

**St. George Planning Board  
St. George Town Office  
October 26, 2021 - 7 p.m.**

The Planning Board meeting was called to order at 7:04 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: Beth Smith, Richard Bates, Rick Erb, Rich Moskowitz, Mary and Bob Blenk, and Dale Pierson. Present via Zoom were: Will Gartley, Eileen Hugo, Greg and Lauren Soutica, Adele Welch, Loreen Meyer, and Matt Tibbetts.

**Quorum:** A quorum was present. For the Papka and Hawkins on-site inspection minutes, the Papka and Hawkins' wharf applications, and for the Craginair Findings of Fact regarding the solar panel system, Mary K. Hewlett stepped down and Van Thompson stepped up as the voting member. Anne Cogger did not vote on the David Hawkins on-site inspection minutes or vote on the Dale Pierson application as she was absent for the on-site visit. Van Thompson did not attend the Pierson on-site, so he was not elevated to voting status.

**Conflict of Interest:** None.

**Adjustments to Agenda** - The following adjustment was made:  
Chair Cox stated that after the October 12, 2021, workshop, it became clear that the Planning Board does not need to hold a roll call vote unless a Planning Board member is attending via Zoom. A regular vote can be done by voice and/or show of hands. Chair Cox noted for the benefit of those attending by Zoom, she will verbally report the vote count.

**Review of the Minutes:**

**Planning Board Meeting Minutes — September 28, 2021**

A motion was made by Cogger, seconded by Jordan, to approve the minutes of September 28, 2021, as amended. The vote was 5-0. The motion carried.

**Findings of Fact and Conclusions of Law – Craginair Inn by the Sea, 5 3<sup>rd</sup> Third Street:**

A motion was made by Jordan, seconded by Thompson, to approve the Findings of Fact & Conclusions of Law for the Craginair Inn, as amended. The vote was 5-0. The motion carried.

**On-Site Inspection Minutes:**

- Ron Papka & Rebecca Einsenberg-Papka, 22 Benjamin's Way, October 19, 2021.

A motion was made by Thompson, seconded by Cogger, to approve the on-site inspection minutes, as amended. The vote was 5-0. The motion carried.

- David Hawkins, 337 Island Avenue, Rackliff Island, October 19, 2021.

A motion was made by Jordan, seconded by Thompson, to approve the on-site inspection minutes, as amended. The vote was 4-0 and 1 abstention (Cogger). The motion carried.

**Public Comments:** None.

**Wharfs:**

a. **Ron Papka & Rebecca Einsenberg-Papka, 22 Benjamin's Way / Map 235, Lot 037**

Will Gartley of Gartley & Dorsky Engineering & Surveying represented the applicants Ron and Rebecca Papka. The application is to construct a 30' long x 5' wide pier with five stairs, a 3' x 50' ramp, and a 12' x 24' wood float. Shoreland Zone District: Marine Residential. Floodplain Designation is: AE-12.

Gartley summarized the proposed project. The plan is to construct a 30' section of structure that includes two sections: a level platform and a set of stairs to get them down to about high water and then a 50' gangway (ramp) and a 12' x 24' float. Permits have been received from the Dept of Environmental Protection and The Army Corps of Engineers and part of that process includes review of permits by the Department of Inland Fisheries & Wildlife and the Dept. of Marine Resources.

Gartley stated they are locating this in an area that will be somewhat shielded and protected by the existing large trees and there will not be any large tree removal. There will be a little undergrowth where the pier meets the ground that needs to be cleared to create a path to the pier. The length of the structure is as short as it possibly can be to get it to the spot where the flats level out.

Cogger commented to the letter that was sent regarding this project. "I do think they addressed habitat here, and I think that is important."

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

The Board then reviewed the standards under Section 15(C) of the Shoreland Zoning Ordinance.

**C. Piers, Docks, Wharfs, 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. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of the water body or within a wetland is allowed on a single lot. - 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 only one structure is proposed.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion. - 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 the contractor has represented that they will use Best Management Practices, the majority of the construction will access the shoreline by barge, there will be minimal vegetation disturbance and any disturbance is to be loamed, seeded, and mulched and from the Board's observation at the on-site visit it looked like the soil was appropriate for this project.
3. The location shall not interfere with existing developed or natural beach areas. - On a motion by Brown, seconded by Jordan, the Planning Board determined by a vote of 5-0 that the standard is not applicable because this area is rock grading to mud; there is no developed or natural beach.

