

ISLESBORO PLANNING BOARD
REGULAR MEETING
MONDAY, May 3, 2021
Zoom Meeting at 5:00 PM

MINUTES

1. Call the meeting to order and Establishment of a Quorum.

Chair Bill Schoppe called the meeting to order at 5:00 pm and a quorum established.

Members Present: Bill Schoppe; Jennifer West, secretary; Dave Dyer, voting; Isabel Jackson; and Jesse Burns, voting.

Absent: Jennifer Whyte, Gil Rivera

Others Present: Bill Boardman, CEO; Michael Hutcherson, applicant/Islesboro Media; Jon Bernstein, applicant; Eric Jagger, for LU 17-21; Duran Fernandez O'Brien, architect for LU 17-21; Tim Forrester (applicant), John Tittman, architect for LU 17-21; Christina Robb; Diane Rolerson, Kim Grindle, Lauren Bruce, Phil Seymour, and S. Reynolds, Republican Journal.

2. Approval of Minutes of April 19, 2021

- LD 17-21 is within the 75' Shoreland District.

Motion: To accept Minutes of April 19, 2021 with correction, by B. Schoppe, seconded by I. Jackson. Roll Call, motion passed 5 yes 0 no.

Motion: To accept Minutes of April 14, 2021 as written, by I. Jackson, seconded by Dave Dyer. Roll call, motion passed 5 yes 0 no.

3. OLD BUSINESS

A. LAND USE ORDINANCE

1. **Craig Venter, LU 16-21**, Map 37 Lot 4, 1588 Turtle Head Road. To build a 4' X 156' fixed pier.

- Site Review was conducted and all setbacks were met.
- Deputy Harbor Master Earl Mackenzie reviewed proposed application, no impediment to navigable waters.

Motion: Public Hearing not requested or required, by B. Schoppe, seconded by I. Jackson. Roll call, motion passed 5 yes 0 no.

Motion: Application LU 16-21 is complete, by I. Jackson, seconded by J. Burns. Roll call, motion passed 5 yes 0 no.

Motion: Application LU 16-21 is approved, by I. Jackson, seconded by Dave Dyer. Roll call, motion passed 5 yes 0 no.

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2. *Jon Bernstein and Martina Albright, LU 17-21*, Map 18 Lot 10, 311 West Bay Road. To remove non-conforming house and boat house and replace with new dwelling and boat house.

- Site Review was conducted. The 75' shoreland setback was determined by the applicants engineers, who used survey, which is more accurate than by hand.
- Letters to abutters have been sent.
- Jon Tittman, architect, indicated that the engineering firm will pin the corners of the building to ensure that the building is located as shown on the plans.
- The project proposes to reduce the non-conformity of the existing building by 13%.
- B. Boardman, the proposed structure cannot exceed 30% in foot print or volume of the current structure within the 75' zone.
- Discussion as to whether J. Burns should recuse from vote as he will be working on the project. B. Boardman indicated that it would not be a conflict and therefore he should vote.

Motion: Public Hearing not requested or required, by B. Schoppe, seconded by I. Jackson. Roll call, motion passed 5 yes 0 no.

Motion: Application LU 17-21 is complete, by I. Jackson, seconded by D. Dyer. Roll call, motion passed 5 yes 0 no.

Motion: Application LU 17-21 is approved, by I. Jackson, seconded by Dave Dyer. Roll call, motion passed 5 yes 0 no.

B. DEVELOPMENT REVIEW ORDINANCE

1. ***J.T. Zlotkowski, MD 05-21***, Map 17, Lot 7F, 144 Mill Creek Road. Construct a 60' X 110' steel building for a plumbing business with shop and 3 apartments.
 - Site Review- no discussion, refer to minutes of April 14, 2021.
 - Planning Board requested additional information from applicant, see minutes of April 19, 2021.
 - No additional information received from applicant.
 - B. Boardman and applicant have been trying to contact the Fire Marshall with no luck so far.

Motion: Application MD 05-21 is tabled for information requested, B. Schoppe, seconded I. Jackson. Roll call, motion passed 5 yes 0 no.

4. NEW BUSINESS

A. LAND USE ORDINANCE

1. ***Susan Durkee, LU 19-21***, Map 24, Lot 22A, 827 Main Road. Construct a 14' x 50' modular home.
 - Noted two errors on the application: Lot number is Lot 22A and lot acreage is 1.375A. B. Boardman will make the correction to the application.
 - The lot is grandfathered or non-conforming. A residential trailer was formerly on the lot.

