



## Hardshell Cafe

 **From** Amy Tierney <clerk@longislandmaine.org>  
**To** Town Selectmen <selectmen@longislandmaine.org>, Town Administrator <townadmin@longislandmaine.org>, Bradley B brown <planningboard@townoflongisland.us>  
**Cc** <rebecca.walsh@maine.gov>, Lawson, Brent <Brent.Lawson@maine.gov>, Jim Nagel <ceo@townoflongisland.us>  
**Date** 2022-02-17 11:13

 20220216 Ltr to Nagle re\_ 3 Garfield Ave.pdf (~155 KB)

Below is Jim's cover letter and correspondence with Phil Saucier. Attached you will find Phil's response to Jim in regard to approved uses of the property.

Board of Selectmen,

I am forwarding my review notes as well as the Attorneys Letter addressing Land Use Issues at the Hard Shell Cafe. The intent is to clarify for the Board and the Property Owner the approved Use of the Property. I offer this now in anticipation of the 2022 Permit and Licensing Review Requirements by the Town of Long Island and various State Agencies.

I have been corresponding with the Maine Health Inspection Program and Department of Health Engineering to ensure that State Licenses issued are in line with Town of Long Island Land Use Regulations.

Finally, this letter allows the Property Owner the opportunity to become Zoning compliant or to seek alternative uses.

Regards,

James Nagle

Code Enforcement Officer Town of Long Island

**From:** James Nagle

**Date:** Tue, Feb 15, 2022 at 2:03 PM

**Subject:** Hard shell Cafe

**To:** Philip Saucier <[psaucier@bernsteinshur.com](mailto:psaucier@bernsteinshur.com)>

**Cc:** Amy Tierney <[clerk@longislandmaine.org](mailto:clerk@longislandmaine.org)>

Hi Phil,

Quick time line to consider.

Prior to 2004 Planning Board Review, Structure now known as Hard Shell Café is Abandoned.

All former uses associated with that structure are surrendered upon application to Planning Board.

2004 Planning Board approves use as Retail Establishment with 4 seats / Commercial Kitchen. NOT A RESTAURANT

2009 Amendment to 2004 P.B. Approval, Retail Establishment / Commercial Kitchen Increase seating to size allowed by septic system. NOT A RESTAURANT

2014 Permit granted to allow second floor addition for residential dwelling unit.

2016 C of O for second floor residential dwelling unit.

2018 / 2019 Application submitted 1 Eds Shack for snacks and soft serve ice cream 2 restaurant.

This started as a 2 part application that did request a restaurant. However, request for Restaurant removed by applicant.

Approved by P.B. as 110 sq. ft. snack shack. NOT A RESTAURANT

2020 Hard shell Café applies to State of Maine for Catering Kitchen Lic.

State review requires L.P.I. sign off, that proposed use does not exceed waste water limits. Application indicates no indoor or outdoor seating.

My review of the property card indicates that there is enough capacity. NOT A RESTAURANT

Much confusion. I think that the former owner (Capt. Perry) operated a restaurant with out proper approval. I also believe that the current owners operated a restaurant or event center without proper approval.

The Land Use Review by the Town Planning Board is for Retail Sales with seating, and a Commercial Kitchen. The License granted by the State of Maine is for Eating and Catering. The review by both authorities anticipates off premise consumption of food. NOT A RESTAURANT

The owners can apply for a change of use to a restaurant at any time. However, P.B. Site Plan Review is required. Building Code, Internal Plumbing Code and Life Safety Code will also be part of the review process.

Your thoughts.

Jim

**From:** James Nagle  
**Sent:** Monday, February 14, 2022 12:56 PM  
**To:** 'Philip Saucier' <[psaucier@bernsteinshur.com](mailto:psaucier@bernsteinshur.com)>  
**Subject:** Hard Shell Cafe

Good Morning Phil,

As we discussed Friday, the HHE 200 Form, septic design dated 10/30/21 (permit #473) effectively removes the 2 bedroom house located at 11 Garfield St. from the Island Ave. Property. (Hard Shell Café). The original permit design dated 3/29/91 (Portland, Maine Permit # 4153) indicates 21 seats at 15 gallons per day or 315 gallons total. No information or permits on file trace the installation of the Garfield Street Property to this septic field. However, Frick Assoc. letter dated October 9, 2014 indicates that this was the case. It is now my understanding that the Original Design of 315 G.P.D. system is not utilized.

Further, the septic design dated 3/20/09 (permit #275) has a design flow of 230 G.P.D. The Owners Residence added to the property subsequent to the design requires a minimum 120 G.P.D. design flow.

230 minus 120 minimum for owners residence leaves a design flow of 110 G.P.D. for the Commercial Use on this system.

Total G.P.D. of the 2 existing systems is 425 G.P.D. after factoring in the owners one bedroom apartment.

Given the complexities of these systems and the mis- flow of actual gallons used per use group I am uncertain the Planning Board had a clear understanding of the information as submitted by the Applicant. I feel that any increase or intensification of the uses would require further review by the Planning Board or Code Enforcement

Office. The State of Maine Health Inspection Program and Maine Health Engineering Program Subsurface Waste are likewise confused and concerned by the Applicants Submission for Permits and are willing to work with us to solve this dilemma.