4. The facility shall be located so as to minimize adverse effects on fisheries. - On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 5-0 that the standard has been met. Though the project will be located in an area of shellfish and marine worm harvesting, the DMR's statement and the DEP concurred, the proposed float skids should minimize impacts of soil compaction for that particular fishery.
5. The facility shall be no longer in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A pier, dock or wharf in non-tidal waters shall not be wider than (6') six feet for non-commercial uses. - 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 the first section of the structure will just reach the area of the mud and therefore is no longer than necessary, and it is consistent with the surrounding character because water access along the river is normal and the structure has been designed to be shielded from view from the surrounding neighbors. The 6' width is not applicable because this structure is located in tidal waters.
6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 5-0 that the standard has been met because no such structures are proposed or existing.
7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 5-0, the standard is not applicable because the pier is in tidal waters.
8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 5-0 that the standard has been met because no such structures are proposed or existing.
9. Except in the Commercial Fisheries/Marine Activities District, structures build on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed (20') twenty feet in height above the pier, wharf, dock or other structure. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 5-0 that the standard has been met because no such structures are proposed or existing.
10. Vegetation may be removed in excess of the standards in Section 15 (P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board. - On a motion by Thompson, seconded by Brown, the Planning Board determined by a vote of 5-0 that the standard has

been met because excessive vegetation will not be removed, and it has been represented in the application that construction will be done by barge.

## **SECTION 16 (D)**

### **PROCEDURE FOR ADMINISTRATIVE PERMITS**

After the submission of a complete application to the Planning Board, Code Enforcement Officer or Local Plumbing Inspector, the application shall be approved, or approved with conditions, if a positive finding is made based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions. - On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 5-0 that the standard has been met. There are no health or safety issues in construction of this project.
2. Will not result in water pollution, erosion, or sedimentation to surface waters. - On a motion by Thompson, seconded by Jordan, the Planning Board determined by a vote of 5-0 that the standard has been met based on the Maine Dept. of Environmental Protection's findings that indicated this project would not result in water pollution, erosion or sedimentation to surface waters.
3. Will adequately provide for the disposal of all wastewater. - On a motion by Thompson, seconded by Brown, the Planning Board determined by a vote of 5-0 that this standard is not applicable. There is no wastewater disposal associated with this project.
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 5-0 that this standard is met based on the Dept. of Marine Resources, the Dept. of Inland Fisheries & Wildlife, and Dept. of Environmental Protection findings.
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 Thompson, the Planning Board determined by a vote of 5-0 that the standard is met. This project will have no effect on shore cover by conserving the existing vegetation along the shore as much as possible, and the pier will not prohibit access to inland and coastal waters.
6. Will protect archaeological and historic resources as designated in the comprehensive plan. - On a motion by Brown, seconded by Jordan, the Planning Board determined by a vote of 5-0 that the standard is not applicable because there are no archaeological or historic places in this location that are identified in the Comprehensive Plan.
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District. - On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 5-0 that this standard is not applicable because this project is not located in the CF/MA District.
8. Will avoid problems associated with flood plain development and use. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 5-0 this standard is met because piers by their nature do not generate flood plain problems.

9. Is in conformance with the provisions of Section 15, Land Use Standards. The standards under Section 15(C), 1-10 were approved by the Planning Board.

Jordan asked Gartley: "How will the ramp and float be stored in the off-season? Where?"

Gartley: The plan is to store the ramp and float offsite. The applicant is paying to have somebody take them away and store them in a boatyard or some offsite location.

On a motion by Brown, seconded by Thompson, the Planning Board determined by a vote of 5-0 to approve the wharf application for Ron and Rebecca Einsenberg-Papka.

**b. David Hawkins, 337 Island Avenue, Rackliff Island / Map 230, Lot 036**

Matt Tibbetts of Art Tibbetts Marine Contractor represented the applicant and property owner David Hawkins. The application is to build a new 5' x 70' long wood piling supported aluminum walkway pier, with a seasonal 3' x 50' aluminum ramp and a 12' x 24' wood float. Shoreland Zone District: Marine Residential. Floodplain Designation: AE-18.

Tibbetts summarized the proposed project. This is a residential pier for family use. It is a 5' x 70' long aluminum walkway pier, and it will be wood piling supported. It is located primarily over ledge. It will have a seasonal ramp and wood float. The site of the project is mostly bare ledge. No trees will be removed.

Hewlett: Why an aluminum walkway pier? We are so used to seeing wood.

