

## Ed Pentaleri

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December 12, 2019

Town of Alna Planning Board  
1574 Alna Road  
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By email: [alnaclerk@gmail.com](mailto:alnaclerk@gmail.com)

Dear Board Members,

I am writing in regard to the Application for Permit that was submitted by Jeff Spinney in November for “Dock/Ramp Alterations.” As you are well aware, Alna’s Shoreland Zoning Ordinance (SZO), Section 16 (Administration), Paragraph D (Procedure for Administering Permits) requires the planning board to approve an application or to approve an application with conditions only if it can make certain *findings of fact*, as enumerated in that section. Although I will not repeat all of the findings that are required, I would like to draw your attention to specific requirements that are inconsistent with the permit that has been filed by Mr. Spinney.

From SZO Section 15 (Land Use Standards), Paragraph C (Piers, Docks, Wharfs, *etc.*), sub-paragraphs 4 and 6

- A. The proposed facility is no larger in dimension than necessary to carry on the proposed activity, AND
- B. The proposed facility is consistent with EXISTING conditions, use, and character of the area, AND
- C. The proposed facility is for a non-commercial use, AND
- D. The proposed facility is not a permanent pier or dock unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, AND
- E. A permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

Although I intend to address each of the requirements above, I shall address them in an order different than they are listed in the SZO.

### **C. The proposed facility is for a non-commercial use**

Although it is not represented in the permit application submitted to the Town of Alna, you should be aware that Attachment 1 to Mr. Spinney's NRPA application includes an extensive description as to how the requested dock modification is required in support of a "recreational club" for "a variety of uses," including "swimming, boating, duck hunting, and fishing." In this "Activity Description" attachment, Mr. Spinney goes on to indicate in that "common infrastructure such as the gun range located upland on the property, the camping area, the dock, and the boat ramp" "are funded through annual club membership dues."

Section 17 of the SZO defines a "Commercial Use" as

"the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services"

During the December 5, 2019, meeting of the Alna Planning Board, at which Mr. Spinney presided as chair, Mr. Spinney spoke for nearly an hour about his permit application to a standing-room-only group of attendees. Through the course of the meeting, Mr. Spinney indicated that the "club" referenced in the NRPA application is the "Golden Ridge Sportsman's Club, LLC," an entity that he registered with the Maine Secretary of State in May 2019.

It is clear from the information above that the true purpose of Mr. Spinney's permit application is to expand the modest dock, previously permitted by the Town of Alna for personal use so that it will be better suited to support the expanded commercial use for a recreational club that he incorporated with the State of Maine earlier this year. Although Mr. Spinney suggested during the December 5 Planning Board meeting that he was considering whether to obtain 501(c)3 designation as a non-profit entity,<sup>1</sup> he has made clear in his NRPA application that the recreational facilities are provided in exchange for membership dues (income). Whether any part of the dues/income are ever paid to Mr. Spinney personally or are retained by the club, the permit application is for a facility that is explicitly intended for commercial use, as defined in the ordinance.<sup>2</sup>

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<sup>1</sup> Presumably based on the (mistaken) belief that a corporation's for-profit or not-for-profit status has some bearing on its status as to whether or not it constitutes a commercial enterprise

<sup>2</sup> It may also be worth noting that per SZO Section 15, Paragraph U, "Limited Light Commercial Usage is allowed in the Head Tide District only," and even then only in connection with "reuse of structures that have or have had a prior use as commercial or institutional buildings"

There are clearly two ways that Mr. Spinney could overcome the SZO prohibitions on commercial facilities:

- (a) Amend his NRPA and Alna permit applications to a more modest scale consistent with his previously permitted personal use, and removing from his NRPA application all justifications related to activities for his private club, or
- (b) Provide open access to the proposed facilities to the public, without respect to the payment of membership dues

**E. A Permit has been obtained from the DEP pursuant to the Natural Resources Protection Act**

As described above, Mr. Spinney has indeed sought a permit from the DEP, pursuant to the Natural Resources Protection Act. That said, I have also described above how the DEP-facing permit application differs materially from the local Alna-facing permit application in terms of the rationale as to why the requested dock and ramp improvements are required, with the DEP-facing application being clearly based on needs that are inconsistent with Alna's local SZO prohibitions on commercial facilities. It makes no sense for the Town of Alna to require NRPA permits from the DEP, only to accept NRPA permits that are based on needs that are inconsistent with Alna's SZO. As such, in order for the Planning Board to accept such a permit, the basis for the underlying NRPA permit must be brought into conformity with Alna's SZO.

**D. The proposed facility is not a permanent pier or dock unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible**

The expanded dock/ramp that Mr. Spinney has proposed clearly includes a permanent pier and concrete ramp. As such, this would be a new permanent structure as part of the Boat Launching facility, as defined in Section 17 of the SZO.

