

**St. George Planning Board  
St. George Town Office  
July 27, 2021 - 7 p.m.**

The Planning Board meeting was called to order at 7:01 p.m. Present in person were: Anne Cox, Chair; Jane Brown, Anne Cogger, Mary K. Hewlett, Michael Jordan, and Van Thompson. Also present in person were: CEO Terry Brackett, Richard Bates, Glen Hall, Janet Kidd, Raelani Marton, Sondra Perry, Chip Bauer, Sara Allenwood, Jeff and Liz Thalheimer, Kevin Lipson, Steve Thomas, Leslie Noble, Evan McNaughton, Joe Richardi, and William "Bill" Lane. Present via Zoom were: Loreen Meyer, Kimberly and Robert Lehmann, and Gerrit Lansing.

**Quorum:** A quorum was present.

**Conflict of Interest:** Jordan noted for the record that he knows the owners of 535 Island Avenue; they are social friends, but does not feel this will affect his judgment on the application.

The Board did not feel this was a conflict of interest as he did not stand to gain financially, and the owners were not relatives.

**Adjustments to Agenda** - The following adjustments were made: None.

**Review of the Minutes:**

**Planning Board Meeting** — July 13, 2021 – The minutes were corrected as follows:

Page 1, under Quorum, line 2, change to read: ...as a **regular voting** member

Page 2, under A. Permitting, the Floodplain Designation is : **AE-12**

Page 2, paragraph 3, line 4, change subvert to **divert**

Page 3, paragraph 8, line 2, change word to: **conditioned**

Page 3, paragraph 8, line 3, change excessive to **excess**

Page 4, paragraphs 6 & 9, correct to: **aerial**

Page 4, under Building Permits, line 5, strike out from the word **and construct** to the end of the sentence.

Page 5, paragraph 9, line 6, delete words **at to**; line 7 add a comma after location,

Page 5, add a comma after sold, **that...**

Page 9, middle of page, under Thompson: change it to **the parking area**

Page 10, paragraph 7, line 2, delete the words **increase in**

Page 11, paragraph 7, line 3, delete words **simply reference the state and**

Page 11, under Motions, lines 3 & 4, delete wording **as required by State law.**

Page 12, paragraph 7, line 1, change placement of word know to after: ... (KRCC) **know?**

Page 13, paragraph 1, line 3, delete working **as required by State law.**

A motion was made by Brown, seconded by Cogger, to approve the Planning Board minutes of July 13, 2021, as amended. The roll call vote was 5-0, in favor.

**On-Site Inspection** – Robert and Kimberly Lehmann, 3 Riverview Lane

A motion was made by Cogger, seconded by Hewlett, to approve the July 12, 2021, on-site inspection minutes for Robert and Kimberly Lehmann, as written. The roll call vote was 5-0, in favor.

**Public Comments:**

Sondra Perry commented on Robert and Kimberly Lehmann's property.

Perry: I want to make sure that anything they do within the Shoreline (Zone) is within DEP state regulations. If you end up removing that from blasting or whatever and you put it in the Shoreland Zone that you have a permit and there is a licensed contractor that is going to oversee it.

Perry: I am still concerned about the blasting. I tried to read what your obligations are in the Shoreland Zone, and it kept referring to the state and the health of the whole area in general and maintaining the shorefront but also adjacent properties and their structures. One of the gentlemen on the Board said, "Well you could easily replace the cement septic tank." I don't want to replace a septic tank. And if the shock caused a crack in the shoreline, water could come in, and it can get to the well.

Perry: You went to the site. You never saw the big mountain of rock that they are taking out in the basement; it is a huge mountain of rock. It is going to be a lot of blasting. You have no idea. My question is, "When you have shorefront lots, you do not permit someone to build a new house within 75' on a shoreland lot yet you are willing to permit this invasive blasting within 25' of the water and the shoreline?" To me, it doesn't make any sense.

Perry: Where are our safe and healthy regulations? Because I don't want to have to replace the septic tank. Look what happened on Route 1 in Warren with all those houses that are much more substantial than our houses are. They were not even within 75' of the St. George River and look at the damage that was caused. Look at the money the state had to pay out to make repairs to those houses and that was certified blasting with proper permits. And there we are close to the water, a little spit of land. There is no way you can control everything when blasting. Warren is a perfect example.

