

**Town of Mount Desert Planning Board
Meeting Minutes
6:00 PM, January 13, 2021**

This meeting was held virtually and was recorded.

Public Present:

Electra Reed, Posy Stone, Kate Davis, Andrew Davis, Matthew Pierce, Matthew Baird, Tracy Aberman, Sarah Hunter, Shirley Putnam, David Putnam, Christopher Willis, Josephine Ingle, Stuart Kogod, Robyn Hanson, Jamie Whitehead, Hornor Davis, Kathy Miller - Mount Desert 365, Millard Dority, Steve Zirnkilton, Arthur Keller, Mark Gauthier, John Gordon, Andrew Hamilton, Kent Schmidt, Alex Stephens, Philip Dennis, Julie Dennis, Allan McLane, Jim Hanson, Terri Hanson, Wendy O'Neill, David Rayner, John Lowe, Wendy Livingston, Tom Livingston, Todd Mydland, Abby Simpson, Katrina Carter, Bill Eacho, Donna Eacho, Teresa Ball - Matthew Baird Architects, William Hague, Lili Pew, Carol Bult, Laura Stone, Steve Sligar, Mary Schuler, Nancy McCormick, Paul Monfredo, Ruling Searle, Asa Philips, Avery Bourke, Charlotte Thibodeau, Dick Broom, Ed Bearor, Edith Dunham, Eliza Clark, Ginny Barrus, Louise Hartwell, Henry Ogilby, Janet Moore, Jerry Miller, Jon Halpern, Sarah Halpern, Lincoln Millstein, Lydia Kimball, Mary Costigan, Norty Knox, Olympia Stone, Patrick Grace, Paul Growald, Rachel Maniatis, Rob Whitman, Robin Lynch, Sanford Whitehouse, Cynthia Robertson, Sydney Roberts Rockefeller, Winnie, Wilson Neely, Rob Whitman, Nellie Bly, Alyne Cistone, Alex Kleinman

Board Members Present:

Planning Board Chair Bill Hanley, Christie Anastasia, Joanne Eaton, Tracy Loftus Keller, Dave Ashmore, Meredith Randolph

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

Chair Hanley called the Meeting to order at 6:02PM.

Zoom protocols and procedures were explained.

Board Members were noted. Tracy Loftus Keller is an alternate, non-voting member.

II. Approval of Minutes

December 9, 2020:

MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, APPROVAL OF THE DECEMBER 9, 2020 MINUTES AS PRESENTED.

VOTE:

MEREDITH RANDOLPH: AYE

JOANNE EATON: AYE

CHRISTIE ANASTASIA: AYE

DAVE ASHMORE: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 5-0.

1
2 **III. Subdivision Application(s):**

3 **Section 4.4 Completeness Review:**

4
5 **Subdivision #002-2020**

6 **A. OWNER NAME(S):** Mount Desert 365

7 **APPLICANT(S):** College of the Atlantic

8 **AGENT(S):** John Gordon, Architect

9 Gregory Johnston, G.F. Johnston & Associates

10 **LOCATION:** 141 Main Street, Northeast Harbor

11 **TAX MAP:** 024 **Lot:** 078

12 **ZONING DISTRICT:** Village Commercial (VC)

13 **PURPOSE:** A division accomplished by sale, lease, development, buildings or otherwise.
14 The term "subdivision" also includes the division of a new structure or structures on a
15 tract or parcel of land into 3 or more dwelling units within a 5-year period, the
16 construction or placement of 3 or more dwelling units on a single tract or parcel of land
17 and the division of an existing structure or structures previously used for commercial or
18 industrial use into 3 or more dwelling units within a 5-year period.

19
20 No Conflict of Interest was found among the Board.

21
22 Chair Hanley noted this was the second phase of the subdivision review process. This
23 phase was a Completeness Review; to find whether the Application submitted is
24 complete.

25
26 Agent for the Applicant Greg Johnston noted that project architect John Gordon and
27 College of the Atlantic representative Millard Dority were also in attendance. Mr.
28 Johnston stated the purpose of a Completeness Review is to ensure each of the criteria
29 for the Application has an exhibit submitted weighing in on that criteria.

30
31 CEO Keene confirmed the Completeness Review was not advertised, as public notice is
32 not required. Abutters were notified.

33
34 Mr. Johnston shared a view of the Site Plan showing the Main Street end of the proposed
35 building. The Colonel's Restaurant is to the south of the proposed building site; the
36 Kimball Shop is to the north. The lot is currently vacant. The Main Street streetscape is
37 proposed to be retail space with a two-bedroom apartment above. The Tracy Road end
38 of the building is proposed to be three five-bedroom apartments. There is existing
39 driveway access from the Tracy Road which will remain. There is an existing town sewer
40 main which runs through the property. This sewer main serves other buildings on Main
41 Street. There are no easements for this sewer main. The Applicant is willing to formalize
42 an easement for the sewer main. The Applicant proposes to construct a protective vault
43 area in the basement of the proposed building, allowing the Town access to the sewer

1 main. Access and maintenance of the main will be codified. The proposed building will
2 also use that sewer main.

3
4 Addressing the stormwater system, roof runoff will be routed, via rain leaders and
5 downspouts, to drains recently installed on Main Street. The Applicant has been advised
6 that stormwater runoff does not drain well on Tracy Road and a stormwater line must be
7 extended to allow the footing drains there to drain. There is a drywell inlet in the Tracy
8 Road area as well. The Applicant proposes to create some small yard drains that drain to
9 the Tracy Road stormwater system.

10
11 A four-inch water main connects to the site for fire suppression. There are an additional
12 two existing water services.

13
14 There is space on the Tracy Road end of the property for parking spots and some
15 maneuvering space. A walkway will lead to a courtyard.

16
17 Architect John Gordon stated the front section of the building on Main Street is proposed
18 to be roughly 30'x30'. Retail space is planned for the Main Street level with a two-
19 bedroom apartment above. There will be an elevator and stair. The rear section of the
20 proposed building will be three stories, each floor being a five-bedroom apartment. Mr.
21 Gordon shared a floor plan of the first level. He pointed out the Main Street end of the
22 first level is below street level and will consist of basement. The Tracy Road end of the
23 first level will be a five-bedroom apartment, along with a back entryway leading to a
24 stairway, hall, and elevator and parking.

25
26 The second floor of the building on the Tracy Road end will consist of a five-bedroom
27 apartment identical to the apartment below it, a hallway that leads to Main Street, and
28 retail space approximately 700sf in size.

29
30 The third floor of the building will consist, on the Tracy Road end, a five-bedroom
31 apartment identical to the two apartments below it. A two-bedroom apartment is
32 planned for above the retail space and faces Main Street. The building is proposed to
33 have zero setbacks. The building's walls will be on the property line. Walls facing other
34 buildings will have no windows. This requires the building to comply with NFPA5000
35 construction standards, requiring two-hour construction walls. The building will be fully
36 sprinklered.

37
38 The three rear apartments will all have five single bedrooms for College of the Atlantic
39 students. The front two-bedroom apartment is planned for faculty or staff.

40
41 Mr. Gordon described the Main Street elevation. The roof will be gabled. There will be
42 solar panels on the south facing roof.
43

1 The retail space is designed to look like other Main Street retail space, with lots of glass
2 and a recessed covered entryway. The second floor will have three windows facing Main
3 Street. There will be attic space above the apartment.

4
5 Initial energy models have been completed. The building is estimated to be near net zero.
6 Solar panels are planned for the south side of the roof and on the low-sloped roof of the
7 apartments, facing Tracy Road.

8
9 There is a covered entry on the Tracy Road end of the building, along with covered bike
10 storage.

11
12 There will be no windows facing the Kimball Shop, as the building will be built to the
13 property line.

14
15 It was noted that there is a third phase to the subdivision process, the public hearing.

16
17 Chair Hanley asked if there were any questions from the public.

