

**Town of Mount Desert Planning Board  
Meeting Minutes  
6:00 PM, March 10, 2021**

This meeting was held virtually and was recorded.

**Public Present:** Kirsten Thoft, Greg Johnston, Kevin Royer, Becca White, Millard Dority, Jerry Miller, Katrina Carter, Stephanie Reece, Laure Haro, Tom James, Judy Worrell, Andrea Spalla, Steve Pekluk, Will Winkelman, Dick Broom, Tim Murphy, Kathy Miller

**Board Members Present:** Chair Bill Hanley, Tracy Loftus Keller, Meredith Randolph, Joanne Eaton, Christie Anastasia

**I. Call to order 6:00 p.m.**

Chair Hanley called the Meeting to order at 6:03PM. Board Members were noted.

Tracy Loftus Keller is an Alternate, non-voting member.

MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, MAKING MS. LOFTUS KELLER A VOTING MEMBER FOR THE MEETING.

VOTE:

CHRISTIE ANASTASIA: AYE

JOANNE EATON: AYE

MEREDITH RANDOLPH: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 4-0.

**II. Approval of Minutes**

February 10, 2021:

MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, APPROVAL OF THE FEBRUARY 10, 2021 MINUTES, AS PRESENTED.

VOTE:

JOANNE EATON: AYE

MEREDITH RANDOLPH: AYE

CHRISTIE ANASTASIA: AYE

TRACY LOFTUS KELLER: AYE

CHAIR BILL HANLEY: ABSTAINS

MOTION APPROVED 4-0-1 (HANLEY IN ABSTENTION)

February 24, 2021:

MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, APPROVAL OF THE FEBRUARY 24, 2021 MINUTES AS PRESENTED.

VOTE:

MEREDITH RANDOLPH: AYE

1 CHRISTIE ANASTASIA: AYE  
2 JOANNE EATON: AYE  
3 CHAIR BILL HANLEY: AYE  
4 MOTION APPROVED 4-0.  
5

6 III. **Nonconformity:** – Sections - 4.3.6, 4.3.5 & 4.3.2 *Non-conforming Structures –*  
7 *Reconstruction or Replacement, Relocation and Expansions.*

8 A. **APPLICATION:** #001-2021

9 **OWNER(S) NAME(S):** Kevin M. Royer & Andrea L. Spalla

10 **AGENT(S):** Greg Johnston, G.F. Johnston & Associates

11 **LOCATION:** 130 Northern Neck Road, Mount Desert

12 **TAX MAP:** 015 **LOT(S):** 010 **ZONE(S):** Shoreland Residential Two (SR2)

13 **PURPOSE:** Reconstruction or Replacement, Relocation and Expansion of a  
14 Non-conforming Structure. An existing Camp/Residential  
15 Dwelling Unit.

16 **SITE INSPECTION:** 5:00PM **Masks Required During Site Inspection.**

17 **Nonconformity:** – Sections - 4.3.6 & 4.3.5 *Non-conforming Structures –*  
18 *Reconstruction or Replacement and Relocation.*  
19

20 CEO Keene confirmed adequate Public Notice. Abutters were notified.  
21

22 No Conflict of Interest was found among the Board.  
23

24 Ms. Anastasia reported on the Site Visit. There is a dirt road driveway cul-de-sac access to  
25 the camp. The property has many trees. There is a small structure with a large porch area.  
26 The porch area is high above the water and has several sets of steps and landings leading  
27 to the water. The septic area was seen. A site where a new septic system could be located  
28 was flagged. The property lines to the north and the south of the property were seen.  
29

30 Ms. Loftus Keller noted the building is proposed to be closer to the ground and  
31 expanded slightly. Chair Hanley added that the lot is heavily wooded.  
32

33 Agent Greg Johnston shared a survey of the property. He pointed out where on the  
34 property the area for a replacement septic system is located. There are electrical  
35 easements crossing the property. There are many oldgrowth trees on the property, hiding  
36 much of the building. Mr. Johnston noted significant foundation cracking and  
37 deterioration. He noted that per the LUZO, once a building's foundation requires  
38 replacement it becomes a reconstruction/replacement.  
39

40 The structure is high in comparison to the water. The Applicants intend to lower the  
41 structure. None of the large growth will be removed for reconstruction. The trees will  
42 continue to maintain a buffer for privacy between the property and abutters. Mr.  
43 Johnston noted that if the building were moved back, it would be higher and on steeper  
44 ground, resulting in a building more visible to abutters. Lowering the buildings height will

1 reduce its nonconformity.

2  
3 A modest expansion is proposed. The allowable expansion is up to 30%. The proposed  
4 expansion equates to approximately 14%. Expansion will occur to the rear of the building.  
5 No clearing will be necessary. Additionally, the setback has been moved back to the  
6 furthest point of the decks.

