

**Town of Mount Desert Planning Board
Regular Meeting Minutes
Meeting Room, Town Hall
6:00 PM, February 12, 2020**

Public Present:

Kathleen Miller, Wanda Fernald, Steve Fernald, Penny Fernald, Nick Sempts, Rick Mooers, Jerry Miller, Ed Bearor, John Macauley, Dick Broom, Matt Hart, Dwight Lanpher, Noel Musson, Katrina Carter, Ronald Musetti, Marsha Wilmerding, Jim Wilmerding, Sara Fraley, Skip Fraley, Phil Lichtenstein

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

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

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

Chair Hanley called the Meeting to order at 6:04PM. Board Members were noted.

II. Approval of Minutes

January 22, 2020: MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, APPROVAL OF THE JANUARY 22, 2020 MINUTES AS PRESENTED. MOTION APPROVED 5-0.

III. Public Hearing:

Land Use Zoning Ordinance, Official Land Use Map, Sale of Food and Merchandise Ordinance, Reorganization of the Town of Mount Desert Zoning Board of Appeals and Sewer Ordinance Amendments for the 2020 Town Meeting.

Ms. Eaton confirmed adequate Public Notice.

Mobile Food Vendors: Mr. Musson reiterated the proposed changes to the Ordinance. Changes include allowing vendors in the Shoreland District to retain their license for three years, with annual renewals, and a change to the Application schedule to make the process more user friendly to those applying. The issue was discussed by the Board at the last meeting.

New applications will be due February 1st of each year. Relicensing must occur by March 1st of each year, otherwise an application can be offered by lottery to the public. These earlier changes give those interested in applying more time to plan.

There were no other questions.

Rooming Houses: Proposed changes include constraints on the size of a rooming house, and appropriate bathrooms per numbers of people in the rooming houses. The issue was discussed by the Board at the last meeting.

1 The definition of a rooming house is *“a building or portion thereof that is not otherwise qualified as*
2 *a one- or two-family dwelling unit that provides sleeping accommodations for a total of up to 16 or*
3 *fewer people on a transient basis (transient being no less than 30 days) or on a current basis. The*
4 *rooming house shall provide onsite shared cooking facility for access by all occupants but there shall*
5 *be no other separate cooking facilities for individual occupants.”*

6
7 There are currently what could be considered rooming houses in the Town.

8
9 There were no other questions.

10
11 **Changes to the LUZO and Appeals Ordinances with regard to circumstances through which an**
12 **appeal can be made on certain enforcement decisions made by the CEO:** Such decisions could
13 bypass the Board of Appeals and go straight to court. This would affect appeals on what is
14 considered to be an erroneous Code interpretation or enforcement decision. Building permits and
15 other Land Use permitting issues would still be heard by the Board of Appeals. This is in response to
16 a recent court case that brought the need for the change to the Town’s attention. The issue was
17 discussed by the Board at the last meeting.

18
19 CEO Keene noted the situation rarely occurs.

20
21 There were no other questions.

22
23 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, MAKING ALTERNATE MEMBER TRACY
24 LOFTUS KELLER A VOTING MEMBER OF THE BOARD FOR THIS MEETING. MOTION APPROVED 4-0-1
25 (MS. LOFTUS KELLER IN ABSTENTION).

26
27 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, RECOMMENDATION OF “AN ORDINANCE
28 DATED MAY 5, 2020 AND ENTITLED ‘AMENDMENTS TO THE TOWN OF MOUNT DESERT LAND USE
29 ORDINANCE AND AMENDMENTS TO THE TOWN OF MOUNT DESERT BOARD OF APPEALS
30 ORDINANCE REGARDING APPEALS TO BOARD OF APPEALS OF DETERMINATIONS BY THE CEO’ BE
31 ENACTED...” TO THE 2020 WARRANT. MOTION APPROVED 5-0.

32
33 **Village Residential 3 Zoning District:** This would change a fifteen-acre area essentially covering the
34 Asticou Inn lot. It relates to hotel and hotel accessory use. The use has been there historically. The
35 issue was discussed by the Board at the last meeting.