18
19 Resident Kent Schmidt felt the biggest concern was parking. Mr. Johnston stated there
20 were three parking spaces proposed for the site. The Applicant is working on obtaining
21 additional offsite parking. A dedicated van will be kept onsite, as well as a shuttle. College
22 of the Atlantic representative Millard Dority agreed that three onsite parking spaces
23 would not be adequate for the building. A study of vehicles on the college campus has
24 determined a trend toward fewer cars on campus. As an example, an off-campus unit
25 provides 25 beds; that site has eight cars associated with its residents. There are 124 beds
26 on campus; eighteen cars are associated with the dorm residents. Most parking on
27 campus is dedicated to faculty and staff. Mr. Dority believed that by the time the
28 proposed building reaches the public hearing phase, the college will have a plan that will
29 include:

- 30 - three onsite parking spaces.
31 - six offsite parking spaces under lease.
32 - rules restricting the number of vehicles allowed.
33 - a dedicated van kept onsite for student use.
34 - an extension of the college's shuttle bus system to include multiple trips per day to
35 and from the building.

36 Mr. Dority understood residents' concerns. He felt he could provide a solid plan by the
37 time the public hearing comes around.

38
39 Chair Hanley began the checklist review to determine the Application is complete.

40
41 **4.2.1 Information on the Applicant:**

42 1. **Name of applicant:**

43 Found on Page 1 of the Application; confirmed to be complete.

44 2. **Name of agent with attached authorization for agent by owner:**

- 1 Found on Page 1 of the Application; confirmed to be complete.
- 2 3. **If Applicant is a corporation, state whether the corporation is licensed to do business in**
3 **Maine, and attach copy of Secretary of State's Registration:**
4 Found on Page 1 of the Application; confirmed to be complete.
- 5 4. **Name of Applicant's authorized representative and authorization:**
6 Found on Page 1 of the Application; confirmed to be complete.
- 7 5. **Name, address, and number of Registered Professional Engineer, Land Surveyor, or**
8 **Planner:**
9 Found on Page 1 of the Application; confirmed to be complete.
- 10 6. **Address to which all correspondence from the Board should be sent:**
11 Found on Page 1 of the Application; confirmed to be complete.
- 12 7. **What interest does the Applicant have in the parcel to be subdivided (option, land**
13 **purchase contract, record ownership, etc.:**
14 Found on Page 1 of the Application; confirmed to be complete.
- 15 8. **What interest does the applicant have in any property abutting parcel to be subdivided:**
16 Found on Page 1 of the Application; confirmed to be complete.
- 17 9. **State whether preliminary plat plan covers entire, contiguous holdings of owner:** Found
18 on Page 1 of the Application; confirmed to be complete.

19
20 Chair Hanley asked Mr. Johnston what interest the Applicant has in the parcel to be
21 subdivided, per item 4.2.1.7. Mr. Johnston noted the Applicant intends to lease the parcel
22 to be subdivided, as noted in the Project Description on page 1 of the Application. The
23 Applicant as no interest in abutting parcels, per item 4.2.1.8. Tab 15 in the Application
24 includes the boundary survey and shows all contiguous holdings.

25
26 The Board agreed to review each section with a final vote on completeness at the end.

- 27
28 **4.2.2 Information on Parcel to be Subdivided:**
- 29 1. **Location of property Map and Lot (from Town Tax Maps.):**
30 Found in Tab 15 of the Application; confirmed to be complete.
- 31 2. **Survey maps of tract to be subdivided, as well as contiguous property of the owner of**
32 **the tract:**
33 Found on the Plan submitted showing retail space and rental apartments in Tab 1 of the
34 Application; confirmed to be complete.
- 35 3. **Current zoning district(s) of property:**
36 Found in Tab 3 of the Application; confirmed to be complete.
- 37 4. **Acreage of parcel to be subdivided:**
38 Found in Tab 15 of the Application; confirmed to be complete.
- 39 5. **An SSWD, by a licensed soil engineer identifying soil types and a map showing the**
40 **location of soil test areas, unless the parcel will utilize public sewer:**
41 Found in Tab 4 of the Application; confirmed to be complete.
- 42 6. **Names of property owners within 1,000 feet from the parcel to be subdivided, and on**
43 **opposite side of any road from parcel to be subdivided (show on Plat):**
44 Found in Tab 5 of the Application; confirmed to be complete.

- 1 7. **Any restrictive covenants to be placed on the deeds:**
2 No restrictive covenants found per deed submitted in Tab 2 of the Application; confirmed
3 to be complete.
4 8. **Proposed soil erosion and sedimentation control:**
5 Found in Tab 6 of the Application; confirmed to be complete.
6 9. **Water supply:**
7 Water supply stated to be Town Water and adequate. Found in Tab 7 of the Application;
8 confirmed to be complete.
9

10 Mr. Johnston stated that the site has stubbed into it a single four-inch ductile iron pipe
11 confirmed to provide adequate water for fire suppression. Two one-inch diameter lines
12 will provide adequate water for the proposed living space. These estimates have been
13 confirmed with the Mount Desert Water District.
14

15 **4.2.3 Information on Subdivision:**

- 16 1. **Proposed name of subdivision:**
17 Found in Tab 1 of the Application; confirmed to be complete.
18 2. **Number of lots:**
19 Found on the architectural plans in Tab 14 of the Application; confirmed to be complete.
20 3. **Date, north point, graphic map scale (show on Plat):**
21 Found on the Site Plan on Tab 15 of the Application; confirmed to be complete.
22 4. **Proposed lot lines with approximate dimensions and suggested location where known**
23 **of buildings, subsurface sewage disposal systems, and wells (show on Plat):**
24 Found on the Site Plan on Tab 15; confirmed to be complete.
25 5. **Location of temporary markers so located as to enable the Board readily to locate lots**
26 **and appraise basic lots layout in the field (show on Plat):**
27 Found on the Boundary Survey on Tab 15 of the Application; confirmed to be complete.
28 6. **Location of all parcels to be dedicated to public use, the conditions of such dedication,**
29 **as well as the location of all natural features of site elements to be preserved (show on**
30 **Plat):**
31 Found on the Architectural on Tab 14; confirmed to be complete.
32 7. **A location map, consisting of a USGS Topographical Map, showing the relation of the**
33 **proposed subdivision to adjacent properties and to the general surrounding area:** Found
34 on Map and Aerial on Tab 8; confirmed to be complete.
35 8. **Location and size of existing buildings and other essential existing physical features**
36 **(show on Plat):**
37 Found on the Boundary Survey on Tab 15; confirmed to be complete.
38 9. **Location of all wetlands, regardless of size, all water bodies and areas within the State**
39 **Shoreland Zone (show on Plat):**
40 None identified on the Site, reference to Habitat Maps indicating no protected resources
41 found on Tab 8; confirmed to be complete.
42 10. **Location of all drains which shall provide adequate storm water management:**
43 Stormwater system found on the plan, and Stormwater system capacity information
44 found on the Site Plan on Tab 15. Stormwater Management Plan found on Tab 9;

1 confirmed to be complete.

2 11. **Location and size of any existing and proposed sewers and water mains, and culverts**
3 **and drains:**

4 Found on the Site Plan on Tab 15; confirmed to be complete.

5 12. **Location, names, and widths of existing and proposed streets, highways, easements,**
6 **building lines, parks, and other open spaces (shown on Plat):**

7 The Site Plan shows access from Main Street and ten feet from Tracy Road, on Tab 15;
8 confirmed to be complete.

9 13. **Names of abutters (show on Plat):**

10 Found on Site Plan submitted on Tab 15; confirmed to be complete.

11 14. **The Subdivider will determine, based on the Federal Emergency Management Agency's**
12 **Flood Boundary and Floodway Maps, whether the subdivision is in a flood prone area:**

13 No flood prone area on or adjacent to the property. Found on Tab 3; confirmed to be
14 complete.

15 15. **Other information not indicated above, as specified by the Board:**

16 Chair Hanley inquired of the Board whether there was anything further they would like
17 the Applicant to clarify or include in the Application.

18
19 Ms. Randolph clarified the stormwater management plan was on Tab 9 and not tab 10, as
20 originally noted by the Applicant. CEO Keene noted another correction. 4.2.3.7 is on Tab
21 8 and not Tab 9, as originally noted by the Applicant.

22
23 **5. GENERAL REQUIREMENTS**

24 **5.1 Buffer Strip Buffering elements or screening in the form of architectural and/or**
25 **landscape design:**

26 Applicant notes the adjoining uses as similar – that of commercial use with apartments.
27 The courtyard entry will be landscaped, and the historic foundation wall on site will
28 remain as an architectural and artistic relic, and also as a visual buffer along a portion of
29 the south side of the structure. Found on Tab 15; confirmed to be complete.

