

Town of Mount Desert Planning Board
Meeting Minutes
6:00 PM, August 26, 2020

This meeting was held virtually and was recorded.

Public Present:

Gerald Berlin, Karen Fox, Liz Atterbury, Joe Atterbury, Ann Rivers, Carol Rivers, John Rivers, Christopher Orthwein, Linda Jonas, Attorney Margaret Jeffrey, Megan Scott, Maryanne Mattson, Sierra Cast, Christina Spurling, Peter Jonas, Russell Notides, Christopher S..., Tate Bushell, Willie Granston, Storey Litchfield, Attorney Seth Libby.

Board Members Present:

Christie Anastasia, Chair Bill Hanley, Tracy Loftus Keller, Joanne Eaton, Dave Ashmore

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 6:00PM.

Planning Board Members were noted.

MS. EATON MOVED, WITH MS. ANASTASIA SECONding, TO MAKE TRACY LOFTUS KELLER A VOTING MEMBER FOR THE MEETING.

VOTE:

CHRISTIE ANASTASIA: AYE

JOANNE EATON: AYE

DAVE ASHMORE: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 4-0.

II. Approval of Minutes

Minutes of June 25, 2020:

MS. EATON MOVED, WITH MR. ASHMORE SECONding, APPROVAL OF THE JUNE 25, 2020 MINUTES AS PRESENTED.

VOTE:

JOANNE EATON: AYE

DAVE ASHMORE: AYE

CHRISTIE ANASTASIA: AYE

TRACY LOFTUS KELLER: AYE

CHAIR BILL HANLEY: ABSTAINS

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

Minutes of July 8, 2020:

MS. EATON MOVED, WITH MS. ANASTASIA SECONding, APPROVAL OF THE JULY 8, 2020 MINUTES AS PRESENTED.

1 VOTE:
2 CHRISTIE ANASTASIA: AYE
3 DAVE ASHMORE: AYE
4 JOANNE EATON: AYE
5 TRACY LOFTUS KELLER: AYE
6 CHAIR BILL HANLEY: AYE
7 MOTION APPROVED 5-0.
8

9 **Minutes of July 22, 2020:**

10 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, TO APPROVE THE MINUTES OF JULY 22,
11 2020 AS PRESENTED.

12 VOTE:
13 CHRISTIE ANASTASIA: AYE
14 JOANNE EATON: AYE
15 DAVE ASHMORE: AYE
16 TRACY LOFTUS KELLER: AYE
17 CHAIR BILL HANLEY: ABSTAINS
18 MOTION APPROVED, 4-0-1 (HANLEY IN ABSTENTION).
19

20 **III. Subdivision Approval Application(s):**

21 **Public Hearing- 6:10PM**
22

23 **A. Subdivision Application #001-2020**

24 **OWNER NAME(S):** Gerald & Marie Berlin

25 **LOCATION:** 181 Oak Hill Road, Mount Desert

26 **TAX MAP:** 012 **LOT(S):** 031-001 & 002 **ZONE(S):** Residential 2

27 **PURPOSE:** Divide and combined lot from previously approved subdivision – Prays Meadow
28 Subdivision (File 21 No. 13, along with subsequent Amendments).
29

30 CEO Keene confirmed adequate Public Notice was given. Abutters were notified.
31

32 Chair Hanley opened the Public Hearing.
33

34 There was no comment.
35

36 Chair Hanley closed the Public Hearing.
37

38 MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, APPROVAL OF SUBDIVISION
39 APPLICATION 001-2020 AS PRESENTED.

40 VOTE:
41 CHRISTIE ANASTASIA: AYE
42 JOANNE EATON: AYE
43 DAVE ASHMORE: AYE
44 TRACY LOFTUS KELLER: AYE
45 CHAIR BILL HANLEY: AYE
46 MOTION APPROVED 5-0.
47

48 CEO Keene reminded the Board they needed to come into the Town Office to sign off on the

1 approval so Mr. Berlin can file his Application. CEO Keene would inform Mr. Berlin when the
2 Application was ready.

3
4 **IV. Conditional Use Approval Application(s):**

5
6 **A. Conditional Use Approval Application #008-2020**

7 **OWNER NAME(S):** Inner Point Trust - C/O Martha Sieniewicz

8 **AGENT:** Andrew McCullough, PE

9 **LOCATION:** 50 Broad Cove Road, Mount Desert

10 **TAX MAP:** 008 **LOT:** 123 **ZONE(S):** Shoreland Residential 3

11 **PURPOSE:** Section 3.4 & 6C.7 Marine and Freshwater Structure Performance Standards. 80'
12 X 5' Permanent Pier, 40' X 4' Seasonal Ramp & 24' X 16' Seasonal Float.

13 **SITE INSPECTION:** 4:45PM Masks Required During Site Inspection.

14 CEO Keene confirmed adequate Public Notice. Abutters were notified.

15
16 No Conflict of Interest was found.

17
18 Chair Hanley reported on the Site Visit. He attended with the Agent and the Property
19 Owner. The property is near the end of Broad Cove. Agent Andrew McCullough described
20 the location at the shoreline and the orientation of the proposed pier. The location where
21 the pier would be connected to the shore was seen. Property lines were pointed out,
22 referencing the plans submitted. Piers to the East and the West of the proposed pier were
23 noted.

24
25 Agent for the Applicant, Andrew McCullough, reported that the proposed pier is essentially
26 centered on the 400-foot width property. At the end of the proposed float there is an
27 approximately 150-foot separation between the proposed float and the float located to the
28 West. The dock will be secured to the ledge at the shoreline. Two granite cribs are being
29 proposed; one at 40 feet and one at 80 feet. Both cribs are in the intertidal zone. There is
30 no fixed dock or fixed pier extending below mean low low-water. Construction will be done
31 from the water, by barge.

32
33 Chair Hanley acknowledged a letter only recently received by the Board from Abutter Karen
34 Fox. In the letter, Ms. Fox questioned the Completeness of the Application presented.

