

**Town of Mount Desert Planning Board
Regular Meeting Minutes
Meeting Room, Town Hall
6:00 PM, August 14, 2019**

Public Present:

Judy Holmes, James A. Progis, Cheryl M. Dulong, Liza Harig, Kate Andrews, Ron Harig, Stephanie Zirnkilton, Randall McAndrews, Steve Zirnkilton

Board Members Present:

Christie Anastasia, Joanne Eaton, Tracy Loftus Keller, Meredith Randolph, Chairman Bill Hanley, Dave Ashmore

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

Chairman Hanley called the meeting to order at 6:00PM. Board Members were noted. Ms. Loftus Keller is an Alternate Non-voting Board Member.

II. Approval of Minutes

July 17, 2019:

MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO APPROVE THE MINUTES AS PRESENTED. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

July 24, 2019:

MS. EATON MOVED, WITH MR. ASHMORE SECONDING, TO APPROVE THE MINUTES AS PRESENTED. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

June 12, 2019 Revision:

A mistake was found in the previously approved June 12, 2019 Minutes, referencing the May 22, 2019 Minutes as May 27, 2019 Minutes.

CHAIRMAN HANLEY MOVED, WITH MS. RANDOLPH SECONDING, TO APPROVE THE JUNE 12, 2019 MINUTES AS REVISED. MOTION APPROVED 4-0-2 (EATON AND LOFTUS KELLER IN ABSTENTION).

III. Section 4.3.7 Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact than the existing use on:

- a. The subject or adjacent properties and resources; or
- b. Water body, tributary stream, or wetland

OWNER(S) NAME: Dylan A. and Jessica A. Harig

AGENT(S): Meredith Randolph

LOCATION: 5 Wetlands Way, Seal Harbor

TAX MAP: 031 **LOT:** 036 **ZONE(S):** Village Residential One (VR1)

PURPOSE: To renovate an unfinished area above garage into an Accessory Residential Dwelling Unit

SITE INSPECTION: 5:15PM

Ms. Eaton confirmed adequate Public Notice. Abutters were notified.

Ms. Randolph stated she had a Conflict of Interest.

MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, TO ACCEPT MS. RANDOLPH'S RECUSAL DUE TO CONFLICT OF INTEREST. MOTION APPROVED 4-0-2 (LOFTUS KELLER AND RANDOLPH IN ABSTENTION).

MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, TO MAKE MS. LOFTUS KELLER A VOTING MEMBER FOR THE AGENDA ITEM. MOTION APPROVED 4-0-1 (MS. LOFTUS KELLER IN ABSTENTION).

Ms. Eaton reported on the Site Visit. Three Board Members were in attendance. One back corner of the garage on the property is over the ten-foot setback making it nonconforming, which is why the proposed change requires Board review. Being proposed is an entryway and stairway on the back, on the end that is not nonconforming, windows will be installed, and the upstairs area will be converted into living space.

Ms. Anastasia added that the proximity of the abutters' properties and views from where the windows are proposed to be were also discussed.

Agent for the owner, Meredith Randolph, reported that the property owners are a family of six and the house on site is small. Enlarging the house is outside their budget. The space above the garage is available to renovate into a "bunkhouse" area. Included would be a kitchenette and bathroom; making it essentially a second dwelling.

Windows on one side face the neighbors and are not changing. The stairs on the building will be moved to the opposite side of the building. Bunk beds will be added, along with a bathroom and kitchen. A balcony over the driveway will be added. Ms. Randolph reiterated that a back corner of the building crosses the setback area. The house is near the garage.

Chairman Hanley asked if the only exterior changes were the stair relocation, and the balcony and windows installation. Ms. Randolph added that the exterior siding would be replaced as well. The new stairs and entryway will change the exterior look.

Chairman Hanley asked for public comment.

Neighbor Stephanie Zirnkilton asked whether the building would have fit within the building area. Ms. Randolph believed that the building could have been built within all setbacks. She did not know why it was not.

Neighbor Steve Zirnkilton stated the building towers over the neighbors. The windows planned will look into the neighbors' yards. He installed a fence and cedar hedge for privacy which only

1 blocks the first floor. Second-floor windows will look down on the neighbors. Additionally, the
2 owners have stated that renting the addition is not out of the question. Renting affects issues
3 such as noise, privacy, and house values in the area. This proposal will impact the neighbors in
4 many ways.

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6 Ms. Eaton asked how many feet outside the setback it was.

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8 Ms. Randolph did not know the specific distance. She thought it was approximately three feet.

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10 Neighbor Stephanie Zirnkilton requested the exact footage outside the setback. She pointed out
11 that the biggest change is that currently the space is not lived in. Mr. Zirnkilton stated that because
12 the building was nonconforming, the Applicant must prove there is no negative impact. He
13 asserted there is a negative impact to the neighbors.

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15 Neighbor Judy Holmes abuts the property on the East side. The windows planned will face her
16 bedroom. The increase in noise by either children or renters will broadcast from the second floor.
17 She felt property values would be adversely affected. The property owner told her renting the
18 dwelling was an option. The plan was not an additional "bunkroom" but a full two-bedroom
19 dwelling. The addition would adversely affect six neighboring families. Currently the building is
20 nonconforming, but its current use does not impact others. The proposed use would be an impact.

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22 Neighbor Randall McAndrews agreed that with the addition there would be no privacy, and
23 additional noise. He alleged what is being presented is not what had been described to him by
24 the owners.

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26 It was noted the owners were currently in Texas and not in attendance. Chairman Hanley asked
27 those Board Members who were at the Site Visit whether they had any insight.