30
31 **5.2 Conformance with other Laws, Regulations:**

32 Narrative regarding state and federal site laws being Not Applicable attached on Tab 11;
33 confirmed to be complete.

34
35 Mr. Johnston noted the narrative relates to the state law of site law related to
36 subdivisions. This law is specific to lots of 20 acres or more, or three acres in purely
37 impervious area to qualify for Site law. Neither of these issues apply for the .137-acre lot
38 in question and therefore the issue is Not Applicable.

39
40 **5.3 Construction Prohibited No utility installations, no ditching, grading or construction of**
41 **roads, no grading of land or lots, and no construction of buildings shall be commenced**
42 **on any part of the proposed subdivision until a Final Plat Plan of the subdivision has**
43 **been prepared, submitted, reviewed, approved, and endorsed as provided by this**
44 **Ordinance:**

1 Applicant's submission states that no work will occur on site until Plat is recorded and
2 Permits are granted.

3
4 **5.4 Ditches, Catch Basins:**

5 Pertinent plans and reports identified in Checklist Number 4.2.3.9; confirmed to be
6 complete.

7
8 **5.5 Easements The Board may require easements for sewerage, drainage, utilities, or public**
9 **access:**

10 Deed shows Easement access to adjacent property over the subject's site. Found in Tab
11 2 of the Application; confirmed complete.

12
13 Mr. Johnston noted there is an easement along Tracy Road, towards the back of The
14 Colonel's Restaurant. There will be no change in the use and the easement will continue
15 to exist.

16
17 **5.6 Dedication for Year-round housing:**

18 Applicant states none is required. The Applicant intends to provide student living
19 quarters.

20
21 **5.7 Lots and Density:**

22
23 **5.7.1 The lot size, width, depth, frontage, shape and orientation and the minimum setback**
24 **lines shall be in accordance with the Land Use Zoning Ordinance.**

25 Shapes sizes and setbacks are on the Site Plan, Tab 15. There are zero side setbacks. The
26 proposed project is NFPA compliant; confirmed to be complete.

27
28 Section 3.5 Density calculations are included. Mr. Johnston noted a dwelling is allowed per
29 1000 sf.

30
31 **5.7.2 Where individual, on-site sewage disposal systems are to be utilized, the size of each**
32 **lot shall be based on soil characteristics, and shall, as a minimum, conform to M.R.S.**
33 **Title 12, Section 4807- A as amended.**

34 Not Applicable. The proposed building is on Town sewer.

35
36 **5.7.3 The Planning Board shall determine if a division of land will be reviewed as a Cluster, a**
37 **Workforce or a Conventional subdivision.**

38 The Applicant has not requested the project be reviewed as a cluster subdivision.

39
40 **5.8 Sewage Disposal**

41 **5.8.1 Where any part of a proposed subdivision is located within 1500 feet of a public sanitary**
42 **sewer line, the subdivider shall connect with such sanitary sewer line by means of a**
43 **main not less than 8 inches in diameter.**

1
2 **5.8.2 Where private subsurface sewage disposal is to be utilized, the subdivider must**
3 **conform to all State of Maine Plumbing Code and LUZO requirements:**

4 Plans approved by the Public Works Department shown on Tab 10 and Tab 15. Confirmed
5 to be complete.
6

7 **5.9 Land not Suitable for Development:**

8 Submittal found on Tab 12. Confirmed to be Complete.
9

10 Mr. Johnston noted 5.9 addresses submerged lands and resources, neither of which exist
11 onsite. The FEMA map submitted shows the property is not near flood zones.
12

13 **5.10 Open Space Provisions**

14 **5.10.1 The Board may require that a proposed subdivision design include a landscape plan that**
15 **will show the preservation of existing trees (10" or more in diameter), the replacement**
16 **of trees and vegetation, graded contours, streams, and the preservation of scenic,**
17 **historic, or environmentally desirable areas. The street and lot layout shall be adapted**
18 **to the topography. Extensive grading and filling shall be avoided.**

19 Applicant states the building has access to recreational facilities in Northeast Harbor and
20 Acadia National Park.
21

22 **5.10.2 The Board may require that the subdivider reserve an area of land as an open space**
23 **and/or recreational area for use by property owners in the subdivision.**

24 No open space requirements are required for the Application.
25

26 **5.11 Wells**

27
28 **5.11.1 Because they are difficult to maintain in a sanitary condition, dug wells may be**
29 **permitted only if it is not technically feasible to develop other ground water sources.**

30 Deemed Not Applicable – the property is on Town water.
31

32 **5.11.2 The applicant may be required to show the availability of adequate potable water. A**
33 **test well may be required, if a public water system is not utilized.**

34 Applicant states there is adequate capacity of public water available.
35

36 Mr. Johnston confirmed the Water Department has been contacted. The property has a
37 4-inch water main and two services stubbed in and available for use.
38

39 **5.12 Performance Bond**

40
41 **5.12.1 The Board may require that the subdivider file with the Board at the time of submission**
42 **of the Final Plan a performance guarantee in an amount sufficient to defray all expenses**
43 **of the proposed improvements.**

44 Mr. Johnston stated that when applying to connect to a utility, there is an associated fee

1 which estimates the total impact. Additionally, there is a reserve fund held for a road
2 opening. These funds should be adequate, but if a performance bond is deemed
3 necessary, the Applicant is willing to discuss it.
4

5 Chair Hanley asked for the Board's thoughts. Ms. Randolph did not feel there was enough
6 information to make a decision. Mr. Johnston estimated the road opening fee to be
7 \$1000 - \$1500. The purpose of a performance bond is to cover in case a project is not
8 completed. Should that happen, the Town can step in with the performance bond and
9 complete it. It would have to be determine what sort of project could be started that
10 would require the Town to step in and complete. Sewer and water are already at the site.
11 The only service to install would be the storm drainage system. This results in very little
12 risk to the Town.
13

14 CEO Keene inquired whether the Applicant has been in contact with the electricity
15 provider. Mr. Johnston reported conduits for the electricity have been stubbed in.
16 Infrastructure at least is in place for electricity.
17

18 **5.13 Plan Revisions After Approval**

19
20 **5.13.1 No changes, erasures, modifications, or revisions shall be made in any Final Plat Plan**
21 **after approval has been given by the Board.**
22

23 **5.13.2 Applicants for revisions shall submit at least eight (8) copies of any proposed revision.**
24

25 **5.13.3 The revised Plan shall refer to the original Plan (and any other revisions) and state the**
26 **specific nature of the revision.**

27 The Applicant states no revisions will occur without an Application to the Planning Board.
28

29 **5.14 Street Design and Construction**

30 **5.14.1 Widths of rights-of way**

31 Applicant states access is on Main Street and adequate access for emergency vehicles is
32 planned for.
33

34 **5.14.2 Dead End Streets**

35 Deemed Not Applicable.
36
37

38 **5.14.3 The approval by the Board of a subdivision plan shall not be deemed to constitute or be**
39 **evidence of any acceptance by the Town of Mount Desert of any street, road, or**
40 **right-of-way.**
41

42 **5.15 Access to Direct Sunlight**

43 Applicant notes considerable access to sunlight. Solar arrays are planned for the roof.
44

1 **5.16 Cluster and Workforce Subdivision**

2
3 **5.16.1 Purpose: The purpose of the cluster and workforce subdivision standards is to**
4 **encourage new concepts of cluster housing with maximum variations of design.**

5
6 **5.16.2. Plan Design Requirements**

7 Deemed Not Applicable. Applicant is not applying for cluster housing.

8
9 Ms. Randolph inquired about the performance bond in relation to the sewer main proposed to
10 run under the building. She wondered if there were any work planned for the main that might
11 prove problematic should the project fail. Mr. Johnston referred to a plan reviewed with Public
12 Works and submitted to the Planning Board. A letter from the Public Works Director has been
13 submitted as well. Perhaps further discussion between the CEO and Public Works Director could
14 be held and if they felt bonding was necessary related to construction of the sanitary sewer, he
15 would feel comfortable with such a suggestion. Mr. Johnston shared a plan of the existing sewer.
16 The work proposed is that the sewer will have its own secured basement area. The sewer line is
17 relatively new. It has been scoped and confirmed clean and operating. The basement area
18 provided will allow maintenance to occur on the line without having to dig it up.

