

**St. George Planning Board
St. George Town Office
December 22, 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, Anne Cogger, Ray Emerson, Mary K. Hewlett, Michael Jordan, and Alan Letourneau. Also present: CEO Terry Brackett, Richard Bates, Loreen Meyer, Rosemary Stanek, Kathryn Pardo, Betsy Welch, Chris Leavitt, and Matt Tibbetts.

Quorum: A quorum was present.

Conflict of Interest: None.

Adjustments to Agenda: None.

Review of the Minutes:

Planning Board Meeting – December 8, 2020 - The minutes were corrected as follows:

Page 4, paragraph 6, line 6, correct the word distributed to disturbed

Page 9, under JML, paragraph 1, line 1, change to read: The applicant is Sharon Moskowitz for the Jackson Memorial Library.

Page 9, under JML, paragraph 2, lines 1 & 2, change to read: ... explained they have a grant and part of their grant criteria ...

Page 10, paragraph 2, lines 2 & 3, change to: Chair Cox asked that it will be...

Page 10, paragraph 6, line 2, delete: all the criteria of and change to read: ... meets the stated...

A motion was made by Jordan, seconded by Hewlett, to approve the minutes of December 8, 2020, as amended. The vote was 5-0. The motion carried.

Public Comments: My name is Betsy Welch, I live at 60 Old Woods Road, the subdivision in Tenants Harbor across Port Clyde Road from the Seaside Cemetery.

I am here tonight to express my concern, and that of our Homeowners Association, about a plan in the works for the property that was Lot 11 in our subdivision plan approved by the Planning Board in 2006.

All of us who bought lots from the developer was given deeded access to Lot 11, which is 83.3 acres of wetlands and second-growth woodlands also adjacent to the Tenants Harbor Water District property. This access was for non-motorized recreational purposes only, and the developer promised that the lot would go into conservation. This assured us that our association-owned road would dead-end just past the last driveway, and we would enjoy protection from noise and traffic with the added benefit of being able to hike on undeveloped land just outside our doors. There is no access to Lot 11 from any public road.

Recently, Lot 11 sold to a gentleman from Vermont. He has informed some neighbors that he intends to use the lot for a variety of activities, including a

shooting range, ATV and snowmobile trails, and also plans to log it off to help underwrite the cost of such development. He told me that he might develop house lots in the future. Additionally, he intends to access the lot from Old Woods Road, having a deeded right of way across the road for travel and utilities.

There is a tiny section of Lot 11 east of Meadow Brook (as shown on the National Wetland Inventory) upon which he first intends to build a parking lot to accommodate an RV and another car. It does not abut the existing Old Woods Road, but rather two homeowners' lots. He referred to the parking lot as a "staging area" from which he would build out the main parcel. In order to access the rest of Lot 11, he would have to build a road or bridge of some kind from the end of our road to cross the stream and wetlands. The stream runs through the lot and also through the water district, ultimately reaching Otis Cove.

We are concerned at the potential loss of open, environmentally sensitive wetlands in the center of the Peninsula, and the introduction of undesirable noise and land destruction from motorized vehicles and gunfire, not to mention vehicular traffic on our road designed strictly for a small residential neighborhood. We, and many of our other neighbors, feel that this project is completely unsuitable and unsustainable.

The Lot 11 owner is in a hurry to get started, having already brought out a chainsaw to begin to cut some trees. We are alert to the beginning of any work prior to his receiving permits, but urge the Town to pay close attention to a potentially precedent-setting development and violations of important Town ordinances and DEP wetland safeguards.

Thank you.

Hewlett: This question about subdivisions has come before the Planning Board in the past. I remember reviewing this subdivision, and I was under the impression that Lot 11 (if it is 83.3 acres) was never to be developed. Are the restrictions in the covenant of the subdivision?

Welch: We have a lot of backup information about the covenant promise. It was in meeting minutes of 2005 and 2006 so that could all come up.

Hewlett: The reason I am asking is the Planning Board would have signed an original subdivision plan and on that might have been the covenant. But I also remember when we approved it, we were told the Planning Board could not enforce a covenant of a subdivision; that it would have to go to legal between the Association owners and whoever was violating the subdivision. I do not know if Terry Brackett has had a chance, though I know nothing has come before us yet, to look at the original we all signed.

