

**St. George Planning Board  
St. George Town Office  
July 28, 2020 - 7 p.m.**

The Planning Board meeting was called to order at 7:00 p.m. via Zoom. Members present were: Anne Cox, Chair; Jane Brown, Ray Emerson, Mary K. Hewlett, Michael Jordan, and Alan Letourneau Also present: CEO Terry Brackett, Richard Bates, Will Gartley, Chris Fasoldt, Ann and Michael Smith, Kyle Murdock, and John Murdock.

**Quorum:** A quorum was present.

**Conflict of Interest:** None.

**Adjustments to Agenda:** The following adjustment was made:

- The On-site Inspection Minutes for Anne and Michael Smith, 50 Shipyard Road were added under review of minutes.

**Review of the Minutes:**

**Planning Board Meeting — July 14, 2020 –** The minutes were corrected as follows:

Page 2, under #1, line 3, change to: ...building with electricity.  
Page 2, #7, line 3, change word structure to miscellaneous building.  
Page 3, #8, line 4, change Planning Board to Code Enforcement Officer  
Page 3, #18, line 3, change to read: ... they will meet the 75' setback.  
Page 3, #13, line 2, use the word: ... on the site  
Page 4, #20, line 1, add: ... seconded by Brown...  
Page 4, line 4 of the motion, change Planning Board to Code Enforcement Officer  
Page 4, add Floodplain Designation is AE-12  
Page 4, under Building Permits, paragraph 4, line 8, change to: Sheet V(1)  
Page 4, last paragraph, line 1, change to read: ... reviewed Gartley's maps in their individual packets.  
Gartley pointed out (delete word noted)  
Page 5, 4<sup>th</sup> full paragraph, line 2, change to Sheet C (1)  
Page 5, 5<sup>th</sup> paragraph, line 1, correct wording to 20-inch spruce tree  
Pages 7, 8,9,10,13,15,17, use the word unintelligible in parentheses for unidentifiable wording  
Page 8, paragraph 8, line 3 insert : ... yellow colored deck is.  
Page 8, paragraph 4, use the word: juggling  
Page 9, paragraph 6, line 2, change to read: sea-level rise, ...  
Page 9, paragraph 8, line 1, change to read: ... maybe there is a way to rethink the structure...  
Page 10, paragraph 4, lines 2 & 3, change to read: ...about what is involved when it comes to...  
Page 11, line 1, change to read: ... out of the 75' setback, then...  
Page 11, paragraph 10, line 1, change to read: ... similar application a few years ago on Wallston Road, and we...  
Page 12, lines 1 & 2, correct word to sit  
Page 12, paragraph 4, line 1, change the wording to: as soon as possible. Line 2, ...we don't need a public notice, do we? (delete like that)  
Page 12, paragraph 5, line 1 change word it to so.  
Page 13, paragraph 8, change to read: No, we use landscaping stone.  
Page 14, paragraphs 8 & 10, change to: A public member, Eliza Bailey,  
Page 15, paragraph 3, line 4, change to read: ... in any way by this operation...  
Page 15, paragraph 9, line 2, change to read: ...So, I think it's ok to come to either one of us.  
Page 16, paragraph 3, line 2, change to: ...will be the time...

Page 16, paragraph 7, change to: ...will we meet for the...

A motion was made by Letourneau, seconded by Jordan, to approve the minutes of July 14, 2020, as amended. The vote was 5-0. The motion carried.

**Findings of Fact and Conclusions of Law:**

Corrections were made as follows:

Page 1, #1, line 3, change to: ...building with electricity.

Page 1, #7, line 3, change to: miscellaneous building.

Page 1, #8, line 4, change Planning Board to Code Enforcement Officer

Page 2, #18, line 3, change to: ... will meet the 75' setback.

Page 2, #20, line 1, ...seconded by Brown,

Page 3, bullet, change Planning Board to Code Enforcement Officer

A motion was made by Jordan, seconded by Hewlett, to approve the Findings of Fact & Conclusions of Law for Sean Carlson. The vote was 5-0. The motion carried.

**On-Site Inspection – July 27, 2020 – Michael and Ann Smith**

On a motion by Jordan, seconded by Hewlett, the on-site inspection minutes for Michael and Ann Smith, 50 Shipyard Road, were approved as written. The vote was 3 in favor, 2 abstentions. (Cox was unable to read the minutes; Brown did not attend the on-site.)