J. Thalheimer: We share the same concerns with our neighbor. We are property owners to the south. Our house is anchored into ledge as part of the foundation work, and we just had our well restored last year which is approximately 75' from the location of the blasting that is going to take place. Of course, I am concerned about what blasting is going to do to my structure. And more importantly, my well. I had the water tested when we opened up the well. Everything is fine and now I feel it is incumbent upon me to spend a few hundred dollars to have it tested to make sure that before the blasting starts, we know what the water quality is, and then after the blasting starts, know what the water quality is.

J. Thalheimer: If we speak to the person doing the blasting he'll say, "Oh yeah. There's maybe no chance. There is no chance that there can be any damage." If that is the case, then maybe the contractor doing the blasting could add it as additionally insured to make sure it's (unintelligible). So, if there is an issue, we don't have to go to any legal action or anything like that. Make it easy upon the neighbors to reclaim anything if damage is done.

Kevin Lipson commented on the McNaughton-Noble wharf application.

Lipson: I understand you are going to be considering the McNaughton-Noble pier permit tonight. If that is the case, I just want to make the comment that there are a number of residents of Hupper Island and Port Clyde (facing Hupper Island) that are supportive of the pier

application filed by McNaughton-Noble. I just wanted to make that clear. If there is another opportunity for comment, I would be happy to do so.

### **Site Plan Review**

#### **A. Port Clyde Fresh Catch, 3 Culver Road / Map 203, Lot 047**

Glen Hall represented the applicant. The property owner is Linda L. Bean. The existing use of the building as stated on the application is seafood processing and the proposed use is the same. The application is to renovate the interior of the existing structure, remove an overhead door, add storefront, redo the concrete floor, and add interior partitions. The existing building is: 32' x 48'.

Hall: The plan is to renovate the interior of the existing building. There is a garage-type door on the front that will be removed, and a storefront type of door installed.

Chair Cox asked if they will be re-doing the concrete floor and adding some interior partitions. Hall stated yes.

Chair Cox asked Hall if they were installing a bathroom as one is being proposed and she did not see one on the plan. CEO Brackett stated there are none on the first floor (the lower part of the building). Hall stated there is an existing septic system on site now for the bathroom. Jordan asked Hall if they were adding a bathroom. Hall explained they will have just one bathroom upstairs. The plumbing is in, but the toilet and sink are not installed yet. Cox noted they were not adding a bathroom, just adding the fixtures for the bathroom. Hall said, "Exactly."

The Project Description was amended to read: Present: 1; Proposed: 0; Total: 1.

Hewlett asked if there were any pictures of the site. Chair Cox stated no. Hewlett asked if the Board would be doing an on-site visitation. Hall stated to CEO Brackett, "You said there wasn't going to be one." Brackett, "I told you I didn't think there would be one." Chair Cox stated this project was all interior work, and the project had been previously approved (on November 27, 2007) for processing crab and shrimp.

Chair Cox asked: This has not been used a lot, and now it will be used more?

Hall: It never was used at all. They got all the permits for it.

Chair Cox: Now it will be used in ways it has not been. (Hall stated correct).

Chair Cox: Will there be more traffic going on here?

Hall: There might be. There are going to be parking spaces for the workers and retail customers who come to buy fish or crabmeat.

Cox: If they are increasing the use, what is this going to do to the site? Is there adequate parking?

Hall: Yes, there is all kinds of space there.

Hewlett: I have never been here. Is Port Clyde Fresh Catch moving to this location?

Hall: Yes.

Hewlett: It is a short street, but I have never been down the street. Do we have a parking schematic?

Chair Cox: No. We do not even know where the parking is.

Hewlett: Is there a loading dock?

Hall: No, there is no loading dock.

Chair Cox: Where is the storefront door? Hall pointed it out on the sketched drawing.

Chair Cox: Where is the parking? Hall pointed out the parking areas on the drawing.

Chair Cox asked CEO Brackett if he had been there. Brackett responded he had. He had checked the septic system, was there today inspecting the tank, and the septic system had been inspected last week by Brackett. Brackett explained there is paved parking at the site. Jordan asked Brackett to estimate the number of parking spaces. Brackett's estimate was 8 to 10 spaces.

Hewlett: Are there residential houses on this road that will be affected by the addition?

Hall: There is one down below us.

Hewlett: You are the first building?

Hall: Yes, we are right beside the road on Marshall Point Road.