Brackett stated he was working on it. Hewlett said the Planning Board does not get a copy of a subdivisions' by-laws but remembers this lot was not supposed to be developed.

Chair Cox noted it was helpful to give the Planning Board a “heads up” should this issue come before the Planning Board. Cox also added that the issue may not come up at all because the Board may not have jurisdiction over it.

No other public comments were made.

Building Permits:

a. Leavitt Property Services, 186 States Point Road / Map 222, Lot 058

Chris Leavitt of Leavitt Property Services represented the property owner, John Doherty. The application is to renovate the existing house and garage. New dormers will be added along with interior finishes updated. The attached deck will be repaired and expanded by 192 sq. ft. on the side of the house (not the water side). The garage on the property will be remodeled and dormers added. New windows and doors will be installed.

Leavitt explained the proposed plan. This is an existing single-family dwelling with a garage. The plan is to install dormers on the structure, but these will not change the existing footprint; they will stay within the existing roofline. On one side of the house, there will be a full-length dormer and on the other side, there will be a partial dormer. Dormers will be built on both sides of the garage.

Chair Cox asked about the 192 sq. ft. attached deck addition. “Would it not change the footprint?”

Leavitt stated the deck will change the footprint and the deck will run parallel to the house. He stated they will suspend the deck over the paved area. Leavitt explained that the deck will basically cover the pavement, and it will be turned into a piece of decking that is elevated so the access from the front to back is more suitable.

Chair Cox asked if the addition is on the northeast side. Leavitt stated yes and on the plan it should be hashed in red. Chair Cox stated the Planning Board needs to know where it is in relationship to the water.

Leavitt stated it is not on the water side of the structure and it is behind the 75-foot area. It does not have any calculable difference in that space.

Hewlett: Are either of the dormers going to be within that 75-foot setback? It looks like 10 feet of the house is within the 75-foot setback.

Leavitt: No. The way the 75-foot line cuts the house, neither dormer is impacting the 75-foot line. They are all behind the 75-foot setback.

Hewlett asked: This is not a 30% expansion issue because the dormers are outside the 75-foot setback?

Leavitt: It is one of the easiest ones we could review. Nothing within 75 feet is being changed.

Jordan asked: No part of the additional deck is within the 75-foot setback?

Leavitt: Correct. It is just being attached to an existing nonconforming structure, but it is not within the 75-foot setback.

Hewlett asked: Is the south elevation the water side? If I am looking at the A-4 diagram, tell me which side is the water side.

Leavitt: Look at the site plan then look at the red hashed section of the new deck that is being proposed. If you are standing facing the water, that is on the left side of the house and you are facing straight ahead at the ocean.

Hewlett: So, the south elevation which has all the windows, and the larger deck is facing the water side. Leavitt stated yes.

Chair Cox suggested it would have been helpful to have had a simple sketch that showed where that additional decking would be with regard to the water. She then asked the Board if the application was complete.

A motion was made by Jordan, seconded by Letourneau, to accept the application as complete. The vote was 5-0. The motion carried.

Hewlett recommended the directions north, south, east, or west be written on the Cook Design plans, especially diagram A-2 so the Planning Board could identify the water side of the proposed project.

Chair Cox: These are all interior renovations. The addition is not part of the 75-foot setback, and I do not see any issues with this project.

Hewlett: If he is putting on a new deck section and it is getting a new shed dormer of 32 feet by 6 feet, I would think the percentage is going to be more than .0048 %?

CEO Brackett stated that dormers do not count in lot coverage. Letourneau did the math and stated 192 square feet is a .0048% increase.

Hewlett stated that the footprint is increasing with the new dormer over the new deck according to A-2. Leavitt stated that the new deck will not have a roof over it. It is just an extension of the existing deck. The only expansion is 192 sq. feet.