Despite having proposed a new permanent structure, Mr. Spinney has provided no evidence whatsoever that the temporary structures previously permitted for his personal use are not feasible. Quite to the contrary, there is a rather substantial abundance of evidence (such as satellite images that appear later in this letter) that the previously permitted dock/ramp have been quite adequate over the course of the sixteen years since the initial permit was granted. Although the previously permitted dock and ramp may have fallen into somewhat of a state of disrepair, this would appear to be much more a matter of normal wear and tear, and inadequate or overdue care and maintenance rather than relating to a fundamental question as to the feasibility of such temporary structures satisfying the reasonable requirements associated with personal use.

**A. The proposed facility is no larger in dimension than necessary to carry on the proposed activity**

Publicly available satellite imagery shows the seasonal use that Mr. Spinney has made of the dock and ramp that have been permitted over the last 16 years for his personal use. These images first show (Figure 1) in July 2007 what appears to be a ~16x16-ft floating dock, connected to shore by a ramp that appears to be approximately 16 feet in length.



Figure 1: Spinney dock ca. Summer 2007

The next (and only) other images to show Mr. Spinney's seasonal dock appear in August 2012 (Figure 2), and, with the benefit of much better resolution, clearly show an 8x12-ft floating dock connected to shore by a ramp that is approximately 8 to 12 ft long.

Although Mr. Spinney’s NRPA permit application indicates that he has a 17-ft boat, the dock and ramp shown in the satellite imagery have evidently been adequate until now for his personal use of this boat on the Sheepscot. Mr. Spinney has made no representations whatsoever to the town of Alna as to what the non-commercial activity that requires expansion of the dock and ramp beyond those permitted since 2003 for his personal use.

I will simply note that SZO Section 16, Paragraph D states that the “applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance,” and that this burden applies to all of the findings of fact required to support approval, including the one discussed under this heading.



Figure 2: Spinney Dock ca Summer 2012

**B. The proposed facility is consistent with existing conditions, use, and character of the area**

Despite the fact that (as discussed above) the SZO clearly places the burden upon the applicant to demonstrate that the permit application is in conformity with all of its provisions, Mr. Spinney's Alna permit application includes no information whatsoever in regard to the reason for his request to expand his currently permitted dock/ramp, let alone whether the proposed changes are consistent with exiting conditions, use, and character of the area.

Although his Alna permit application is mute on any discussion of potential uses for the expanded ramp/dock facility this, his NRPA permit application is not. And while not all of the activities described in the NRPA permit application are necessarily inconsistent with the existing conditions, use, and character of the area, the unspecified potential scale and intensity of the uses the NRPA permit application describes in association with commercial recreational activities beyond his own personal use are of great concern to me and to many other members of the community.

For example, at the December 5 meeting of the Planning Board, there was considerable discussion of and concern expressed for new and more intensive uses centered around the expanded dock / ramp facility (such as the use of jet boats, jet skis, *etc.*) that might be incompatible with the existing conditions, use, and character of the area. While acknowledging throughout the meeting that his pursuit of the expanded dock is in support of club activities that he envisions, Mr. Spinney refused to elaborate on the specific nature, scope, and scale of activities permitted by club members, repeatedly stating that bylaws, rules, and other details of club activities are "still being worked out," while also expressing that he views many of these questions as not being relevant to the town's permitting process.

Although we have yet to have a public hearing on Mr. Spinney's application for permit, the clear consensus that has emerged from the December 5 Planning Board meeting was that while community members believe that certain potential club activities, such as fishing, swimming, hunting, and the use of non-motorized watercraft are likely to be consistent with existing conditions, use, and character of the area, other activities (largely centered around the potential use of motorized watercraft) are of great concern.

It is clear, even from this initial discussion that the Planning Board *must* consider details of the specific nature, scope, and intensity of non-personal activities of club membership in its consideration as to whether to approve Mr. Spinney's permit application, and whether any such approval should be subject to restrictions, conditions of use, or mitigations for impacts caused by the changes he is requesting.

To conclude, Section 16 of Alna's SZO explicitly requires that the Planning Board make certain findings of fact in order to approve a permit application. Here I have described five of the land-use requirements of the SZO that are not supported by Mr. Spinney's current application. In its review of the application, I strongly encourage the board to explicitly structure its deliberations in such a manner as to clearly address these required findings of fact, as well as other findings that are required under the ordinance. To the extent that the current application does not support the required findings, I encourage you to reject the application, consider a more modest application consistent with continued personal use, or to approve subject to appropriate conditions of use.

Sincerely yours,



Ed Pentaleri