36
37 There were no questions.

38
39 MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING, RECOMMENDATION OF THE “AN
40 ORDINANCE DATED MAY 5, 2019 AND ENTITLED ‘AMENDMENTS TO THE TOWN OF MOUNT DESERT
41 LAND USE ORDINANCE REGARDING THE VILLAGE RESIDENTIAL 3 DISTRICT AND TO CHANGE THE
42 LAND USE DISTRICT DESIGNATION OF THE MAP 5: LOT 14-1 AND MAY 5: LOT 14-4’ BE ENACTED...”
43 TO THE TOWN WARRANT. MOTION APPROVED 5-0.

44

1 **Map Change:** This issue is correcting the location of a stream on a LUZO map. The DEP has been
2 consulted and they agree with the correction. The change does not affect zoning, or any applicable
3 rules. The issue was discussed by the Board at the last meeting.

4
5 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, RECOMMENDATION OF THE "ORDINANCE
6 DATED MAY 5, 2020 AND ENTITLED 'AMENDMENTS TO THE LAND USE ZONING ORDINANCE TO
7 CHANGE THE POSITION OF A STREAM SHOWN ON THE OFFICIAL LAND USE TO MORE ACCURATELY
8 REFLECT ITS LOCATION' BE ENACTED..." TO THE TOWN WARRANT. MOTION APPROVED 5-0.

9
10 Mr. Musson noted an issue regarding lot coverage has been tabled for this year's Warrant.

11
12 **Lighting Changes:** This issue has been presented to the Town by the Sustainability Committee.

13
14 Electrical Engineer Dwight Lanpher worked with the Sustainability Committee to create this
15 ordinance revision. The current lighting code was written in approximately 2005-06. Mr. Lanpher
16 pointed out an error in the code definition of Lumens. Additionally, with the advent of LED lighting
17 as a predominant source of light fixtures, Mr. Lanpher incorporated regulations on LED lighting, to
18 be in line with lighting standards across the country. Certain levels of LED lighting can become a
19 health issue. The addition of technical specifications will make a lighting ordinance enforceable.
20 How much light is visible to a neighbor, or deemed invasive, has also been addressed. A number of
21 definitions have been added. This will provide the CEO a basis to make a legitimate ruling.

22
23 Lighting and lightbulb packaging will provide a homeowner with the information they need to
24 determine appropriate lighting. Older lighting would be grandfathered with this new Ordinance. A
25 lighting project replacing more than 50% of lighting would be required to comply with the
26 Ordinance. This would apply to outdoor lighting only.

27
28 There is a section of the Ordinance for new requirements of outdoor lighting, and a section of
29 recommended best practices encouraged by the Town but not required. There's also a section on
30 Grandfathering.

31
32 Mr. Musson hopes to work with the Town Attorneys on this ordinance. He recommends the Board
33 wait to vote on this Ordinance until the following Planning Board meeting to provide him that time.
34 A Public Hearing has also been scheduled.

35
36 There were no further questions.

37
38 **IV. Other**

39 *Discussion with Ronnie Musetti & Adam Fraley (Lessees) – D/B/A – The Nor'Easter, regarding*
40 *potential restaurant use expansion or establishment of new retail use (mixed-use) within existing*
41 *restaurant space, at the Kimball Terrace Inn structure. Location: 10 Huntington Road, Northeast*
42 *Harbor. Tax Map 024 Lot 125. Zoned Village Commercial District.*

43 Lessee Adam Fraley joined the meeting via phone.
44

1 Mr. Musetti and Mr. Fraley propose to create a lobster pound and market along with a restaurant.
2 They will rent the Western portion of the Kimball Terrace Inn. The lobster pound will work as other
3 lobster pounds on the island work. The market will sell fresh seafood. The site is in the Village
4 Commercial District. A restaurant has operated on the site for years.