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- Proposed home is 2 bedrooms with a new septic system. Well is existing.

Motion: Application LU 19-21 is tabled for Site Review, I. Jackson, seconded B. Schoppe. Roll call, motion passed 5 yes 0 no.

B. DEVELOPMENT REVIEW ORDINANCE

1. **Josh Linscott, MD 06-21**, Map 06, Lot 14A, AT 116 Main road. Place a 30' x 48' garage/storage shed on site.
 - Garage next door to Island Market will be moved across street to the project site.
 - The previous permit (MD 01-21) will continue as is.
 - B. Boardman measured permeable spaces, which exceed required.
 - Garage will be placed on impermeable parking area.
 - Letters to abutters have been sent.
 - Questions for the applicant: will there be water and power? Any plans for outdoor lighting?

Motion: Application MD 06-21 is tabled for Site Review, I. Jackson, seconded B. Schoppe. Roll call, motion passed 5 yes 0 no.

5. OTHER BUSINESS

- CEO Report- will be prepared for next meeting.
- People Wishing to Address the Planning Board- None
- Correspondence- see letter from Kim Grindle (attached), Islesboro Oyster Co. Discussion followed:
 - B. Boardman indicated that aquaculture does not come under the jurisdiction of the Planning Board. The Harbor Master signs off on pier and aquaculture site applications regarding impact to navigable waters. He suggests that the Town attorney should be asked about what should be done if a structure was permitted under faulty information.
 - K. Grindle suggested that the Town should have up to date maps and a list of aquaculture sites.
 - B. Schoppe asked if Kim Grindle had tried to contact the Brighams. She had tried but had not gotten through to them.
 - K. Grindle indicated that DMR's Nault would have suggested a slight modification of the pier location if he had been aware of her site.
 - J. Burns asked if there is a 'magic number' for separation of an aquaculture site from a pier.
 - K. Grindle did not know what standards DMR uses. She has worked up some suggestions to the Planning Board.
 - B. Schoppe will contact Town attorney regarding this subject.
- Committee Reports: AUCO will be meeting this week.
- Chair- Additional Business- none discussed.
- Motion to adjourn meeting at 6:05 pm, B. Schoppe, seconded by I. Jackson. **Roll call, motion passed 5 yes 0 no.**

Dear Members of the Planning Board et al,

As many of you may know, I am a lifelong resident of Islesboro and (am easily) a 10th generation islander. In 2019 I started Islesboro Oyster Company, along with my three children, ages 13/15/15, whom are listed as assistants on my aquaculture licenses. This summer will be our second growing season.

The company is off to a promising start. We have the maximum of four limited-purpose aquaculture sites (LPAs) growing oysters - and on one site, sea urchins. If any of you have seen our posts/photos on social media, you'll have seen that we are growing a beautiful and delicious product. Our main goal is to grow this business into a standard lease providing product year-round to wholesalers and the general public; we're lucky enough to have already secured commitments from various local restaurants in the mid-coast to carry our oysters once we start harvesting.

I went through a careful selection process to determine my lease sites, and, after I completed the state applications, our Harbor Master carefully reviewed and approved them per the regulatory process. As these are LPAs, of which there are now 14 directly off of Islesboro (with an additional seven off of Lime, Lasalle, and Little Spruce Head islands. Maine's aquaculture map database can be found here- <https://bit.ly/3u65FHI>), there is not a requirement for the Planning Board or other town boards/committees to review. With the Harbor Master's approval, I then submitted the applications to the state for final approval and was granted leases by both the Department of Marine Resources (DMR) and the Army Corps of Engineers.

One of my sites, KGRI220, is located in Marshall Cove. I was very mindful when I picked my location in Marshall Cove to avoid any impact with current or potential future marine activities within the cove. I understood that Josh and Shey Conover (dba IME / Marshall Cove Mussels) were thinking about putting in a large pier of some sort in the cove, at some point, and there is a cluster of moorings on the south side of the cove. As such, I placed my lease in a spot on the north side of the cove to maintain appropriate distances from those activities to reduce interference with one another.

My desire to be a good ocean neighbor, combined with the economic risk of any start-up business that dictates avoiding any disturbance of my nascent aquaculture activities, could only go so far if the town and state authorities turn a blind eye to protecting leaseholders.

