

III. **Nonconformity – Sections - 4.3.6 & 4.3.5 Non-conforming Structures – Reconstruction or Replacement.**

- A. **OWNER(S) of the Building/Structure:** Town of Mount Desert
AGENT: Tony Smith, Public Works Director
LOCATION: 26 Dodge Point Road, Seal Harbor
TAX MAP: 001 **LOT(S):** 015 **ZONE(S):** Shoreland Residential Two
PURPOSE: Reconstruction or Replacement of a Non-Conforming Structure. Seal Harbor Bait House renovation project. Project details are available at the Town Office.
SITE INSPECTION: 3:00PM - **Masks Required During Site Inspection.**

**Non-Conforming Structures
Reconstruction or Replacement
Section 4.3.6**

Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or Code Enforcement Officer in accordance with Section 4.3.5 above. An appraiser must make the determination of market value, as defined, of the structure. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or Code Enforcement Officer shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

Within the shoreland zone only: When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- 1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.*

2. *Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area.*

The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

3. *Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.*

If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 4.3.2 above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.

When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 4.3.5 above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within eighteen (18) months of such damage, destruction, or removal. An appraiser must make the determination of market value, as defined, of the structure.

In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer shall consider, in addition to the criteria in Section 4.3.5 above, the physical condition and type of foundation present, if any.

Findings of Fact(s): Based on the valuation of the building by the Town Assessor
identifying the building's worth at \$3,000.00, and the reconstruction cost exceeding
\$242,000.00, the reconstruction costs are more than 50% of the market value of the
building and therefore the Planning Board has jurisdiction to review, under Section 4.3.6

Conclusion of Law: For which the Standard of Section 4.3.6 has been met.

(Randolph/Anastasia) Motion approved 5-0.

APPROVAL CONDITIONS: In addition to all applicable federal, state, and town permits be in place prior to any construction, the following conditions apply:

APPLICATION APPROVED 10/28/2020 **DENIED** _____
(Date) (Date)

MINUTES OF THIS PUBLIC HEARING CONSTITUTE A PART OF THE RECORD FOR THIS MATTER.

SIGNATURES OF ALL VOTING BOARD MEMBERS:

William Hanley
William Hanley, Chairman

David Ashmore

Joanne Eaton
Joanne Eaton

Christie Anastasia
Christie Anastasia

Meredith Randolph
Meredith Randolph

Tracy Loftus Keller
Tracy Loftus Keller, Alternate