**Public Comments:** None.

**Building Permits:**

**a. Michael Smith, 50 Shipyard Road / Map 126, Lot 024**

Will Gartley of Gartley & Dorsky and the applicants were present. The application is to replace the failing foundation and make structural reinforcements to their residence located at 50 Shipyard Road.

Gartley gave a brief overview of the project. The Smiths have an existing house that has been there since the early 1970s and has been added onto a little bit. They are looking to reconstruct the main cape portion of the house, a portion of which is within the 75' setback. Gartley explained this project falls under Section 12 of the Shoreland Zoning Ordinance for non-conformance; the portion on the south side of the building that is "kind of a wing" is outside the 75' setback. That portion will be reconstructed. Gartley referenced Section 12(C)(1), Expansions. He stated they are not proposing an expansion within the setback but pointed out that under Section 12(C)(1)(c)(i) they would be allowed a 30% expansion to the footprint that is within the 75' setback as long as they were not destroying more than 50% of that, and they were not putting a new foundation under it. That would allow them to add about 380 square feet within the setback. Gartley said what they are proposing to do is slide the building back 5' and reduce the impact within the 75' setback by 226 square feet. He stated from the beginning, the Smiths, Chris Fastoldt, and he looked at the ordinance and understood that they had the option of expanding but knew that the goal should be not to expand if they did not have to within the 75' setback. That is when they started to look at the other two sections that require they come to the Planning Board and look at moving it back to the greatest practical extent.

Gartley stated he reviewed Section 12(C)(2) Foundations and reviewed the definitions of what practical extent meant and said there was no definition. He also tried to find the definition of maintenance or repair of a foundation as he wanted to know how much he could do before tripping that section, and it was not clear to him. He said he, the Smiths, and Fasoldt then reviewed Section 12(C)(3) Relocation [referenced in Section 12(C)].

Gartley, "We felt like we understood that section relatively well and looked at this site which is a little bit odd shaped and has some interesting constraints regarding the right of ways, the easement, the boathouse, the adjacent structure on the other property, and the fact that all the structures had been there for a long time and also the well. In taking into consideration, and what's practical to each one of you, what's practical to us, and the Smiths may be something different. But we felt like it was very reasonable to think that moving it back five feet, reducing the footprint within the 75' setback, knowing that we could have expanded within the 75' setback, not having to drill a new well, not having to take out the 28' spruce, not having to deal with the fact that right above the driveway is a sizeable change in grade and a ledge outcrop, and if we moved it back much further it would make the driveway and exit to the front door more difficult." Gartley felt all those things seemed quite reasonable in making the impact less and avoiding all the other constraints the Smiths had.

Chair Cox asked if the Board understood the application and if it was a complete application given the information received and viewed at the on-site inspection. There were no questions.

On a motion by Hewlett, seconded by Jordan, it was voted 5-0 to accept the application as complete. The motion carried.

Chair Cox asked for discussion. Hewlett stated, "I think it is a very interesting (piece of) property with all of the limitations that have been spelled out to us. My only concern is if they do lift (which they would like to keep) and able to move it back 5' onto a new foundation, what if it ends up being a demo project? Which I know they are not trying to do but what if?"

Jordan, "Kate, is your question the more than 50% issue?" (Hewlett said exactly.)

Jordan, "I think that doesn't matter because if they are re-doing the foundation, they are stuck with having to move it back as far as reasonably practicable whether the demolition is 10% or 87%. One possible workaround for them would be to not reconstruct the foundation and try to keep the demolition below 50% but that is not what they are proposing to do. So, I think they've just asked us to decide the question of whether this plan moves it back to the best practical extent. Do you see what I mean?"

Kate, "Yes, obviously I am worried about a Patten Point Road type of situation. That is what I am thinking and maybe what we do is caution them. If it turns and they do have to demolish the building, they need to come back to us because we are not approving the demolition of the cottage that they want to keep." (Chair Cox stated correct.)

Gartley, "I have a question about that. Why would we have to come back? The difference with Patten Point Road is they didn't ask for you to decide that they moved it back to the greatest practicable extent. Right now, I can tell you that we are going to demolish it and the standard would be the same. We have to move it back to the greatest practicable extent. It refers to the same section of ordinance Section 12 (C)(3)."

Jordan, I think Will is right about that, Kate. Either way, they have to move it back as far as they practically can."

Chair Cox, "In the Patten Point case, they were not moving it back." Jordan noted in that case the Planning Board told them they did not have to because they were not going to demolish anything, and then they did. Chair Cox said that was correct, and then they did. That is where they ran into the problem. Hewlett said okay.