Tibbetts: It was somewhat a matter of aesthetic choice. It will be easier to install because getting access to the location with the aluminum section, "We will span 50' versus 24' so it is less pilings in between. So, it is a little easier to construct."

On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 4-0 that the Hawkins' application was complete.

The Board then reviewed the standards under Section 15(C) of the Shoreland Zoning Ordinance.

**C. Piers, Docks, Wharfs, 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. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of the water body or within a wetland is allowed on a single lot.  
- On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 4-0 that the standard has been met as only one pier is proposed.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion. - On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 4-0 that the standard has been met. The pier begins on land but most of the access points are ledge, and construction access will take place by barge.
3. The location shall not interfere with existing developed or natural beach areas. - On a motion by Thompson, seconded by Jordan, the Planning Board determined by a vote of 4-0

that the standard has been met as there is no beach area within a reasonable distance of the proposed structure.

4. The facility shall be located so as to minimize adverse effects on fisheries. - On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 4-0 that the standard has been met based on the findings of the Dept. of Marine Resources, Dept. of Wildlife & Inland Fisheries and the Dept. of Environment Protection.
5. The facility shall be no longer in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A pier, dock or wharf in non-tidal waters shall not be wider than (6') six feet for non-commercial uses. - On a motion by Thompson, seconded by Brown, the Planning Board determined by a vote of 4-0 that the standard has been met based on the design and length of the proposed structure, it is in tidal waters, and there are similar piers in the vicinity.
6. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.  
- On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 4-0 that the standard is not applicable because none are proposed or exist.
7. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 4-0 that the standard is not applicable because the pier is in tidal waters.
8. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 4-0 that the standard is not applicable because none are proposed or exist.
9. Except in the Commercial Fisheries/Marine Activities District, structures build on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed (20') twenty feet in height above the pier, wharf, dock or other structure. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 4-0 that the standard is not applicable because none are proposed or exist.
10. Vegetation may be removed in excess of the standards in Section 15 (P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board. - On a motion by Brown, seconded by Thompson, the Planning Board determined by a vote of 4-0 that the standard is met as no vegetation will be removed, it has been represented that construction access take place by barge.

## **SECTION 16 (D)**

### **PROCEDURE FOR ADMINISTRATIVE PERMITS**

After the submission of a complete application to the Planning Board, Code Enforcement Officer or Local Plumbing Inspector, the application shall be approved, or approved with conditions, if a positive finding is made based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions. - On a motion by Thompson, seconded by Jordan, the Planning Board determined by a vote of 4-0 that the standard is met because the proposed project appears to be a well-designed pier and ramp system.
2. Will not result in water pollution, erosion, or sedimentation to surface waters. - On a motion by Brown, seconded by Jordan, the Planning Board determined by a vote of 4-0 that the standard is met based on the Dept. of Environmental Protection's findings, this project will not create undue erosion.
3. Will adequately provide for the disposal of all wastewater. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 4-0 that the standard is not applicable as no wastewater will be generated.
4. Will not have an adverse impact on spawning grounds, fish aquatic life, bird or other wildlife habitat. - On a motion by Jordan, seconded by Thompson, the Board voted 5-0 to correct the finding in paragraph #4 to reflect that the standard has been met based on the findings by the Department of Marine Resources, the DEP, and the Department of Wildlife & Inland Fisheries.
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters. - On a motion by Thompson, seconded by Brown, the Planning Board determined by a vote of 4-0 that the standard is met because there will be no change in the tree line, has only provided access to the water, and it will not interfere with recreational or navigational uses.
6. Will protect archaeological and historic resources as designated in the comprehensive plan. - On a motion by Thompson, seconded by Jordan, the Planning Board determined by a vote of 4-0 that the standard is met as there are no such archaeological and historic resources in this area.
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District. - On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 4-0 that the standard is not applicable because this project is not located in a CFMA District.
8. Will avoid problems associated with flood plain development and use. - On a motion by Jordan, seconded by Thompson, the Planning Board determined by a vote of 4-0 that the standard is met because piers by nature do not generate flood plain problems.
9. Is in conformance with the provisions of Section 15, Land Use Standards. The standards under Section 15(C), 1-10 were approved by the Planning Board.

On a motion by Thompson, seconded by Jordan, the Planning Board determined by a vote

of 4-0 to approve the wharf application for David Hawkins.

**Site Plan Review:**

**a. Greg Soutiea, Craignair Inn by the Sea, 5 3rd Street / Map 106, Lot 016**

The owner, Greg Soutiea was present. The application is an addition of walk-in cooler for the restaurant. The outside of the cooler will be no closer to the center line of the road than 18' 6" as discussed with the Code Enforcement Officer during the site meeting on October 7, 2021. This project is not located in the shoreland zone or in a flood plain designation area.

