

**St. George Planning Board
St. George Town Office
September 14, 2021 - 7 p.m.**

The Planning Board meeting was called to order at 7:00 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, Robert and Kimberly Lehmann, Jeffrey Schroeder, Dale Pierson, Brian Breen, Joe Richardi, and Andrew Hedrich. Present via Zoom were: Loreen Meyer, Sandra Roak, Adele Welch, and Lisbeth Thalheimer.

Quorum: A quorum was present.

Conflict of Interest: Chair Cox stated she is a friend of Dale Pierson, who is one of the applicants tonight. She affirmed that she would not be receiving any financial gain from his proposed project. Members of the Planning Board discussed and agreed that there was no conflict of interest.

Adjustments to Agenda: None.

Review of the Minutes:

Planning Board Meeting — August 8, 2021 – The minutes were corrected as follows:

Page 1, 1st paragraph, line 1: change time to 7:18 p.m.

Page 3, paragraph 6, line 1, change to read: ... closer to the road than the propane structure.

Page 3, paragraph 11, line 3, correct to: ... it stated 7'6".

Page 4, paragraph 6, line 1, delete the 2nd and; change to read: ... Appeals, and there are undue hardships, they are...

Page 6, #20, lines 2&3, change to ...the standard has not been met because the project would have increased the nonconformity of the setback from the right-of-way.

Page 6, last motion, add to line 3: the standard has not been met because the project would have increased the nonconformity of the setback from the right-of-way.

Page 6, last paragraph, line 5, change to: ...their heart and soul...

Page 7, paragraph 3, line 8, change time to 7:18 p.m.

Page 7, paragraph 5, line 3, add the word: aerial photo

Page 7, paragraph 5, lines 4 & 5 delete words as well as; who; change to: navigational issue.

Comments were made by experts indicated...

Page 7, last paragraph, line 4, correct spelling to neighbors'

Page 8, paragraph 6, line 2, change land to plan C-2.

Page 12, paragraph 3, line 2, delete and; change to read: ...and dock, on condition that

A motion was made by Hewlett, seconded by Cogger, to approve the August 24, 2021, Planning Board minutes, as amended. The roll call vote was 5-0. The motion carried.

Public Hearing – Abaco Property Holdings, Inc., 19 Hupper Island

Page 5, paragraph 2, line 2, correct spelling of word to: too

A motion was made by Jordan, seconded by Hewlett, to approve the minutes of August 24, 2021, for Abaco Property Holdings, Inc., as corrected. The roll call vote was 5-0. The motion carried.

Findings of Fact and Conclusions of Law – Craignair Inn, 5 Third (3rd) Street

Page 3, #20, correct to: ... that the standard has **not been met because the project would have increased the nonconformity of the setback from the right-of-way.**

A motion was made by Cogger, seconded by Jordan, to accept changes as noted in the minutes as they apply to the Findings of Fact, and authorize the Chair of the Planning Board to sign the amended Craignair Inn Findings of Fact on behalf of the Planning Board. The roll call vote was 5-0. The motion carried.

Public Comments:

Lisbeth Thalheimer, 210 Otis Point Road, was present via Zoom: I have questions about the Robert and Kimberly Lehmann project. Who is going to be responsible to ensure that the blasting is being executed properly?

Chair Cox: We will be addressing that when we get to the application.

Thalheimer: I will ask all my questions then and hopefully you will address them when you are ready. (Cox stated yes.) I would like to know if the building inspector is going to review all the calculations and do a proper inspection while this work is being done? And if the town is not equipped to do it, will you hire an engineer that is familiar with the blasting to make sure that all of the procedures are being followed?

Thalheimer: My husband had spoken at the last meeting. We are concerned about the blasting because our well is very close to their property. At the last Planning Board meeting, we expressed our concern about the blasting aspect of the proposed construction.

Thalheimer: I would like to know if the blasting contractor is providing the homeowner with a license to do such work and a Certificate of Liability insurance? Is the submission of such documentation required to ensure a building permit? If not, it should be. I would like the building department to consider as a condition of granting a building permit that the blasting contractor include the contiguous neighbors of the Lehmanns as additionally insured for their work. This would at least give the contiguous owners some legal coverage if damage does occur. Thank you.

There were no other public comments.

Building Permits:

a. Dale Pierson, 13 Doughnut Point Lane / Map 209, Lot 012

The applicant was present. The application is to raise the existing cottage, install a new concrete foundation, remove small jut on the side of the building that sits on posts over the water, and rebuild with a new concrete foundation. The applicant also plans to install siding, windows and

doors on the cottage. The property owner is Pierson Properties. The existing use is a summer cottage. Shoreland Zone District: Marine Residential. Floodplain Designation is VE-12/AE-11.

Pierson explained the proposed project. The property has been in his family for over 100 years. The building in question was his grandfather's workshop that was turned into a cottage. The family does not know the date the workshop was built, but it was the last structure his grandfather built on the property. Pierson stated it was also the lowest structure and closest to water level.

Pierson: For several years, I have considered raising it. You don't have to be a rocket scientist to tell what is occurring throughout the world, and I would like to preserve it for my children or grandchild. I decided this year that it is time to move on it. I am involved with the Conservation Commission, and Sea Level Rise is discussed frequently.

Pierson: The existing building gets water underneath as it stands, which isn't a problem. I have seen water under the door twice that I can recall. Once in the 1978 storm and once a few years ago. Not of consequence, but I know it will happen more frequently and I want to preserve the building.

Chair Cox: Is the proposal to raise the building up above the flood plain elevation?

The Board reviewed pictures from the packet of the existing buildings and property.

Pierson stated he picked a height of 2' but he was not sure if that was floodplain elevation. Hewlett stated that if you looked closely at one of the pictures, you could see several structures underwater.

Chair Cox asked if this is a VE-12, AE-11, or both. Brackett reviewed the floodplain map and stated that according to this, it is VE-12 from out in the big waters into that line, and then between those two lines, it is AE-11. Chair Cox asked if they should reference it as a VE-12. Brackett thought most of that building, if not all of that building, was right on that line. He said that it might be in the AE zone.

Brackett: If it is in the VE zone, it has to be on piers. If it is in the AE zone, it is going to be on a typical foundation; but you would need to have flood zone vents.