7  
8 Architect Kirsten Thoft noted that when the Applicants purchased the property, their  
9 intent was to preserve the trees and landscape. The condition of the foundation  
10 necessitates a reconstruction. Ms. Thoft shared the floorplan. The building is currently a  
11 one-bedroom/one-bathroom. The Applicant would like to expand it into a two-  
12 bedroom/one-and-a-half-bath. An effort was made to keep the floorplan close to the  
13 original, with some small expansion. Approximately 220sf is being added to the house.  
14 The front door will remain in place. The new foundation will consist of parallel walls  
15 running perpendicular to the land under the house. The upper portion of the house is at  
16 the same height as the original, with another level below that which is lower than the  
17 original house and the deck being lower still. This will remove the sizable gap currently  
18 between the raised deck and the ground.

19  
20 Ms. Thoft reiterated that no trees will be removed by the expansion. Impact to the  
21 neighbors should be negligible.

22  
23 Chair Hanley asked for public comment or questions.

24  
25 Regarding the outbuilding to the right of the driveway, Mr. Johnston stated there were no  
26 plans for changing it. Abutter Steve Peklenk stated that when abutters agreed to the  
27 setback variance for the outbuilding, they were told it was to be an art studio. It is now a  
28 bunkhouse. Applicant Andrea Spalla stated that the building is intended to be used for  
29 storage. Change to the building would disturb the vegetation there and would likely  
30 impact abutters.

31  
32 Ms. Spalla noted she would be happy to connect directly with any concerned abutters  
33 about the plans.

34  
35 Abutter Judy Worrell asked about the distance between the building and the property line.  
36 Mr. Johnston noted the proposed building will be further from the property line than the  
37 existing deck. The distance varies between 25 and 30 feet from the line. Some of the stairs  
38 protruding off the current deck will be removed from that side.

39  
40 Ms. Worrell asked about construction timing. Ms. Thoft estimated that foundation work  
41 could start in May, or earlier. It was noted that times of day for construction would have to  
42 abide by the Town's rules, and further timing requests could perhaps be discussed with the  
43 Applicant.

44

1 CEO Keene asked about the original nonconforming footprint versus what the Assessor's  
2 tax records show. There appeared to be a discrepancy. Ms. Thoft reported that in  
3 measuring square footage she counted everything, including the overhang. Because of  
4 that it might not match up with the assessor's information.

5  
6 The new structure is proposed to be 1331sf including the overhang; 390sf covers the deck  
7 and steps, for a total of 1721sf. Ms. Thoft noted the overhang extends approximately a  
8 foot off the building. Overhangs of the new building will not extend any further than the  
9 overhangs of the existing building. Measurements with overhangs are included in the  
10 boundary survey submitted.

11  
12 Ms. Worrell noted the new septic system is closer to the road. Mr. Johnston confirmed it  
13 was. There is no record on file for the existing septic system. There is no confirmation  
14 through records or testimony that the septic system and leach field are functional. The  
15 plan is to eventually drill a new well.

16  
17 Ms. Worrell asked to see the picture of the proposed structure, which the Planning Board  
18 accommodated. Ms. Thoft noted that building color has not been discussed with the  
19 Applicants. She envisions the siding materials to be hardy plank.

20  
21 Chair Hanley asked if there were further comments. There were none.

22  
23 Chair Hanley closed the public hearing.

24  
25 A review of Section 4.3.6 ensued and is attached to these Minutes. Chair Hanley read  
26 Section 4.3.6.

27  
28 A review of Section 4.3.5 ensued and is attached to these Minutes. Chair Hanley read  
29 Section 4.3.5.

30  
31 With regard to septic Mr. Johnston reported a new septic system is flagged on site. It will  
32 accommodate the construction proposed including expansion of the building by a  
33 bedroom/half-bathroom.

34  
35 Chair Hanley noted this move sets the septic further back from the water. Moving the  
36 building would put it more adjacent to the septic system.

37  
38 Ms. Randolph noted that there are cases where every standard is not met. Chair Hanley  
39 agreed septic is not a constraint to them being able to relocate the footprint to the  
40 greatest practical extent. Nevertheless, he felt moving the septic further from the water  
41 and decommissioning an unknown system was an environmental improvement.

42  
43 Ms. Randolph reiterated that moving the septic system is not relevant to the question of  
44 building location.