35
36 With regard to the questions posed in Ms. Fox's letter, Chair Hanley asked Mr. McCullough
37 about the archaeological aspects of the site. Mr. McCullough, as part of the Application
38 process, contacted the State of Maine Historic Preservation Commission. The Commission
39 did not believe there were any archaeological sites impacted by the proposed work. It did
40 not appear the correspondence was included in the Application submittals. Mr. McCullough
41 promised to provide the letter to the Town. It was included in his submittals to the Maine
42 DEP.

43
44 Chair Hanley asked Mr. McCullough about DEP Permitting. Mr. McCullough confirmed the
45 project has received permitting from the Maine DEP. A copy of the approval was forwarded
46 to the Town. Additionally, permitting was received from the Corps of Engineers and has also
47 been forwarded to the Town.
48

1 CEO Keene added that all permitting she's received has been forwarded to the Planning
2 Board Members.

3
4 Ms. Fox stated the Application did not include sufficient information to show compliance for
5 several of the required standards. She believed the Application should be denied until
6 more information is available.

7
8 Additionally, Ms. Fox inquired where the seasonal dock and ramp will be stored during the
9 off-season.

10
11 It was re-confirmed that Abutter Notification was sent August 7, 2020. Public Notice in the
12 Mount Desert Islander Newspaper was posted August 13, 2020. A scan of the full
13 Application packet was sent to Ms. Fox on August 13, 2020.

14
15 MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, TO FIND THE APPLICATION
16 COMPLETE.

17 VOTE:

18 CHRISTIE ANASTASIA: AYE

19 JOANNE EATON: AYE

20 DAVE ASHMORE: AYE

21 TRACY LOFTUS KELLER: AYE

22 CHAIR BILL HANLEY: AYE

23 MOTION APPROVED 5-0.

24
25 Chair Hanley acknowledged Ms. Fox's letter voicing concern regarding several issues.
26 Discussion would ensue regarding these concerns as the Application was reviewed.

27
28 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, USING THE SHORT FORM.

29 VOTE:

30 JOANNE EATON: AYE

31 CHRISTIE ANASTASIA: AYE

32 DAVE ASHMORE: AYE

33 TRACY LOFTUS KELLER: AYE

34 CHAIR BILL HANLEY: AYE

35 MOTION APPROVED 5-0.

36
37 MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, APPROVAL OF THE APPLICATION AS
38 PRESENTED.

39
40 A review of the Application ensued. The Checklist is attached to these Minutes.

41
42 Regarding concerns voiced about the proximity to other piers, Mr. McCullough reported
43 that a Site Visit was made in the winter months to try to determine the distance between
44 the pier to the West and the proposed pier. The end of the dock was determined. The
45 lengths of the ramp and the float were measured via Google Earth. Based on those
46 measurements, the end of the proposed float will be 150 feet from the nearest float.

47
48 Chair Hanley noted concerns raised about the pier and inquired about the proximity to

1 other structures and the overall size of the proposed pier.
2

3 Mr. McCullough stated the proposed pier is 80 feet. It extends only to low-water. The
4 objective was that the float should reach the point where there was six feet of depth at low-
5 water. The Applicant worked to limit the length of the overall structure, including the
6 seasonal ramp and seasonal float. Both were designed to meet LUZO standards and go no
7 further. The site is intentionally very close to centered on the property, ensuring the pier
8 was as far as it could be placed from either abutter. It was clarified that the 80 feet is the
9 fixed section of the pier. There is a 40-foot ramp and a 24-foot-long float. In addition to the
10 80-foot pier, the total length is 144 feet. Mr. McCullough noted that the total length won't
11 be quite 144 feet, due to the fact that sections change in angle due to the rise and fall of the
12 tide. Additionally, the end of the ramp will have some overlap in relation to the end of the
13 float.
14

15 Chair Hanley reminded the Board of maximum allowed lengths for such marine structures
16 per the LUZO:

- 17 - A structure's entire length can be no longer than 225 feet
- 18 - Permanent structure length can be no longer than 150 feet
- 19 - Non-permanent structure length can be no longer than 75 feet
- 20 - Maximum width of a pier walkway can be no more than 6 feet
- 21 - Maximum square footage of all floats are allowed to be no more than 400 square feet

22 Chair Hanley felt the proposed structure was in conformance with these requirements.
23

24 Chair Hanley invited Ms. Fox to share her concerns relative to Section 6.A.1. Ms. Fox
25 inquired whether the dock would angle straight out from the steps, or whether it would
26 angle toward Somes Sound. Mr. McCullough stated the dock will essentially run straight out
27 from the shore. Ms. Fox stated she had no more questions.
28

29 Chair Hanley asked for Board Comment. There was none. It was noted this would be the
30 third pier in the cove. The closest structure to it would be 150 feet away.
31

32 Mr. McCullough felt there would be little potential for erosion. The end will be founded on
33 a section of bedrock. Two granite cribs will be set by a barge at high tide. This should result
34 in very little soil disturbance. Posts dug into the ground at the top of the bank would
35 perhaps be required for the landing. Soil disturbed is estimated to be less than a cubic yard.
36 Best Management Practices and erosion control measures would be used during
37 construction.
38

39 Ms. Fox inquired about the construction equipment on the shore side of the project. Mr.
40 McCullough reiterated the pier will be constructed by barge. The compressor will be on the
41 barge. Mr. McCullough estimated a small amount of lumber for approximately three steps
42 that could be carried in. No heavy equipment would be brought over land to the site.
43

44 Chair Hanley noted the house sits close to the shore and the land is heavily wooded. Access
45 to the shore for land-based equipment is limited.
46

47 With regard to Land Suitability, Mr. McCullough felt the site is the best location the
48 Applicant could have chosen. Soil disturbance will be minimal due to the amount of ledge at

1 the site. A crib does not have to be built at the shoreline. Heavy equipment will not be
2 brought in overland and therefore no clearing of the land is required to bring equipment in.