Chair Cox referred to the photograph and asked if this was what the building would look like at flood levels, and Brackett stated yes. She added if there was a flood that hit the AE-11 designation that building would have water splashing around and in it. Brackett stated yes.

Cogger: asked if 2' was going to make any difference because of the predicted Sea Level Rise. Brackett stated they did not know what the elevation of the building was, and Pierson stated he had not "shot" the elevations of the buildings.

Brackett stated that to meet the town's floodplain ordinance, in the AE zone, the lowest wood member would have to be 1' above the AE floodplain. Chair Cox said so, in the AE zone it

would have to be 12' high, and we have a situation where the VE-12 zone cuts about one-fifth of the building.

Hewlett asked Pierson if they raised the building 12 feet, would it block the view from the main house. Pierson said he did not know but they were not talking about raising it 12 feet. Chair Cox stated that was the elevation above sea level, so it would have to go to 12 feet above sea level. Pierson stated he understood but did not know what that was. He explained that he and his brother own the entire property and house together, and they agreed he could do this. Pierson said he picked the height based on what he thought he could deal with.

Pierson: The higher it goes, there is an issue about access because you need steps and things to get at. It is a very tight piece. We have our boat ramp that is next to it. You can kind of see where I can bring it back and still have access to the boat ramp and access for vehicles to come in because that would close it off. The whole neighborhood uses our boat ramp to put in their boats - the Tinsley's, the Hupper's, and some others. I am happy to do an elevation or have it done.

Chair Cox: Is there a place on the property that you could move the building?

Pierson: Not in my vision. I can't put it on top of a septic system. I can't move it so that it fits the zone because I am not deep enough. I would be on the neighbor's property.

Brackett: You could move it so it is more conforming, but you can't move it out of the zone. That is right.

Pierson: I couldn't move it where it was nonconforming and did not impact a well, the septic, or driveway access, or another building.

Hewlett referred to Pierson's diagram and stated, "I think the water is on this side, so what is up here in this corner?" Pierson stated the diagram was just a tax map and explained that the curvy line was the water/shore. He noted their access area, the locations of the driveway, the house, areas of the septic system the well, and the pond where the water streamed down through. He stated his grandfather had dammed up the pond decades ago. Pierson also pointed out the small shed and the "standing water."

Hewlett: We do not know where the 75' setback is from.

Chair Cox: The 75' setback is through this back quarter of the property; a third of the property.

Chair Cox thought they needed to determine several factors: The elevation level. Would raising it 2' be sufficient to meet the current standards? Could a hybrid model be built? Most of the building is in the AE zone which could permit a foundation, and some of the building is in the VE zone which would require piers.

Pierson: There is a concrete foundation around the entire structure that the building sits on and the concrete sits on ledge. Then it is deeper on the waterside where it drops off on the ocean side corner and back again to this corner, and the ledges drop off. On a very high tide, water does

come up underneath it. When I check the plumbing underneath the building, there has been water there, not washing but certainly rising. This is a very protected area and does not get much wave action as we face the south southeast, so we get the sea breezes coming in.

Cogger stated that even though it had been there forever, it was nonconforming, and any changes made would have to move it toward being more conforming. Chair Cox stated, "Exactly. And to the greatest extent practicable." Cox, "That is the question. Is there a practical place where you could move it to be more conforming?"

Hewlett: Know that three-quarters of the property is within the 75-foot buffer zone and half of the existing house is already within the 75 feet.

The Planning Board discussed holding an on-site visitation inspection. Hewlett suggested that some type of measurement or scope be made for the VE and AE elevations. Chair Cox said once the Board knew the elevation of the current structure, at some point, Pierson should have a schematic done that showed the area of the well and area of the septic system.

Brackett: Isn't the well on the left-hand side of the house? It is pretty close to the house.

Pierson: Yes, very close to the house.

Cogger: Then there is the driveway. You can't see that (in the photo). And the cottage is not a boathouse. It was a workshop. Could it be moved back?

Pierson: Originally it was a workshop. How far do I have to be from the pond?

Cogger: That is another issue. I think we do need to see it.

Brackett: The pond is manmade.

Pierson: I don't think it was made (manmade).

Jordan: It was dammed up from a stream?

Pierson: Yes.

Jordan: Then there may be a stream setback requirement.

Pierson: That's what I thought because it's running water from downhill. It is not from up the road.

Chair Cox stated that stream setbacks were more stringent.

Pierson recapped: I need to have elevation set. I will draw what I know and bring it with me.

Cox explained they would need the schematic at least by the next meeting, there would also be a public hearing, and the Board would review his application that night.

An on-site inspection was scheduled for October 1, 2021, at 4:00 p.m.

Cogger: I don't want him to go to all this work and still have other things he's going to have to do. Are you the one that comes and looks at it and says okay this is high enough?

Brackett: No. What happens is he gets a surveyor to go in there and establish the elevation that he needs to be. Then if this project was permitted and went on, I would give him the first part of the permit for the floodplain and once the concrete is poured, the surveyor goes back and takes

elevations of the concrete, and then I can issue the second part of the permit if the elevations are correct.

Cogger: So, who verifies because I am just thinking he goes in and puts in the concrete, and then someone says, that is not high enough or that is not the right thing.

Brackett: The surveyor.

Pierson: They establish a benchmark and that is what everything is referenced from.

Pierson noted he might have difficulty finding a surveyor for the project. Brackett suggested a couple of surveyors. Pierson said the concrete company he had lined up and the building lifter walked away from him yesterday, so he had to push the project to next year but would still like to get permitting done.

Chair Cox stated Pierson's application would be on October 12, 2021, or the October 26, 2021, agenda.

Brackett: I couldn't find any information on the septic system.

Pierson: I would agree with that. I know where it is, and I know the part we repaired some years ago.

b. Robert and Kimberly Lehman, 3 Riverview Lane / Map 217, Lot 042

The application is to remove the existing structure and build a structure further from the edge of the shoreline and the western property line. Existing and Proposed Use: Residential. Shoreland Zone District: Marine Residential and Floodplain Designation: AE-13/VE-13.

Chair Cox explained that she received a letter the afternoon of September 13, 2021 and would read the letter into the record later in the meeting.

Andrew Hedrich, P.E., of Gartley & Dorsky Engineering & Surveying, Inc. represented the applicants, Robert and Kimberly Lehman, who were present. Joe Richardi, the general contractor was also present.

