

**Town of Mount Desert Planning Board
Planning Board Meeting Minutes
Meeting Room, Town Hall
6:00 pm, June 8, 2016**

Public Present

Jim Keene, Priscilla Keene, Jack Russell, Steve Weinrich, Linda Hayward, Greg Benz, Sandy Wilcox, Ellen Gilmore, Nelson F. Goodwin Jr., Peter W. Bucklin, Jules Opton-Himmel, Annette Carvajal, Mark Reece, Jean Travers, Susan Ferrante-Collier, John Collier

Board Members Present

David Ashmore, Chairman Bill Hanley, Joanne Eaton, Lili Andrews, Meredith Randolph, Beth Renault (Planning Board Alternate Member)

Also present were Attorney for the Board P. Andrew Hamilton, CEO Kimberly Keene, and Recording Secretary Heidi Smallidge

I. Call to Order

Chairman Hanley called the meeting to order at 6:00 pm. Voting members were noted.

II. Approval of Minutes

March 9, 2016: Minutes were tabled for lack of quorum.

April 27, 2016: MS. EATON MOVED, WITH MR. ASHMORE SECONDING, TO APPROVE THE MINUTES AS PRESENTED. MOTION APPROVED 5-0.

III. Other:

5.4 Review Procedures

A. Review of Applicant's request for a preliminary ruling on whether the revised plan meets setbacks.

Conditional Use Approval Application #032-2014

OWNER(S): James Owen Parker Harris c/o Shepard Harris

APPLICANT(S): Parker Harris

AGENT(S): Jules Opton-Himmel and Erick Swanson

LOCATION: Lakeside Road/Echo Lake Road, Mount Desert

TAX MAP: 009 **LOT(S):** 120-009 **ZONE(S):** Shoreland Residential 2 (SR2)

PURPOSE: Sections 3.4 & 6.C.7 – Marine and Freshwater Structure Performance Standards

It was determined that no public notice was necessary for the pre-application review. No conflict of interest was found.

It was agreed that deliberations should address how setbacks apply to the

1 proposed structure.
2

3 Agent for the Applicant, Jules Opton-Himmel, referred to a memo submitted by the
4 applicant's attorney, Jonathan Harris, who was not in attendance.
5

6 The memo listed three setback scenarios impacting the application:

7 A – The setback doesn't apply because the applicant owns the land on both
8 sides of the road.

9 B – There is a 25-foot setback because of a footnote in the ordinance
10 referring to a 25-foot setback on a private right of way.

11 C – The setback should be from Lakeside Road and not Echo Lake Road.
12

13 Mr. Opton-Himmel felt options B and C should be taken together to mean that the
14 25-foot setback should be taken from Lakeside Road.
15

16 Jack Russell, representing the Echo Lake Road Association, and the Echo Lake
17 Owner's Association, pointed out that Section 3.5, 6.C8 and 8 of the LUZO require
18 that any marine structure proposed for the north-end wetland must be set back 50
19 feet from both the Lakeside Road and Echo Lake Road. Mr. Russell felt the LUZO
20 was clear that a landowner could not grant himself relief from the setback rule on
21 Echo Lake Road. Mr. Russell read the definition of "lot" from the LUZO: "*A parcel
22 of land described on a deed, plot, or similar legal document, and is all contiguous
23 land within the same ownership, provided that lands located on opposite sides of a
24 public or private road shall be considered each a separate parcel or tract of land
25 unless such road was established by the owner of land on both sides of the road
26 thereof after September 22, 1971.*" Mr. Russell opined therefore, that the lot on
27 either side of the road in question is two lots, and must follow the 50-foot setback
28 rule.
29

30 Discussion ensued regarding various aspects of the setback requirements.
31

32 Attorney Hamilton summarized three setbacks to consider:

- 33 - water setback - Mr. Hamilton opined that there was no water setback applicable
34 to the situation.
- 35 - Attorney Hamilton reiterated the arguments presented by the applicant:
- 36 - road setback -
37
 - 38 ○ the applicant abuts on both sides of the road and therefore can waive the
39 setback
 - 40 ○ the setback is 25 feet for a private way
 - 41 ○ the right of way bisects the lot and therefore no setback applies
 - 42 ○ the setback applies from the Lakeside Road only.
- 43 - sideline setback - the sideline setback is applicable to the road setback and
44 therefore can be waived.
45

46 Attorney Hamilton summarized the arguments presented by the interested parties:

- road setback –
 - o if there is the potential for a sideline setback waiver, then the true abutter is not the applicant but another property owner who does not waive the setback.
 - o The setback should be 50 feet from the roadway
 - o The setback should be measured from both the Lakeside Road and Echo Lake Road.