3
4 No lighting is proposed for the pier.

5
6 Mr. McCullough noted a few fir trees, approximately two inches in diameter would be
7 disturbed for the project. No larger trees would be removed.

8
9 Mr. McCullough noted with regard to excavation, there will be limited excavation to install
10 the posts at the shore. Mr. McCullough felt the work would most likely be handwork using a
11 shovel.

12
13 Chair Hanley reiterated that the marine structure sizes previously stated were within the
14 LUZO requirements previously stated.

15
16 Mr. McCullough stated the width of the fixed pier will be five feet. The width of the ramp is
17 four feet. The seasonal ramp will be stored on the pier during the winter, as many ramps
18 are. The float will be stored at Chalmers Enterprises during the winter. Only one float is
19 proposed. The proposed pier is for private, single-family use. The dock is confirmed to be
20 within conformance with the dimensional criteria required. The pier has been sited so as
21 not to interfere with any beach area. The Department of Marine Resources has reviewed
22 the Application. They anticipated no concerns regarding fisheries or wildlife. State of Maine
23 Natural Areas Program has reviewed the Application and saw no impact from the proposed
24 pier.

25
26 The float will be at a six-foot depth of water at low tide, as required by the LUZO.

27
28 Mr. McCullough agreed to send the letter received regarding archaeological impacts.

29
30 Regarding water quality, Mr. McCullough noted the proposed has no bearing on drinking
31 water or fresh water. Materials in contact with the water will be native granite and
32 pressure-treated lumber. The lumber will be air-dried prior to use as required.

33
34 Mr. McCullough did not see the construction of the pier affecting the floodplain.

35
36 It was agreed the letter regarding archaeology of the area should be submitted prior to
37 approval.

38
39 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONding, THAT A LETTER REGARDING
40 ARCHAEOLOGY IN THE AREA MUST BE SUBMITTED TO THE TOWN AS A CONDITION OF
41 APPROVAL TO THE APPLICATION.

42 VOTE:

43 CHRISTIE ANASTASIA: AYE

44 DAVE ASHMORE: AYE

45 JOANNE EATON: AYE

46 TRACY LOFTUS KELLER: AYE

47 CHAIR BILL HANLEY: AYE

48 MOTION APPROVED 5-0.

1
2 Chair Hanley asked for final Public Comment. Applicant Tom Sieniewicz thanked the Board
3 for their work, and Ms. Fox for addressing her concerns. Mr. Sieniewicz would be happy to
4 walk Ms. Fox through the plans at any time.

5
6 Ms. Fox had no further comments.

7
8 VOTE TO APPROVE THE APPLICATION AS PRESENTED AND CONDITIONED:

9 CHRISTIE ANASTASIA: AYE

10 JOANNE EATON: AYE

11 TRACY LOFTUS KELLER: AYE

12 DAVE ASHMORE: AYE

13 CHAIR BILL HANLEY: AYE

14 MOTION APPROVED 5-0.

15
16 **B. Conditional Use Approval Application #010-2020**

17 **OWNER NAME(S):** Mount Desert Land and Garden Preserve

18 **APPLICANT:** Taylor (Tate) Bushell, Natural Lands Director

19 **LOCATION:** Off Peabody Drive, Seal Harbor

20 **TAX MAP:** 003 **LOT:** 030 **ZONE(S):** Conservation, Shoreland Residential 3 & Resource
21 Protection

22 **PURPOSE:** Section 3.4 – Excavation or Filling < 50 cubic yards. Trail Restoration Project along
23 Long Pond, Seal Harbor.

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

25 CEO Keene confirmed adequate Public Notice. Abutters were notified.

26
27 Regarding Conflict of Interest, Chair Hanley noted the Land and Garden Preserve is a client
28 of his on an unrelated project. He did not feel this relationship required recusal; however,
29 he would abstain on all votes regarding the Application.

30
31 The Board concurred with Chair Hanley’s assessment.

32
33 Ms. Anastasia reported on the site visit. The Western side of the Land and Garden Preserve
34 property centered around Little Long Pond is the site. Trail restoration is occurring on that
35 side, specifically the “David and Neva” Trail. The work area was north of the actual Site Visit
36 location. The site visited was commensurate with the nature of the trail work planned. This
37 was done due to time constraints and the numerous site visits required of the Planning
38 Board for this meeting.

39
40 At the site visited, examples of the trail work planned were shown, including bench cutting,
41 stone cribbing, and treadway surfacing. Application materials were discussed.

42
43 Applicant representing the Land and Garden Preserve, Tate Bushell, noted the proposed
44 work was a trail restoration project. The trails receive numerous visitors – sensors indicate
45 over 5,000 people last year. Heavy use has resulted in erosion and trail creep. There are
46 areas where the trail is too close to the water. Mr. Bushell proposes to move the trail away
47 from the water in some places, improve the treadway surface, and create a uniform
48 treadwidth of two to three feet. Trail work proposed is on the northwest side of the pond.

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Chair Hanley inquired about the work planned within the 250-foot shoreland zone and whether the DEP had been involved.

Mr. Bushell noted the DEP was contacted and they issued a Permit by Rule. The Maine Natural Areas Program had no objections to the work planned. The Historic Preservation Commission had no objections to the work planned. It was noted that DEP representative John Cullen visited the site.

MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, TO FIND THE APPLICATION COMPLETE.

VOTE:
CHRISTIE ANASTASIA: AYE
JOANNE EATON: AYE
DAVE ASHMORE: AYE
TRACY LOFTUS KELLER: AYE
CHAIR BILL HANLEY: ABSTAINS
MOTION APPROVED 4-0-1 (HANLEY IN ABSTENTION)

MS. EATON MOVED, WITH MS. ANASTASIA SECONDING TO USE THE SHORT FORM.