Hedrich explained the project. The building will be more conforming than it was in the previous application. With the help of 2-A Architects, they redesigned the building to fit within the original parameters with several improvements being made to the setback. Visual aids were used by Hedrich who pointed out the entire lot and the location of the existing building. The proposed plan is to reshape it, reconfigure it to create a unique building that will fit within the original parameters.

Hedrich reviewed the setback table. "Going down the setback table, originally the building was 4.3' from the western boundary. We are increasing that to 20' so we can meet that requirement of 20'. The highest annual tide (HAT), we are basically over it or right up to it with the original building. The deck actually overhung the HAT, and we are going to pull that back 23.1'. The building is going to be 25' but they were trying to get enough room up on the deck to make it useable so that is where the overhang is, jutting out there. So, the actual building is back 25'.

We can still get this back behind the level of the flood elevation which is one of our original priorities. To try to get the whole building back behind those setbacks.

"The eastern boundary, we had plenty of room before. We had 26' and we are still able to maintain a 20' setback from that boundary. The right of way is where we got caught up last time. We can maintain that 22.1' so the current building juts out (pointing to the visual aid). You can see beyond where that 25' setback is, and we made certain that our new building would not jut out any further than the current building so that we can still get our parking in there. Be able to keep it and make it more conforming than it currently is.

"The building footprint did shrink down. We are still reducing the footprint. We are still improving reducing the lot coverage. The same tree removal is proposed. We are not proposing to do any piers or anything at this point. We simply wanted to come back, present a new building and a new design for that lot, and kind of go through this process again with your review to make sure that we are in compliance with the ordinance."

Chair Cox: In the plan, you have the shaded area around the building. Is that grass?

Hedrich: Yes. It is a Curlex Excelsior Blanket. It will be grass.

Chair Cox asked about the grading.

Hedrich: We are grading along the edges and within those setbacks, but we are still doing the tree management. I think we originally proposed to remove 13 trees. We are still going to get those trees out, but we did push those grades over a little bit to get around the building, so they had access.

Hedrich: The one other change that we talked about is a future lay-down area for construction and a future potential like a grass parking area, so we have shown that on our plan. It is just a little box to get them in there and we did extend a (gravel) walkway to that for future use. We were still able to get the lot coverage down, but we did want to put it on the plan and show you where it would be, so we could make sure we kept our lot coverages where they needed to be.

Chair Cox asked about the septic tank.

Hedrich: As originally planned, we have to move the new tank down. The tank is underneath where the proposed building would be located. We have to shift that down as much as possible. We will have to work with Terry on a permit for that tank placement. We are going to do a combination tank and pump station. A separate tank and a separate pump station to handle that and get that back up to the existing septic system.

Hewlett asked about the leach field.

Hedrich: There is a leach field and we are going to tie back into that.

Hewlett: Is there any reason why the waterside deck isn't pushed back two more feet to get out of the 25' setback?

Hedrich: We just could not get the room in there to do that. By the time we took our square footage of a building trying to get standard building lengths and dimensions and putting a deck

on there, we just could not get that distance. We were left with a three-foot-wide deck that would barely get you a door swing, so we extended it a couple of feet to give them room. I think there is a total of 6' on that deck. We are still improving that setback by 23' from where it currently exists, so we believe we have done everything we can by shrinking the building, pushing it back, and realigning it to make sure we meet the standards.

Chair Cox: I think one of the things before us is the whole issue of having to blast to get that walk-out basement. The comments we have heard address this and so does the letter we received.

The following letter was written to the Town of St. George Planning Board and sent electronically to Chair Cox who read the letter into the record. The letter was written and received on September 14, 2021.

We are writing regarding the application for a building permit for the tearing down and rebuilding of the cottage at 3 Riverview Ln. In their previous application, the Lehmann's indicated that they intended to excavate the shoreland to construct a seven-and-a-half foot (head height) basement and that the means of excavation would include the use of explosive ordnance. In conversations and emails with the Lehmann's and their builder, Mr. Joe Richardi, it has been indicated that blasting shoreland to construct a similar basement is also contemplated.

The question of blasting was considered by the Planning Board in the July 13, 2021, meeting, during consideration of the first building permit application. Quoting from the published minutes:

'The Board discussed where the Board had jurisdiction around blasting and safety and requesting a blasting plan. Jordan thought it would be proper for the company to prepare a blasting permit required by state law before any blasting was done. He did not think there was an upside to reviewing the permit and the downside was if the Planning Board reviewed it, they may end up responsible for what was in it. He felt the Board did not have the expertise to assume that responsibility, but the state government had that expertise. If the Board makes a condition, Jordan suggests it say the blasting company has to get a permit, has to do a plan if they are going to do blasting, has to submit it to the state regulatory authority as required by law, and the Planning Board requests wells and septic systems be included in the plan.'

We have had the opportunity to research this state permit process and discuss it in detail with Jami MacNeil at the Department of Environmental Protection and Kenneth MacMaster at the State Fire Marshal's Office. In both cases, Ms. MacNeil and Mr. MacMaster confirmed that neither the DEP nor the State Fire Marshal conduct any site inspections or issue any blasting permits for projects of this size.

Both Ms. MacNeil and Mr. MacMaster indicated that the role of their respective organizations is to get involved when something goes wrong – for example, where some activity causes shoreland erosion the Department of Environmental Protection has the authority to require remediation and impose penalties; or when someone conducts blasting who is not licensed by the Fire Marshal’s Office to possess or use explosives.

Blasting is regulated at the state level by the following statutes:

- MRS Title 38, Article 8, §490-Z “Performance standards for quarries” details requirements for blasting in quarries, and includes many of the requirements that Mr. Andrew Hedrich, the applicants’ civil engineer, articulated to the planning board. However, MRS Title 38, Article 8, §490-Z “Applicability” explicitly excludes this kind of project from these standards: “This article does not apply to an excavation or grading preliminary to a construction project, unless intended to circumvent this article.”
- MRS Title 38, Article 7 “Performance Standards for Excavations for Borrow, Clay, Topsoil, or Silt” applies the requirements of §490-Z projects on land area greater than 5 acres. However, it also excludes “[an] excavation or grading preliminary to a construction project unless it is intended to circumvent this article.” (MRS Title 38, Article 7, §490-B)
- MRS Title 38, Article 6 “Site Location of Development” applies the standards of §490-Z (MRS Title 38, Article 6, §484) to developments. However, a development, amongst other things, is defined as having land or water area in excess of 20 acres (MRS Title 38, Article 6, §482).