CEO Brackett: This building sets about 100' off Marshall Point Road.

Chair Cox: You hardly notice it when you go by.

Hall: It is big, but you don't (see it).

Hewlett: Any signage that you will put up or exterior lighting?

Hall: There will be an outside light by the door. At some point, there will be a sign. This is a work in progress. We are trying to get it so we can progress. It (the sign) will not be anything elaborate.

Chair Cox stated that this project is not a change in use from what had been permitted in 2007 and the footprint is not changing. The current Board members determined a site visit was not necessary. Hewlett remarked she was okay with no site visit as long as CEO Brackett stated there was ample parking. Hewlett asked that the sketch drawing be documented to state there are 10 exterior parking spaces, and that they might have a sign for the building.

Chair Cox asked Hall if they will put a sign up by the road and Hall stated yes. Chair Cox noted that the sign needed to comply with the town's sign ordinance.

Jordan: You may have to come back with an application under the sign ordinance once you decide what the sign is going to be, where it is going to be placed, the size, and all parameters. We don't know enough about it. Chair Cox agreed.

Jordan asked about lighting. Hall indicated there will be a light by the door and it will be down shielded. Chair Cox documented the words "down shielded light" on the drawing. Chair Cox asked about the location of the door. Hall pointed out on the drawing, the area of the sales office that will have the storefront (half glass) type of door.

On a motion by Brown, seconded by Cogger, the Planning Board voted to accept the application as complete, with the amended changes. The roll call vote was 5-0, in favor.

## PERFORMANCE STANDARDS

1. Preserve and Enhance the Landscape – On a motion by Jordan, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no change is proposed to the landscape.
2. Relationship of the Proposed Buildings/Structure to the Environment – On a motion by Jordan, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no change is proposed to the relationship of the proposed buildings to the environment.
3. Vehicular Access – On a motion by Jordan, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because there is no change proposed to vehicular access.
4. Parking and Pedestrian Circulation – On a motion by Jordan, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met based on statements by the applicant and the Code Enforcement Officer that there was sufficient parking space and adequate space for circulation. There may be an increase in use as the building has been dormant.
5. Surface Water Drainage – On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 5-0 that the standard has been met because no change is proposed that would affect surface water drainage.
6. Existing Utilities – On a motion by Hewlett, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no change is proposed as the business will be using their current well.
7. Advertising Features – On a motion by Cogger, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no advertising features are proposed.
8. Special Features – On a motion by Hewlett, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because all of the coolers are inside and will not produce noise audible from outside the building. The only issue that might affect this property is the fan which only runs during cooking operation hours.  
  
By a roll call vote of 5-0, the Planning Board also approved the applicant's proposed hours of operation from 6 a.m. to 6 p.m., six days a week excluding Sundays.
9. Exterior Lighting – On a motion by Brown, seconded by Hewlett, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because exterior lighting will be down shielded.
10. Emergency Vehicle Access – On a motion by Brown, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no change is proposed to emergency vehicle access.

11. Municipal Services – On a motion by Brown, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no change is proposed to municipal services.
12. Water/Air Protection – On a motion by Brown, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no change is proposed.
13. Water Supply – On a motion by Brown, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no change is proposed to the water supply.
14. Soil Erosion – On a motion by Brown, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because no change is proposed.
15. Sewage Waste Disposal – On a motion by Brown, seconded by Jordan, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because the LPI stated there is adequate sewage disposal.
16. Hazardous, Special, and Radioactive Materials – On a motion by Jordan, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met. There are no hazardous, special, or radioactive materials proposed.
17. Financial/Technical Capacity – On a motion by Hewlett, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because the representative for Port Clyde Fresh Catch stated the business has the financial and the technical capacity to complete the project.
18. Shoreland Zone – On a motion by Brown, seconded by Jordan, the Planning Board determined by a vote of 5-0 that the standard has been met because this project is not in the Shoreland Zone.
19. Flood Plain – On a motion by Brown, seconded by Jordan, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because this project is not in a floodplain.
20. Lot Standards - On a motion by Jordan, seconded by Brown, the Planning Board determined by a roll call vote of 5-0 that the standard has been met because there is no change in the dimensions of the building.

On a motion by Cogger, seconded by Brown, the Planning Board voted by roll call vote of 5-0 to approve the Port Clyde Fresh Catch application pursuant to the Performance Standards Review, Section V, A1-20 in the Site Plan Review ordinance.