VOTE:
JOANNE EATON: AYE
CHRISTIE ANASTASIA: AYE
TRACY LOFTUS KELLER: AYE
DAVE ASHMORE: AYE
CHAIR BILL HANLEY: ABSTAINS
MOTION APPROVED 4-0-1 (HANLEY IN ABSTENTION).

MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, TO APPROVE THE APPLICATION.

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

VOTE TO APPROVE THE APPLICATION:
JOANNE EATON: AYE
CHRISTIE ANASTASIA: AYE
DAVE ASHMORE: AYE
TRACY LOFTUS KELLER: AYE
CHAIR BILL HANLEY: ABSTAINS
MOTION APPROVED 4-0-1 (HANLEY IN ABSTENTION).

C. Conditional Use Approval Application #011-2020
OWNER NAME(S): John R. & Carol B. Rivers
APPLICANT: Ann E. Rivers
LOCATION: 15 Kimball Road, Northeast Harbor
TAX MAP: 024 **LOT:** 060 **ZONE(S):** Village Residential 2
PURPOSE: Section 3.4 – Non-Commercial – Animal Husbandry. The care and keeping of livestock and domestic animals.
SITE INSPECTION: 3:00PM Masks Required During Site Inspection.

1 CEO Keene confirmed adequate Public Notice. Abutters were notified.

2
3 No Conflict of Interest was found.

4
5 Ms. Eaton reported on the Site Visit. She attended with Chair Hanley and several members
6 of the public. She noted dogs in a car were picked up as they waited for the Site Visit to
7 begin. No other dogs were seen. The rooms to be used for the proposed purpose are on
8 the back of the house. There is a back deck where cages with birds were located. The
9 Applicant stated the birds were on the deck for fresh air. There is a portion of the property
10 referred to as the greenhouse which was being used for storage. There was a room called
11 the feeding room with cages used for reptiles and occasionally rabbits. There was a room
12 called the treatment room. There was a large covered fish tank in the room. The treatment
13 room had a line of four or five freezers, used for food storage and other storage. The room
14 had scales and locked cupboards holding medicines and other things requiring secure
15 access.

16
17 The Applicant provided some history about her activity at the site. There were cages
18 outside the home holding rabbits, tortoises and birds. There are garbage disposal
19 containers near the road. Medical refuse such as needles are taped up and taken off the
20 premises for disposal.

21
22 Chair Hanley noted the Site Visit consisted only of the back third of the residence. There
23 was a separate raised cage outside with guinea hens inside.

24
25 Applicant Anne Rivers stated she was hoping to receive approval for a small, not-for-profit
26 animal rescue occurring out of her home. The residence is next door to the medical center.
27 She is seeking an after-the-fact approval, and she apologized for not applying for the
28 operation earlier. She stated she does not make money off of the work or run it as a
29 business. Animal rescue is a hobby that started 15 years prior. As the number of animals
30 she cared for increased she decided to become a Licensed State of Maine Animal Rescue.
31 Ms. Rivers stated she specializes in exotics, which primarily entails birds, and also high-risk,
32 orphaned animals that need special attention or medical treatment. All animals at her
33 rescue are previous pets surrendered by their owners. Ms. Rivers stated she is one of very
34 few rescues of this type in New England. Her aunt has a rescue facility specializing in wildlife
35 rehabilitation. Ms. Rivers only rescues domestic animals. Her goal is to heal both body and
36 mind of her animals. Ms. Rivers has no intention of becoming an SPCA or other big shelter.
37 Her goal is to hold only a few animals and work with them individually. Ms. Rivers stated
38 her willingness to work with the community.

39
40 The house Ms. Rivers is in has been there 60 years. An addition was added to what was the
41 old Master Bedroom. She has two large rooms partitioned off with a door. This section has
42 its own exit and entrance. Mr. Rivers' private pets do not go into the animal rooms.

43
44 There is a large treatment room with a big counter space, storage, and three freezers. There
45 is also a bathroom and sink. There is a section reserved for the animals. Cages are moved
46 and organized based on what types of animals are being held. There is a vestibule where
47 food and bedding and other supplies are stored. The greenhouse is occasionally used as a
48 sunroom for animals. Currently it is being used for storage.

1
2 Ms. Rivers resides year-round at the property in another section of the house.

3
4 Attorney Seth Libby is representing Ms. Rivers. He stated his purpose there was to ensure
5 Ms. Rivers understands the requirements expected of her during the Application process to
6 ensure compliance.

7
8 Chair Hanley noted there was a lot of interest regarding the Application, and members of
9 the public were in attendance. He felt members of the public might be interested in voicing
10 their concerns. Ms. Rivers had no objection.

11
12 Attorney Margaret Jeffrey stated she was in attendance on behalf of Chris Orthwein who is
13 also in attendance. She voiced appreciation for the attention the situation was receiving.
14 Attorney Jeffrey hoped the Planning Board would review whether the Application has been
15 correctly submitted, including a review and decision regarding whether the operation is
16 commercial in nature. Commercial Animal Husbandry in the Village Residential 2 Zone is not
17 allowed. Attorney Jeffrey maintained this was a commercial use. A non-profit operation
18 has nothing to do with whether it is commercial or not; the fact that the Applicant has
19 applied for non-profit status indicates that she is bringing income into the establishment
20 and augmenting the operation through the income.

21
22 The Town of Mount Desert defined "Commercial" as "*The use of lands, buildings, or*
23 *structures...the intent and result of which activity is the production of income...*" Attorney
24 Jeffrey maintained that Ms. Rivers has done fundraising for the purpose of bringing income
25 into the establishment to support the operation. Mr. Rivers' Facebook profile page states
26 she's self-employed at Acadia Island Exotics. Employment implies a commercial endeavor.
27 Ms. Rivers refers to the space of her operation as a "facility", which seems to imply
28 commercial endeavor.