19
20 Ms. Randolph felt that while no one wants to think anything will go wrong, bonding is put into
21 place as an assurance. The building is being designed to protect the exposed sewer line. If
22 something were to happen halfway through the project and construction could not continue, the
23 Town would need to complete the project to the point the sewer line is protected.

24
25 Chair Hanley asked property owner MD365 Representative Kathy Miller her thoughts.

26
27 Ms. Miller noted she would have to consult with COA before offering an opinion. An agreement
28 would have to be reached on how to proceed and the legal documents between the entities
29 would have to be reviewed.

30
31 Mr. Dority inquired what the bond would look like. Chair Hanley agreed more specifics would
32 have to be in hand before details like the amount of the bond could be determined.

33
34 Mr. Johnston noted he could discuss the issue with Public Works. A cost of the work would have
35 to be determined by the Town. A Bond is a percentage of that cost estimate. Mr. Johnston felt
36 an opinion of necessity will be required, as well as cost estimates of the work to determine an
37 appropriate bond amount. The issue must then be brought back to MD365 and COA to determine
38 responsibility.

39
40 Ms. Miller asked if there was a precedent to requiring such a bond for construction projects in
41 town. Chair Hanley agreed it has been a long time since a bond was required for a project. Ms.
42 Miller asked if other buildings that have gone up since were required to provide a bond. Chair
43 Hanley recalled one building constructed in town shortened the end of the building to avoid the
44 issue of the sewer line.

1
2 Mr. Johnston felt there was ample opportunity to provide answers to the questions presented
3 by the Planning Board. Chair Hanley felt a bond requirement would be scaled to the sewer line.
4

5 It was agreed the issue of the performance bond needed to be re-reviewed at the next Planning
6 Board Meeting.
7

8 **LAND USE ZONING ORDINANCE**
9 **SECTION 6 STANDARDS FOR USES, PERMITS AND APPROVALS**
10 **6A GENERAL PERFORMANCE STANDARDS**

11 **6A.1 Compatibility**

12 The Applicant noted the building is compatible with the Village Commercial District.
13

14 Architect John Gordon reported the building had been designed to fit the scale of other buildings in
15 the area. It is proposed use and function appears to be compatible with what else is in that district.
16 The wall facing Main Street was designed specifically to match aesthetically.
17

18 **6A.2 Erosion and Sedimentation Control**

19 Exhibit submitted under 4.2.2.08.
20

21 **6A.3 Highway Safety**

22 Applicant states construction timing will be coordinated with abutters and considerate of summer
23 business. Construction parking will be onsite during the summer months. Mr. Johnston noted the
24 Applicant wants to be a good neighbor. Neighbors would be reached out to.
25

26 **6A.4 Impact on Town Services**

27 Applicant notes that the Public Works Department and the Water Division have been contacted.
28 Coordination and letters from Public Works have been submitted to the Town.
29

30 **6A.5 Land Suitability**

31 Exhibit submitted under 4.2.2.5 in Tab 12 with regard to suitability of the site.
32

33 Mr. Johnston noted that SW Cole has been engaged to do borings on the site to ascertain the
34 suitability of the soils. Bedrock lies below a surface of fill and other historical disturbance. Similar
35 structures exist to the north and south of the property.
36

37 **6A.6 Lighting – Outdoor**

38 Lighting plan is attached to the Application in Tab 15. All lighting will be shielded and dark-sky
39 compliant.
40

41 **6A.7 Stormwater**

42 Stormwater report submitted in Tab 9 of the Application.
43

44 **6A.8 Vegetation**

1 Site is devoid of trees. No clearing is required. Submitted on Site Plan in Tab 15.

2

3 **6A.9 Dust, Fumes, Vapors, Odors and Gases**

4 No activities will occur outside of normal construction activity. Vapors and Odors will be not
5 created. Water trucks as described in the erosion control specifications will be employed to
6 control dust.

7

8 Ms. Randolph noted that with regard to compatibility, she would like to see street elevations
9 from the Tracy Road end of the building. While Tracy Road is the less dense end of the property,
10 it is where the three stories will be visible. Elevations from the Main Street side are already
11 presented. Ms. Randolph hoped to see something that shows the proposed building is
12 compatible from the Tracy Road end as well. Mr. Gordon felt it could be provided. He added
13 that from the Tracy Road end, the building is approximately 100 feet back and should be screened
14 by the Water Department building and trees. Chair Hanley suggested a photo montage from
15 Tracy Road looking east, like the montage used from the Main Street end. Ms. Randolph hoped
16 for something to show the context of the heights in relations to trees and other buildings on the
17 Tracy Road end.

18

19 **6B SPECIFIC PERFORMANCE STANDARDS FOR ACTIVITIES AND LAND USES**

20 **6B.1 Agriculture**

21 Deemed Not Applicable.

22

23 **6B.2 Air Landing Sites**

24 Deemed Not Applicable.

25

26 **6B.3 Beach Construction**

27 Deemed Not Applicable.

28

29 **6B.4 Boat Storage**

30 Deemed Not Applicable.

31

32 **6B.5 Campgrounds**

33 Deemed Not Applicable.

34

35 **6B.6 Driveway Construction**

36 No driveway construction is proposed. Existing paved access to the rear of the building will be
37 repaved, following utility installation. Minimum of three inches of asphalt to be applied. Shown in
38 Tab 15 of the Submittals.

39

40 Mr. Johnston noted the driveway there would be brought to better than the condition it is currently
41 in.

42

43 **6B.7 Excavation (other than gravel pits) or filling.**

44 Deemed Not Applicable.

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6B.8 Fences and walls

The existing stone foundation on the south side will remain as part of the landscape design. No other fences or walls are proposed. Shown in Tab 15 of the Submittals.

6B.9 Individual Private Campsites

Deemed Not Applicable.

6B.10 Home occupations and home offices

Deemed Not Applicable.

6B.11 Lots

The lot is a conforming lot in its district. Shown on Tab 15 of the Submittals. Access is provided from Main Street. Emergency access is via the existing driveway off Tracy Road. Access will remain unchanged and available.

6B.12 Manufactured Homes.

Deemed Not Applicable.

6B.13 Mineral Extraction and Exploration

Deemed Not Applicable.

6B.14 Mobile Homes (temporary), Campers, Trailers and Recreational Vehicles

Deemed Not Applicable.

6B.15 Sanitary Standards

Sanitary Sewer is available onsite. Six-inch sanitary connection provided is consistent with the Town of Mount Desert Sewer Ordinance.

6B.16 Sign Regulations

Retail space will secure signage at the time of lease. Signage, if any, for College of the Atlantic will be as shown on the architectural plans submitted and shown on Tab 15.

6B.17 Vehicles, Unregistered

Deemed Not Applicable.

6B.18 Wireless Communication Facilities

Deemed Not Applicable.

6B.19 Animal Husbandry 2 in the Village Commercial and Shoreland Commercial Districts

Deemed Not Applicable.

1 **SHORELAND ZONING STANDARDS**

2
3 **6C.1-6C.11 – N/A – Property is not located within the Shoreland Zone.**

4
5 Chair Hanley confirmed the Section was not applicable, because the site is not within the
6 shoreland zone.

7
8 Ms. Randolph asked if elevations were included in the submittal. Mr. Johnston noted Tabs 14
9 and 15 are the architectural plans. There is elevation from Tracy Road in Tab 14. It appeared
10 that other elevations were not included in the submittal. Mr. Johnston promised to get them to
11 the Planning Board in time for the next review. He hoped Mr. Gordon’s expert testimony would
12 suffice in the meantime.

13
14 Chair Hanley asked for further questions or comments from the Board.

15
16 Chair Hanley asked how the Applicant will handle electrical loads. Mr. Johnston noted the
17 building is proposed to have solar panels. This will bring the building to near net zero. With the
18 recent Main Street project, there is no question that adequate power from the street wiring is
19 available. Wires have not been pulled from the pole across the street yet. Versant Power has
20 confirmed there’s adequate power for the building’s needs.

21
22 CEO Keene noted that submission deadlines for a January 27, 2021 Hearing have passed. The
23 next available meeting date would be February 10, 2021. If the Board wants to deem the
24 Application complete, submissions must be at the Town Office by noon on January 22, 2021. If
25 the Application is found not complete because items are missing, time will be necessary for a
26 final completeness review and public hearing.

