan said it is true that it is not the same thing as a functionally water-dependent use, but it is exactly the same problem that was in the application that took precedence and thought the BOA interpreted their way around it.

Chair Cox stated that based on the Board of Appeals ruling on a similar case, the fact that it does seem that the water-dependent use does fit into the non-applicability clause and the side and rear setbacks are met, the Planning Board could approve the application. CEO Brackett did not recommend the zoning change if the Planning Board was going to approve this application.

Tad Miller asked what would happen if the zoning change did not get approved. Would they be back to where they are now? The Planning Board said yes. Letourneau asked if the Planning Board was indicating after the June vote, would that be the first time they would know versus if they approved the application, it would be ready to go in April? Jordan said late April by the time the Findings of Fact were done, so that would be about a month's difference, about five weeks.

Josh Miller said that a month would be better as alewife season might start early May and if they could have a freezer on the wharf by then would be great. Chair Cox asked Miller if the Planning Board went that route, would he still be interested in doing the zoning change?

Peter Miller said he would go on Brackett's direction, but probably a qualified yes, he would like to have a zoning change. But if it was approved tonight, they may not be in such a rush to do the zoning change. Miller would like CEO Brackett's guidance. Miller said, "As far as the zoning change if he (Brackett) thinks it's prudent to do, follow one with the other or not, I don't know."

Chair Cox suggested Miller go through the application process, have on-site visitation, the Public Hearing, and see how that goes. If after that, they feel they want to proceed with a zoning change, then they could go forward. Tad Miller asked if they ran into opposition at the Public Hearing, would that change the track? Could the Planning Board move on both tracks at once?

Chair Cox said they could start initiating the zoning change and thought the main complaint might be noise. She said the application could be contingent on muffling the sound/noise.

Jordan said even with the zoning change, a Public Hearing would still need to be held and invite public comment.

CEO Brackett said he could take photographs of the area to put in the file.

Letourneau made a motion to accept the application as complete but withdrew his motion after the Planning Board further discussed and decided to hold an on-site visit before acting on the application.

The Planning Board scheduled an on-site inspection on Monday, April 13, 2020, at 5:30 p.m. and the Public Hearing scheduled for Tuesday, April 14, 2020, at 7 p.m. at the town office.

Other Business:

CEO Brackett spoke with Leticia vanVuuren about a wetlands map and she said she will try to put something together.

Brackett said an appeal has been filed for Heidi McNaughton, 130 Patten Point, regarding renovations the Planning Board approved. The appeal is scheduled for March 31, 2020, at 7 p.m. at the town office. Brackett said he believes it is his decision that is being appealed because he told the Naughtons to stop work on the project. He said the appeal states that CEO Brackett is depriving them of the use of their building. Brackett will disseminate the information to the Board members and the information will be available at the town office.

There was no further business to come before the Board. On a motion by Jordan, seconded by Brown, it was voted to adjourn the meeting at 7:50 p.m.

Respectfully submitted,

Marguerite R. Wilson
Planning Board Recording Secretary