29
30 Attorney Jeffrey noted that Ms. Rivers' Facebook Page stated she had three hundred
31 animals at her place of operation. She stated elsewhere in her Facebook that she takes
32 "thousands" of animals in at her place of operation. These volumes of animals are
33 tantamount to commercial use. In another Facebook post Ms. Rivers distinguishes her
34 personal animals from the rest of the animals. The animals Ms. Rivers listed in her post
35 included numerous types of animals. Differentiating between her own animals and other
36 animals suggests a commercial endeavor. Attorney Jeffrey concluded the operation is a
37 commercial endeavor; the Application is misapplied.

38
39 Attorney Jeffrey added that a number of the animals noted by Ms. Rivers are neither
40 domestic nor livestock. The Ordinance allows for animal husbandry as "*The care and*
41 *keeping of livestock and domestic animals.*" Animals such as skinks, rats, bats, snakes,
42 various reptiles, and quails do not fall under either livestock or domestic animals.

43
44 Attorney Jeffrey clarified that by objecting to Ms. Rivers' operation in this neighborhood
45 does not mean the neighbors object to rescue operations, nor to the Owners of the
46 property. The objection is to the use in this location. A residence at 15 Kimball Road used
47 as a place for rescue, quarantine, and residence for so many animals is not appropriate.
48

1 Chair Hanley asked Ms. Rivers for her thoughts on the perception that the operation is a
2 commercial activity.

3
4 Attorney Libby stated on behalf of Ms. Rivers that they disagreed with Attorney Jeffrey's
5 assessment that the operation is a commercial one. Ms. Rivers stated she has taken
6 donations over the years in the course of taking in animals and providing medical treatment
7 and rehabilitation. She has accrued costs she and her parents are prepared to bear. She has
8 asked for donations when placing an animal in a home and received donations from those
9 who support her mission. Attorney Libby agreed statements were made on Facebook. He
10 asserted Mr. Rivers acknowledged those statements were essentially embellishments. Mr.
11 Rivers has not had thousands of animals through her facility over the years. There are not
12 three hundred animals on the premises as was evidenced during the Site Visit, nor is there
13 room for three hundred animals. Ms. Rivers is perhaps guilty of embellishment, but it was
14 done in furtherance of her rescue operation and as a way to promote what she's doing. Ms.
15 Rivers did state she was employed there; however, it is a hobby and not a business.

16
17 Ms. Rivers stated that regarding the statement about being self-employed, Facebook has no
18 other way to state what she does. Options presented by Facebook can be limited.

19
20 Attorney Libby asserted that Ms. Rivers wants to be on good terms with her neighbors. She
21 has been doing rescue work at the site for several years with no complaints. She admits her
22 mistake in not applying for the use with the Planning Board. She is applying for not-for-
23 profit status to be more transparent regarding how the donations she receives are used.
24 Mr. Rivers denies the work is a commercial operation. The points Attorney Jeffrey raised do
25 not support the allegation.

26
27 Chair Hanley asked if there was other public comment.

28
29 Neighbor Peter Jonas asserted there have been complaints regarding the site. Neighbors
30 reached out to the Town when they saw the Facebook page and learned of the sale of
31 reptiles. He noted employment status on Facebook is an option and not a mandatory field
32 to fill out. Ms. Rivers made the choice to identify herself as self-employed. Mr. Jonas has
33 seen posts in prior years regarding the sale of animals. It puts the community in an
34 awkward position when Ms. Rivers admits to embellishing some information but not other
35 information.

36
37 Resident Storey Litchfield stated that as a year-round working resident of Northeast Harbor,
38 she is disappointed that people would complain about the rescue work Anne Rivers is doing.
39 The rescue portion of the residence can hardly be seen from the road. Ms. Rivers' work is a
40 wonderful public service and the Town should be grateful for it.

41
42 Neighbor Megan Scott asserted that no one is questioning the good work Ms. Rivers does.
43 The issue at hand is the location at which she does it. Is it safe in a residential neighborhood
44 to have the number of animals she has in her care? There have been occasions where the
45 amounts of garbage put out takes the Town's garbage personnel lengthy amounts of time to
46 remove it. There have been turkey vultures circling the area. Neighbors have heard that
47 raw meat is being held outside the residence. These things raise concern for neighbors,
48 particularly with regard to their children and pets. Ms. Rivers mentions medicines and

1 quarantined animals on the premises. The possibility of the parasite cryptosporidium has
2 been mentioned. These things make the neighbors nervous. Ms. Scott is just across the
3 street and on a well. She worries whether things from the home seep can into the
4 groundwater. The work is to be applauded. The location is the concern. Ms. Scott was not
5 sure how many animals are allowed in a household, but there must be some limits. Ms.
6 Rivers has stated she has had 300 animals in the residence. Neighbors have to assume this
7 was an accurate count at the time.

8
9 Neighbor Chris Orthwein thanked CEO Keene for addressing the neighbors' concerns. He
10 believes commercial business is occurring at the residence. Mr. Orthwein is concerned
11 about animals being quarantined on the site and how it might affect garbage being removed
12 from the residence. He noted a large number of red squirrels getting into the trash from the
13 residence and worried about cross-contamination of disease. What if a disease she's
14 quarantining gets into the community? How can the Town be sure Ms. Rivers is
15 quarantining the animals in an appropriate manner? What is her medical background?
16 Surely some of the garbage must be related to the quarantined animals.

17
18 Mr. Orthwein inquired about who would monitor the facility and ensure it's being safely and
19 appropriately run should the use be approved. The Town would have to go in and monitor
20 the facility as if it were a business and regulate it.

21
22 Mr. Orthwein added that since the Application was submitted, he has seen a handyman on
23 the site every day, cleaning and organizing the building, and disposing of things. The site the
24 Planning Board visited today is not what it looked like a month ago. It's concerning to see
25 posts stating hundreds of animals are on site, but then told there are not. It's difficult to
26 know what the truth of the situation is.