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29 Ms. Eaton felt the neighbors' descriptions were accurate. The building was close to the property
30 line. Ms. Loftus Keller agreed that the barn looms up and looks out on the other properties. Ms.
31 Anastasia noticed another, similar barn in the area, so the building was not the only tall thing in
32 the neighborhood. The two windows proposed that would face the Randall property would be
33 high on the building's wall in relation to the stairs, and would be small. She did not believe people
34 would be able to look out of them onto the neighboring property. The other window planned is in
35 the bathroom, and presumably would be closed much of the time.

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37 Ms. Randolph stated the McAndrews property was the only property facing the nonconformity.
38 Other issues being discussed have no relation to the nonconformity.

39
40 Mr. Zirnkilton stated that the slope of the property slopes down toward his property. Even with
41 the fence he installed, the building is still visible. He added that when those at the Site Visit went
42 inside the building, those outside could hear the ongoing conversation. Mr. Zirnkilton reiterated
43 that the fundamental fact remains that the change will have a negative impact on the neighbors.

44
45 Neighbor Cheryl Dulong concurred with others that the plan presented was not what was
46 explained to her by the landowners. She noted the windows planned can be enlarged. A balcony
47 is planned and there could be a picture window installed there.

Ms. Randolph asserted that none of these concerns had anything to do with the nonconformity.

Chairman Hanley reread the section of the LUZO: *"The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact than the existing use on: a. The subject or adjacent properties and resources; or b. Water body, tributary stream, or wetland"*. The issue as it related to water bodies was not the issue critical to the project.

Neighbor James Progis noted that allowing this change of use opens the door for future owners to make further change to the building. This change creates an opening for additional negative impact to the area. He agreed with the others that the proposed changes would have an adverse impact on the neighbors.

Kate Andrews noted she was the aunt of the property owner and a resident of Seal Harbor. She appreciated the views shared and wished the property owners were in attendance. She felt that the Seal Harbor area was changing, and this sort of thing was inevitable.

There was no further public comment. Chairman Hanley closed the Public Hearing.

Ms. Eaton reiterated that had the building been built within the setback, the Applicant would be perfectly within his right to make these changes. Mr. Andrews noted that he's seen buildings where a non-conforming section was simply removed.

Ms. Randolph felt the complaints were mostly due to the building previous owners built. The building exists and a second dwelling is allowed. Rentals are not regulated, and it's anyone's right to rent. The rest of the building is acceptable under the code.

Ms. Anastasia noted the neighbors' concerns are about the transient nature of renters, privacy, and noise. Are there ways to mitigate these concerns through design?

Ms. Randolph maintained that the space will be a bunkhouse, and bunkbeds are planned for it. She reiterated this meeting is limited solely to addressing the issue of the nonconforming setback. The biggest feature relative to the setback is the bathroom window. Ms. Randolph did not believe the bathroom window would not be large. Issues such as secondary dwellings or rentals are not connected to the nonconformity, and the owners are allowed to have such things.

CEO Keene pointed out it is not just adding a bathroom. The second story is currently not occupied. The change of use proposed is very different than the current use. Ms. Randolph understood the concerns but argued that the neighbors would not have the ability to weigh in if the building was within the setback standards. Ms. Keene clarified that neighbors could weigh in on a conforming change of use. Once a permit is issued by the CEO, it can be appealed by abutters within 30 days of issuance. She agreed the Board should not be looking at the possibility of renting the building as rentals are not regulated.

Ms. Eaton asked if there were changes the owner would be willing to make regarding the bathroom window. Ms. Randolph noted the bathroom will be a divided room.

Chairman Hanley noted that the change of an empty building to a habitable space is the proposal. That change of use is what is being reviewed. Ms. Randolph felt that regarding the change of use, the majority of the concern she hears is about privacy.

Ms. Ashmore felt the Board could not ignore the fact that there will be an adverse impact to the neighborhood. This is a completely different use proposed for a nonconforming structure. This change involves more activity, a change of use to the property, more occupants. Ms. Eaton added there would be an increase in light from the building, and an increase in noise.

Ms. Randolph argued that everything proposed is permitted. The building exists. The neighbors are trying to prevent the owners from doing what other property owners are allowed to do, per the LUZO. Forcing them to do more puts a financial burden on them.

Chairman Hanley noted that if the proposal is rejected by the Board, the plan can be modified or appealed.

MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, THAT THE CHANGE OF USE OF THIS PROPERTY FROM PRIMARILY STORAGE TO A PERMANENT LIVING AREA WILL CAUSE AN ADVERSE IMPACT ON ADJACEMENT PROPERTIES.

Ms. Eaton felt different windows, or sound mitigation such as trees might possibly improve the proposal. She hoped the input from the neighbors resulted in other options the owners can explore.

MOTION APPROVED 5-0.

Chairman Hanley clarified that the vote meant the change would not occur as proposed.

CHAIRMAN HANLEY MOVED, WITH MS. ANASTASIA SECONDING, TO RETURN MS. LOFTUS KELLER BACK TO ALTERNATE MEMBER STATUS. MOTION APPROVED 4-0-1 (LOFTUS KELLER IN ABSTENTION).

CHAIRMAN HANLEY MOVED, WITH MS. EATON SECONDING, TO RETURN MS. RANDOLPH TO THE BOARD. MOTION APPROVED 4-0-2 (RANDOLPH AND LOFTUS KELLER IN ABSTENTION).

IV. Other

There was no Other Business.

V. Adjournment

MS. EATON MOVED, WITH MS. ANASTASIA SECONDING TO ADJOURN THE MEETING. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

Meeting adjourned at 7:05PM.