5
6 CEO Keene suggested Mr. Musetti and Mr. Fraley meet with the Planning Board to ensure there is
7 no issue regarding having a market and restaurant under one roof.

8
9 Abutter to the Kimball Terrace Inn Jim Wilmerding worried about the potential for smell from a fish
10 market being on site, potential traffic to the business, and any outdoor lobster cooking on the site.

11
12 Mr. Musetti confirmed the business would cook lobster outdoors. There is a cooker already located
13 outside which they intend to use. The cooker is located off the deck of the restaurant and has been
14 in use for 30 years. No additional cookers will be added. Garbage will be removed from the
15 business daily.

16
17 Abutter Marsha Wilmerding stated that selling fish in a market will cause traffic to the business. She
18 opposed traffic and the cooking of lobster.

19
20 Mr. Musetti noted the business is in a Village Commercial district. He reiterated the fish would be
21 fresh. The smell of the bait from the marina would theoretically produce more odor than fresh fish
22 inside the market.

23
24 Mr. Fraley stated they would be mindful of any smell or noise. He did not anticipate a significant
25 increase in traffic in direct relation to the market. The market is intended to be a small auxiliary use
26 to the restaurant. Those purchasing fish will most likely be restaurant customers.

27
28 Mr. Musetti asked if the Wilmerdings had any suggestions on how to mitigate their concerns. The
29 Wilmerdings did not offer any suggestions.

30
31 Mr. Musetti and Mr. Fraley restated their willingness to do what they could to work address the
32 Wilmerdings concerns.

33
34 It was noted this was intended as a small-scale creative use of the space and inventory.

35
36 CEO Keene noted the issue was before the Board so the Board can make a determination on
37 whether the use is an expansion of a restaurant use or a market for retail. The restaurant is
38 currently designated a restaurant use and there will be a retail component within the predominant
39 restaurant.

40
41 Mr. Musetti noted per the contract with the Kimball Terrace Inn, the restaurant must be open for
42 breakfast, lunch, and dinner. A small room used in the past as a lounge will be used for the market
43 space. The market space will be used in the mornings as a continental breakfast space, and once
44 breakfast is finished, the market will be opened. The market will have a lobster tank and fresh

1 picked meats for sale. The market area is approximately 25% of the entire restaurant area.
2 Restaurant staff will run the market. The market will not have its own name.

3
4 Ms. Randolph asked about the potential for growth – she felt perhaps the market could grow into a
5 building expansion that takes away parking. Mr. Musetti noted the lease contract states the space
6 must remain a restaurant. It was reiterated that no expansion of the building would be allowed.
7 The parking area is ample. It was noted that previous restaurants in the space have sold things as
8 well.

9
10 Ms. Eaton felt this was no different than a restaurant selling baked goods.

11
12 CEO Keene noted that Mr. Musetti and Mr. Fraley planned to sell other items such as pottery and
13 kitchen items.

14
15 Mr. Fraley noted he found nothing in the Ordinance that prevents such a use of the space.

16
17 Kathleen Miller pointed out that previous restaurants in that space sold items such as Tshirts and
18 other things. Other restaurants in Town also sell food and offer restaurant service and are not
19 deemed a mixed use.

20
21 Mr. Musetti noted any additional items for sale would be a very small amount, and in connection
22 with the lobster or other food being sold. Things like pottery will be limited to a couple shelves, as a
23 way to support local artists.

24
25 Mr. Musetti pointed out that both retail and restaurant are approved uses under the LUZO.

26
27 Ms. Randolph felt this was a restaurant use.

28
29 It was confirmed that if the use is classified as a restaurant no additional permitting would be
30 required.

31
32 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, THE DETERMINATION THAT THE USE AS
33 STATED WAS DEEMED AS RESTAURANT, AND NOT A MIXED USE. MOTION APPROVED 5-0.

34
35 **V. Adjournment**

36 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, ADJOURNMENT. MOTION
37 APPROVED 5-0.

38
39 The meeting was adjourned at 6:58PM.