27
28 Neighbor Linda Jonas stated she lives directly behind the residence. She abuts the property
29 and shares a fence. The addition the Rivers added to the property is in close proximity to
30 the fence. Her grandchildren play on the other side of where Ms. Rivers' animals are stored.
31 She has no idea if there are hundreds of animals on the other side of that fence, or cases of
32 cryptosporidium. The area is a densely populated residential neighborhood with small lots.
33 This type of activity is not appropriate. Shortly after the addition was built, Ms. Jonas noted
34 there were green lights glowing through the night; she assumed Ms. Rivers was growing
35 food for the reptiles she had in her care. There is an ever-growing accumulation of cages –
36 at the Site Visit there were hundreds of cages stored behind the fence she shares.

37
38 Another neighbor (Mr. Orthwein?) disagreed with the opinion that this is not a commercial
39 operation. He has seen cars coming in and out of the residence. When he moved to the
40 area earlier this year there were up to 30 glass containers and cages for reptiles in front of
41 the house. There's constant movement in and out of the building. It is deeply concerning to
42 hear Ms. Rivers discuss medical supplies and quarantining sick animals on the premises, and
43 that taking sick animals is part of her work there. There is a clear squirrel problem in the
44 area across from her garbage area. This is clearly more activity than one would see in a
45 residential area.

46
47 Attorney Libby pointed out that undue focus has been given the reptiles on Ms. Rivers
48 property. He felt they were a small part of Ms. River's operation. He believed there were

1 only five reptiles on the property currently. To the extent that Ms. Rivers takes in sick
2 animals, the birds she's brought in have been abused and she's rehabilitating them. The
3 operation is open, and it's been inspected by the State Game Warden, the State Biologist,
4 and others from the State. In the last six months, Attorney Libby stated there have been
5 over a dozen inspections made. Ms. Rivers has passed those inspections every time. Closed
6 trash cans are used for garbage. While he understood the concerns being voiced, rampant
7 speculation can get out of hand, tainting the argument unfairly.

8
9 Ms. Rivers stated she uses pine shavings with the animals. This type of bedding is
10 voluminous. She uses two compressed bales of pine shavings per week. She felt it only
11 looked like a large amount of garbage because she does not re-compress the waste back
12 down. Any waste she feels would attract animals is secured inside closed containers. Ms.
13 Rivers was certain no unsecured bags of garbage contain materials scavengers would be
14 interested in. She noted the changes in the Town's recycling program has forced her to add
15 cardboard and plastic containers to her garbage. She asserted her work protects wildlife by
16 preventing the animals she shelters from encroaching on their environment.

17
18 Mr. Orthwein added that animals on the site can escape. He inquired why rats were on the
19 premises. He pointed out that if Ms. Rivers is using materials to collect the urine and feces
20 of animals that are in quarantine, and then it's disposed of, is there a risk of contaminating
21 other animals in the neighborhood.

22
23 Mr. Orthwein inquired about the Agencies reported to have inspected the area. Will the
24 Town be required to monitor the facility? And if so, would that not constitute the facility as
25 a business?

26
27 Ms. Rivers stated that the Facebook posts regarding reptiles were from five years ago. Mr.
28 Orthwein corrected her, stating the posts were dated 2017.

29
30 Ms. Rivers stated that rats are surrendered pets. Currently, she has older rats that were
31 surrendered by their owners.

32
33 Chair Hanley interrupted the discussion to remind those in attendance about the time.
34 Planning Board tries to limit their meetings to ending at 9:00PM. It was now 8:30PM. He
35 assured those in attendance there would be more chance for public comment as the
36 Application review ensues. He asked for Planning Board comment.

37
38 Ms. Eaton inquired about the rats. Rats were not seen at the Site Visit. Ms. Rivers explained
39 where the rats were located. All the rats are older. She currently has seven.

40
41 Ms. Eaton noted that as the Site Visit went outside to see the cages, she noticed a large
42 number of empty cages stored under the greenhouse. Ms. Rivers noted these were the
43 cages animals come to her in. They are usually not appropriate for further use. She keeps
44 them in case she needs them.

45
46 Ms. Eaton inquired about the inspections and the reports from those inspections. They
47 don't appear to have been submitted with the Application. Ms. Rivers stated she has some
48 of the inspection reports. She's been inspected multiple times by the State Humane Agent,

1 the State Biologist, the Game Warden, the area Animal Control Officer. Ms. Rivers has, on
2 occasion, requested they come make an inspection.

3
4 Ms. Eaton felt it was necessary to see the previously noted reports made on the facility. Ms.
5 Rivers agreed to try to get the reports, or perhaps the Town could get them.

6
7 Mr. Ashmore and Ms. Anastasia felt the main issue is determining whether the operation is
8 commercial or not. Ms. Anastasia agreed with Ms. Eaton that the expert opinions in the
9 reports might shed some light on the question. Ms. Anastasia noted that if the operation is
10 not deemed commercial, then perhaps conditions could be set regarding issues like the
11 number of animals on the premises or cages outside the premises. Ms. Loftus Keller
12 concurred with Ms. Anastasia on her thoughts.

13
14 Chair Hanley noted that Ms. Rivers' efforts are to be commended. He believed everyone in
15 attendance supports animal rescue activities. However, a provision the Planning Board
16 must consider is that of compatibility. The Board is tasked with endeavoring to uphold the
17 Land Use Zoning Ordinance. Chair Hanley read Section 6.A.1 of the Ordinance:

18
19 *"The proposed use shall be compatible with the permitted uses within the district in*
20 *which it is located as measured in terms of its physical size, visual impact, proximity*
21 *to other structures, and density of development."*

22
23 The point of focus is on permitted uses. For the Village Residential 2 Zone, the use would
24 have to be Non-Commercial Animal Husbandry. Chair Hanley is struggling with the fact that
25 the activity as described – although commendable - sounds like a commercial activity. More
26 information will be required for the Planning Board to quantify and make a determination.
27 Online activity identified along with the breadth and volume of the activity as noted is of
28 concern.