1  
2 Mr. Johnston stated that Section 4.3.5 of the Ordinance requires the Applicant  
3 demonstrate that a system can be in compliance with Maine Subsurface Rules. CEO Keene  
4 agreed this was a better system design to meet the requirements of the Maine Subsurface  
5 Rules. The Board must determine if moving the septic system back prevents the Applicant  
6 from being able to meet the greatest practical extent as determined by the Ordinance.  
7

8 Ms. Randolph suggested the Findings of Fact to be that the new septic location is being  
9 considered in a sensitive manner. Consideration is not relevant to the building necessarily  
10 remaining in the existing location and not a restrictive measure in potentially moving the  
11 building.  
12

13 CEO Keene did not believe the Finding was accurate. The Planning Board must consider  
14 the issue. If the existing system is being moved or relocated because there is no record  
15 supporting the integrity of the existing system, particularly if the Applicant requires it to be  
16 expanded for an additional bedroom. It's part of the criteria in determining whether the  
17 building has been moved to the greatest practical extent. Moving the system to a new  
18 location where the design meets all the criteria of the Maine Subsurface Wastewater Rules  
19 frees up the current system space for consideration of moving the building back.  
20

21 Ms. Randolph agreed, the area has no vegetation that would be disturbed. The tank will  
22 be removed from the field.  
23

24 Mr. Johnston felt the issue to be weighed in on is the septic system's existing location, and  
25 the new location, and meeting the setbacks to the greatest practical extent. Moving the  
26 building requires moving parking as well, and extensive tree removal for any potential new  
27 site. Not every criteria must be directly affirmative. The Board must consider the situation  
28 and Mr. Johnston felt they had been diligent in their efforts. Each criteria must be used to  
29 determine what is the greatest practical extent as a whole.  
30

31 Ms. Anastasia believed moving the septic system further from the water is an  
32 improvement. She did not feel moving the leach field and moving the building further back  
33 had to be linked. Such a link almost felt like penalizing an Applicant for pushing the septic  
34 field further back. Ms. Randolph clarified that the Planning Board was not necessarily  
35 forcing the Applicant to move the building, but moving the septic system opens the space  
36 where it currently is as an option for building relocation.  
37

38 CEO Keene felt there could potentially be a way to use and expand the existing system.  
39 She's seen no proof confirming the current system is malfunctioning, or proof that it  
40 couldn't be expanded. She pointed out that a new septic system will require trees to be  
41 cut on the new site.  
42

43 Chair Hanley felt that getting any septic system further from a water body is a benefit that  
44 outweighs the removal of vegetation in order to accommodate it.

1  
2 The current septic tank is approximately 60 feet from the water. The leach field is at the  
3 75-foot setback line. The field itself will not need to be dug up unless a clear system  
4 malfunction is found. The tank will be removed. Mr. Johnston did not feel it was good  
5 practice to re-energize a system that's old and been only sporadically used, especially  
6 when there's a better option available. The route the Applicant proposes to go is the most  
7 environmentally responsible.

8  
9 Ms. Randolph asked what it was that prevents moving the building back 10 feet, so the  
10 deck is out of the 25-foot setback area at least. The area of the septic system will be  
11 disturbed anyway.

12  
13 Mr. Johnston reiterated that only the tank will be removed. The tank is in an area without  
14 trees. Moving the building back will raise it up six to eight feet higher. It will necessitate  
15 removing trees that create the canopy on the property. Minimizing cutting, excavation and  
16 movement are the highest priorities for reducing erosion. Moving the building could be  
17 done, but is it practical to dig the area out and remove the large pines in order to move the  
18 building? The criteria to be considered must be weighed together as a whole. The Board  
19 must determine whether other criteria can be deemed lower priorities in comparison to  
20 movement that will result in more excavation, tree removal, a building higher on the land.  
21 The Board has considered the septic as required. The Applicant has shown there is a septic  
22 option that meets State regulations.

23  
24 Chair Hanley said the current understanding is that reconstruction in the present location  
25 requires no vegetation removal. If the Planning Board determines the building should be  
26 moved back behind the 25-foot setback it will necessitate vegetation removal. Ms.  
27 Randolph argued vegetation removal would only occur at the back of the building. It  
28 would provide an opportunity to plant on the water side of the building. Mr. Johnston  
29 argued that the vegetation to be removed would be mature growth trees and cannot be  
30 replaced with plantings.

31  
32 Chair Hanley reminded the Board that the point being considered is the septic system. The  
33 relocation of the septic system is not preventing the Applicant from moving the building  
34 back to the greatest practical extent. Keeping the septic where it is and amending the  
35 existing system is not practical. It would require a complete system reconstruction as the  
36 current system is unknown.

37  
38 CEO Keene pointed out that the Subsurface Wastewater Rules notes that a septic  
39 replacement is allowed to go down to 50 feet from a major watercourse without a  
40 variance.

41  
42 Mr. Johnston maintained that keeping the building in its location and finding a code-  
43 compliant septic system without any variances is the intent of the ordinance. Anything  
44 else would require further erosion mitigation planning and efforts made to maintain

1 privacy.