Soutiea explained the proposed project. He stated at the site meeting with CEO Terry Brackett and Anne Cox, they measured out exactly where the right-of-way was and the distance from the right-of-way. Soutiea stated he adjusted the building structure and adjusted the plan to reflect the measurements they took on-site so the location of the cooler would be outside of the right-of-way plus two feet (2') with the structure.

Soutiea stated they marked out everything at the site meeting on October 7, 2021, so, he will make sure that the contractor knows that is no closer than the flag markers and then go from there.

Jordan: What is the current distance between the existing building and the roadway?

Chair Cox: The existing structure is just over 16' 2" at the closest point to the center of the road.

Jordan: The drawing is marked 18' 6".

Chair Cox: That is the plus 2 feet because of the location of the pre-existing gas tanks so it was determined that they were 2 feet in from that 16.5 foot setback. So, it is the center line of the road, to the town's right-of-way is 16.5 feet and then adding 2 two on to that is where Soutiea got these dimensions. The gas tanks were next to the building, and they were 18.6 feet from the center line.

Chair Cox: The town's right of way is 16.5 feet from the centerline of 3rd St. The old gas tanks and enclosure were 18.5 feet from the centerline. Therefore, the new cooler structure can be no closer to the road than 18.5 feet from the centerline.

Jordan: The extent of existing nonconformity was 18.5 feet.

Thompson: It is met, so he is not more nonconforming.

Hewlett: It is not more infringement from the propane tanks; the former location.

On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 5-0 to accept the Craignair Inn application as complete.

**Motions:**

On a motion by Jordan, seconded by Cogger, the Planning Board determined by a vote of 5-0 that the Standards in Section V, A1-19 of the Site Plan Review Ordinance are met on the basis or findings on the previous application and on the fact that nothing in this application changes that finding.



On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 5-0 that the Standard in Section V, A-20 is met because now the new structure will be no closer than 18'-6" from the center line of the roadway, and therefore there will be no increase in the nonconformity of the existing structure.

On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 5-0 to approve the Craignair Inn application on the basis of those findings.

On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 5-0 to adopt the Findings of Fact distributed at the meeting, as amended to include the wording "centerline of the roadway," and authorize the Chair to sign the Findings of Fact and Conclusion of Law.

**Building Permit:**

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

The applicant was present. The application is to raise the existing summer cottage/building 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 owners, Pierson Properties, also plan to install siding, windows, and doors on the cottage. Shoreland Zone District is Marine Residential. Floodplain Designation is VE-12/AE-11. An on-site inspection was held on October 1, 2021, at 4 p.m.

Pierson stated for the Planning Board onsite, he had staked out an area where the structure could possibly be relocated but would still be nonconforming, but he felt this area was unrealistic and an undoable location.

Chair Cox noted that Pierson had the structure elevation shot and stated that the first floor elevation is 9.22 feet.

Hewlett: Is he going to build a foundation at 9.22 feet?

Chair Cox: Because this is a VE-12 which means the bottom of the first floor has to be 1 foot above 12 feet or 13 feet. The height difference between 13 feet and 9.22 feet is 3.78 feet.

Pierson: And it cannot be a foundation. It has to be piers based on our discussions.

The Project Description on page one of the application was amended to:

Raise cottage *3.78 feet*

Install new concrete *piers for the foundation*

On a motion by Brown, seconded by Hewlett, the Planning Board determined by a vote of 4-0 that the application was complete.

Chair Cox read Section 12(C)(2), Foundations in the Shoreland Zoning Ordinance, and the Planning Board discussed the following question.

Is the Planning Board satisfied that there was no practical place this building could be moved? The Board discussed the location of the roadway, the ramp, the existing buildings, the location of the septic system and well, the brook/pond, and the way the roadway was used.

**Motions:**

On a motion by Hewlett, seconded by Brown, the Planning Board determined by a vote of 4-0 that there is no place at which the building can be relocated without resulting in other nonconformities or interfering with the septic system.

On a motion by Jordan, seconded by Hewlett, the Planning Board determined by a vote of 4-0 that the approval will be conditioned on compliance with the Floodplain Ordinance as determined by the Code Enforcement Officer.