29
30 Procedurally, the Board must first determine whether the Application presented is
31 Complete.

32
33 Mr. Ashmore felt more information was necessary. It seems to him that this is a commercial
34 operation.

35
36 Chair Hanley noted the many points made regarding why the operation could be deemed
37 commercial. Nothing has been presented to support why the operation is not a commercial
38 activity. He felt the burden was on the Applicant to present evidence supporting the
39 activity's non-commercial nature. In reviewing the Application, he sees nothing supporting
40 the assertion.

41
42 Ms. Anastasia felt more information was required to go further. She wondered what the
43 demarcation point between non-commercial and commercial was. People use GoFundMe
44 websites for non-commercial purposes, and people gather donations for hobbies or causes
45 that are not commercial. People create things in their homes to sell and are not considered
46 businesses. If Ms. Rivers' operation is deemed a commercial activity, is there a level it could
47 be backed up to so it could no longer be considered a commercial activity?
48

1 Ms. Rivers stated she does take donations. The fundraising Ms. Rivers has done in the past
2 year would not be enough to cover a recent animal surgery costing \$900.00. There are
3 medical costs and food costs. Typical donations are \$5.00. Ms. Rivers stated costs are
4 covered by her disability paycheck and her family and anyone making a donation.
5 Donations cover a fraction of the cost to operate. Ms. Rivers receives no discounts for
6 medical expenses.

7
8 Ms. Rivers stated she does not file taxes for the rescue work she does. She has not been
9 classified as 501(c)3, non-profit status. She has made no profit with the rescue work she
10 does. What money she does receive goes back into the rescue work she does. Her work is
11 essentially supported by her family.

12
13 CEO Keene suggested the Board focus on the definition of Commercial Use. It needs to be
14 determined that what Ms. Rivers is doing falls within the definition of "Commercial Use".
15 Ms. Keene read the definition of Commercial Use:

16
17 *"...the intent and result of which activity is the production of income from the buying
18 and selling of goods and/or services..."*

19
20 Ms. Eaton pointed out that a number of businesses would say any income they make goes
21 right back into expenses. She suggested that with regard to the lateness of the hour, the
22 Planning Board should provide the Applicant with a list of things necessary for the Board's
23 review and Continue this meeting to another date. The Board should consider what
24 submittals would provide a better feel for the scope of the work and whether it's a
25 Commercial Use. Ms. Eaton added that this type of business will ebb and flow, and the
26 Board needs to consider the fact that the situation will change from what the Site Visit
27 showed.

28
29 Chair Hanley felt a determination needed to be made on whether the Application is
30 Complete and if it is not complete, what is required to make it complete.

31
32 Ms. Eaton felt that a list of the inspections made on the site and any reports Ms. Rivers had
33 are necessary. Chair Hanley agreed. He felt the question of how to identify the activity as
34 non-commercial activity needed to be addressed as well.

35
36 It was reiterated that there would be opportunity for additional commentary from the
37 public as discussion continued.

38
39 Chair Hanley felt the next step was making a finding on whether the Application was
40 Complete. And if it was not Complete, what does the Board require.

41
42 Discussion ensued regarding whether or not the Motion must be made in the positive –
43 finding the Application Complete. Chair Hanley reminded the Board that they have been
44 advised by legal counsel in the past to make Motions in the affirmative.

45
46 MS. ANASTASIA MOVED TO FIND THE APPLICATION COMPLETE.

47
48 Ms. Eaton felt uncomfortable with seconding such a Motion. She preferred the materials

1 the Board requires be submitted first before any Motion is made. She felt the reports
2 should have been a part of the original Application submittal.

3
4 Chair Hanley suggested as an alternative that the Discussion could be continued to a date
5 certain and provide more details on the information required to make the decision. He
6 noted the State Agency Inspection reports would be necessary.

7
8 Chair Hanley noted that procedurally, and as advised on previous occasions, he had hoped
9 for a vote regarding whether the Application is Complete. And if it were found through vote
10 that it was not Complete, Findings could be created on what was required for review, and
11 the meeting could be continued to a date certain to address those Findings.

12
13 MS. EATON SECONDED MS. ANASTASIA'S MOTION.

14
15 VOTE:
16 CHRISTIE ANASTASIA: NAY
17 JOANNE EATON: AYE

18
19 Mr. Ashmore was confused regarding the procedure. Discussion ensued regarding how the
20 Planning Board can reach a point to where a list of what is necessary for further review is
21 compiled.

22
23 VOTING CEASED.

24
25 Chair Hanley clarified that this was an issue that could very well be appealed. As a first step,
26 a vote on whether the Application is Complete must be made. Continuing to a date certain
27 was also a possibility.

28
29 CEO Keene noted that if the Board is not comfortable with finding the Application complete
30 because additional information is necessary, it was acceptable to find the Application
31 Incomplete, with the understanding that additional information was required. Typically, the
32 Board makes a Motion in the positive, but if Board Members are not comfortable with that,
33 A finding can be made, along with the reasons why, and a list of what is necessary for a
34 review. This was not a judgment; this would simply be a request for more information
35 necessary for the Planning Board to make a review. Ms. Keene suggested finding the
36 Application Incomplete and including the reasons why.

37
38 After some discussion, MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, TO
39 WITHDRAW THEIR ORIGINAL MOTION AND SECOND.

40 VOTE:
41 CHRISTIE ANASTASIA: AYE
42 JOANNE EATON: AYE:
43 DAVE ASHMORE: AYE
44 TRACY LOFTUS KELLER: AYE
45 CHAIR BILL HANLEY: AYE
46 MOTION APPROVED 5-0.