Jim

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**Amy Tierney,**  
Town Clerk, Tax Collector, CEO Assistant  
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Town of Long Island, ME

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Philip Saucier  
Shareholder  
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February 16, 2022

Jim Nagle, Code Enforcement Officer  
Town of Long Island  
P.O. Box 263  
Long Island, Maine 04050

Re: 3 Garfield Avenue

Dear Jim:

You have asked me to review the current land use approvals for the property located at 3 Garfield Avenue (“the Property”) to determine the current allowed uses and whether the Property is approved for restaurant and/or special event uses such as lobster bakes – and you also asked me to review whether the existing subsurface wastewater disposal system is adequate to support the uses on the Property.

### Permitted Uses

Specifically, I have reviewed the following municipal approvals for the Property and included a summary below each:

- **September 14, 2004 Site Plan Approval.** The Planning Board approved an application filed by EBTAC, Inc. for a Retail Establishment for the primary purpose of selling baked goods and a commercial kitchen facility for the preparation and sale of foodstuffs for consumption off premise. The approval contained a number of conditions, including that on-site seating is limited to serve up to four customers located either indoors or outdoors, that foodstuffs prepared in the commercial kitchen for catering purposes was for delivery or pickup by customers only and not to be served for consumption on the premises.
- **October 27, 2009 Amended Site Plan Approval.** The Planning Board approved an amendment to the prior approval that eliminated the restriction that required foodstuffs prepared by the commercial kitchen to be consumed off-premises, and allowed an increase in the number of on-site seating (either indoor or outdoor) to the limit of the capacity of the subsurface wastewater disposal system “which shall be designed, installed, operated and maintained in conformance with State and local plumbing codes.”

The approval was dependent upon and limited to the proposals, plans and supporting documents submitted by the application in connection to the Planning Board approval (see condition #9), so any expansion beyond what was approved at that time requires additional Planning Board review (i.e., expansion of the physical space itself, expansion of the use of that space, or any change in use beyond what was approved).

- **February 25, 2019 Site Plan Approval.** The Planning Board approved an application for the remodel of an existing structure on the Property to serve snacks and soft serve ice cream. The original application also included an additional request to “reopen a restaurant and dining room” but the application was subsequently amended to remove the request for a restaurant and dining room and moved forward only for approval of the existing on-site shack to serve snacks and soft serve ice cream.

Based upon a review of the above approvals, the Property is currently approved for the following commercial uses:

- 1) A retail establishment for the primary purpose of selling baked goods and a commercial kitchen facility for the preparation and sale of foodstuffs with on-site seating limited to the capacity of the subsurface wastewater disposal system approved as of October 27, 2009; and
- 2) A stand to serve snacks and soft serve ice cream.

The Property is not currently approved as a “restaurant” which is a permitted use in the Island Business Zone separate from retail or service establishments and is defined in Article 2 of the Land Use Ordinance as “a food service establishment with indoor seating capacity for ten (10) or more patrons.” A “retail establishment” is defined as a food service establishment that is not a restaurant. The Property is also not approved for special event uses such as a lobster bake that exceeds the number of on-site seating approved by the Planning Board in 2009. Any change in use for a restaurant or to expand the existing use beyond the current approvals requires Planning Board approval.

Finally, I understand that in addition to the commercial uses outlined above, the Property was also issued a certificate of occupancy for a second-floor residential dwelling unit in 2016.

### **Subsurface Wastewater Disposal System**

You have also asked about whether the current capacity of the subsurface wastewater disposal system supports the existing uses on the Property.

In a letter dated October 9, 2014, Matthew Logan of Albert Frick Associates noted that the initial system for the Property at that time had a design flow for 315 gallons per day and only served a 2-bedroom dwelling unit located at 11 Garfield Avenue which required 180 gallons per day. The original approval for that system dated 3-29-91 (Permit #4132) was for 21 seats at 15 gallons per day per day (for a total of 315 gallons per day) and did not include any reference to residential dwelling units.

February 16, 2022

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Mr. Logan also observed a second system on the Property that was designed for 230 gallons per day, and that the then proposed one-bedroom dwelling unit would require 120 gallons per day, leaving 110 gallons per day in the second system for the commercial use on the Property. The approval for that system is dated 3-20-09 (Permit #275) was for a commercial kitchen at 110 gallons per day (4 seats), 70 meals (additional words not legible), and a toilet accessory structure at 50 gallons for a total of 230 gallons per day.

Combining the two systems, Mr. Logan found that the total design flow of the existing systems amounted to 545 gallons, thus leaving 245 gallons for commercial use at that time after subtracting out the residential uses (Mr. Logan subtracted out 300 gallons for the residential uses even though he determined that the 2-bedroom required 180 gallons and the 1-bedroom required 110 gallons per day which would equal 290 gallons).

In a permit issued on October 10, 2021 (Permit #473), a new subsurface wastewater disposal system was approved for the 2-bedroom unit located at 11 Garfield Avenue for 180 gallons per day, eliminating the need to use the initial 315 gallon system previously referenced.

Based on the above, there are currently two systems available to service the Property at 3 Garfield Avenue – the 315 gallon system approved in 1991 and the 230 gallon system approved in 2009 for a total of 535 gallons per day. Subtracting the 110 gallons for the 1-bedroom system, that leaves 425 gallons per day for commercial or other uses.

I hope this is helpful, and please let me know if you have any other questions.

Sincerely,



Philip Saucier

cc: Amy Tierney, Town Clerk (via email only at [clerk@longislandmaine.org](mailto:clerk@longislandmaine.org))