**Building Permits:**

**a. Robert and Kimberly Lehmann, 3 Riverview Lane / Map 217, Lot 042**  
Reconsider Tear Down and Relocation of New Structure:

Chair Cox stated that a question arose whether the Planning Board made a wrong decision at the July 13, 2021, meeting about the road setback on the Lehmann's application.

Chair Cox: While it is not the Planning Board's normal practice to reconsider, as long as it is done in a timely manner and all interested parties know in a timely manner, the State says we absolutely can reconsider. I wanted to bring this forward for the Planning Board to look at again. The Code Officer raised the issue of the setback question so that is why we are reconsidering it. We have received two letters about it, but the most important one just came, and it is from the Lehmann's who are present via Zoom. I thought I should read this before we went any further and then ask them a question. Chair Cox read the following into the record:

Yesterday, Monday, July 26, 2021, we found out that the Board scheduled another meeting about our building plan that was approved on July 13, 2021. We were not contacted in a timely manner by the Planning Board to explain what this meeting is about. You have no idea that the approval of our project is in jeopardy until the day before the meeting is extremely disappointing and distressing. We have followed all requirements for this process, and we have followed each step in good faith following the advice of our team of professionals and making sure we are abiding by the regulations of the town of St. George and the Shoreland laws.

We are happy that the neighbors and the Board had several opportunities to voice their concerns and ask questions. Upon approval of our project at the July 13 meeting, we gave the go-ahead for our architect to begin the next phase of the construction drawings which means that we have incurred new expenses that we would not have had if the project had been turned down at that time. We have also started packing up the house which we also would not have done. Any concerns that members of the Board had should have been brought up at the last meeting. There was ample time for discussion and the initial meeting on June 22, at the site visit on July 12, and at the meeting on July 13. If members had concerns, they should have brought them up during the meeting or voted accordingly. If there were concerns, there could have been additional meetings before approval.

We and our engineer would have been more than willing to work with addressing any concerns that any Board member or neighbor had. After approval is given, is not the time to raise new concerns. What happens later if the Board brings up other new objections and decides to take back approval then? How can we ever be sure that we can move forward without worrying that we will end up incurring large financial losses? We ask that you keep the approval for the plan as is. Thank you. -- Kim and Robert Lehmann

Chair Cox: The fact that they were not informed in a timely manner bothers me. We have a situation where it seems that the Board may have made an error in our judgment. But the question is since you (the Lehmann's) are here, should we go ahead with our meeting on your application today? Or perhaps we should let you decide whether you need some more time, and that would be appropriate.

K. Lehmann: We would like to go ahead with the meeting today even though we did not hear about it until yesterday afternoon. Continue with your discussions and we would like to keep the process moving so that we have input.

Chair Cox said a letter was received from Gerrit Lansing after the Planning Board decided they would be reconsidering the Lehmann's application. The letter was sent electronically on July 21,

2021, to Chairperson Cox and Members of the Planning Board from Gerrit Lansing, Somerville, MA. Chair Cox read Lansing's letter into the record:

I am writing in reference to the approval of the building permit application on July 13, 2021, for the tear-down and rebuild of 3 Riverview Lane. I have been in the process of preparing an appeal of this action but recently learned of the Board's intent to reconsider its vote to approve the building permit application. I urge the Board to reconsider its decision to approve the application on the following grounds:

(1) Pursuant to the second note (\*\*) of Section 15(A)(16) "Setbacks" of the Shoreland Zoning Ordinance, the Planning Board may not authorize a setback less than 10 feet from a right-of-way. The setback from the right-of-way of the proposed structure is 6.2 feet which does not meet the requirements of the ordinance.

(2) Section 12(C)(3) "Relocation" of the Shoreland Zoning Ordinance requires that "{in} no case shall a structure be relocated in a manner that causes the structure to be more nonconforming." Or, in other words, that it complies with setbacks to the "greatest practical extent."

In reaching a finding of "greatest practical extent" the Board may consider "the size of the lot, the slope of the land, the potential of soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems and the type and amount of vegetation to be removed to accomplish the relocation."

The use of the existing gravel parking area to reach the finding that relocating the structure did not increase the nonconformity or that it complied with setbacks to the "greatest practical extent" is inconsistent with the requirements of the ordinance.