**SECTION 16(D) – Procedure for Administering Permits**

1. Will maintain safe and healthful conditions. - On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 4-0 that the proposed project will have no adverse effect on safety and health.
2. Will not result in water pollution, erosion, or sedimentation to surface waters. - On a motion by Brown, seconded by Jordan, the Planning Board determined by a vote of 4-0 that the project will have no effect on water pollution, erosion or sedimentation as Best Management Practices will be used during construction.
3. Will adequately provide for the disposal of all wastewater. - On a motion by Jordan, seconded by Brown, the Planning Board determined by a vote of 4-0 that there is no adverse effect on the disposal of wastewater as a result of the project.
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat. - On a motion by Brown, seconded by Jordan, the Planning Board determined by a vote of 4-0 that there will be no change on the spawning grounds, fish, aquatic life, bird or other wildlife habitat.
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters. - On a motion by Brown, seconded by Jordan, the Planning Board determined by a vote of 4-0 that there will be no change to shore cover and visual, and points of access to inland and coastal waters.
6. Will protect archaeological and historic resources as designated in the comprehensive plan. - On a motion by Jordan, seconded by Hewlett, the Planning Board determined by a vote of 4-0, the standard does not apply as there are no such archaeological or historic resources in the area.
7. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries Maritime Activities District. - On a motion by Brown, seconded by Hewlett, the Planning Board determined by a vote of 4-0, this is not applicable as the project is not located in a CFMA District.
8. Will avoid problems associated with flood plain development and use. - On a motion by Jordan, seconded by Hewlett, the Planning Board determined by a vote of 4-0, the raising of the structure will improve compliance with the flood plain development and use.

9. Is in conformance with the provisions of Section 15, Land Use Standards. - On a motion by Jordan, seconded by Hewlett, the Planning Board determined by a vote of 4-0 that the standard is met because this is a nonconforming structure and the nonconformity is not being increased by the project, and the provisions of Section 12 are being complied with as they relate to nonconforming structures.

On a motion by Jordan, seconded by Hewlett, the Planning Board determined by a vote of 4-0 to approve the Pierson application with the condition that the construction is in compliance with the Floodplain Ordinance as determined by the Code Enforcement Officer.

**Application Renewals:**

**a. Charles Hugo, 56 Atlantic Quarry Road / Map 234, Lot 082**

The applicant was present via Zoom. The application is to install 65 feet of rip rap at 56 Atlantic Quarry Road, Spruce Head as described in Mr. Hugo's 2019 application that was approved by the Planning Board.

Chair Cox stated they have Hugo's initial application and the letter asking for the application to be extended. She asked if anything had changed since his initial application.

Hugo stated not really. Cox stated it was the same conditions, but he has just not done the project yet.

Hewlett asked why he had not completed the project. Hugo stated there were a couple of reasons. He has been dealing with Prock Marine since 2017 and they put him off every year to have the work done. He said this year, he had another project going on and Prock Marine notified him in July that they could do it. Hugo stated he had not heard from them since last September and wasn't prepared because he had started another project and ran out of money. And the fellow that he was dealing with left their employment.

Chair Cox asked him if in a year, he would be able to sort it out with them. Hugo stated he was trying to.

Jordan stated that the permit could not be extended based on the Shoreland Zoning Ordinance that states in order to extend the permit, the project has to have been substantially started or substantially completed or both. This is an application for a new permit. A very short form because Hugo's letter is all that it took because there have been no changes to the proposal from the original application.

Jordan: So, this would be a new permit, good for two years. Jordan asked about the permit from the Army Corps of Engineers. He did not find how long that permit is good for. The question is it still in effect?

Chair Cox: I thought it was good for four years.

Jordan: Referred to 1. Corps Determination, paragraph 4. And Chair Cox read: "Provides one year for completion of the work that has commenced or is under contract to commence prior to the expiration of the permit on October 13, 2020. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 13, 2021."

The Planning Board determined that Hugo needs to go back to the Army Corps of Engineers to reapply.

Jordan felt they could approve this permit on the condition that Hugo gets approval from the Army Corps of Engineers.

On a motion by Jordan, seconded by Cogger, the Planning Board determined by a vote of 5-0 to approve Charles Hugo's permit on the condition that he receive re-authorization from the Army Corps of Engineers for this project.

**b. Dennis Diesel, 7 Southern Ave, Rackliff Island / Map 230, Lot 066**

This application renewal was not acted upon as Mr. Diesel was not present or a representative to speak to the application.

**Other Business:**

Procedures for Processing and Deciding Applications.

