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**TOWN OF MOUNT DESERT
ZONING BOARD OF APPEALS MINUTES
June 6, 2023**

Board Members Present:

Acting Chair Kevin Walls, John March, James Bright, Julie Bennoch, Jerry Suminsby

Members of the Public Present:

Janet Leston Clifford, Robert G. Clifford, Brian Silverman

I. Call to Order

Kevin Walls called the meeting to order at 6:00PM.

A quorum was confirmed. Board Members were identified.

It was agreed by consensus to discuss Item III of the agenda first.

II. Election of Officers

MR. BRIGHT MOVED WITH MS. BENNOCH SECONDDING, NOMINATION OF KEVIN WALLS AS CHAIR OF THE ZONING BOARD OF APPEALS.

CEO Keene noted the Board of Appeals has a Chair and a Secretary and no other officers. She noted that Current Chair, Bill Ferm, voted Kevin Walls as Chair.

MOTION APPROVED 5-0.

Mr. Walls nominated John March as Secretary. Mr. March declined the nomination.

MR. WALLS NOMINATED JAMES BRIGHT AS SECRETARY. MS. BENNOCH SECONDED THE NOMINATION.

MOTION APPROVED 5-0.

III. Administrative Appeal

OWNER(S): Janet Leston Clifford & Robert G. Clifford

PROPERTY LOCATION: 8 Sweet Fern Way, Hall Quarry

TAX MAP: 007 **LOT(S):** 070 **ZONE(S):** Residential One (R1)

PURPOSE: Appealing Code Officer's Notice of Violation Letter dated Aril 7, 2023 (AB# 001-2023)

CEO Keene confirmed adequate Public Notice. Abutters were notified.

1 Appellant Robert G. Clifford referred to a memo sent by CEO Keene on May 25, 2023, and
2 shared the following points:

3
4 The CEO's memo states that if no bedroom exists and the cooking facilities have been
5 removed, as the Clifford's stated in their April 13, 2023, email, then the Notice of Violation
6 discussed in a letter dated April 7, 2023, would be abated. It was Mr. Clifford's opinion that,
7 per the CEO's memo, the Notice of Violation should have been abated April 13, 2023, when
8 the CEO received the Clifford's' email stating that all three items cited in the Notice of
9 Violation were removed. The CEO responded to the email thanking the Clifford's for the
10 information. Mr. Clifford reported the CEO was informed of the removal of the items a
11 second time via the Appeal Application dated May 5, 2023, under Item 4A of the Application.

12
13 In paragraph 4 of CEO Keene's May 25, 2023, memo it states the original internal plumbing
14 permit (#3169, issued September 26, 2011) did not include a checkmark for the dishwasher.
15 Ms. Clifford explained that the plumber mistakenly checked off "clothes washer" instead of
16 dishwasher. The September 15, 2011, plumbing application correctly indicates seven fixtures
17 and confirms payment of the necessary fee. CEO Keene approved the dishwasher rough-in
18 plumbing during a May 23, 2013, inspection without questioning the absence of plumbing for
19 a clothes washer. On March 13, 2023, H.G. Reed, Inc. paid for and received an Internal
20 Plumbing Permit for a clothes washer.

21
22 On April 6, 2023, CEO Keene reported that she visited the property for a rough-in plumbing
23 inspection for a clothes washer. During that inspection, she observed cooking facilities in the
24 addition, and upon visiting the attic to inspect the venting for the clothes washer, she learned
25 there was a bed within a room that was designated as an office, on the provided construction
26 plans, dated August 18, 2011, when the addition was applied for and permitted. CEO Keene
27 learned the Clifford's hired a site evaluator, presumably to begin the process for a Change of
28 Use Permit. According to the Subsurface Wastewater Rules, an in-law apartment requires an
29 expanded system to be designed and recorded with the Registry of Deeds.