Hewlett said then their drawing is not correct as it says, 'new shed dormer.' Leavitt stated the dormer is going on the house, not the deck and the dormer is within the roofline of the house. He explained they will have the same drip line, eve line, creating no expansion to the square footage. It is all currently occupied living space. He said they are just renovating it, so the deck is only 192 sq. ft. Chair Cox saw Hewlett's confusion regarding A-2: there are some measurements that state "new shed" dormer and the red line states 32 feet. Cox said this is just a dimension

indicating the “new shed” dormer is 37 feet, but it is not over the deck. Leavitt stated that was his intention. Jordan stated that even if there is a roof over the deck, it will not count twice. Chair Cox stated correct.

A motion was made by Letourneau, seconded by Brown, to approve the application submitted by Leavitt Property Services for property owner John Doherty because it is largely a renovation project, only adds minimally to the lot coverage, will have no effect on the property or environment, and the addition is outside the 75-foot setback. The vote was 5-0. The motion carried.

Wharves:

a. Ronald Thow, 6 Hupper Island, St. George / Map 201, Lot 006

Matt Tibbetts of Art Tibbetts Marine represented the applicant, Ronald Thow. The application is to construct a 5 foot by 96-foot-long residential wood pier supported by eight wood pilings, a 3 foot by 40-foot aluminum ramp, and a 12 foot by 24-foot seasonal float. The Shoreland Zone District is: Marine Residential.

Tibbetts explained the proposed project. Mr. Thow purchased property on Hupper Island in 2019 and would like a pier for island access. The proposal is for a 5 foot by 96-foot-long residential wood pier with a seasonal ramp and float. Permits have been approved by the Maine Department of Environmental Protection (DEP), the United States Army Corps of Engineers (USACE). Tibbetts explained there is an existing haul-off at this project site, but the area is seaweed-covered rocks. The Thows tried using the haul-off last summer but found it difficult to climb over the seaweed to get back to the beach area.

The Planning Board discussed holding an on-site inspection of the proposed project. Chair Cox asked Tibbetts how they would get to the island to view the site in January. Tibbetts asked if the on-site visit of the area could be done via zoom. Chair Cox stated an important part of the on-site is that the abutters are notified of the proposed project. CEO Brackett told the Planning Board that he has had people express concerns to him and he told them there would probably be an on-site and a public hearing. Hewlett noted that the Board has gone out to islands before during the winter and held on-site inspections. Hewlett did not think a drone could capture the boundary lines well enough for them to observe the area.

Tibbetts stated he will contact the Harbormaster and try to locate transportation to the island and will keep in touch with CEO Brackett. Chair Cox suggested that four members of the Planning Board attend the on-site, so not everyone would have to go. This will save space on the boat and keep the physical distancing necessary due to the coronavirus.

Hewlett suggested they ask the Harbormaster if the pier will be in the navigational channel. CEO Brackett stated it is not going to be in the navigational channel, but he will run it by him. Hewlett thinks it extends quite far out and little Raspberry Island is right there, close by. Tibbetts stated it will only extend about 15 feet or so past low water. He said from the pictures, it is a mooring ball float, and the float will be where the haul-off ball is now.

Hewlett asked: A lot of the 96 feet is going to be on land?

Tibbetts: In the tidal zone. If you walk down at low tide, from where you stand, the float will be out about 15-20 feet just in the water, a couple of feet deep.

Chair Cox re-iterated that she will get four Planning Board members to attend the on-site and CEO Brackett and Tibbetts will work with the Harbormaster on locating transportation and setting a date and time to go.

Other Business:

Board Discussion Regarding the MMA Training. Hewlett asked what the town ordinance says about a disability variance. Jordan stated that a disability variance can be granted by either the Board of Appeals or the CEO.

Hewlett stated when a Planning Board does the Performance Standards, the Board should use the Standard is met *because*. MMA said *because* is a key word if it is brought into a legal issue.

Brown said MMA brought up site visits. The Board should stand together as a group to hear all the same information at the same time.

Jordan related that MMA said when members of the Board talk to each other outside the context of a formal meeting, the test for whether it is permissible or not is whether there are enough members present in the informal discussion to form a quorum. Jordan noted MMA repeated three or four times that the test is whether there is a quorum present or not. (A quorum of the St. George Planning Board is four members.) That suggests to him that if there is a reason for three people to talk together, they probably could. Letourneau states that the fourth person makes it a public meeting.