Outside of the above situations, towns can adopt their own blasting ordinances and may include such requirements in their zoning or land use ordinances. Mr. MacMaster indicated that the only other relevant state statutes apply to the permitting of possession, usage, storage, and transport of explosives (MRS Title 25, Part 6, §2473); inspection of storage magazines and transport vehicles (MRS Title 25, Part 6, §2476); and processes for suspension and revocation of these permits (MRS Title 25, Part 6, §2474).

While a Department of Environment Protection permit is required to rebuild a structure in the shoreland zone, it is issued under a “permit by rule” (Department of Environmental Protection Rules, Chapter 305) and subject to cursory plan review (the new site plan must go through this process again), but no consideration of construction methods or site inspections are made in this process.

Mr. MacMaster and Ms. MacNeil were unable to suggest any other state agency that might regulate blasting. From this research and these conversations, it is clear to us that there is no “State blasting permit” as previously indicated and the Town of Saint George is the sole authority for preventing any harm to the shoreland and the health and safety of its residents and their property.

However, we believe the Shoreland Zoning Ordinance does provide for the authority and, in fact, creates the requirement that the Planning Board in its role as reviewer and approver of

building permit applications for the shoreland zone, to address these concerns.

Section 16 “Procedure for Administering Permits” includes provisions for ensuring an application for a building permit “will maintain safe and healthful conditions” (Section 16 (D)(1.)) and “will not result in water pollution, erosion, or sedimentation to surface waters” (Section 16 (D) (2.)). Furthermore, Section 15 (T) (1.) grants the planning board to require a “Written soil erosion sedimentation control plan” subject to the review and approval of the “Permitting authority.”

These clauses of the Shoreland Zoning Ordinance, the planning board can require that these risks be assessed by a qualified third-party (should the Planning Board not feel qualified to adjudicate them) and treatment planning, inspections, and conditions be attached to the building permit itself. The proximity to the protected resource and other structures (and wells, septic systems, and retaining walls) creates risks that we do not feel have been adequately addressed by this process.

We urge the Planning Board to consider this application for a building permit incomplete until the Planning Board has received enough information to fully and accurately assess the risk of and necessary treatments for erosion to the shoreland and the health and safety of its residents and their property.

- Gerrit Lansing, 10 Riverview Ln; Sondra Perry, Raelani Marton, and Russ Marton, 7 Riverview Ln; David and Ruth Kraner, 215 Otis Point Rd

Chair Cox: The blasting is of concern.

Hedrich: Yes, very much of a concern. The way blasting works is a plan is required to be created by a blaster, and it has to be available onsite for inspection, as needed by DEP. For these small projects, they don't force you to send it in and wait for them to review it and send it back. But they have to prepare a blasting plan in accordance with their license and certification and they have to keep and make it available for anyone who wants to inspect it. So, the town can inspect the blasting plan, or the DEP can inspect that blasting plan if something does go wrong. Ninety-nine percent of the other time, it does not get reviewed by the state unless something happens.

Hedrich: In that blasting plan, they determine how they notify all the abutters. They have to provide them with a schedule of when they are going to do blasting. The blasting vibrations need to be monitored; how intense the blast is, where the timing is. You have to determine if a pre-blast survey is necessary, and they will do that. The blasters will determine if and what is needed for the pre-blasting survey which will include the existing structures within one-half a mile. Or if there are wells or septic systems, they will pay attention to those components and determine according to the State standards on when and where they need to do that.

Hedrich: They have to have it all monitored by a licensed blaster when they do this process. They all record the time and date, if there is any rock that exported from the blast site, and if anything is going on from those areas. The State does not review the permit, but it is all monitored, controlled, and recorded so if something does come up and if somebody needs to

inspect it, they can see what goes on. That is the blasting process and how it happens for a small site like this.

Hedrich: Joe Richardi has met with both Maine Drilling and Blasting and an earthwork contractor that is going to perform the work for this foundation. What they determined is that what they are going to try to do is utilize a hammer to the greatest extent they can and then on top of that, they plan on coming back in and drill holes so they can knock off any of the points. They can just drill holes, no blasting involved there. Drill holes and see if we can remove some more with the hammer but there may be a small section to get that full depth.

Hedrich: We might need to utilize blasting but again they are going to try to use the hammer as much as possible. They are going to be fully aware of what they are doing out there and then they are going to implement the drilling and cutting. You can shape and form ledge quite a bit especially if you have the help of Maine Drilling and Blasting who does that all the time. They can core straight through the hardest rock you can imagine so the combination of using the hammer and the whole ram on the excavator, hopefully, most of the blasting can be avoided.

Hedrich: We just cannot guarantee that, nor do we want the Planning Board to dictate that for this project. It is hard to predict. With any of these types of projects, we don't know if you are going to need to get into blasting. We just know they will follow the state standards as they proceed.

Brackett: Have you considered liquid dynamite?

Hedrich: I haven't seen it effective. I'll be honest.

Brackett: They used it at the library over here when they were putting the elevator shaft in.

Hedrich: You can get away with some of those things, but it all depends on if you have the right ledge.

Hedrich: I don't want to give the false premise that there won't be doing any blasting down there. We can't make that determination at this point. We haven't done borings; we haven't figured it out.

Hedrich: I did want to address the erosion control and other components that were identified in the letter. I am a professional engineer and am certified and licensed in designing Erosion Control and Stormwater Management and have done that on our plan. We have a full page detailing how it is going to happen, how these measures need to be implemented and taken care of. We made sure that we are not going to have sediment and erosion control discharged down through the site. The Permit-by-Rule that was obtained, clearly identifies that and the DEP approved it. They didn't have any issues with that being there so there should not be any concerns with the erosion control or sedimentation.

Cogger asked if the blasting company was insured.

Hedrich: Yes. The blaster carries insurance for their company. As far as naming participants on that, I am not well versed in insurances or the legality of all that. I am not sure how the blaster's insurance works, and I would hate to speculate trying to get other people added to the insurance policies.