Letourneau said he thinks in presenting something to the Planning Board, we have an expectation that what we are hearing is what the plan is, and what we think we are hearing on this application is that they are going to try to preserve the existing building.

Gartley said the main portion of the cape house is the part they are trying to preserve. He stated that at the very first meeting, there is a chance that might not be feasible, and they might find it is not worth the effort to preserve that portion. "I am hoping not to have us limited to that. For cost reasons, they do want to save it because I think it is going to work out that way, that they can just make some renovations to that portion. Tear off the wing, build a new wing once they put a new foundation in."

Hewlett, "Terry, you would know the valuation of this property. According to the 2017 town report, the land value was \$729,400 and the building value was \$243,100." (Brackett said correct.)

Chair Cox said what has been pointed out is that it is not that the 50% does not get triggered in this instance and asked if that is correct.

Jordan, "I am not saying it's not triggered, but I am saying whether it is triggered or not doesn't change the result because the proposal to reconstruct the foundation means that they have to back it as far as reasonably practical. That is the same test as if they were going to destroy the whole building and build all over again."

Hewlett thought that if the building is destroyed and built all over again, then they will come out with a different design to meet all of their requirements. Jordan did not think that has much to do with the Planning Board.

Chair Cox said right. It doesn't matter what the building essentially looks like to us. Chair Cox asked if the Planning Board felt that the five-foot shift as outlined in the plan given all the constraints, and as discussed, was as far as practicable.

Hewlett suggested the project description be updated if the Board decided that. "We all realize that the new structure is going to look very different from the existing structure." (Chair Cox said right.) Hewlett, "You realize it's totally different."

Chair Cox said she got Hewlett's point because the proposal is not just moving and making structural reinforcements. There are some additions.

Hewlett, "They are demolishing the ell and making it a straight-line building, so it is not like they are just taking the existing structure and..." (Chair Cox said they are hoping to maintain the bulk of it and then adding on to that.)

Jordan said they described the project as including additional construction. Chair Cox and Brown agreed. Hewlett said, in essence, they are making one house into two houses which makes a lot of sense but they have a new ridgeline, a new second floor, the ell is going away, they are redoing the whole ell. This is major construction.

Brackett explained he can permit all that construction behind the buffer zone line. Hewlett said it is all allowable, but she feels the project description should mention more than just the cape portion. Jordan agreed.

Gartley explained that the new addition is 500 square feet more than what's there now but all of that portion that is there now is getting torn off and rebuilt. Jordan said they are reconstructing a portion of the building that is outside a 75' setback. Jordan said reconstruct and enlarge a portion of the building outside of the 75' setback.

The Planning Board updated the Project Description to include additional information. The project description should read: Applicant would like to replace the failing foundation and make structural reinforcements to their residence, *and reconstruct and enlarge a portion of the building that lies outside of the 75' setback.*

Chair Cox asked if the Smith's were doing as much as practical given the restraints. Letourneau stated he believes the Smiths have made a very good faith effort to comply with the ordinances, to a reasonable extent. Jordan agreed with Letourneau and did not think there was much else they could do given the constraints, the lay of the land, and everything else.

Hewlett stated they have caused their own constraints but that is okay. Chair Cox stated they have created their own constraints by determining exactly where the parameters of the sightline easement will go. Hewlett added, "And the requirement of the access of the boathouse." Jordan said the access to the boathouse constraint is one that has existed in the real estate records for a long time and although it was created at some point, it was probably created by the prior generation. Jordan, "As for the sightline easement, I know that was only recently recorded but was prepared to take them at their word that it was really what was agreed to years ago." He said he supposed it could be questioned but did not have any basis to do that. Chair Cox said right she did not think it was worth questioning. She felt that given issues with sea-level rise, Smith might want to discuss with his brother, moving the building further back. Letourneau stated that his understanding of the ordinance is that people when confronted with issues of repair such as this foundation, do have the right to make reasonable repairs to their property and, in this case, the foundation is clearly crumbling. He said what persuades him is that the applicants need to do something and on top of that have made a good faith effort to comply with the ordinances.

Jordan stated, "I believe the prior discussion has established the finding by those on the Planning Board, who have spoken on this, there is very little in addition that the applicants can do to move the building back any further because of the constraints reflected by the lay of the land, the positioning of the well and whether you could get acceptable water from another well (they could try to drill a new one) and constraints imposed by easements and the like." On that basis, Jordan moved that the Planning Board found that the applicants complied with the requirement to push back the foundation as far as reasonably practical, and the Planning Board approve the application based on the factors in Section 12(C)(3) [Relocation] and Section 12(C)(2) [Foundations].