27
28 Ms. Randolph felt, with the exception of the Performance Bond, the items requested should be
29 straightforward and easy to procure. Unless the Applicant had any concerns about the
30 submittals, the Application could be found Complete contingent upon submission of the building
31 elevations, street montage and elevations from Tracy Road, and a Bond agreement.

32
33 Mr. Johnston understood the conversation regarding the bond was that the Applicant would
34 research what bond requirements there may be and present the information back to the CEO’s
35 office. He did not feel having a bond physically in place was necessary at this point in the process.
36 The Board needed the information to determine whether a bond was necessary. Bonding occurs
37 at construction and is not usually in place at the time of the public hearing. He felt the Planning
38 Board needed to determine whether the work needed to be bonded, and the Applicant has
39 agreed to bring to the Board information on what bonding would look like.

40
41 Ms. Eaton suggested including a parking plan in the submittals. Chair Hanley agreed parking was
42 a key component of completeness. He suggested tabling the issue of parking till the next meeting
43 and continuing the discussion then when more information is available. Ms. Randolph agreed.
44 She cautioned that information provided at a later date may be deemed inadequate.

1 All later submittals will require discussion.

2

3 Mr. Dority pointed out that the Application presented already offers alternates to the parking
4 spaces as well as a dedicated van and a small shuttle van back and forth from the building to the
5 school. He hoped the Board would take a chance that the three on-site spaces, plus six additional
6 spaces, plus the other modes of transportation will prove satisfactory. Delaying the process due
7 to this issue could delay the project by another four or five weeks. Mr. Dority felt confident he
8 could convince the Board that a solid plan is in place. Chair Hanley felt the request was in the
9 context of completeness review. Something must be submitted attesting to parking. It should
10 not incur a four- or five-week delay. Mr. Johnston noted that there is an exhibit for parking. The
11 college is taking on the risk that the plan submitted does not satisfy the Board's standards. The
12 two-week required public notice period bumps the hearing out to a further meeting. He hoped
13 the Board would consider the parking information already submitted does meet completeness
14 requirements, with the assumption of risk on the Applicant that what has been submitted will
15 not suffice. Given the interest as evidenced by the number of attendees at the meeting, Mr.
16 Johnston felt it important to keep the momentum going, rather than delaying the project's
17 progress.

18

19 Ms. Eaton felt parking would be a big discussion at the public hearing. The Applicant could be at
20 risk of having their Application denied. Ms. Randolph noted that if the Board agreed to consider
21 the Application incomplete until the parking plan was seen, the next meeting, only two weeks
22 away, was when new submittals could be reviewed. Mr. Johnston maintained there was
23 something in the Application for each of the required submittals. The Application satisfies the
24 question of Completeness. Chair Hanley agreed. An approval contingent upon the submittals
25 would keep the process moving forward. There would be further in-depth conversation about
26 the project. Ms. Eaton agreed it was a good idea.

27

28 Ms. Randolph voiced confusion. She believed there was not enough time before the next hearing
29 due to public notice and notification of abutters. The issue would be discussed not at the next
30 meeting, but the meeting following that. Chair Hanley felt that in the context of completeness,
31 the Planning Board would find the Application complete, contingent upon the submittal of the
32 additional items noted.

33

34 CEO Keene wondered whether there would be enough time to review additional submittals
35 before the public hearing, presumably scheduled for February 10, 2021. Chair Hanley noted a
36 vote would only be to determine completeness. The public hearing will be the occasion where
37 issues and concerns are fully reviewed and discussed. CEO Keene inquired whether the Board
38 planned to review the items at the public hearing. If that was so, and the submittals are found
39 to be satisfactory, the Application can be approved that night. Mr. Johnston hoped that
40 submittals could be confirmed as adequate that night, followed by discussion public hearing and
41 compliance. The final portions of the process can be continued to a later date if deemed
42 necessary. Adequacy of the submittals would be discussed and determined at the public hearing.
43 Mr. Johnston believed the necessary materials can be submitted to the Town by the January 22,
44 2021 deadline.

1
2 Ms. Randolph asked if it were possible to review the rest of the information that needs to be
3 applied at the January 27, 2021 meeting and still have the public hearing on February 10, 2021.
4 This would provide the Board with the opportunity to review the submittals before the public
5 hearing, while not impacting the timeline.

6
7 CEO Keene noted there is a chance the Board would not be satisfied with what is presented.
8 Public Notice and abutter notification would already have gone out for a public hearing. Ms.
9 Randolph felt that was a risk the Applicant seemed willing to take. Discussion on the 27th would
10 be a continuance of this meeting's discussion. CEO Keene noted that if this meeting were
11 continued, advertisement would not be necessary. She felt the Board would likely want to see
12 the submittals prior to public hearing.

13
14 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, TO FIND THE APPLICATION
15 COMPLETE, CONTINGENT UPON THE FOLLOWING SUBMITTALS:

- 16 1. MORE INFORMATION ON PARKING.
- 17 2. MORE INFORMATION ON WHETHER A BOND MAY BE NECESSARY.
- 18 3. BUILDING ELEVATIONS.
- 19 4. A PHOTO MONTAGE OF THE BUILDING FROM THE TRACY ROAD END OF THE PROPERTY.

20 VOTE:

21 MEREDITH RANDOLPH: AYE

22 CHRISTIE ANASTASIA: AYE

23 JOANNE EATON: AYE

24 DAVE ASHMORE: AYE

25 CHAIR BILL HANLEY: AYE

26 MOTION APPROVED 5-0.

27

28 CEO Keene asked whether this discussion was being continued to January 27, 2021 for
29 Completeness Review. The Board agreed it was not being continued. CEO Keene was unsure
30 how to proceed with public notice and abutter notification, which is based on the next step in
31 the process.

32

33 Mr. Dority suggested amending the Motion to state the next meeting would be held February 10,
34 2021 and would consist of a Completeness Review and public hearing.

35

36 Mr. Johnston thought it was a conditional completeness vote contingent upon the four exhibits
37 being submitted by January 22, 2021. This allows the public hearing to be properly advertised
38 and gets the expansion of the exhibits in by January 22, 2021, giving the CEO the confidence to
39 proceed with public notice and abutter notification. Such wording only modifies the Motion to
40 include the deadline of having the submittals in by January 22, 2021 at noon.

41

42 THE MOTION WAS AMENDED TO READ:

43 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO FIND THE APPLICATION COMPLETE,
44 CONTINGENT UPON THE FOLLOWING SUBMITTALS:

- 1 1. MORE INFORMATION ON PARKING.
- 2 2. MORE INFORMATION ON WHETHER A BOND MAY BE NECESSARY.
- 3 3. BUILDING ELEVATIONS.
- 4 4. A PHOTO MONTAGE OF THE BUILDING FROM THE TRACY ROAD END OF THE PROPERTY.
- 5 SUBMITTALS MUST BE SUBMITTED BY NOON JANUARY 22, 2021.

6 VOTE:

- 7 JOANNE EATON: AYE
8 MEREDITH RANDOLPH: AYE
9 CHRISTIE ANASTASIA: AYE
10 DAVE ASHMORE: AYE
11 CHAIR BILL HANLEY: AYE
12 MOTION APPROVED 5-0.

13

14 It was suggested the meeting take a recess.

15

16 MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, TO TAKE A FIVE-MINUTE RECESS.

17 VOTE:

- 18 CHRISTIE ANASTASIA: AYE
19 MEREDITH RANDOLPH: AYE
20 JOANNE EATON: AYE
21 DAVE ASHMORE: AYE
22 CHAIR BILL HANLEY: AYE
23 MOTION APPROVED 5-0.

24

25 The meeting took a five-minute recess.

26

27 **IV. Other:**

28 **A. Remand from the Zoning Board of Appeals to the Planning Board for further**
29 **findings of facts and conclusion of laws with regards to height and setbacks in the**
30 **matter of the Otium, LLC (formerly, Lapsley Family, LLC) application for the**
31 **Reconstruction or Replacement of a Non-conforming Structure.**

32 **OWNER(S)** Otium, LLC (formerly Lapsley Family, LLC)

33 **AGENT(S):** Mary Costigan, Bernstein Shur Esq.