Cogger: I suspect these blasting companies have had issues where neighbor's property has been impacted and how is that dealt with?

Hedrich: I think that's encompassed in the surveys they are required to do. They have to notify everyone, who is within a certain range of the blast. When they do the survey, they have to look one half a mile, so there are several different requirements that they are watching for and looking into. They don't send the survey off to the State to review but the state can come to review it as needed.

Cogger: You said there is a plan at the site. Is it a plan that neighbors could see?

Hedrich: I am sure. It is just a paper document that has these things listed out. They have to come and inspect it. I don't think the blaster wants the neighbors coming and inspecting their logs but probably a copy of that could be made available for the town. I think having that plan made available to the town would be reasonable and easy to accommodate and it could be a public document.

Hewlett asked what Hedrich meant by using a hammer.

Hedrich: We are talking a hydraulic hammer; a hoe ram on an excavator.

Hewlett asked who would be watching the neighboring septic systems and wells.

Hedrich: It is all part of the process when you get into those things. Nobody is going to physically watch or monitor the septic or the wells, but this is what these contractors do. They do earthwork all the time. They understand what they are getting into. There is a lot of fear around wells being ruptured. I understand the sensitivity associated with this, especially on these peninsulas with the saltwater intrusion and the concern that people might not be able to find a new place to put a well.

Hedrich: Everything is going to be controlled even when they are using a hammer to know where they can hit it. When the hammer is implemented, they put it on a sharp angle and they are just knocking off the top of it and they go back reset, knock it off, make a few cuts in it with a saw and keep knocking it off trying to lower that ledge. That is why blasting is usually a preferred method; because they can do it a lot quicker, but hopefully we will get into a situation where only minimal ledge will need to be removed, and we can do it all with a hammer and drilling.

Chair Cox: There is no way of assuring there will not be a problem. (Hedrich: Correct.) I understand the worry about the septic tank being right next door. I think the homeowners need to hear about the insurance. We need to know how we have a legally binding document that says, "If there is an injury to your septic system after a second party determines that has happened, you will be compensated."

Hedrich: Their insurance does take care of incidents that have occurred, but I do not know the specific language.

Cogger: Do you think we need to hear from the blasting company?

Chair Cox: I was also wondering if we need to hear specifically and precisely how these neighbors will be protected.

Hedrich: They do and perhaps we can get a statement from them that would indicate these but it is also a professional company that handles this so they may have some language. We can reach out to them and see what they are willing to do. We won't get a representative at a Planning Board meeting, but I am sure they have some language on how it is handled and can give us a more educated direction. We can have that available hopefully before our next meeting.

Hedrich: There is a line though. If we are unsuccessful in getting that blasting information, the question is how much does the Planning Board want to get into regulating blasting, vibration in the ground, volume, and all those components? I worry that if we get down that road if you read it or there are comments regarding what they say, and it is not accepted or approved then where do we go from there?

Cogger: But my concern is these people are feeling like nobody's got their back and there is no one from the State to support their concerns. It sounds like from what you are presenting everyone is going to be very careful and do the best job. I also think the Lehmanns are trying to do the best and meet the standards, but I hear the fear of the neighbors. I feel that letter suggests, where do we go? So, I do feel some responsibility.

Hedrich: You go back to the people that they wrote to originally and that is what Maine Drilling & Blasting said in their meetings. "When something goes wrong, you contact us, and the State is going to step in and assist with taking care of it." I know it is not assuring that nothing is going to go wrong, but it gives them someone to go to if something does occur. That is when the State would come and review that blasting plan and make sure everything was done in accordance and then would assess what is needed to be done to correct it.

Hewlett: Maybe they can be named as additionally insured?

Hedrich: We can ask the question and see what information they are willing to share.

Jordan: That part of it is not quite as important. Being an additional insured on a liability insurance policy gives the additional insured direct access to the insurer. If you are not, there is still a lawsuit, there is liability. If there is liability, it's covered by the policy, and the policy will provide the money to pay the judgment.

Hewlett: Because it could be somebody across the way that is not even on the property.

Jordan: In my experience, the real circumstance in which you got an additional insured status is if the relationship between you and the insured is such that you might also be held liable or the insured might be liable for and therefore, you get the direct protection under the policy.

Chair Cox: And we do have. If something goes wrong, that is when DEP steps in with the remediation and penalties.

Jordan: Also, I have to add that in order to add liability on the part of the blaster, you have to establish more than just something went wrong and you have to establish negligence which you either will or will not be able to do. There is a lot of uncertainty around this.

Jordan: This is rather a different picture than I got from the last presentation. I had the impression that you would file a plan with the state, this got approved, and then you had to follow it. But not so. Kind of disappointing.

Hewlett: And because the house is sitting on the granite now, are we talking 7' has to be knocked out, or we do not really know?

Richardi: The elevations have changed since the beginning of the project (way back). The house did lift. In other words, the roof came down, but the floor came up in order to get that 7'6" which helps a lot because that is where the ledge is. By doing that and I went around and dug 10 test pits, we got the elevations and it turns out that it should probably be no greater than 3' so that is why this changed.

Richardi: I had a meeting with the guys at Maine Drilling and we talked about just drilling 4 inch "swiss cheese" holes down to that elevation. They think they could get away doing the whole thing that way.

Richardi: The only thing is when it does come up to the septic tank, it has to be a little bit lower down and there is a crevice there. Now we don't know if that crevice has water all through it. It could be all cracked up and they could break that right out, no problem. But if it is a solid piece of granite, then we may have to drill and "blow it up" so to speak and that would only be a "poof." That is what the blasting company is thinking but they felt hammering would be the best approach on this project. So, the elevation of the granite, or the thickness of the granite changed in my mind after the configurations changed because the new location of the house changed. Remember the back of the house came up further on the higher ledge.

Chair Cox said it sounded like they were doing everything they could to mitigate the impact of the construction on this nonconforming lot. Cogger said there were problems just by living that close to one another in those cottages and trying to make it into a house. Hewlett thought they had strived to get within the setbacks though the right-of-way setback was still an issue, it was not any worse than it was. Chair Cox added that it was no more nonconforming.

Jordan: The plan says that the right-of-way setback is going to be 22.1'. Is that what it is now?
Hedrich: Correct.