Chair Cox stated this issue came up at the October 12 workshop with regard to Findings of Fact and the difference between time the Board votes on the Findings and the written Findings of Fact as they are often changed or amended. This can affect the appeals process, and when the clock starts clicking and when people can appeal, Jordan had some ideas to discuss.

Jordan: Those who were around a couple of years ago when they talked with Bill Napier about procedures, the Board was told that the 30 day appeal period begins to run when they take the vote on approval of the application. After taking the vote on the approval of the application, they do not see the draft Findings of Fact and Conclusions of Law for two more weeks and then usually have changes to it. Then those have to get done. In the old days, that meant the Board didn't see them again for another two week and then everyone signed them. Lately they have shortened it by authorizing the Chair to sign them and that takes a little less than two weeks if revisions need to be made.

An alternative to doing that would be to hold off on taking the definite vote on approving the application until the next meeting at which time the Findings could be made, approved and all done. None of that has much of an effect on how long before the applicant sees the building permit. But in a contested case, it does have an effect on the ability of any objecting parties to take an effective appeal because it is hard to appeal until you see the written decision. If you only have two weeks or less, some meetings are three weeks apart. That introduces a bit of unfairness to the objecting parties.

After that I worked on the appeals section of the new ordinance and looked at the existing ordinances and we have different rules under different ordinances. Which is one reason we are doing this. Under the SLZ ordinance and the Minimum Lot Size Ordinance, he discovered that the 30 days does not begin to run until the official written findings are done. As for those, if that is the rule, then we can take the vote and it does not start the clock running until we actually get the Findings done and signed.

The Site Plan Review Ordinance doesn't say that. It does not say anything. So, the result there is what Napier was telling them and lawyers said which is that it really begins to run when you take

the vote. So, I think, and I think Anne agrees with this, is what we ought to do in the new ordinance is just to say that everything begins no matter whether it is a Site Plan or what it is, everything begins to run when the Board issues the formal, written findings of fact that has been authorized to sign. That matches the same time the building permit gets issue, too.

Jordan: What that means, if there are objectors, they will have the time they are supposed to have in order to mount an effective appeal. What it does to the applicant is it pushes farther out the time when he is going to know there's an appeal.

Cogger: Because the building permit is issued at the same time, he might not want to start building until 30 days later after the appeal period.

Jordan: That's right because if he does start building and the appeal happens and it gets overturned, he will have to just tear it down. It is even worse than that because he can't really enter into any binding commitments without risking that result.

Jordan: That is not as bad as it sounds because the law is the only people who can appeal the finding of an applicant are people who participated in the Planning Board proceeding from which the appeal is supposed to be taken. So, if nobody shows up to object, in those cases, the applicants can feel pretty safe in going ahead.

Cogger: So, they would have to show up at the meeting when the Findings of Fact were discussed or could they show up at the appeal? Jordan: No, they have to do something before the Planning Board. What counts, lodging a written objection may be sufficient. You have to do something somewhere along the line in order to get standing.

In the majority of cases, we do not do written findings. We do them for Site Plan Review and rarely do it for anything else. But that is because we keep fairly extensive minutes related to what our decision was. I believe and we are going to check all this out once the language gets closer to final, but I believe what Costigan said at the workshop was that that is probably a sufficient writing to show what we did. So, in those cases when there is not going to be some later sign thing, I think the right answer is that the approval of the minutes at the next meeting would constitute the official written activity. So, the clock would start then.

Cogger: I am concerned about the applicant understanding this process.

Jordan: So, the appeal period will begin to run when Brackett signs the building permit, or when the minutes are approved at the next meeting? That is on my list of questions.

Chair Cox: We need to figure out some language to say okay, we would deny this application contingent upon our written Findings of Fact which we will have at the next Planning Board meeting. For instance, for purposes of the appeal period, it will not begin to run until we sign the Findings of Fact.

Jordan: That is really the only way to do it.

Jordan: Do we do written findings on denials under the Site Plan review? Cox stated, yes.

Hewlett: When does the appeal start? At our denial at that meeting or for the Findings of Fact?

Thompson: We wait for the Findings of Fact.

Jordan: That is the rule now under the Shoreland Zoning Ordinance and Minimum Lot Size Ordinance. Under the new ordinance it will be the same rule for every ordinance. They will discuss with counsel on this.

There was no further business to come before the Board. On a motion by Brown, seconded by Cogger, it was voted 5-0 to adjourn the meeting at 8:39 p.m.

Respectfully submitted,

Marguerite R. Wilson  
Planning Board Recording Secretary