Furthermore, in reviewing the plans in more detail and in conversations with others, it does seem that there are possible sites on the lot that better balance the rights and interests of all parties. Rotating and repositioning the proposed structure could potentially yield a structure that is *more conforming* than exists today. This repositioning may also allow more use of the natural slope of the land to decrease the amount of digging or blasting required to achieve the applicants' desired basement, which would seem preferable to minimize ecological and social impacts. --  
Gerrit Lansing

Chair Cox: I believe where we misinterpreted was in using the parking area as a structure that would allow us to permit being closer to the property line, to the right-of-way. It is not a structure.

Hewlett: And thinking it was a grandfathered use.

Jordan: Just to be completely precise about this. In the Shoreland Zoning Ordinance, the definition of increasing a nonconformity does not say that the totality of the structures on the lot can be used to determine whether it is increasing the nonconformity. It's structure by structure. So, the problem with the house is quite a different problem... whether it increases the nonconformity... I think it is nonconforming at the moment. It is in the right-of-way setback, but the application would require us to allow them to violate the setback and we are not allowed to do that. I take my share of the blame for that because I thought I was applying the ordinance the way I thought it was written. Now that I have taken another close look at it, I just got it wrong and am sorry to have done that.



Chair Cox: I think I was very pleased that the new building could get 25' from the water and was a smaller footprint and further away from the property line on the other side. That all seemed to the good. Then we have this issue.

Jordan: I would like to make two points about the second letter you read. It refers to a provision that allows 10' setbacks in some circumstances. Those circumstances do not apply here. The required setback is 25 feet. The second point I would make about that letter is that it talks at some length about the requirement that the structure be replaced further back to the great extent practical. I didn't really understand why the letter writer thought that we had not done that. I do believe we did do that. (Chair Cox and Cogger agreed.)

Cogger: The building is nonconforming. In today's world, it would never be there at all. (Jordan and Hewlett agreed.)

Jordan: So, we have to have them move it back as much as possible, and I believe we did that as reasonably possible.

Chair Cox: The question is (and the engineers clearly drew it) if all the setbacks are observed, where the lines would go and where the 25' would go. It is tight.

Hewlett: Are we thinking because they are taking out all those trees to the right that they can keep moving it right? Chair Cox stated that would be up to the Lehmanns.

Chair Cox: They could take the allowable building envelope (the current building is a lot closer to the northwestern property line) and as long as they went no closer than 5 feet that could be allowed. Correct? Jordan stated yes.

Chair Cox: There is that, but even if they say okay, we are going to go 5 feet, seems like this building cannot go here given the setback from the property line. I see some options, but if we cannot approve this, you can always appeal our decision and take it to the Board of Appeals. That would be one option. Or a redesign.

Hewlett: Are we saying that we want the 25' setback on the right-of-way?

Jordan: I don't think it is whether we want it or not, it is just a requirement.

Hewlett: But that is the issue we have.

Chair Cox: Right. That we were in error when we approved this plan because of that setback issue.

Hewlett: Thinking that it was existing, and it was grandfathered. And it turns out it cannot be.

Jordan: To me, it seems that we clearly made a mistake. My first inclination is that we ought to correct it. I am sorry it was made and sorry it wasn't done and brought to the applicant's attention. But the issue seems to be that our ability to change our mind is subject to consideration such as the ones that the Lehmann's have raised which is, they have acted in reliance on our decision. They have taken steps, incurred costs, and we need to take that into consideration.

Jordan: The final thing I think the Lehmann's need to take into consideration is that the second letter that Chair Cox read said that one of the neighbors is intending to appeal our decision to the

(BOA) Board of Appeals. If they do that, the Board of Appeals will have to decide what to do with the appeal. I think they will decide what we've decided. That we made a mistake because the 25' setback is simply mandatory. Then they can decide whether the facts that I mentioned before will be sufficient to let our decision stand. I think for us right now the question is, should we reverse ourselves and deny the application, despite the fact that it obviously wasn't communicated to the Lehmann's as soon as we all would have liked it to have been, or do we just stick with it and deny them? I invite discussion.

Chair Cox: Yes, it seems to me that either way it may well go to the Board of Appeals. The Lehmann's might choose to, or the neighbors might choose to. So, we will see what they say. I am open to sticking with the decision that we made. However, there is another part of me that says it is wrong what we did.

Cogger: If you stay with the decision that was made, is that negating that the Board made a mistake?