Chair Cox stated the letter from Lansing and others suggested the Planning Board did not have enough information to accept the application as complete. Jordan asked Chair Cox if she would read the basis for why the application was not complete.

After reading the paragraphs starting with the wording "Section 16, Procedure for Administering Permits" and "These causes of the Shoreland Zoning Ordinance," Chair Cox stated to Hedrich, "With the erosion control specs and notes prepared by a certified civil engineer that you have

included are very, very clear using Best Management Practices (BMP) and are planning to do the erosion control berm in combination with the silk fence."

Hedrich: Yes. Exactly. At least two rows are what we have proposed on the plans. As to whether they do two rows of erosion control mix or one row of silt fence, is undetermined.

Chair Cox: I feel confident that we have an example of what will be BMP on this project for erosion control and protecting the resource. We have been told how the blasting company proceeds, should it even be needed, and we have been told that DEP will get involved if something goes wrong. Chair Cox said she felt like the people were not going to be "hanging out there" should something go wrong.

Cogger: I am just concerned about the blasting, and I am assuming that these blasting companies have a template or document they generally get. I could not feel good about approving this unless that was something that was in the town office.

Chair Cox said they could ask that the blasting plan be submitted to the Town Office and available to the public. Hewlett asked that it to be included in the property file.

Richardi: At my last meeting with the blasting company, they said they usually notify people within 250' of the blast areas. I am not 100% sure about 2,000 feet. I think the state does have a requirement for the blasters as to how far out they go.

Lehmann: Can we get that blasting plan before the next meeting?

Hedrich: We won't need the blasting before the next meeting, we will simply have to provide it in advance of the blast if it is going to happen. That would be a condition the Planning Board would put on the approval.

On a motion by Jordan, seconded by Hewlett, the Planning Board voted to accept the Lehmann application, as complete. The roll call vote 5-0 in favor. The motion carried.

The Planning Board reviewed the Shoreland Zoning Ordinance, pages 8-9, Section 12(C)(4) Reconstruction or Replacement.

On a motion by Jordan, seconded by Hewlett, the Planning Board determined by a roll call vote of 5-0 that Section 12(C)(4) has been met because the new structure: will be placed as far back as reasonably practicable and is not going to expand what is allowed in Section 12(C)(1), will not increase the nonconformity, and is a reduction in the footprint rather than an expansion.

The Planning Board then reviewed Section 16(D) Procedure for Administering Permits:

1. Will maintain safe and healthful conditions. Discussion:

Jordan: The issue is whether the construction can happen safely. Which is the blasting question. If we are going to make a favorable finding, don't we have to impose some condition? The condition would be that a copy of the blasting plan would need to be made available to the Town of St. George for inspection by the residents, and not for approval by the town.

Jordan: On the subject of blasting, could we impose a condition that the blasting be avoided to the extent possible?

Chair Cox: That was what I was thinking to maintain safe and healthful conditions. 1) blasting would be avoided as much as possible and 2) that the blasting plan is filed in the town office.

Jordan: If we are going to file the blasting plan in the town office for the neighbors to view, it should be filed for some period of time in advance of when the blasting would occur. A couple of weeks? And that the neighbors be notified.

Hedrich stated the prescribed timeline is in the state permit, I don't recall, and Richardi said he did not know. Jordan thought the blasting plan should be filed with the town in advance of the commencement of blasting by at least the amount of time that they are required to give notice to the neighbors under state law.

Brackett asked if they could list some of the alternatives that they would need to go through before they did the blasting. Cogger suggested the wording "less invasive strategies would be preferred."

Hedrich: As an engineer, I hate dictating methods and means on how somebody is going to accomplish something. I understand we want to restrict blasting to the great practical extent so they are not out there blowing their entire lot of for the fun of it; but to dictate how and where and how much they have to drill, it just becomes open to question and there is no definite answer. Even the greatest extent practicable seems a little gray and you could receive complaints from an abutter because there might have been a knob that was blasted at the same time that could have been hammered off, so I question that.

Hedrich: We will go with the condition as you presented it but to go through a list and present okay now, we've tried this, we've done saw cutting because you can hammer on ledge for days and get little inches taken off, but it depends on what is needed there.

Jordan: I like the suggested wording less invasive.

Hedrich: Yes, we will work with that and that is definitely their intent.

Kim Lehmann: Who determines that? If somebody determines we are not doing that. Who determines that?

Cogger: The people removing the stone are experts.

Hedrich: In a legal challenge from an abutter, which is really what we are looking at is how to make that clear and defined statement that we tried to make that as much as possible. That is the struggle with all of that. It is a pretty contentious topic, to begin with, and restricting that and putting the onus on the contractor when there is going to be a difference of opinion. It is not going to be black and white. It is going to be very gray, and I would fear that somebody could go to an attorney and the court, and they could say, "Well no, you didn't try this as much as you should have. You should have hit that spot two more times or like that." That gives an open-ended question. I am really worried about that.

Cogger asked how that should be stated. Hedrich suggested, "as determined by a general contractor." Chair Cox suggested, "as determined by the blasting contractor."

Cogger: I like the language, "they will determine what is the best approach and do the best they can to use methods that are not blasting."

Jordan: Before we leave the blasting plan, the approval we gave the last time that the plan would have to take account of wells, septic systems within the prescribed area.

Hedrich: I think it said in accordance with the State standards.

Jordan: Whatever was in the minutes, we should put in.

Hedrich: Can we get clarification on what we are asking? Do we want them to do a pre-blast survey or inspection of each one of those within 250'? Generally, it should follow the state standards. They will inspect those as required and as their expertise determines when they are going to need to inspect those.

Jordan: Does the state law require them to take account?

Hedrich: There is a pre-blast survey that is required, and their ownership is associated with that. They are responsible whenever they do blasting projects. If they blast near the foundation, they need to go look at those foundations. So, there is a level that the state already dictates that they have to do and that is included in the blasting plan.