2  
3 A review of Section 4.3.2 ensued and is attached to these Minutes.

4  
5 Mr. Johnston stated a structure within the 75-foot setback is allowed to be expanded,  
6 providing certain criteria are met. The proposed building moves the structure further back  
7 from the water by lowering and moving some of the nonconforming decks and stairs. The  
8 building will be expanded away from the water. The building will not get closer to existing  
9 sideyard setbacks. The total expansion is approximately 14% of the allowed 30%  
10 expansion. The proposed building will be below the height of the current building.

11  
12 CEO Keene noted Section d of 4.3.2 is the section the Board must review.

13  
14 Chair Hanley read excerpts of Section 4.3.2.d which states that structures that do not meet  
15 the water body setbacks may be expanded or altered in the following way: For structures  
16 less than 75 feet from the normal high-water line the maximum combined total footprint  
17 for all structures may not be expanded to an area greater than 1,000 square feet or 30%  
18 larger than the footprint that existed on January 1, 1989, whichever is greater.

19  
20 It was clarified the building was being expanded by 14%.

21  
22 Section 4.3.2.d states that maximum height of structures less than 75 feet from the normal  
23 high-water line may not be made greater than 20 feet or the height of the existing  
24 structure, whichever is greater.

25  
26 It was clarified the building proposed to be lower than the existing structure, as shown on  
27 Sheet P-2 presented by the Applicant.

28  
29 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, APPROVAL OF THE  
30 APPLICATION AS PRESENTED.

31 VOTE:

32 MEREDITH RANDOLPH: AYE

33 CHRISTIE ANASTASIA: AYE

34 JOANNE EATON: AYE

35 TRACY KELLER: AYE

36 CHAIR BILL HANLEY: AYE

37 MOTION APPROVED 5-0.

38  
39 **A. APPLICATION: #002-2021**

40 **OWNER(S) NAME(S):** NN Cove, LLC

41 **AGENT(S):** Winkelman Architecture

42 **LOCATION:** 7 Evergreen Way, Mount Desert

43 **TAX MAP:** 015 **LOT(S):** 004 **ZONE(S):** Shoreland Residential Two (SR2)

44 **PURPOSE:** Reconstruction or Replacement and Relocation of a Non-

Conforming Structure. An existing Camp/Residential Dwelling Unit.

**SITE INSPECTION: 4:35PM Masks Required During Site Inspection.**

CEO Keene confirmed adequate Public Notice. Abutters were notified.

Ms. Loftus Keller reported on the site visit. An Application for the property was presented to the Planning Board and approved last year at this time, but the building has not been constructed. This is a new Application presenting a building with a more “stepped” configuration in an effort towards construction that is more harmonious with the land.

Becca White of Winkelman Architecture reminded the Board that the building and property have already been vetted through the Planning Board back in approximately March of 2020. The design approved then was modern. This design will have a more traditional aesthetic. The building is proposed to be all one story but will step up the slope with the topography. The material palette will be a cedar siding and darker colors that will recede into the landscape. The porch will be lower. The structure will be placed further from the 75-foot setback and will be less non-conforming in its square foot area. The existing porch is proposed to be moved to the North side of the building, further from the neighbors. The lot to the North is owned by the same family. The family has tried to tie the other existing buildings on neighboring lots they own together. The Applicant prefers not to move the existing structure further back, as its current location is part of a master design plan for the area, including the adjacent properties.

Sections 4.3.5 and 4.3.6 were addressed last year with the previous renovation. Nothing has changed since that time. No vegetation has been removed, and none is expected to be removed. Vegetative buffers facing the abutting properties and the water will remain in place. The existing septic system will remain in place.

Chair Hanley inquired why the proposal is not being considered an amendment to a previously approved application. CEO Keene explained that the Application proposes a substantial change from what was previously approved and therefore must come before the Planning Board. Additionally, a reconstruction/replacement is not considered as a conditional use application is. Conditional Use Approval has a process in place for amendments. Reconstruction/replacement does not. Regardless of the size of change to something previously approved, it must come before the Planning Board.

Chair Hanley asked for public questions or comment. There were none.

No Conflict of Interest was found among the Board.

A review of Section 4.3.6 was made and is attached to these Minutes.



1  
2 CEO Keene confirmed a full review of Section 4.3.5 was required, regardless of the fact  
3 that the Board reviewed the section just a year ago. The proposed changes are different  
4 from those of the previous Application.

5  
6 A review of Section 4.3.5 was made and is attached to these Minutes.

7  
8 Ms. White reported the size of the lot is 3.13 acres. The area is in the Shoreland  
9 Residential 2 Zone.

10  
11 Ms. Anastasia asked about the abutter to the property across the dirt road to the west.  
12 CEO Keene noted the property across the Northern Neck Road belongs to Dr. Paul M.  
13 Rudolph. He was sent an abutter's notice.