Jordan: No, if we are going to let the decision stand, we have to admit we made a mistake, but we would be letting it stand on the basis that they were prejudiced by the decision and by the fact that they were not notified earlier that we were reconsidering it. Therefore, they spent money and did a lot of things that they would not have done. I am sympathetic. It's just fairness. It's equity.

Chair Cox: If we said we were letting our decision stand, it would be honoring what the Lehmann's did in good faith, but the result may be the same.

Jordan: Yes, and the other thing to keep in mind is that we do think one or more of the neighbors are going to go to the Board of Appeals. The fact that the Lehmann's spent money in reliance on our decision will not have any effect on the Board of Appeals' decision. The general rule is, I think, that when you get an approval and you start spending money, you do it at the risk that there will be an appeal.

Cogger: I am sorry that they spent the money but what is right? Do we set a precedent for other people in the future if we make mistakes?

Jordan thought it would and Chair Cox agreed. Hewlett did not think the Board had ever been in a position to reverse an approval.

Hewlett: If there is an appeal, the BOA would see in the minutes we felt that we did make a mistake and they would probably send the application back to us to start over, and the application has a time factor; I know that part of this was a time factor.

Jordan thought whatever the Planning Board did, it would likely go to the Board of Appeals. Hewlett agreed. Chair Cox stated she was leaning towards reversing their decision and denying the application. Jordan felt if the Board was going to set a precedent, the precedent should be that they try to correct their mistakes. Hewlett noted that it was the Planning Board's mistake.

Bill Lane of Gartley & Dorsky Engineering spoke. He explained that Mr. Hedrich could not be at tonight's meeting and asked the Lehmann's if they would like him to state Gartley & Dorsky's recommendation on their behalf. Kim Lehmann stated yes, they would.

Lane: We would recommend the middle ground. That this could be remedied if you tabled this review now that you have taken it back up until we could make a variance application to the Board of Appeals and either return with an approved variance or an amended plan.

Jordan stated the Board of Appeals is allowed to consider variance applications even if they had never gone before the Planning Board and variances were very hard to get. Lane said he understood. CEO Brackett stated there were four criteria that had to be met, and Lane stated correct. A member of the public stated he did not think it could be tabled because the Board had already made a ruling. Jordan agreed and stated the status of the matter was that the application had been approved, and he thought they had to take action to change that status. Jordan thought the Board would have to deny it, and then they could come back with a revised application or with a variance if they got one.

Jordan: And if you want to try a variance with the Board of Appeals, you could also do that on the basis of an appeal from the Planning Board's reconsideration. Jordan felt they had to do something because if the Board did nothing, the construction could go ahead. Chair Cox agreed.

A motion was made by Jordan, seconded by Cogger, to reconsider the application based on the fact that the proposed building would not meet the 25' right-of-way setback, and the Planning Board was in error in approving the application; thus, the Board moved to reconsider and disapprove the application. The roll call vote was 5-0, in favor. The motion carried.

**b. Harbor Builders Associates – Anne & Vinnie Bowlus**, 535 Island Ave / Map 230, Lot 006 Sara Allenwood and Chip Bauer of Harbor Builders represented the property owners, Anne and Vinnie Bowlus/Bowlus-Rogers Family Trust. The application is to renovate the existing structure and addition per the drawings done by Scholtz & Barclay Architecture, Camden, Maine. Shoreland Zone District: Marine Residential. Floodplain Designation: VE-14.

Allenwood explained the application. There is an existing building at 535 Island Avenue. The applicant is proposing to remove the garage and the garage foundation. The roof will be removed, they will make it compliant with the new energy code, and the structure will also stay within the tight limitations set by the 75' setback.

Chair Cox: This building is mostly outside of the 75' setback.

Allenwood: There is an existing sunroom/living room and part of it is in the 75' setback.

Chair Cox: But it is existing. (Allenwood stated yes.)

Jordan: And part of the existing deck is also in there.

Allenwood: Yes. Within it, stairs are attached.

Chair Cox referred to the site plan. It seems the only thing that is new in the 75' setback is some side steps, part of the deck, and then some steps going towards the water. Is that correct?

Allenwood: They are all existing and they are going to be altered.

Jordan: As I read the drawings, the new addition to the deck is made on the landward side to connect with the extension on the east side of the house that is being built. The new deck and the steps off the deck on the eastern side, are all outside the 75' setback or existing. Did I read that right? (Allenwood stated correct.)