On a motion by Jordan, seconded by Brown, the Planning Board determined by a roll call vote of 5-0, a positive finding with the following conditions:

1. The Board requires a blasting plan be prepared before and if any blasting is to be undertaken and the blasting plan will include wells and septic systems and retaining walls on properties where notice is required to be given for the owners by State law, the blasting plan is to be filed at the St. George Town office and if blasting should be necessary, the blasting company will notify the surrounding properties in advance.
 2. Blasting should be avoided in favor of less invasive methods to the extent the blasting contractor determines that it is reasonable to do so.
 3. All access routes be open and preserved during construction of the project, but should the contractor have to block the road temporarily during the day, the contractor will notify Knox Regional Communications Center fifteen (15) minutes prior to the blocking.
2. Will not result in water pollution, erosion, or sedimentation to surface waters. - On a motion by Hewlett, seconded by Brown, the Planning Board determined by a roll call vote of 5-0, a positive finding based on extensive documentation in the C-1 and C-2 plan submitted by Gartley & Dorsky and that Best Management Practices will be used.
3. Will adequately provide for the disposal of all wastewaters. - On a motion by Cogger, seconded by Jordan, the Planning Board determined by a roll call vote of 5-0, a positive finding as the applicant will install a new septic tank and has a plan to dispose of all wastewaters.

4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat. - On a motion by Cogger, seconded by Hewlett, the Planning Board determined a positive finding because Best Management Practices will be utilized to prevent erosion. The roll call vote was 5-0.

5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters. - On a motion by Jordan, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0, a positive finding as the project will not have an adverse effect on shore cover and visual compared to the currently existing structure.

6. Will protect archaeological and historic resources as designated in the comprehensive plan. - On a motion by Brown, seconded by Hewlett, the Planning Board determined by a roll call vote of 5-0, this finding is not applicable. To the best of the Planning Board's knowledge, there are no archaeological and historic resources at this site.

7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District. - On a motion by Hewlett, seconded by Jordan, the Planning Board determined by a roll call vote of 5-0, this finding is not applicable. This is not a CFMA District.

8. Will avoid problems associated with flood plain development and use. - On a motion by Cogger, seconded by Jordan, the Planning Board determined by a roll call vote of 5-0, a positive finding because the Floodplain issues have been appropriately addressed in Gartley & Dorsky plan.

9. Is in conformance with the provisions of Section 15, Land Use Standards. - On a motion by Cogger, seconded by Jordan, the Planning Board determined by a roll call vote of 5-0, that Section 15, was in accordance with the Land Use Standards.

On a motion by Jordan, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0 to approve Robert & Kimberly Lehmann's application with the conditions previously described in the minutes.

Piers & Floats:

a. Brian Breen for David Kappos, 15 Earthly Haven / Map 217, Lot 059

Brian Breen, Peninsula Home Repair, represented the property owner, David Kappos. The application is to add an 8' x 10' seasonal float to an existing 12' x 20' existing float. Shoreland Zone District is Marine Residential. Floodplain Designation is VE-13.

Breen explained the application. The Kappos have an existing pier and float but would like to install a smaller float off to the side that will sit lower in the water to launch their kayaks. This will be an 8' x 10' float and be attached to the existing 12' x 20' float.

Chair Cox to Brackett: Do we need any DEP involvement?

Brackett: We do not because it is a seasonal float, less than 7 months in the water.

Chair Cox: Do we need to have the Harbor Master view this proposed project?

Brackett: Cline has already looked at it, and he did not have any issues as far as it affecting navigation.

Jordan: Does the Army Corps of Engineers need to review this project?

Brackett: It is 7 months in the water, so the USACE does not need to be involved.

Chair Cox: Do we need to do an on-site visit?

The Planning Board determined they did not need to do an on-site visit as the application appeared pretty straightforward.

Hewlett asked: This is seasonal. You will take it up? Breen stated yes.

The Planning Board amended the project description to state it is a seasonal float. On page 2, it was amended to state an 8' x 10' float.

On a motion by Hewlett, seconded by Brown, the Planning Board determined by a roll call vote of 5-0, to accept the amended application, as complete.

The Planning Board reviewed the Shoreland Zoning Ordinance sections:

Section 15(C) Piers, Docks, Wharves, Bridges, and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland and Shoreline Stabilization, 1-10.

On a motion by Jordan, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0, that all standards, 1-10, under Section 15(C) of the Shoreland Zoning Ordinance were met because this is a small, seasonal float attached to an existing float. The roll call vote was 5-0, in favor.

SECTION 16(D) – Procedure for Administering Permits

On a motion by Jordan, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0, that standards 1-10, under Section 16(D) of the Shoreland Zoning Ordinance were met on the basis that this is not a significant change to the existing structure.

On a motion by Jordan, seconded by Cogger, the Planning Board determined by a roll call vote of 5-0, to approve the application to install an additional 8' x 10' seasonal float located at 15 Earthly Haven.

A motion was made by Brown, seconded by Hewlett, to extend the Planning Board meeting beyond 9:00 p.m. for an additional 15 minutes. The roll call vote was 5-0, in favor.

Pre-Application:

A. Jeff Schroeder, 162 Drift Inn Road / Map 203, Lot 040

Andrew Hedrich, P.E., Gartley & Dorsky Engineering & Surveying, Inc. represented the applicant, Jeff Schroeder, who was also present. This is a pre-application to discuss Mr.

Schroeder's previous application to the Planning Board in connection with his proposed campsites located at 162 Drift Inn Road.

Hedrich explained the reason for the pre-application discussion with the Planning Board and displayed a visual aid of the proposed campsite area. He stated that they came to review the ordinance with the Planning Board and provide Schroeder with a clear direction on what he needed to do to move the project forward. Hedrich stated he sat in at the last Planning Board meeting Schroeder had and Schroeder was sent away with the understanding that it did not meet Subdivision standards.

Hedrich stated he wrote a basic letter to the Planning Board which indicated he had reviewed the town's Minimum Lot Size definitions and the Subdivision definitions, and he could not find anything that applied to this development. Hedrich stated he read the ordinances as an engineer and a lot of it seemed to be in a gray area. He stated he looked at the Residential Unit and the Dwelling Unit and again it did not seem to apply to a campground site. The Shoreland Zoning Ordinance and the Minimum Lot Size Ordinance appeared to be geared toward a permanent establishment that was going to be sold or leased long term. He reviewed the State definitions standard, and the dwelling unit is made for sale or lease to one person, long term: not a short-term seasonal unit. Hedrich stated that both those standards also excluded RV's which left them spinning in circles because there was no clear definition of what exactly they were dealing with.