With regard to these arguments, Attorney Hamilton's assessment was

- The road setback is not a sideline setback. Maine Municipal Association takes the position that such a waiver cannot be applied by the Planning Board. Mr. Hamilton does not feel the sideline setback applies.
- The LUZO distinguishes between a public road setback and a private road setback. The setback requirement for a private road is 25 feet. Attorney Hamilton opined that the 25' setback requirement is correct given the Public Works Director's confirmation that both roads are private ways. With regard to the question of whether the setback is measured from the road or the right of way, Attorney Hamilton referenced Footnote C which is applicable to a public or private road and provides that the setback "*is measured from the road surface or edge of legally established right of way if there is no road that exists.*" Therefore, the setbacks needed to be measured from both the edge of Echo Lake Road and the edge of Lakeside Road.
- With regard to the definition of setback on page 8-15, it notes "*setback is the horizontal distance measured in a straight line from any property line, shoreline, road, or edge of legally established right of way if no road exists.*" Attorney Hamilton felt it was clear the setback had to be measured from the edge of the road, and the setback must be applied to both roads.

Attorney Hamilton expressed his view that given the question of the setback being measured from the road vs. the right of way, the Board would be within its right to measure the setback at the right of way. Mr. Opton-Himmel affirmed this would not make a difference to the proposed boardwalk. Mr. Russell reiterated his view that legislative history made it clear that the setback should be 50 feet.

After lengthy discussion, MS. EATON MOVED, WITH MR. ASHMORE SECONDING, TO FIND THAT THE SETBACK MUST OCCUR FROM THE EDGE OF THE RIGHTS OF WAY FOR BOTH LAKESIDE ROAD AND ECHO LAKE ROAD AND THE SETBACKS WOULD BE A DISTANCE OF 25 FEET, AS RECOMMENDED BY ATTORNEY HAMILTON. MOTION APPROVED 4-1-1 (RANDOLPH AGAINST, RENAULT IN ABSTENTION).

B. The Colonel's Restaurant – 143 Main Street, Northeast Harbor, Tax Map 024 Lot 077, Village Commercial District

Public Notice was not necessary. No conflict of interest was found.

1 It was noted the applicant is requesting a sign where existing signs already are.
2 One is proposed for across from the Harborside Road, and the other will be past
3 Hadlock Pond. CEO Keene noted the signs are existing. Route 198 is a State
4 road, and Harborside is a Town road.

5
6 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO RECOMMEND
7 TO THE BOARD OF SELECTMEN THE PLACEMENT OF TWO PROPOSED
8 SIGNS ON EXISTING POSTS. MOTION APPROVED 5-0-1 (RENEAULT IN
9 ABSTENTION).

10
11 **IV. Conditional Use Approval Application(s):**

12 **A. Conditional Use & Approval Application #006-2016**

13 **OWNER(S):** Nelson F. & Kristen L. Goodwin, Jr.

14 **APPLICANT(S):** Nelson F. Goodwin, Jr.

15 **LOCATION:** 5 Lower Dunbar Road, Seal Harbor

16 **TAX MAP:** 031 **LOT(S):** 092-002 **ZONE(S):** Village Residential 1 (VR1)

17 **PURPOSE:** Section 3.4 – Services 3 (Not Wholly Enclosed)

18 **SITE INSPECTION:** 3:45 PM
19

20 Mr. Ashmore confirmed adequate public notice. Abutters were notified. There was
21 no conflict of interest found.
22

23 Ms. Eaton reported on the site visit. The applicant is currently using the old Seal
24 Harbor Water Co. building and currently has materials outside. The applicant is
25 proposing a larger building to store materials inside. The neighbor across from the
26 property responded favorably. The agent for the Applicant noted the intent is to
27 keep everything inside, but the applicant would like approval for outside storage, to
28 cover that contingency. Ms. Andrews was concerned with where exterior storage
29 would be and if it would be screened from the neighbors. The Applicant stated he
30 would do some landscaping and would specify the outside storage area. He hoped
31 there would be floor space available for the occasional interior work.
32

33 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO FIND THE
34 APPLICATION COMPLETE. MOTION APPROVED 5-0-1 (RENAULT IN
35 ABSTENTION).
36