A motion was made by Jordan, seconded by Hewlett, to approve the Smith application based on the following: there is very little that the applicants can do to move the building back any further because of the constraints reflected by the lay of the land, the positioning of the well and whether they could get acceptable water from another drilled well, and constraints imposed by easements. The applicants have complied with the requirement to push back the foundation as far as reasonably practical, and the Planning Board considered the factors in Section 12(C)(3) [Relocation] and Section 12(C)(2) [Foundations]. The vote was 5-0. The motion carried.

#### **Site Plan Review:**

##### **a. Midcoast Marijuana Company, 56 Mussel Farm Road / Map 222, Lot 026**

Kyle Murdock was present. John Murdock, the property owner, was also present via Zoom. The application is to utilize an unused portion of the existing structure to operate an agricultural business cultivating medical marijuana located on 56 Mussel Farm Road. Existing use: Commercial Fishing and Processing. Proposed Use: Medical Marijuana. Shoreland Zone District is CFMA. Floodplain Designation: AE-12.

K. Murdock explained his proposed project. Murdock said they are proposing to start up and operate an agricultural business cultivating medical marijuana in accordance with the laws and rules of the State of Maine and the town ordinances at the existing facility at 56 Mussel Farm Road. They are proposing to utilize the section of the building that is currently not in use. They are not proposing to make any changes to the facility. He said they believe the proposal will have a much lower impact on the environment, properties, and the community resources at large than previous uses did.

Jordan requested to speak. He stated, "I have been looking at this for a little bit and I have some thoughts. Would this be a good time for me to discuss them? (Cox said yes.) I think the rest of the Board knows that a very similar issue came up a little over two years ago before the Board of Appeals (BOA). It didn't come before the Planning Board because that proceeding was on an appeal from an enforcement order by the Code Enforcement Officer. So, the Planning Board did not deal with and may not remember reading it. But I went back and looked up the prior record.

"Here's the framework of the issues that are involved in this. There are two provisions of the Shoreland Zoning Ordinance that would bear on this. One of them says that if this use is agricultural then the applicant can go forward with it without a permit or permission or approvals from anybody in the town. But if it is not agricultural but rather industrial then they would need approval from the Planning Board. Because this is in a Commercial Fisheries and Marine Activities district in the Shoreland Zone, the Planning Board could not approve it because the only use we could approve would be for a functionally water-dependent use. That is the framework that we are looking at and the framework that the Board of Appeals looked at two and one-half years ago.

"The BOA decided that this was not an agricultural use and therefore was an industrial use and that it was not functionally water-dependent as the ordinance uses that term, and therefore it could not be approved. So, that is in the past.

"If you go back and read the minutes and Findings of Fact of the Board of Appeals, the reason for their decision had to do with the scope, nature, and intensity of the use of the property. There

were things like electricity for grow lights and all of that, water requirements, and they viewed agricultural definition as not comprising that, but it was more industrial. Then there was a lot of discussion at that hearing about that issue.

"In this application (to the Planning Board), there is really nothing other than an assertion that the applicant believes that it really is agricultural. I guess I am prepared to be convinced but I do not see anything in the application that does or does not convince me. What I think we need to do is get an amended application, a complete factual record that includes a detailed description of what is going to go on here. What is the scope of it? How many square feet? What is the growing medium? How are they going to plant it? How much lighting, electricity, water, and how much other resources will be used in the activity? How is the product going to be harvested? What will they do once it is harvested? What kind of processing is involved? Distribution. What happens to the product (after whatever processing you do, after you've packaged it), and where do you send it to?

"If we are being called on to make a decision about whether this is agricultural or industrial, we need a factual record on which to do it. My view, at least is, we can't make that factual record. It is not appropriate to make that factual record by sitting around and talking about it. I would urge that they amend the application to cover those points and any other points that the Planning Board might find relevant, particularly to explain why what is proposed to be done now, is sufficiently different from what was done earlier that would cause us (the Planning Board) to come to a different conclusion than the Board of Appeals? The final thought apart from those issues is that I would also like the revised application, if that is what the Board wants to require, to address the issue of compliance with the marijuana laws. I don't know that there are any particular issues with that but none of us knows much about the marijuana laws. We would want to know what we may be asked to approve is legal and that you have all the (required) permits you need to do it. So, those are my thoughts, Anne. Thank you."