Hedrich: I went through the other ordinances trying to find something close or similar and went to the Shoreland Zoning Ordinance. There are two definitions. There is an individual campsite which clearly says that an individual campsite is for a residence for long term one person occupied. It would be a whole site and lease it out for a season or a yearlong to one camper. The other definition, realizing that it is not applicable because we are in the Shoreland Zone, was a campground. A campground is very specific, and it seems to align with what he is trying to do. Put a tent site out there without kitchens. They are not year-round dwelling units. They are not a subdivision. He is not trying to subdivide things. Those only require you to have 5,000 sq. ft. of upland area associated with each one of those campgrounds.

Hedrich: Very roughly we have not done any final calculations but using those standards, I then looked at his lot and noticed that he has 2.9 acres. I started looking at deeds and trying to figure out exactly what is there. This is a rough and crude plan that was put together. The bottom line is there is about 50,000 sq. ft. of upland (pointing to the visual plan). That would be directly associated with a wetland. Then we have another peninsula in here that is somewhere in the range of about 19,000 sq. ft. of upland.

Hedrich: Working all that backward, gave us the reasoning to say that we should be able to put up to the three campground sites on his plan using the current configuration excluding the road area, excluding his residential lot, and excluding the wetland areas as they are defined there. That was what we came up with, but these are your ordinances, and would love to hear how you interpret them or how you think we should respond to see if we can't keep the project moving forward.

Chair Cox: It's not a subdivision ordinance.

Hedrich: I probably misunderstood that; it was probably the Minimum Lot Size Ordinance.

Cox thought this would be a Site Plan Review. She said the last time they thought that these may be dwelling units, but that may not have been correct. There was a feeling of something counter to the density requirements in the Minimum Lot Size. She also said the Board questioned what the difference between the canvas walls and a wooden wall like was a cabin was. She thought that was some of their reasoning for their decision.

Brackett: I was reading Down East magazine and found an ad for a campground for glamping in Sanford called Utopia. I called them hoping to get some insight into how they got permitted. They suggested I call the town of Sanford which I have not had time to do. I did find out that Utopia is a chain of glamping ownerships, and they have 86 tents plus some dwelling units on that site. I am thinking that the tents he plans to use fall under the definition of an accessory structure.

Chair Cox: I had not thought of those as an accessory structure.

Schroeder: After the last meeting, I reached out to at least five glamping or luxury camping businesses in Maine. I heard back from one in Bar Harbor, Brownfield, and Warren. I asked about zoning and its process with the Planning Board. The ones in Bar Harbor and Brownfield said their Planning Board considers them temporary structures. These are similar to what I am proposing. One is a Yurt campsite and the other is similar to the tents that we are trying to go with.

Thompson: What period of rental were you going to be offering? Weekly, monthly? That plays a role, I think.

Schroeder: The stay will be a minimum of three nights and will be only offered from May to October and they will be shut down in the winter.

Thompson: The minimum is three nights or a week at a time.

Schroeder: Like an Airbnb and we are not going to make that a rule that you would have to rent it for a week. We felt comfortable with a three-night minimum.

Thompson: It's almost like you could be a B&B.

Schroeder: Right.

Chair Cox: This is not in the Shoreland Zone. We do not have anything in our Site Plan Review or our Minimum Lot Size specifically addressing this. However, we also have a definition of a campground in the Minimum Lot Size so clearly that has been contemplated even though we don't have anything explicitly stated.

Chair Cox: I have a feeling whether this ends up being an accessory structure or whatever we end up calling it, this might have to go through the Site Plan Review process.

Jordan: I think that is right. I believe this fits the definition of Commercial Use in the Site Plan Review Ordinance. (Hedrich agreed.) I agree with Anne because I was part of the author that these were residential dwelling units, and they were limited to one acre for each one of the tents plus the house. I have come to think that is a mistake.

The Planning Board agreed they would need a to do a Site Plan Review and to review the 20 Performance Standards. The Planning Board noted there were a number of constraints on this site that raised lots of questions. They included but not limited to: the setback issue, emergency vehicle access, the safety issues such as the narrow passage along the side of the pond, the septic line above ground mounded to run next to it as it looked dangerous, the solar panels, the water, holding tanks, hot tubs because what were they going to do with all the water, parking and the need for a parking schematic.

Hedrich: All of it needs to be on the plan. We need a Site Plan Review process to make sure everything is identified and accounted for.

Hedrich: Regarding the lot size standards, is this a Site Plan Review, and we are not going to get into any of the square footage requirements identified in the Shoreland Zone and assume that we are treating it more as a motel or site plan commercial entity.

Hewlett: It would be commercial.

Hedrich: In those ordinances, it does not define any of the square footage requirement components. All that would go away.

Jordan: The Shoreland Zoning Ordinance says you have to have at least 5,000 sq. ft. for each campsite but there is no provision for that outside the Shoreland Zone.

Hedrich: So that would not apply to this?

Jordan: I don't think so. (Hedrich stated okay.)

Chair Cox: But we will have to decide, do we consider this an accessory structure?

Chair Cox reminded Schroder of the concerns brought up at the on-site. "You heard from your neighbors at the on-site about the usage and increasing density in this area." But right now, we do not have any ordinances regulating campgrounds.

Hewlett: You mentioned up to four people per tent. That is 12 parking spots.

Schroeder: It would be one parking spot per tent. With the idea that it would be parents and kids; two adults, but each tent would be allocated one parking spot.

Hewlett: Twelve girlfriends. I see twelve individual cars arriving.

Schroeder: We would only allow one car per tent. That is the space we have, and I do not want to add any additional.

Jordan: The problem is if you do not allow additional spaces, they are going to park on the street.

Hewlett: And that street is too narrow to park on. I think you will have to come up with another option/alternative.

Chair Cox stated the Planning Board had the 9:15 p.m. extension, and asked Hedrich if the Board had given him enough information. Hedrich thought the Board had and asked Schroeder if he

was comfortable with the information. Schroeder said he was. Hedrich and Schroeder thanked the Board for their time.

A motion was made by Cogger, seconded by Brown, to adjourn the meeting at 9:15 p.m. The roll call vote was 5-0, in favor.

Respectfully submitted,

Marguerite R. Wilson
Planning Board Recording Secretary