30
31 Appellant Janet Leston Clifford referred to the email sent to the CEO on April 13, 2023, stating
32 the items noted in the Notice of Violation had been removed. CEO Keene acknowledged
33 receipt of the information. Additionally, the Appeal Application states the items were
34 removed. The Notice of Violation stated that the Clifford's were required to contact a Site
35 Evaluator immediately, therefore they did so. On May 24, 2023, the Clifford's submitted a
36 memo per the requirements of the Appeal procedure. That memo stated there was no
37 additional bedroom planned. Ms. Leston Clifford explained that a family member had
38 become wheelchair bound and was required to be near a wheelchair accessible bathroom.
39 To accommodate the situation, they moved a bed from another part of the house to that
40 area.

41
42 Ms. Leston Clifford noted that in response to CEO Keene's April 7, 2023, Notice of Violation,

1 the items noted in the Violation were removed. CEO Keene was notified of this on April 13,
2 2023.

3
4 Mr. March inquired about the kitchenette referenced in the Clifford's' memo. Ms. Leston
5 Clifford explained the kitchenette has a sink, refrigerator, dishwasher, counter, microwave,
6 toaster oven and table. The addition has an office and a room used for general use and
7 entertainment. Ms. Leston Clifford noted the kitchenette has always been there and is on
8 the original plan. The plumbing was in place when the 2013 approval was granted.

9
10 CEO Keene stated a final inspection is required to confirm the violations as noted within the
11 April 7, 2023, Notice of Violation Letter have been removed. Ms. Leston Clifford asserted that
12 the CEO did not ask for such a visit. Mr. Clifford stated that they were never informed in any
13 of the correspondence they received that an additional inspection was required. Ms. Leston
14 Clifford felt that after receiving the April 13, 2023, email and being informed that items were
15 removed, the CEO should have inquired about scheduling another inspection. The Clifford's
16 were unaware they were required to invite her.

17
18 Ms. Bennoch summarized that CEO Keene believed the Clifford's hired a site evaluator to
19 bring the addition into compliance. Ms. Leston Clifford pointed out that the correspondence
20 received directed them to hire the site evaluator.

21
22 Mr. Suminsby did not believe moving a bed from one room to another within a home was
23 cause for violation, nor was it something the Town could effectively police.

24
25 Ms. Leston Clifford reiterated that a permanent new bedroom was not created; they used
26 the space to accommodate the needs of a family member for a short amount of time.

27
28 It was agreed that confirmation of the removal of the items in violation would be enough to
29 abate the Notice of Violation.

30
31 Mr. Walls did not believe the Board could make a ruling on the issue until an inspection was
32 made to confirm whether the violation still exists.

33
34 Mr. March stated that based on the testimony provided by the Clifford's, the Board has
35 evidence that measures have been taken to abate the violation to make a finding. Mr. March
36 suggested continuing the meeting to a date certain to allow the CEO time to make an
37 inspection.

38
39 Mr. Walls suggested a resolution with stipulations: if, upon the CEO's inspection, it is found
40 the violations remain, the Board will uphold the CEO's action, and if the violations are
41 confirmed to have been removed, the Board will overturn the violation. Mr. Bright agreed.
42

1 Mr. Walls suggested formulating the guidelines with which to proceed.

2
3 Mr. March inquired about the lack of a permit for the dishwasher.

4
5 Ms. Leston Clifford explained the original 2011 permit had clothes washer mistakenly checked
6 off instead of dishwasher. A clothes washer was added, with a new plumbing permit.

7
8 MR. BRIGHT MOVED WITH MS. BENNOCH SECONDING TO GRANT THE APPEAL ON THE
9 CONDITION THAT CEO KEENE MAKES AN INSPECTION TO VERIFY TO HER SATISFACTION THAT
10 THE COOKING FACILITIES AND THE BED HAVE BEEN REMOVED.

11
12 Mr. Walls asked if there was any further discussion. There was none.

13
14 MOTION APPROVED 5-0.

15
16 Discussion ensued regarding whether Findings of Facts and a Conclusion of Law were
17 necessary. Mr. March believed Findings of Fact and Conclusion were necessary in addition to
18 a Decision.