14  
15 Ms. White shared her screen to show the topography of the property. The site area is  
16 steep. Existing flat areas, aside from the building footprint, include the septic field, and  
17 a parking area. The existing building is on one of the flatter areas. Moving the site area  
18 will involve the removal of vegetation.

19  
20 Ms. Randolph pointed out that while directly behind the building is steep, there is an  
21 area further back that appears to be adequately flat. Ms. White believed there was a  
22 significant amount of vegetation in the area Ms. Randolph referred to. She pointed out  
23 an area where there may be ledge as well.

24  
25 Architect Will Winkelman reported the septic system is directly behind the building.  
26 Additionally, there is a power line easement crossing the property. The area is full of  
27 mature vegetation. A backup septic system to be used if the current septic system fails  
28 has been designated in the area Ms. Randolph referred to. This makes it difficult to  
29 move the building further back.

30  
31 Ms. Randolph reiterated that within the context of just the topography, there are other  
32 relatively flat areas on the property the building could be moved to.

33  
34 The 75-foot setback line was pointed out on the plan.

35  
36 Mr. Winkelman reported that a septic designer visited the site last year to determine  
37 where a backup system could be located should the current system fail. It was  
38 determined that the area being considered could be used, and test pits were made.  
39 This was one of the determining factors in deciding relocation could not occur in that  
40 flat area.  
41

1 Ms. Randolph did not believe steep slope, setbacks, power line easements, or septic  
2 limited the building potential for relocation. On the issue of slope alone, there are other  
3 areas for potential relocation. They've sited the area for a replacement septic system,  
4 and there may be other reasons not to move, but with regard to the issue of slope  
5 alone, there are level places on the three-acre lot of land to which the building can be  
6 moved.

7  
8 Ms. Anastasia agreed with Ms. Randolph, however a GoogleEarth image of the lot  
9 submitted by the Applicant shows the growth on the site. So, yes, there are areas the  
10 building can be moved to. But doing so adversely affects vegetation.

11  
12 Ms. White advised that she was not a part of last year's Application process. At that  
13 time it appears the Board determined that the steep topography was a constraining  
14 factor inhibiting relocation.

15  
16 Chair Hanley pointed out that the currently proposed footprint is dimensionally  
17 different than what was previously proposed.

18  
19 Ms. Randolph said slope was just one factor. Slope constrains moving the building back  
20 to just behind the 75-foot setback. However, there are other flat locations further back  
21 on the 3-acre lot to which the building could be moved.

22  
23 CEO Keene contended that while it was reviewed and approved last year, the Board has  
24 the right to change its opinion. Last year's Minutes were presented as part of the  
25 submittal. The Applicant is changing the design of the building, but other than that,  
26 there is little difference between this Application and the last one.

27  
28 Ms. Randolph tried to recall whether there were compelling reasons tying the building  
29 to the location during the last Application submittal. Ms. White reported the last  
30 iteration of the building retained the footprint but moved the building slightly back.  
31 This iteration has a new design and layout and will further move the footprint back.

32  
33 Mr. Winkelman explained the building currently has a concrete block foundation which  
34 is crumbling. It requires replacement. This is one of the issues forcing new  
35 construction.

36  
37 A plan submitted to the Board shows an outline of the building as currently proposed, as  
38 well as a dashed-line drawing of last year's proposed plan superimposed. Portions of  
39 the currently proposed plan are further back from the water than last year's plan,  
40 making the proposed building design less non-conforming than last year's design.

1 Additionally, the current design extends back into the topography. Could the design as  
2 proposed complicate moving the house to another site?

3  
4 Mr. Winkelman stated the goal of the design was to make it less non-conforming and  
5 improve the aesthetic. The conforming portion of the building is terracing up, using the  
6 topography of the site.

7  
8 Ms. White reported that due to the heavily wooded condition of the site, relocation  
9 would require a sizable amount of vegetation removal, which would adversely affect  
10 erosion. The proposed building will have strip footings in the foundation. This will limit  
11 the amount of disturbance to the soil. Currently the frost wall is concrete block. The  
12 foundation will have a wood screen so it will not be open to the elements. Water will  
13 not be able to flow through under the proposed building. There will be a linear concrete  
14 cross-wall built in the conforming area of the footprint. The frost wall will go to four  
15 feet below grade and create a crawlspace but no habitable space.

16  
17 The foundation area within the 75-foot setback is a more open design than the section  
18 behind the setback.

19  
20 Ms. White noted there is a small garage on the property as well as an adjacent  
21 boathouse. Neither will be affected. The abutting property's residence was pointed  
22 out. There is no reason the property will be affected by the changes proposed.