34 **PROPERTY LOCATION:** 11 Barnacles Way, Northeast Harbor

35 **TAX MAP:** 023 **LOT(S):** 002-002

36 **ZONE(S):** Shoreland Residential One (SR1)

37

38 Attorney Hamilton felt it would be helpful to the Board to have proposed draft findings submitted
39 by the attorneys for both the Applicant and the Appellant. Both attorneys have submitted draft
40 findings.

41

42 Regarding the remand, Attorney Hamilton noted that the Zoning Board of Appeals determined
43 the case to be remanded back to the Planning Board for further findings. The Board of Appeals
44 directed the Planning Board to make findings and conclusions, including as to setback and height.

1 This has been interpreted by the CEO and the attorneys that it is not limited to setbacks and
2 height, but it is focused on setbacks and height. The Planning Board confirmed they were in
3 receipt of the draft findings submitted by both attorneys.
4

5 Attorney Hamilton suggested working from the draft findings to conclude whether the proposed
6 building is considered a replacement or reconstruction of an existing structure, or the proposed
7 building is considered a new structure. The answer to this question determines the path the
8 Planning Board must follow. Attorney Hamilton wondered if it would be worthwhile to hear from
9 the parties regarding their arguments.
10

11 Chair Hanley hoped to hear from both the Applicant's and the Appellant's attorneys.
12 Additionally, Mr. Hanley hoped for guidance from Attorney Hamilton regarding procedure. Chair
13 Hanley believed the goal was to add more quantifiable information to the established findings of
14 fact and conclusion of law determined at the Planning Board's previous review of the Application.
15 The revised findings of fact and conclusions of law will then return to the Board of Appeals to
16 provide them with a better understanding of how the Planning Board reached their decision.
17

18 Attorney Hamilton noted for clarification that the Board of Appeals reviews decisions made by
19 the Planning Board on a purely appellate review standard; they do not make a *de novo* review.
20 The Board of Appeals took no evidence and formed no new record. Their remand is focused on
21 the need for further findings of fact and conclusions of law. The remand is not a directive to the
22 Planning Board to reconsider their decision. It is related to the decision already made by the
23 Planning Board.
24

25 Attorney for the Applicant Mary Costigan believed it was the Board's task to review their
26 previously made decision and issue more specific findings. The Planning Board's decision was
27 made under the non-conforming structure Section 4.3.6 which addresses reconstruction or
28 replacement. That decision has been made. This is not an opportunity to make a new decision.
29 This is an opportunity to review the decision already made and add to it explicit reasoning
30 supporting how the decision was reached. She felt there was support in the record of the
31 previous Minutes for everything she provided in her draft findings. Her draft findings are
32 consistent with the decision previously determined by the Planning Board.
33

34 Attorney for the Appellant David Perkins stated that the Planning Board has the right at any time
35 to reconsider their decision. The Appellant believes the Board should do so and deny the
36 Application. With regard to the remand, Attorney Perkins asserted that Section 4.3.2 clearly
37 states that new structures must comply to all setbacks. The Applicant is focused on Section 4.3.6
38 which addresses replacement structures. Section 4.3.6 states that a replacement structure
39 cannot be larger than the existing building. The Applicant alleges that Section 4.3.2.D alleviates
40 this requirement, but Attorney Perkins disagreed. Section 4.3.2.D, that mentions a 30% rule,
41 addresses only building expansions. The Planning Board's decision is flawed for two reasons:

- 42 - the Applicant is trying to build a new, larger building within the shoreland setback.
- 43 - Sections 4.3.2 and 4.3.6 state that a reconstructed building cannot create more
44 nonconformity. The proposed building does create new nonconformity by creating a

1 new setback violation in addition to the shoreland setback encroachment and setback
2 encroachment towards the Grace property.

3
4 Attorney Perkins pointed out that there has been no discussion from the Planning Board
5 regarding Land Use Zoning Ordinance (LUZO) interpretation. Attorney Perkins states the LUZO
6 discusses the prohibition of expanding non-conformities. Maine law is clear that when
7 considering expanding a nonconforming use, the law must be looked at with strict interpretation.
8 The Board erred in interpreting the Application generously. The result does not meet the
9 required State standards. The Board still has the opportunity to change their decision based on
10 the fact that the Application is creating more non-conformity and also allowing a bigger building
11 in the shoreland zone.

12
13 Attorney Perkins asserted that the Planning Board's findings of fact are inadequate in offering
14 guidance to the Board of Appeals in a review of the setback issue and the issue of height,
15 including how they are calculated. These issues are complicated and an explanation of how the
16 Applicant made their determinations is complicated and must be addressed.

17
18 Chair Hanley felt one of the challenges to reviewing non-conforming projects is that the review
19 starts at 4.3.6, then moves backwards to Section 4.3.5. 4.3.6 determines the Planning Board's
20 authority to review an Application. Once the Planning Board's authority is determined, Section
21 4.3.5 provides very specific points for review. The Planning Board's decision and findings of fact
22 are based on those points. Those points include size of lot, topography, slope of the land,
23 potential for soil erosion, location of other structures, septic system, and vegetation to be
24 removed. Chair Hanley was unsure whether the clearly stated review criteria in Section 4.3.5
25 relate to the quantifiable minutiae that guides much of the Planning Board's decision. Addressing
26 issues such as building area and location and height is not how the review process is structured.
27 The Planning Board must be mindful of the process in place that they are required to adhere to,
28 as well as a product that must be quantifiably enhanced to convey the Planning Board's position
29 on the issue.

30
31 Attorney Hamilton restated that the fundamental challenge with the Appeal and subsequent
32 remand is that the Board of Appeals does not need perfect guidance, nor would a court judge.
33 However, sufficient guidance is necessary so the basis for the Planning Board's decision can be
34 discerned. The Planning Board must make a sequential determination. Section 4.3.6 determines
35 jurisdiction. Attorney Hamilton did not believe either party was challenging the Planning Board's
36 jurisdiction. Regarding the next step, a review of Section 4.3.5 includes very specific standards.
37 There appear to be several issues, one of which was a question regarding the foundation that
38 was not completely addressed, even in the draft findings of the Applicant. Attorney Hamilton
39 opined that this issue should be addressed because the foundation and structure are proposed
40 to change. Therefore, Section 4.3.4 also should be addressed in addition to Section 4.3.5.

41
42 Chair Hanley felt this was where the Planning Board required guidance. How is additional
43 information that is not a part of Section 4.3.5 added to the stated review criteria of Section 4.3.5?

1 Building height and foundation may need to be addressed more specifically, but where and how
2 is it inserted into the review?

3
4 Attorney Hamilton suggested looking to the Applicant's draft findings. The Planning Board should
5 ask itself whether those findings provide an adequate decision path matching the Planning
6 Board's original decision. Attorney Hamilton was not suggesting there was anything
7 fundamentally incomplete or incorrect about the Planning Board's decision. The Planning Board
8 has had to become practitioners of how non-conforming structures are reviewed. The Board of
9 Appeals does not necessarily have the Planning Board's level of experience and practice on the
10 issue. This results in the need for more clarity and explanation on how the Planning Board came
11 to its decision. In weaving through the two sets of findings, Attorney Hamilton felt it prudent to
12 focus on the specifics of Sections 4.3.2, 4.3.4, and 4.3.5.

13
14 The Applicant's findings lead to Section 4.3.6 addressing the standards for a replacement
15 structure. Section 4.3.6 notes that any non-conforming structure located within less than the
16 required setback from a water body may be reconstructed or replaced provided a permit is
17 obtained within 18 months of the date of said damage, destruction, or removal. The LUZO
18 instructs that reconstruction or replacement must be in compliance with the water body,
19 tributary stream, or wetland setback requirements to the greatest practical extent, as
20 determined by the Planning Board in accordance with Section 4.3.5. If it were impossible to
21 reconstruct or replace using portions of the structure outside the 75-foot setback, the review
22 standard of Section 4.3.5 would not require the building to be setback to the greatest practical
23 extent. Section 4.3.5 introduces standards including size of the lot, slope of the land, potential
24 for soil erosion, septic system, and vegetation, based on replacement or reconstruction being in
25 compliance with the water body setback to the greatest practical extent.