47
48 MS. ANASTASIA MOVED, WITH MS. EATON SECONDING, TO FIND THE APPLICATION

1 INCOMPLETE, DUE TO FOLLOWING ADDITIONAL ITEMS BEING REQUIRED. THAT
2 ADDITIONAL INFORMATION INCLUDES:

- 3 - DOCUMENTATION RELATED TO INSPECTIONS MADE AT THE RESIDENCE.
- 4 - DOCUMENTATION CONFIRMING THE STATUS OF COMMERCIAL USE.

5 VOTE:

6 CHRISTIE ANASTASIA: AYE

7 JOANNE EATON: AYE

8 DAVE ASHMORE: AYE

9 TRACY LOFTUS KELLER: AYE

10 CHAIR BILL HANLEY: AYE

11 MOTION APPROVED 5-0.

12
13 CEO Keene suggested allowing the public to offer their opinion on the proceedings.

14
15 Attorney Jeffrey noted that procedurally, the public will have the opportunity to comment
16 at the next hearing. She inquired whether the public would only be allowed to comment on
17 the changes presented or throughout the proceedings.

18
19 Chair Hanley assured Attorney Jeffrey the Board encourages Public comment relative to the
20 Standards being reviewed. He expected the Board would allow Public comment on each of
21 the standards discussed.

22
23 CEO Keene suggested the meeting could be continued to the September 9, 2020 Planning
24 Board Meeting already scheduled. Or the meeting can be Tabled if the Applicant requires
25 more time, and Public Notice and Abutter Notification can occur for the date chosen. If the
26 meeting were Continued to September 9, 2020, additional Public Notice and Abutter
27 Notification is not necessary. Ms. Keene did not know how full the September 9, 2020
28 Agenda was.

29
30 It was noted the deadline for September 9, 2020 Meeting submittals may have expired. Ms.
31 Rivers may have to wait for the meeting scheduled for the end of September. Another
32 option was having a Special Meeting for the issue.

33
34 Chair Hanley recalled the September 9, 2020 Meeting was a full agenda. Discussion of
35 alternative Meeting dates ensued. Ms. Rivers stated that a meeting near the end of
36 September would be preferable. This would ensure she can pull the information together
37 and allow time for review of the information by the Board.

38
39 September 23, 2020 was the date of the meeting after the September 9, 2020 meeting. Ms.
40 Rivers felt this date would provide her with the time she needed to pull additional
41 information together for the Board's review. She felt that should she have difficulty
42 compiling the necessary information she can request the issue be postponed.

43
44 CEO Keene and Chair Hanley agreed that resolving the issue as soon as possible was
45 preferable. CEO Keene suggested continuing the Discussion to the September 23, 2020
46 Meeting. This would require Ms. Rivers to submit additional information to the Town by
47 September 11, 2020 at noon. Chair Hanley requested the item be first on the Agenda.

48

1 CEO Keene pointed out for those in attendance that a Continuation of the Meeting to
2 September 23, 2020, meant that Public Notice would not be published and Letters to
3 Abutters would be not sent.

4
5 It was the Consensus of the Board to Continue the Meeting to the September 23, 2020
6 Regular Board Meeting.

7
8 A review of the Motion ensued.

9
10 Attorney Jeffrey suggested adding as a requirement the report from the Fire Department,
11 called to the residence in Spring, 2020. This report would include observances of the
12 property without the opportunity for the Applicant to prepare for the visit. Chair Hanley felt
13 it could be discussed at a later date and did not have to be part of the Formal Motion.

14
15 Ms. Rivers reported that the Animal Control Officer had not been on site recently, although
16 she has visited in the past multiple times. Ms. De Los Santos has received a call regarding
17 the residence recently. Chair Hanley clarified for Ms. Rivers that her deadline for the
18 submissions requested was September 11, 2020.

19
20 MS. ANASTASIA MOVED, WITH MS. EATON SECONDING TO AMEND HER ORIGINAL MOTION
21 TO THE FOLLOWING:

22 TO FIND THE APPLICATION INCOMPLETE, DUE TO FOLLOWING ITEMS BEING REQUIRED:

- 23 - DOCUMENTATION RELATING TO INSPECTIONS AT THE RESIDENCE INCLUDING
24 INSPECTION REPORTS FROM THE STATE HUMANE AGENT, STATE BIOLOGIST, GAME
25 WARDEN, ANIMAL CONTROL.
26 - DOCUMENTATION RELATED TO INSPECTIONS MADE AT THE RESIDENCE, INCLUDING
27 REPORTS FROM MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
28 THAT CLASSIFY MS. RIVERS AS AN ANIMAL SHELTER
29 - REPORTS FROM MOUNT DESERT ANIMAL CONTROL OFFICER DIANA DE LOS SANTOS.
30 - DOCUMENTATION CONFIRMING THE STATUS OF NON-COMMERCIAL USE.

31 VOTE:

32 CHRISTIE ANASTASIA: AYE
33 JOANNE EATON: AYE
34 DAVE ASHMORE: AYE
35 TRACY LOFTUS KELLER: AYE
36 CHAIR BILL HANLEY: AYE
37 MOTION APPROVED 5-0.

38
39 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, CONTINUING THE DISCUSSION OF
40 APPLICATION 011-2020 BY APPLICANT ANNE E. RIVERS TO SEPTEMBER 23, 2020, WITH A
41 DEADLINE FOR SUBMITTALS BEING SEPTEMBER 11, 2020.

42 VOTE:

43 JOANNE EATON: AYE
44 CHRISTIE ANASTASIA: AYE
45 DAVE ASHMORE: AYE
46 TRACY LOFTUS KELLER: AYE
47 CHAIR BILL HANLEY: AYE
48 MOTION APPROVED 5-0.

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15

V. Other

There was no other Business.

VI. Adjournment

MS. ANASTASIA MOVED, WITH MS. EATON SECONding, TO ADJOURN THE MEETING

VOTE:

CHRISTIE ANASTASIA: AYE

DAVE ASHMORE: AYE

TRACY LOFTUS KELLER: AYE

JOANNE EATON: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 5-0.

The Meeting Adjourned at 9:23PM.