On April 2, 2021, I was inspecting my lease sites to prepare for the upcoming season. I discovered two pier pilings very close to my site in Marshall Cove. I was startled as I had never received any notice or communication of any sort. Apparently, the Planning Board reviewed, and approved, an application (LU#02-21) by Alexander Brigham, for a 120' long pier with a 50' ramp and a 30' long dock in Marshall Cove.

I spent the entire day of Monday, April 5th, on the phone with various people at DMR, DEP, Army Corps of Engineers, Maine Sea Grant, The Maine Aquaculture Association (for which I'm a

member) a member of the Marine Resources Committee and my state senator trying to determine if there were any missteps in the various regulatory processes, as I had not been notified by any agency of this pier and was unclear on the protocol for notification of abutting stakeholders.

I was told by the DEP & Army Corps that the adjacent land abutters were notified of the proposed pier, but we discovered that there is no apparent requirement for abutting aquaculture leaseholders to be notified, regardless of distance.

Obviously, the local, state, and federal approval processes are intended to eliminate interference and protect permitted activities. In this instance, it appears that the case reviewer from DMR, Mr. Denis Nault, failed to verify or even double-check the information in the application submitted by the site engineer, Mr. Tom Fowler, which contained inaccurate information.

One key inaccuracy is Mr. Fowler's statement that reads, "There an LPA aquaculture lease on the cove but is close to 1000 ft away from the proposed pier." In fact, there is no LPA 1,000 feet away and the application fails to reflect my site at all. My site's closest mooring is approximately 234 feet from the proposed dock and the center of my site is roughly 300 feet from the proposed dock (map attached. provided by Maine Coast Marine Maps). Mr. Nault told me, during our conversation on April 5th, that had he been provided accurate information, or had independently verified the information within the application, as he was supposed to, he would have made a note of it in the pending application and, at minimum, would have notified me so that I would be allowed a comment period and then added that most likely there would've been a suggestion from their agency (DMR) that the location of the proposed pier be shifted slightly. Additionally, when I spoke with Mr. Fowler, he was unable to explain to me what aquaculture site he was referring to that was 1,000 feet away or where he obtained that information from.

Accordingly, at minimum, fairness would dictate that one of the local agencies or related regulatory entities intervene and stop the building of this pier until this issue is sorted out by having a review of the application with the correct information.

During my conversation with Mr. Nault, he indicated that the wave and wake action from all the water activity that will take place very close to my site, could potentially result in a drop-off in feeding, impacting the growth of both species- which was an immediate concern of mine.

Another three concerns that I have are:

- 1) being that oysters are filter feeders, is there potential impact from the chemicals in the pressure treated wood that is being used?
- 2) I'm concerned with the potential of gear disruption from activities around the dock area, especially during lower tides and with certain wind conditions.
- 3) each year I am required to renew my sites. I am concerned that my site won't be renewed now because of the close proximity of this pier/dock, thus driving me out of this location.

Within the next two months, I'll have approximately 50,000 baby (2 mm sized) oysters that I'll be placing in that location. Additionally, I'm waiting to hear from the University of Maine's Center for Cooperative Aquaculture Research as to how many sea urchins they'll be allotting to farmers this season. To say I'm nervous about this season's crop at this location, and the future of this site, is an understatement.

I would note that the intuitive easy solution of “just moving my gear another hundred feet or so away” from the pier is not simple as it requires an entirely new site selection process, lease application and review process, new mapping, and like I said, I purposefully put my site there for specific reasons and have held that spot for two years now- having me just “move my gear for larger development” doesn’t seem like a precedent that the town, or another agency, would want to set.

Beyond the economic peril that I'll face due to the issuance of a permit based on faulty information, I have learned during this saga of the obvious gaps in the approval process. I would be happy to spell out remedies at the local level, to try to help all of us avoid these situations in the future. But in the meantime, I must protect my start-up.

Please let me know what solution the town’s boards may propose.

With thanks,

Kim Grindle
Islesboro Oyster Co.

CC:
Islesboro Harbor Committee, Ken Smith, Chair
Islesboro Board of Appeals, Tom Tutor, Chair
Islesboro Town Manager, Janet Anderson
Senator Chip Curry
Christopher MacLean, Esq.

Grindle LPA with Pier Map Overlay

LPA Coordinate is the center-point for aquaculture site for gear 4x100'.
Moorings are up to 300' apart for site with 100' feet of line before beginning of floating gear on either end.

Legend

- 100' Floating gear
- 300' Distance between moorings
- 300' Radius from center point of LPA