Chair Cox asked Murdock if he understood what Jordan had asked. Murdock said he did understand what Jordan was asking for and said they are more than happy to supply additional written materials as the Board may find necessary or the Board thinks that they could benefit from an on-site hearing. He said they are not sure about how applicable the site plan review ordinance is as it says it does not apply to agricultural operations but he said they have no issue with submitting to the Site Plan Review Ordinance therein to demonstrate to the Board that we are like an agricultural business.

Discussion by Board Members. Hewlett explained to Murdock that because this is a commercial use application, the Board will want answers to the 20 Site Plan Review questions. She said the Board will want to know if he has a water source. Is there a well on-site? How many gallons per day will you require? Cox added, "How will you deal with wastewater? Where does it go?"

Hewlett, "How is this not an ordinance prohibiting retail marijuana establishments and retail marijuana social clubs?"

K. Murdock, "That ordinance prohibits businesses participating in the adult-use marijuana program. That ordinance specifically states that it does not apply to medical marijuana businesses which this is a medical marijuana business, not an adult-use recreational business."

Hewlett asked, "But isn't this a retail marijuana cultivation facility?"

K. Murdock, "No, that exclusively refers to adult-use marijuana. There are two separate programs. You basically have to have a prescription from your doctor to buy our products whereas, from a retail marijuana location, an adult-use facility, anyone over the age of 21 can purchase."

Chair Cox, "It seems to me, some of what Michael Jordan is asking for is some written education on what the laws are regarding medical marijuana but also some written documentation in terms of how you see this as an agricultural enterprise; what is exactly going to be going on and how it fits with our Site Plan Review criteria?"

Jordan, "When you come to respond to part of the marijuana law aspect of this, it would be helpful if you could include references to the statutes so the Planning Board could look at those and see what exactly you are talking about. Is that asking too much?"

Murdock, "I can certainly provide you all with links to the materials provided by the Office of Marijuana Policy." Jordan said that would be very helpful.

Hewlett, "We will be asking how you get it (marijuana) from your agricultural business to the proper medical marijuana selling site?"

Chair Cox said the Planning Board is asking Murdock to show them in detail what the operation is so they can understand fully how he will be doing the different parts of it and using the space.

Letourneau, "What differentiates this application from the previous application referred to by Jordan, that went before the Appeals Board, is that it was agricultural versus an industrial use. Therefore, I think we need to be clear how what is proposed now distinguishes this proposal from the previous one which was rejected because it was considered to be industrial."

K. Murdock, "I would like to remind the Board that decision was against another business that I do not have intimate familiarity with their operations and they had already vacated the facility at the time of Appeals Board hearing. That being said, I am under the impression from my recollection of that, that the Appeals Board decisions apply only to the specific case of which they are reviewing. I just bring that up as a point of information. I just don't know how well I can compare it to a business that I don't have any knowledge of."

Chair Cox explained he did not need to as the records are on file at the Town Office if the Planning Board needs to look at those. She stated the Planning Board wants to know what his business is and what his plan is for the business, starting from the beginning to the final product. Chair Cox said the Planning Board could do an on-site after they receive all the information from Murdock. She explained the application will be placed on hold until Murdock can gather his information for the Planning Board.

#### **Other Business:**

The Planning Board reviewed Section 12(C)(1)(a) Non-conformance in the Shoreland Zoning ordinance. Letourneau said he found Section 12(C) Non-conformation Structures contradicted itself and Jordan agreed. He felt the Planning Board must either allow Section 12(C)(1)(a) stand-alone thereby prohibiting any addition or expansion, or the ordinance should be changed to be less confusing in subsequent paragraphs. Jordan and Chair Cox agreed.



Letourneau stated, there was no point in B or C as written because they both referred back to A. He thought the Board had to say (a) was the law or (b) and (c) applied and to not refer back to (a); that b and c were the exceptions.

CEO Brackett said that Colin Clarke from the DEP had attempted to explain this to him. Brackett said that basically if you allowed (a) to stand, nothing would ever be expanded, and they had troubles with that; that is why (b) and (c) got added in.

Chair Cox said she understood and was trying to get Bill Najpauer back to work on ordinance review.

There was no further business to come before the Board. On a motion by Jordan, seconded by Brown, it was voted 5-0 to adjourn the meeting at 8:16 p.m.

Respectfully submitted,

Marguerite R. Wilson  
Planning Board Recording Secretary