19
20 Mr. March suggested the following as Findings of Fact:

- 21 - That use of the designated office/entertainment space in the appellant's residence as a
22 sleeping quarter lasted no more than 14 days and stemmed from a serious medical issue
23 necessitating access to a handicap-accessible toilet adjacent to the office.
24 - The Appellants promptly discontinued the use upon receiving notice of violation.
25 - There is no evidence of any subsequent use of this space for sleeping.
26 - In accordance with a directive from the CEO, the Appellants have obtained a design for a
27 replacement septic system and recorded that design at the Registry of Deeds.

28
29 Mr. Suminsby did not feel the statements were facts. The only fact is what the CEO verified
30 upon inspection. Further discussion ensued.

31
32 Mr. Walls suggested the following as a Finding of Fact:

- 33 - Upon a review, the Appellants have complied by removing the bed and cooking facilities,
34 upon the verification of the CEO to establish that things are current in the condition of
35 the house.

36
37 Mr. Suminsby believed that the Board accepts the fact that there was miscommunication on
38 both sides. The CEO must inspect to ensure and verify that there is no longer a violation.

39
40 Mr. Bright suggested as a Finding of Fact:

- 41 - Based on the email of April 13, 2023, the bed and cooking appliances have been removed.
42 - The Board has agreed to overturn the violation upon the CEO's inspection, to occur within

1 seven business days, and verification of the facts as represented.

2
3 CEO Keene suggested that instead of a deadline like seven business days, it should state
4 within such time as is convenient to the CEO and the Appellants.

5
6 Mr. March explained that Findings of Fact are evidence in the record that has not been
7 rebutted. A Conclusion is what is arrived at after a review of the facts. Drawing from the
8 Conclusion, a final Decision is made.

9
10 Mr. Walls stated the Finding of Facts is the Conclusion, upon verification of the CEO.

11
12 CEO Keene added that with regard to Mr. Walls' finding, the addition permitted in 2011
13 (Building Permit 5928), on August 18, 2011, is in compliance with the revised plans dated
14 August 18, 2011.

15
16 MR. WALLS MOVED, WITH MS. BENNOCH SECONDING, TO FIND:

- 17 - UPON A REVIEW, THE APPELLANTS HAVE COMPLIED BY REMOVING THE BED AND
18 COOKING FACILITIES, UPON THE VERIFICATION OF THE CEO TO ESTABLISH THAT THINGS
19 ARE CURRENT IN THE CONDITION OF THE HOUSE.
20 - THE ADDITION PERMITTED IN 2011 (BUILDING PERMIT 5928), ON AUGUST 18, 2011, IS IN
21 COMPLIANCE WITH THE REVISED PLANS DATED AUGUST 18, 2011, PLANS.
22 - ACCEPTING THE FACT THAT THERE WAS MISCOMMUNICATION ON BOTH SIDES, THE CEO
23 WILL INSPECT TO ENSURE AND RECTIFY THAT THERE IS NO VIOLATION.
24 - BASED ON THE EMAIL OF APRIL 13, 2023, THE BED AND COOKING APPLIANCES HAVE BEEN
25 REMOVED.
26 - THE BOARD HAS AGREED TO OVERTURN THE VIOLATION UPON THE CEO'S INSPECTION,
27 TO OCCUR AT A TIME THAT IS CONVENIENT TO BOTH THE CEO AND THE APPELLANTS,
28 AND VERIFICATION OF THE FACTS AS REPRESENTED.

29 THE CONCLUSION OF LAW BEING THE FINDINGS OF FACT ARE THE CONCLUSION OF LAW,
30 UPON VERIFICATION OF THE CEO.

31
32 Mr. Walls asked for further discussion. There was none.

33
34 MOTION APPROVED 5-0.

35
36 **IV. Other**

37 There was no Other Business.

38
39 **V. Adjournment**

40 MR. BRIGHT MOVED, WITH MS. BENNOCH SECONDING, TO ADJOURN.

41 MOTION APPROVED 5-0.
42

- 1 The Meeting adjourned at 6:51PM.

DRAFT