23  
24 The current septic system was design in 1992. There are no plans to relocate or change  
25 the system. The system is for a four-bedroom residence. The proposed building will  
26 have three bedrooms. Septic relocation was felt to be not practical. It is currently  
27 functioning and moving the system would require vegetation removal. The location of  
28 the system is uphill of the existing structure. It was Ms. White's understanding that the  
29 current septic system is confirmed to be adequately functioning and operating in  
30 compliance with the subsurface wastewater disposal rules.

31  
32 Ms. Randolph felt that having a functioning septic system was a good argument for  
33 maintaining the current site for the building.

34  
35 Ms. White confirmed that no vegetation, or very minimal, will need to be removed for  
36 the work proposed. Access to parking can be maintained without removing vegetation.  
37 There are old-growth trees on the property and immediately behind the existing  
38 footprint. A minimum amount of vegetation will be removed to accommodate the  
39 uphill expansion behind the 75-foot setback. The area is already relatively clear, due to  
40 it being used as existing parking area. Ms. Black added that there is a plan in place to  
41 plant more trees around the property.

1  
2 Chair Hanley suggested that having a plan that identified the types and sizes of trees on  
3 the property in greater detail would have been beneficial to have. He noted that the  
4 Site Visit made it apparent how dense the tree growth was on the property.

5  
6 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, APPROVAL OF THE  
7 APPLICATION, AS PRESENTED.

8 VOTE:

9 JOANNE EATON: AYE

10 CHRISTIE ANASTASIA: AYE

11 TRACY LOFTUS KELLER: AYE

12  
13 Ms. Randolph protested that the Board has created a weak acceptance of the  
14 Application. She worried about the precedence it sets. She felt the Board should recap  
15 within the Motion the reasons why the Applicant cannot move the building out of the  
16 setback.

17  
18 Voting ceased.

19  
20 Using vegetation as an example, Ms. Randolph asserted that the Board usually makes a  
21 finding that vegetation removal will result in making the building more visible from the  
22 water or other properties. This type of impact has not been determined by the Board.  
23 She felt it set a precedent of allowing the building to remain where it is without  
24 including compelling reasoning supporting the decision.

25  
26 Chair Hanley suggested the Motion could be revised to include more detail, including  
27 compelling review criteria.

28  
29 Ms. Randolph maintained that the building could be moved to the level area at the back  
30 of the lot, near the road. Vegetation would have to be removed, but this is a normal  
31 requirement of construction.

32  
33 Mr. Winkelman noted that the level area is the only other area on the property where a  
34 replacement septic system could go, should the current system fail. Ms. Anastasia  
35 noted the Application states that moving the building back and further up the hill would  
36 leave it more exposed to abutters.

37  
38 Ms. Randolph argued that it was previously stated there was no effect on abutting  
39 properties. Now there appears there is one. Ms. Anastasia recalled that what had been  
40 discussed was that where it is on the property would not have an adverse impact on  
41 abutting properties.

1  
2 Ms. Eaton inquired whether Ms. Randolph had findings that could be added to the  
3 Motion to make her feel more comfortable. Ms. Eaton agreed that more detail  
4 providing support for the Motion would improve the decision and provide closure to the  
5 issue.

6  
7 Ms. Randolph felt she would need assistance. She did not feel it was necessarily  
8 reasonable to ask the Applicant to forsake the current location and relocate to the back  
9 side of the lot near the road. However, the back of the lot is a potential site in this  
10 situation. Why would the Board not require them to move to that site, particularly if  
11 the current building is being torn down completely?

12  
13 Ms. Anastasia suggested as an addendum to the Motion stating that while there is  
14 potentiality for the building to be located on the other flat section of the property, in  
15 looking at the consideration of the functioning location of the current septic system, and  
16 the propensity for the minimal amount of vegetation to be removed, and the potential  
17 for soil erosion, the conclusion is that the proposed area of reconstruction has the most  
18 minimal impact.

19  
20 CEO Keene clarified for the Board that in the situation of non-conformity, the Board is  
21 trying to compel, if possible, conformance to the greatest practical extent. If the Board  
22 cannot do so, it must justify why. If it can be done, then the Board must require the  
23 building be moved back to the greatest practical extent. Ms. Randolph's concerns are  
24 red flags to the Board. Ms. Anastasia is trying to determine justifications. The Board  
25 must look to the Ordinance when addressing nonconformities and try, if possible, to do  
26 away with them.

27  
28 Ms. Randolph noted that the building can't be moved back just a small amount. The  
29 building will have to be moved to the other side of the septic system and all the way up  
30 by the road. It is a sizable demand.