26
27 Attorney Hamilton recommended a finding be determined with respect to section 4.3.4. Section
28 4.3.4 notes that when a new enlarged or replacement foundation is constructed under a non-
29 conforming structure, the structure and new foundation must be placed such that the setback
30 requirement is met to the greatest practical extent, as determined by the Planning Board, basing
31 its decision on criteria specified in Section 4.3.5, relocation. There are components of the
32 foundation being either removed or replaced. Section 4.3.4 provides direction as to what should
33 be done about the foundation.

34
35 If findings have already been made concerning the structure, and if the Planning Board finds the
36 foundation meets the setback to the greatest practical extent, a finding should be included
37 regarding both the foundation and the structure that sits on the foundation.

38
39 Height is addressed on page 3 of the Applicant's findings. Attorney Hamilton believed height was
40 discussed in adequate detail, including the basis for how the proposed building is componentized
41 against the mean original grade of the development site which is stated as 22 feet 9 inches. The
42 finding provides explanation for the various components of the building and the varying heights
43 allowed in relation to the 75-foot setback.

44

1 Chair Hanley believed the Appeals Board struggled with the issue of actual dimensioning versus
2 relative dimensioning. Elevations were provided on the Applicant's submittals based on
3 structural height, but elevations were also provided compared to sea level elevations. There was
4 confusion in trying to reconcile the two. The point must be made very clear when remanded
5 back to the Board of Appeals.

6
7 Attorney Hamilton felt the Applicant's proposed findings largely make clear how height is to be
8 calculated and how it is applied.

9
10 Attorney Hamilton noted that the Planning Board must also consider the questions raised by the
11 Appellant. The questions raised by the Appellant's draft findings are core to the issues and should
12 be addressed, specifically that of whether the proposed building should be deemed a new
13 structure. This question must be answered before the Planning Board can further deliberate. If
14 there were a question as to whether the Board planned to reframe the decision, answering this
15 question is the first step and will make a difference in how the Board proceeds.

16
17 Ms. Randolph appreciated having Attorney Hamilton to assist with the issue, however, she felt
18 Mr. Hamilton was leading the Board. The Board needs to clarify and understand the situation.
19 Ms. Randolph asserted Attorney Hamilton has led the Board the way he sees and understands
20 the situation. Attorney Hamilton promised to step back to wait for Planning Board guidance. It
21 was his intent and hope only to provide tools he felt would be helpful.

22
23 Mr. Ashmore did not fully agree with Ms. Randolph. He found Attorney Hamilton's advice
24 helpful. He agreed more discussion is warranted for the other side of the argument.

25
26 Ms. Anastasia felt it helpful to have Attorney Hamilton step through and make the distinctions
27 regarding where the Planning Board can provide more specificity and clarity.

28
29 Ms. Eaton noted that the forms the Planning Board use are small, and because of that the Board
30 endeavors to keep their findings concise. She believed the Board of Appeals wanted findings
31 more explicit. She felt the points the Planning Board has already made required fuller description
32 and the Planning Board should endeavor to do that. She recalled that the Planning Board has
33 had to do this for the Board of Appeals in the past.

34
35 Chair Hanley agreed with Ms. Eaton. He looked to Attorney Hamilton not to drag the Planning
36 Board down a path per se, but to assist the Planning Board in adding more information in the
37 appropriate locations. The challenge to the Planning Board is to apply further quantitative
38 information to the decision made.

39
40 Attorney Hamilton inquired of the Board whether there was any question regarding the Planning
41 Board's jurisdiction to review the Application. If the Planning Board determines this to be a
42 reconstruction or replacement of a structure, how does it meet the standards that have been
43 previously determined.

44

1 He reiterated that the Board of Appeals could have reversed the decision. They did not. They
2 only asked for more specificity to support the findings and conclusions presented. In conjunction
3 with Section 4.3.4 and 4.3.5, does the Planning Board find the Applicant's draft findings to be
4 helpful? Is there anything in the Appellant's draft findings the Board would like to address? If
5 the findings submitted are helpful, the Board can use them. It perhaps can allow the Board to
6 create an omnibus motion or determine a set of steps.

7
8 Attorney Hamilton felt that the Board must have determined they had jurisdiction; otherwise,
9 they would not have reviewed the Application. If so, the Board must review Sections 4.3.2, 4.3.4,
10 and 4.3.5 and craft findings and conclusions.

11
12 Attorney Hamilton added that he would like to address at some point information in the
13 Appellant's draft findings. He felt there are points within the findings that raise questions the
14 Board may want to consider.

15
16 Chair Hanley felt that Planning Board's jurisdiction to review the Application under Section 4.3.6
17 was clear. Perhaps more detail could be added to the Findings of Fact to further elucidate.
18 Regarding Section 4.3.6, Chair Hanley noted the review falls under the Planning Board because
19 more than 50% of the market value of the structure will be demolished. The building has been
20 proposed to be demolished in its entirety.

21
22 Chair Hanley read a portion of Section 4.3.6 of the Ordinance:

23
24 *"Any non-conforming structure which is located less than the required setback*
25 *from a water body, tributary stream, wetland and which is removed, or*
26 *damaged or destroyed, regardless of the cause, by more than 50% of the*
27 *market value of the structure before such damage, destruction or removal,*
28 *may be reconstructed or replaced provided that a permit is obtained*
29 *within eighteen (18) months of the date of said damage, destruction, or*
30 *removal, and provided that such reconstruction or replacement is in*
31 *compliance with the water body, tributary stream or wetland setback*
32 *requirement to the greatest practical extent as determined by the Planning*
33 *Board or Code Enforcement Officer..."*

34
35 Chair Hanley read the Planning Board's Findings of Fact for Section 4.3.6: *"The Applicant is*
36 *proposing to completely replace the existing building, thereby destroying over 50% of the*
37 *building's value."*

38
39 Chair Hanley read the Planning Board's Conclusion of Law for Section 4.3.6: *"The Application*
40 *meets the standards for Planning Board review."*

41
42 He enquired of the Board members whether they felt more was required to better clarify the
43 question of jurisdiction.

44

1 Ms. Eaton felt the information the Board of Appeals wanted was based on the six criteria
2 presented in Section 4.3.5. Additionally, it appeared the Board of Appeals wanted findings on
3 elements of the Application that are outside of the Section 4.3.5 review criteria. She believed
4 the information was included in the Minutes presented to the Board of Appeals, but perhaps they
5 required a report on those additional items beyond the Findings of Fact and Conclusion of Law
6 listed in Section 4.3.5. she felt that the Planning Board could try to expand on their initial findings
7 and conclusions or create a body of information to support the initial findings.

8
9 Chair Hanley felt this was where the Planning Board needed Attorney Hamilton's guidance.
10 Perhaps the Planning Board should refer back to the Applicant and the Application submitted and
11 point out for the Board of Appeals pertinent items such as locations of setbacks. He felt such a
12 task would prove burdensome.

13
14 Attorney Hamilton attempted to pinpoint the Board of Appeals' specific concerns. Setbacks and
15 height are mentioned in the Board of Appeals' decision. Attorney Hamilton noted three setbacks
16 in question: the setback from the normal high-water line, and two sideline setbacks. The setback
17 to the northwest is being waived. The other setback relates to the Appellant's property. The
18 findings presented by the Applicant address each setback with plans and discussion. Regarding
19 height, it is a complicated topic and will be difficult to explain in such a way that they can be
20 reasonably understood. Attorney Hamilton found the Applicant's draft findings on height to be
21 credible. The Planning Board has the authority to ask the parties to submit draft findings and
22 take from those draft findings what the Planning Board finds helpful. The Board can ask about
23 the findings addressing setbacks and heights submitted by the Applicant and the Appellant.
24 Attorney Hamilton did not feel it necessary to recreate what the Planning Board has already
25 established; just to add more detail to the Findings they already presented.

26
27 Chair Hanley asked other Board Members for their input. He noted he did not want to ignore the
28 question of jurisdiction either. He inquired if the Board Members were still in agreement the
29 Planning Board had jurisdiction to hear the issue, and whether it was felt there was clarification
30 required to better clarify Section 4.3.6.

31
32 Ms. Randolph inquired if the Chair's question was whether the work proposed constitutes a
33 reconstruction or a new building. Is it being suggested that the Planning Board does not have
34 jurisdiction because the project constitutes a new building? Ms. Randolph understands the
35 perception; however, the Planning Board has consistently deemed that more than 50%, up to
36 100%, of a building being taken down, and an Applicant builds again in the same location, then it
37 is a reconstruction. While she understands the confusion, the Planning Board has been
38 consistent on this determination.