37 MS. EATON MOVED, WITH MR. ASHMORE SECONDING, TO APPROVE THE
38 APPLICATION.
39

40 MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, TO USE THE
41 SHORT FORM. MOTION APPROVED 5-0-1 (RENAULT IN ABSTENTION).
42

43 A review of the checklist was made and is attached to these Minutes.
44

45 MOTION TO APPROVE THE APPLICATION IS APPROVED 5-0-1 (RENAULT IN
46 ABSTENTION).

B. Conditional Use Approval Application #007-2016

OWNER(S): George Sayen & Mary A. Teeling

APPLICANT(S): Mary A. Teeling

LOCATION: 2 Keewaydin Way, Mount Desert

TAX MAP: 009 **LOT(S):** 061 **ZONE(S):** Rural or Woodland 2 (RW3)

PURPOSE: Section 3.4 – Retail Stores: Art Gallery

SITE INSPECTION: 3:00 PM

Mr. Ashmore confirmed adequate public notice. Abutters were notified. No conflict of interest was found.

Ms. Randolph reported on the site visit. The proposed area is a portion of a multi-car garage under the house. There are brackets on the wall for display. The ceiling is very low.

Jim Keene, representing the Applicant, noted the garage was used to display art work. It is open two to three days a year or by appointment. There's a small sign out when it's open. The Applicant works with other artists, and sells for them on the premises. She also sells her own work. CEO Keene verified that because some artwork is done by other artists outside the home it does not qualify as a home occupation. It was noted that once approved, the use would follow the property. CEO Keene pointed out that any changes to the use in the future would require a change of use permit. Ms. Keene added that there would be state permits to acquire as well.

Chairman Hanley voiced concern over the precedent that would be set by approving the retail use.

Steve Wainwright, a nearby resident, noted that the road was an entrance to Acadia National Park. There were no businesses in that area like the one proposed. He noted there were available commercial properties in other areas for the business as proposed. This proposed use was not in keeping with the area.

After some discussion, Chairman Hanley closed the public hearing.

MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, TO FIND THE APPLICATION COMPLETE. MOTION APPROVED 5-0-1 (RENAULT IN ABSTENTION).

MS. RANDOLPH MOVED, WITH MS. ANDREWS SECONDING, TO APPROVE THE APPLICATION.

CHAIRMAN HANLEY MOVED, WITH MS. RANDOLPH SECONDING, TO USE THE SHORT FORM. MOTION APPROVED 5-0-1 (RENAULT IN ABSTENTION).

A review of the checklist was made and is attached to these Minutes.

MOTION TO APPROVE THE APPLICATION WAS DENIED 0-5-1 (RENAULT IN ABSTENTION).

C. Conditional Use Approval Application #008-2016

OWNER(S): Crag G. Coleman, et als

APPLICANT(S): Anne Coleman

AGENT: Peter Bucklin

LOCATION: 4 Clifton Dock Road, Northeast Harbor

TAX MAP: 024 **LOT(S):** 140 **ZONE(S):** Village Residential 2 (VR2) & Shoreland Residential 1 (SR1)

PURPOSE: Section – 6B.8 Fences and Walls – Exceeding CEO Authority

SITE INSPECTION: 4:30 PM

Mr. Ashmore confirmed adequate public notice. Abutters were notified. No conflict of interest was found.

Ms. Andrews reported on the site inspection. The height of the dwelling allows the public to see over the 6 foot fence present. The applicant requests to replace the portion of the fence in question with an 8 foot height. The fence would be the same style as is currently present.

Mr. Bucklin noted there were nine sections to be replaced.

CHAIRMAN HANLEY MOVED, WITH MS. EATON SECONDING, TO USE THE SHORT FORM. MOTION APPROVED 5-0-1 (RENAULT IN ABSTENTION).

CHAIRMAN HANLEY MOVED, WITH MS. EATON SECONDING, TO FIND THE APPLICATION COMPLETE. MOTION APPROVED 5-0-1 (RENAULT IN ABSTENTION).

CHAIRMAN HANLEY MOVED, WITH MS. ANDREWS SECONDING TO APPROVE THE APPLICATION.

A review of the checklist was made and is attached to these Minutes.

MOTION TO APPROVE THE APPLICATION APPROVED 5-0-1 (RENAULT IN ABSTENTION).

V. Adjournment

CHAIRMAN HANLEY MOVED, WITH MS. RANDOLPH SECONDING, TO ADJOURN THE MEETING. MOTION APPROVED 5-0-1 (RENAULT IN ABSTENTION).

Meeting was adjourned at 9:13 pm.