31  
32 CEO Keene reiterated the Board must determine if it can be done. The criteria of  
33 Section 4.3.5 must be looked at as if there were no other possible places the building  
34 can go. If the building can be moved, then it must be determined whether doing so is  
35 considered to be a hardship. The Applicant must justify hardship in the Application. The  
36 cost of the move is not a criteria the Board needs to consider. Hardship is a criteria the  
37 Board can consider.

38  
39 Mr. Winkelman inquired whether there was a way to take into consideration that the  
40 flat area is the area a future septic replacement must go.

41

1 CEO Keene noted that the current septic system is functioning, therefore the  
2 replacement site not a critical consideration. Mr. Winkelman agreed that was the  
3 current situation, however septic systems fail. Having a dedicated replacement septic  
4 system site in place is prudent.

5  
6 Ms. Randolph recalled discussing the possibility of ledge being in the area dedicated to a  
7 replacement septic. Ms. White referred to Exhibit 4 of the Application. It was  
8 confirmed ledge is downhill from the replacement septic system site. The level ground  
9 being discussed as a site for the building is where a replacement leach field would be  
10 proposed to go.

11  
12 Ms. Anastasia referred to a note within the Ordinance stating that in addition to the  
13 criteria, the physical condition and type of foundation present should be considered. It  
14 was noted this was due to the possibility that an existing foundation might be reused,  
15 causing compelling reason to leave the building in that location. It was confirmed that  
16 none of the existing foundation could be reused, due to its poor shape.

17  
18 Chair Hanley felt that if there were a finding to relocate the proposed building to a  
19 completely new location, the design would have to change. Ms. White agreed. It was a  
20 very site-specific design. CEO Keene felt there was little change in the plan, although  
21 there is a change to aesthetics. Chair Hanley noted the design pulls the building back  
22 from the water further than the current building is located.

23  
24 CEO Keene clarified she is not advocating for any particular decision. Her goal is to  
25 maintain what the State and local ordinances require.

26  
27 Chair Hanley noted that what a project can potentially be, relative to a conforming  
28 relocation, has been discussed before, including the continuance of established  
29 shoreline character, scale, and natural beauty. If the Board was to make blanket  
30 requirements that a building must be relocated to behind the setback, it would change  
31 the character of the established shorefront. Structures behind setbacks can be  
32 potentially 35 feet tall, different in scale and type, and create different impact on the  
33 area. He felt such a point was worth considering. Decisions made by the Planning  
34 Board could change the character of the shorefront.

35  
36 Ms. Randolph felt that was exactly what the Ordinance asks of the Board. It is not  
37 environmentally sensitive to build close to waterfront. The Ordinance asks the Planning  
38 Board in all potential cases to try to convince people to start moving buildings back. The  
39 ensuing change of character is exactly what is the desired effect. Shoreline is for  
40 vegetation and wildlife, and not decks and heavy human activity. The potential is there  
41 for larger buildings to be built behind the setback once a building is required to move

1 back. There are legitimate reasons not to move a building back. Threatening to put an  
2 enormous, unattractive building up should not be one of them.

3  
4 Chair Hanley agreed. The task is a balancing act, and it is not getting easier.  
5 Applications are not clear cut and must be decided on a case-by-case basis. He felt  
6 there was value to established shoreline character and scale and these decisions affect  
7 character.

8  
9 Ms. Randolph pointed out that not all Board Members have to vote in favor. Three  
10 members have already voted for approval of the Application. Ms. Randolph is not  
11 necessarily advocating forcing the building to move back. But a strong argument has  
12 not been put forth that supports allowing the building to remain in the current location.  
13 If she votes against, while others vote to approve it, the Application may still be  
14 approved, but with the recognition that this Application has a weak argument. Such  
15 action may forestall setting precedent.

16  
17 Ms. Randolph did not feel this was a case where the building should be moved back,  
18 because the distance involved is so great. But there appears to be no way to frame that  
19 with adequate supporting evidence under the criteria the Board must use to make the  
20 determination.

21  
22 CEO Keene stated it was the Planning Board's purview to try to comply with  
23 conformance. The goal is to diminish nonconformities. Application review is a case-by-  
24 case situation.

25  
26 Ms. Anastasia inquired about how to review the situation and conformity to the  
27 greatest extent practicable. Moving this building back puts the garage and the septic in  
28 the wrong places. This will affect the established driveway.

29  
30 CEO Keene noted she reviews the same criteria the Planning Board does with regard to  
31 a nonconformity under her purview. If the setbacks can be met, she requires they be  
32 met, approximately 90% of the time. Nonconformities must be alleviated if possible.  
33 There are some property rights regarding a nonconformity. There must be criteria  
34 supporting why a nonconformity must stand. But if a property can be brought into  
35 conformity, it needs to be required. Monetary concerns are not a criterion the Planning  
36 Board must consider.