Hewlett: And going lateral to the water.

Chair Cox: Those steps are existing steps?

Allenwood: Yes, and they are not going to go any closer to the water.

Chair Cox noted that the new steps were within the 75' setback, and she asked if the deck is existing? Allenwood stated yes.

CEO Brackett: Isn't part of that deck expanded? Bauer stated yes.

Jordan: Yes, the expansion is on the landward side and the steps are there, too. They are taking out a bay window along the back wall, so they are decreasing the amount of footprint.

Bauer: Right, but we are not changing the foundation.

CEO Brackett: You are removing the roof too and putting a new roof on. Bauer said correct.

Jordan: No change in the footprint except the footprint gets a little smaller because of that bay window.

Chair Cox: The only changes within the 75' setback are no closer to the water body than they are currently.

Bauer: That is correct.

CEO Brackett stated that at one point in determining the 75' setback, they used the Mean tide.

Chair Cox stated the standard of the Highest Annual Tide is now used, so that is why originally the house was totally outside the 75' setback, and now it is not.

A motion was made by Jordan, seconded by Hewlett, to accept the application as complete. The roll call vote was 5-0, in favor.

Jordan: Is there any work to be done outside the 75' setback?

Hewlett: Brackett mentioned the roof.

Jordan: But the roofline is not changing.

Brackett: On the original copy I got, I could not read the window schedule.

Allenwood: For the roofline, it will be below the 20' so it will conform to the rules.

Jordan: And it is not being extended?

Bauer: The architects changed the roof pitch to bring it below 20' to make it conforming.

Jordan: The addition to the deck and the new steps on the deck are outside the 75' setback or existing.

Chair Cox: The steps that fall within the 75' setback.

Bauer: There are existing steps on the backside. We will be building the deck with those existing steps and pulling the steps back outside the 75' setback, so there is zero increase.

Chair Cox: The only deck addition and stair addition is no closer to the resource than the existing building. This is simply a replacement of what is existing, it is not increasing the nonconformity, and not changing the footprint of the existing stairs.

A motion was made by Hewlett, seconded by Jordan to approve the Bowlus/Rogers's application because there is no change in the footprint of what is now within the 75' setback. The roll call vote was 5-0, in favor. Motion passed.

**Wharf:**

**a. Gartley & Dorsky Engineering & Surveying** for Abaco Property Holdings, Inc./Leslie Noble, 19 Hupper Island / Map 201, Lot 019

Bill Lane of Gartley & Dorsky represented the property owner, Leslie Noble. The property owners, Leslie Noble and Evan McNaughton were present. The proposed contractor is Art Tibbetts Marine. The application is to remove an old pier and to construct a new fixed pier, seasonal gangway, and seasonal float. Shoreland Zone District: Marine Residential. Floodplain Designation: AE-11/AE-12.

Representing the owners were Bill Lane and Steve Thomas. Lane explained the application. The proposal is to construct a residential fixed pier, gangway, and float at the property. The plan is to install the pier at approximately the same location as the remnants of an old pier on the property for safe and appropriate access to the property. The rest of the property is a legally existing, conforming lot with a legally existing conforming home. The proposed pier is 5' x 170' including the portion that is over land. The proposed gangway is 3' x 60'. The proposed float is 12' x 24'. It is sited so that it can make access to suitable water through almost all normal ranges of tide.

Lane: We have written you a letter describing how we believe it meets the Shoreland Zoning Ordinance requirements since it is a water-dependent use through the flood zone requirements. We have submitted an authorization to act as David and Leslie's agent, current relevant deed, photographs of the area, an aerial photograph with indications where the abutters to the property are, copied the tax map, copied the flood map, and the recently received Army Corps of Engineers and the Maine DEP permits for the project. The plan that we have depicted is a planned view of the entirety of the property, and we have also depicted a plan and elevation sketch of the pier elements.

Jordan: I have a question on the front page of the application. It looks to me that the symbol is indicating the front setback (waterfront) is less than 75 feet, but the symbol indicates greater than 75 feet.

Lane: I think we were trying to address the dock. (Jordan indicated he understood.)

Hewlett: On the Project Description, could we add the size of what we are discussing because some of it is referenced at 190 feet and some are at 170 feet, and I understand you scaled it back. My copy does not show that on the front of my application.