Jordan stated that in the past they have taken a site visit without giving public notice. Hewlett states it is called a Planning Board informational visit only. Jordan said he does not think that works if at least four of the members are together. It doesn't mean you have to send letters to all the neighbors, but if the Board just wants to show up and look at the place, the Board has to give notice somehow, and probably the way to give notice is the same way they give notice about the regular meetings which is to put it on the website.

Letourneau noted MMA held a mock Planning Board (regular) meeting and he noted that the Chairperson publicly stated what the steps would be and what the legal rights of the public were and was done in a way that made it very clear that the public has the right to know and the steps they can take.

Timeline for Ordinance Review. Chair Cox suggested the Planning Board try to set a timeline for the ordinance review process as she felt the Board was beginning to move to the next step. Jordan has been guiding the process and this is a summary of the process. Jordan has been reviewing the ordinance process and from the Board's discussions, he has gotten ideas about how to tentatively begin to cover certain issues. He also has been trying to draft ordinance language and has gotten quite far on it but has been reluctant to send out detailed language because there is a tendency to get buried in the words and not think about the concepts.

Jordan's idea is to put out a handful of issues to work on in workshops. The Board had done this somewhat and he would like to keep doing that.

The status of the drafting. Jordan has come up with a fairly comprehensive definition section and a pretty comprehensive section on how to handle appeals and variances. He has combined four ordinances into one.

He has a draft of the application requirements which he wants to revise. It pulls together a lot of items from the Site Plan Review Ordinance and the Shoreland Zoning Ordinance and other ordinances.

Jordan is trying to decipher what exactly the Board has to do and does not have to do in terms of the Site Plan Review. He thinks the Board could have some flexibility to do Site Plan Review differently but has not put that out for discussion because he does not know if he is right about whether there are constraints. He wants to talk to legal staff at MMA to find out what they know about whether there are mandatory site plan review provisions from the source that he has not been able to detect.

Jordan noted that CEO Brackett has looked very hard to find the source or the agreement between the town and the state about what the ordinance would say but this probably occurred around 30 years ago, so it is not easy to unearth.

Hewlett likes the Site Plan Review as it at least gets the Board to think the same way on every project that comes before them. Jordan thinks the Planning Board should have that in there but asks what does the Board need and what does the Board not need in the Site Plan Review. He is not sure what flexibility they have.

Chair Cox asked how they would deal with reviewing definitions. Jordan suggested three Board members get together and try to hash some of it out. Chair Cox suggested emailing the definitions to the Board members and if two or three say they have some time to work on it, then get together on Zoom or through email.

Chair Cox asked Brackett if the Planning Board could have a lighter agenda on one of their two monthly meetings so they could have an hour workshop to work on the ordinances.

Letourneau said he finds it helpful to see the language as it is, and on the side of it the language proposed for a change.

Chair Cox felt the trick is to meld some things and thinks that is what Jordan has been doing. Jordan said there is a certain amount of melding things together based on the draft they got from Najapauer but in doing that, he has the same questions Chair Cox has, where did that come from? Jordan said he went back and traced each of the things to the ordinances where they are now. Jordan stated that to Alan's point, he could try to do that; it is a little bit of a word processing exercise.

Chair Cox asked the Board if they felt they could set the end of 2021 as a target date for the Ordinance Review. Jordan asked if they would be asking for public comment and hold hearings. Cox stated yes and have the Ordinance Review ready for the town meeting in May 2022.

Chair Cox also suggested in the month of a fifth Tuesday, perhaps the Planning Board could meet via Zoom to review the drafts.

Chair Cox likes that Jordan has separated it so they can deal with concepts rather than dealing with the words. Jordan still has a few concepts to bring up at the next meeting.

There was no further business to come before the Board. On a motion by Brown, seconded by Hewlett, it was voted 5-0 to adjourn the meeting at 8:05 p.m.

Respectfully submitted,

Marguerite R. Wilson
Planning Board Recording Secretary