37  
38 Ms. Anastasia noted monetary concerns may not be a criterion, but it is a consideration  
39 when determining the greatest extent practicable on such an application. CEO Keene  
40 maintained there must be supporting evidence for why such a nonconformity cannot be

1 alleviated. If the evidence is not convincing, the property must be brought into  
2 conformity.

3  
4 Ms. Anastasia felt like this penalizes people with larger lots. Perhaps this is an instance  
5 where the Board needs to ask of the Applicant if there is further pertinent information  
6 to be shared supporting why the nonconformity should stand. CEO Keene stated the  
7 burden is on the Applicant to prove that the criteria cannot be met and provide reasons  
8 why it cannot be met.

9  
10 Ms. Anastasia wondered how the Application for the same property a year ago was  
11 approved, without such considerations. CEO Keene did not know. Reviews are done on  
12 a case-by-case scenario. If the Board feels the Applicant meets the criteria listed under  
13 Sections 4.3.6 and 4.3.5, then the Board can make that decision, and the decision is the  
14 justification behind the Application should it be appealed.

15  
16 It was summarized that there has been a Motion and second to approve the Application,  
17 and three Board members have voted.

18  
19 A REVOTE OF THE MOTION WAS TAKEN:

20 JOANNE EATON: AYE

21 TRACY LOFTUS KELLER: AYE

22 CHRISTIE ANASTASIA: NAY

23 MEREDITH RANDOLPH: NAY

24 CHAIR BILL HANLEY: NAY

25 MOTION TO APPROVE THE APPLICATION DENIED, 2-3 (ANASTASIA, RANDOLPH, HANLEY  
26 OPPOSED).

27  
28 A review of Section 4.3.2 is not necessary.

29  
30 Chair Hanley noted the Board's vote signifies the feeling of a broader effort towards  
31 conformity of the building. CEO Keene agreed. She added that the Board's Decision can  
32 be appealed.

33  
34 Ms. White confirmed that next steps include either to re-apply with a more conforming  
35 Application design or appeal the decision through the Zoning Board of Appeals.

36  
37 Mr. Winkelman asked whether, if the current building design were pushed back behind  
38 the 75-foot setback, the Application could be reheard. CEO Keene explained that if all  
39 setbacks can be met it becomes the purview of the CEO. Ms. Baker noted there is a plan  
40 that was approved last year. Can that plan still be used? CEO Keene noted that if the  
41 permit has been applied for and foundation or structure construction ensued within 12



months of the Application's approval the plan can be used. Otherwise, the Application is void.

MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, FOR A FIVE-MINUTE RECESS.

VOTE:

CHRISTIE ANASTASIA: AYE

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

JOANNE EATON: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 5-0.

A five-minute recess ensued.

Ms. Eaton suggested continuing the meeting to a date certain.

Discussion ensued regarding a date certain. After some discussion, it was agreed to continue the meeting to Wednesday, March 17, 2021, 6PM.

MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, CONTINUING THE MEETING TO WEDNESDAY, MARCH 17, 2021, 6PM.

VOTE:

JOANNE EATON: AYE

MEREDITH RANDOLPH: AYE

CHRISTIE ANASTASIA: AYE

TRACY LOFTUS KELLER: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 5-0.

The Meeting ended at 9:40PM.

IV. **Conditional Use Approval Application(s):**

**A. Conditional Use Approval Application #003-2021**

**OWNER(S) NAME(S):** Stewart Family Waters Edge, LLC.

**AGENT:** Thomas James

**LOCATION:** 28 Sargeant Drive, Northeast Harbor

**TAX MAP:** 005 **LOT:** 047 **ZONE(S):** Shoreland Residential 2 (SR2)

**PURPOSE:** Section 6B.6 Fences and Walls, exceeding CEO Authority.

**SITE INSPECTION:** 4:05PM **Masks Required During Site Inspection.**

THIS ITEM WAS CONTINUED TO MARCH 17, 2021, 6PM.

**B. Conditional Use Approval Application #004-2021**

**OWNER NAME(S):** Mount Desert 365

**APPLICANT(S):** College of the Atlantic

**AGENT(S):** Gregory Johnston, G.F. Johnston & Associates

**LOCATION:** 141 Main Street, Northeast Harbor

**TAX MAP:** 024 Lot: 078 **ZONING DISTRICT:** Village Commercial (VC)

**PURPOSE:** Section 3.4 Dwelling, Multiple. A structure or a portion of a structure designed for human habitation that includes facilities for cooking, eating, and sleeping for three or more families. The units may or may not have an internal connection to another unit or units. (3) 5-Bedroom and (1) 2-Bedroom Residential Dwelling Units in a single structure.

**SITE INSPECTION:** 3:45PM **Masks Required During Site Inspection.**

THIS ITEM WAS CONTINUED TO MARCH 17, 2021, 6PM.

**V. Adjournment**