Brackett: I know that, and I have the correct information on the office file copy. The file's information was updated after the Planning Board packets went out. Brackett read what he documented on the application: Pier 128.3' Aluminum ramp 3' x 60' Wooden float 12' x 24'

Hewlett: So, you have the 6' wide x 170' long for the fixed pier?

Brackett: It is 128.3', I believe.

Hewlett: It is referenced at 170' but also 190' in a lot of the material.

Lane: So, there should not be a reference to 190 feet. The fixed pier extends over the land, so the portion that Brackett is referencing extends from the Highest Annual Tide (HAT) out. The overall is 170' so the 128.3' that he is referencing is starting at the HAT. Lane pointed out the regulatory line and extending seaward to the site plan. There is a portion that stands on the land that we are measuring as well, and we report to 170 feet.

Hewlett: Right, but it was scaled back from my understanding.

Lane: The original plan was proposed, and we have shown that configuration on the plan for a more oblique alignment. That was the initial proposal. That has been scaled back to the alignment that you see now with the proposed pier depicted in that tan color on the plan.

Hewlett: Right. That is why I want to put the Project Description on the front of your application.

Jordan: For the length of the pier, we are including both the portion of the pier over the land and a portion of the pier over the water, so the right answer is 170 feet. That is what you said on the application, right? Brackett noted he documented the total as 170 feet. Hewlett said according to the information in the packet, the project was scaled back after comments were made.

Lane: That is correct. During the initial application for DEP and Army Corps of Engineers, that original alignment was proposed and that has been revised as a part of the effort to address the comments primarily by residents of Hupper Island about the alignment, in particular, the length overall.

Jordan: For purpose of the application, is it actually four components rather than the usual three? There is the pier, there's the ramp, there's the gangway.

Lane: Same thing, ramp/gangway.

Jordan: Okay. So that is the total length? (Lane, yes.)

Cogger: Are the ramp and the float seasonal? Lane stated yes.

Hewlett: And they did make note of the 41' on the land. The reason being is because of an unstable coastal bluff.

Lane: There is a marked, unstable coastal bluff on the property, so we did depict that. The reason that we are locating it is to make an appropriate point as an elevation to transition onto the pier. There is generally a fixed pier portion that is higher than the tide and higher than the Highest Annual Tide, so it does need to extend back and come into contact with the land from an appropriate place.

Hewlett: Typically, we see it and it has been pinned to ledge and it does not go 41' onto the land. So, the reason being, I assume, is the contour (shown on the site plan). Lane stated yes, it is the contour, and pointed this out on the site plan drawings. Hewlett stated that typically, they would have a meandering path.

Lane: Landward of that is mostly open area that has been maintained as turf. If they were to create a new alignment or something with a hardened surface, it would be a meandering path.

Chair Cox said the usual procedure was to do an on-site inspection, and given the fact that neighbors had concerns and a lot of questions, she recommended holding one. Jordan also recommended an on-site visit and then holding a public hearing. Chair Cox agreed that a public hearing could allow the neighbors to address the Planning Board, as well. No action was taken on the application.

The Planning Board asked Lane if he could drop a buoy where the float would be and then mark on land where the pier would start.

Cogger: I do think we should look at the part that is on the land. Chair Cox stated okay, and Hewlett noted that the Board might be getting off the boat and onto land/the island.

An on-site visitation is scheduled for Thursday, August 12, 2021, at 4 p.m. and a Public Hearing will precede the regular Planning Board meeting on August 24, 2021. Arrangements will be made for transportation to the island, and the Planning Board will meet at the town landing in Port Clyde.

**Remote Participation Policy:** A public hearing was held on Tuesday, July 27, 2021, at 7 p.m. at the St. George Town office on a proposal to adopt a policy permitting members of the Planning Board under limited circumstances, to participate in meetings of the Board by remote access. The proposed policy would also permit the public to attend meetings of the Board by remote access, whether Board members attend in person or remotely. The public hearing was held in person and by Zoom. There were no public comments made.

A motion was made by Hewlett, seconded by Brown, to adopt the Policy for Remote Participation in Public Proceedings, as written. The roll call vote was 5-0, in favor. The motion carried.

There was no further business to come before the Board. On a motion by Cogger, seconded by Jordan, it was voted 5-0 by roll call vote to adjourn the meeting at 8:40 p.m.

Respectfully submitted,

Marguerite R. Wilson  
Planning Board Recording Secretary