39
40 Chair Hanley noted that when the Planning Board is dealing with projects like this with a portion
41 of the project within the 75-foot setback, and a total demolition and total reconstruction is
42 planned, The Planning Board is looking at the project in total. He did not see anything that
43 required amendment to how the Planning Board is looking at the project, relative to historic
44 precedence.

1
2 Ms. Randolph recalled past objections that included the concept of the building going over height
3 restrictions in various setback areas. Ms. Randolph asserted that height restrictions only apply
4 to those sections within the setbacks.

5
6 Chair Hanley felt it was a good point. Within the 75-foot setback area there are zones of varying
7 height requirements. In what was submitted and discussed with the Planning Board there
8 seemed to be no question regarding compliance with the heights as presented by the Applicant.
9 He asked of Attorney Hamilton how the Planning Board can convey the issue to the Board of
10 Appeals in a more understandable way.

11
12 Attorney Hamilton recalled a comment made by Attorney Perkins to the Board of Appeals; when
13 a judge tries to review a determination, and the evidence endorsing that determination cannot
14 be identified, then more specificity is needed. Attorney Hamilton felt the findings submitted by
15 both the Attorney for the Applicant and the Attorney for the Appellant were well crafted. More
16 detail is required to support the decisions made. If the draft findings presented are found to be
17 helpful, then the Planning Board may use them in any amount they deem appropriate.
18 Alternatively, the Planning Board may create new and unique findings of their own.

19
20 Ms. Randolph stated that the question of jurisdiction as presented in Section 4.3.6 seems to be
21 based on the question of whether the project is deemed a reconstruction or deemed new
22 construction. The Planning Board consistently reviews these types of projects as reconstruction.
23 Regarding the discussion of height, the Planning Board has heard from the Appellant and the
24 questions they have raised. The Board should further discuss these issues with a goal of clarifying
25 their position, including the fact that the Planning Board has reviewed these types of projects
26 consistently.

27
28 Attorney Perkins asked for the chance to clarify the issues revolving height. Referring to Section
29 4.3.2.D.2, he interprets the section to mean the entire building must be no higher than 20 feet.
30 He requested clarification regarding where the authority comes that allows the Planning Board
31 to break up the heights based on the different setback zones. Chair Hanley agreed it was an
32 important point, and one the Board of Appeals struggled with. He felt it would behoove asking
33 the Applicant to explain the reasoning behind the graduated height limitations within the 75-foot
34 setback area. It was not the Planning Board's burden to explain. It was apparent at the Board of
35 Appeals meeting that the concept had not been adequately explained.

36
37 Attorney Costigan referred to page 3 of her draft findings regarding height. She noted the first
38 paragraph in this finding lays out the definition of height. The definition makes clear that one
39 measures the height of the structure in the Town of Mount Desert as the distance between the
40 mean original grade and the highest point of the structure, with some appurtenances on the
41 structure not included in that measurement. The next paragraph in that finding explains why
42 and how a building is measured differently within the various setback zones. It notes that height
43 restrictions within the water body setback are more stringent than outside that setback, and the
44 proposed structure can be greater in height beyond 75 feet from the high-water line. The

1 maximum height of the structure outside the 75-foot setback is 35 feet. In the next paragraph
2 of the finding, the Applicant attempts to explain how the proposed height applies by first
3 clarifying what the mean average grade is, then adding the height to that grade to determine
4 height. The finding references the fact that there are documents in the record that demonstrate
5 compliance with those height requirements. Attorney Costigan noted that architect Mathew
6 Baird is in attendance should more explanation be required.

7
8 Chair Hanley felt it would be important for Mr. Baird to discuss the previously submitted side
9 elevations of the proposed structure and the original structure highlighted in red. The different
10 zones with regard to height compliance are indicated on the side elevations as well. Chair Hanley
11 felt it would be beneficial to make clear the information submitted to ensure everyone
12 understands.

13
14 The elevation drawings were shared with those in attendance.

15
16 Mr. Baird stated that prior to designing a building, the land is reviewed with a surveyor who
17 determines exactly where all existing topography is. The proposed building is then overlaid on
18 the existing survey. The points where the proposed structure touches down on the existing soil
19 are noted. The Town of Mount Desert's LUZO requires the mean average be taken using the
20 touchdown points where the structure meets the existing grade. Those touchdown points are
21 averaged on the downhill side of the slope. The downhill side is used because it is the most
22 restrictive. An average is determined from those touchdown points. From that average the
23 allowable height is added, resulting in the height limit for the building in the setback area. Zone
24 1, within the 75-foot setback, is the most restrictive zone. It is within the 75-foot setback. The
25 building may only be 15 feet above that mean average elevation in Zone 1, as determined
26 through this process. The mean average elevation was pointed out on the elevation drawing.

27
28 Moving into Zone 2, which is the area between the 25-foot setback and 75-foot setback, the
29 height is allowed to be 20 feet above the mean average elevation. This section of the elevation
30 can be seen to be in compliance, with the exception of a chimney, which is an appurtenance
31 allowed to exceed the height limitation as Attorney Costigan previously mentioned.

32
33 Above the 75-foot setback, a building may rise as high as 35 feet from the mean average
34 elevation.

35
36 The base elevation, once determined, remains unchanged throughout all height calculations. The
37 heights may vary depending on what zone it is in.

38
39 Ms. Randolph noted the elevation sketch displayed did not appear to be facing from the downhill
40 side of the site. It appeared to be a cut through the side of the building. She felt it would be
41 easier to explain how the average is calculated by looking at the low side, and all the surfaces
42 that are parallel to the viewer facing the downside. Mr. Baird noted the reason the elevation
43 sketch was used was because that sketch shows more clearly the different heights in relation to

1 the different zones. Looking at the structure from the water side renders the stepped elevation
2 less visible.

3

4 Ms. Randolph wondered if points used to determine the average mean could be shown at the
5 various points on the downhill side. The elevation sketch looks as if the low side of the building
6 is just the one point. The other points on the downhill side used to calculate the average cannot
7 be seen. Perhaps this was part of the confusion. Mr. Baird noted those points are included on
8 the plan presented in the Application.

9

10 Chair Hanley noted another point to consider is the concept of relative versus actual
11 dimensioning. It was a concept Chair Hanley felt the Board of Appeals struggled with.

12

13 Attorney Hamilton cautioned that it is not the intent to expand on the record evidence; only to
14 clarify what has already been discussed. Chair Hanley agreed. The document he referenced was
15 submitted with the Application. He was asking for further clarification of that submittal.

16

17 Attorney Perkins argued that the conversation was not addressing his point. Section 4.3.2.D.2
18 states *"for structures located less than 75 feet from the normal high-water line...the maximum*
19 *height of any structure may not be made greater than 20 feet..."* There is no language that
20 mentions breaking a structure up by zones. Attorney Perkins stated he has found no reference
21 to breaking a structure up by zones anywhere in the LUZO. The Planning Board must explain
22 where they get the authority to allow a structure's height to be broken up by zones.

23

24 Attorney Hamilton felt there was a logical disconnect. The question is what gives the Planning
25 Board the authority to use a graduated approach to measuring the height of a structure within a
26 setback area with regard to a replacement of reconfigured structure.

27

28 Attorney Hamilton felt the question was a good one. Perhaps the Board of Appeals had the same
29 question. The rule of ordinance construction is construing an ordinance as a whole and not
30 addressing components individually. Perhaps the Applicant can address the question in such a
31 way as to hopefully provide an explanation of how to interpret the Section in question, and not
32 how it applies to the Application.

33

34 Chair Hanley suggested identifying the specific section within the LUZO that allows for graduated
35 height, and including it in any amended findings of facts, along with the documents submitted by
36 the Applicant supporting the heights. Attorney Hamilton agreed. The one thing he felt the
37 Applicant and Appellant were not given time for was to provide supplements for their findings.
38 Perhaps it would be prudent to request the Applicant and Appellant to supplement their
39 submissions. A basis in law for how graduated height may be applied is required. Additionally,
40 that basis in law should be tied back to the record. A citation to the LUZO in the height section
41 should tie to a specific exhibit reference. This will make it clear in the record how the Planning
42 Board came to their decision.

43

1 Chair Hanley agreed the burden for providing a body of supporting evidence was on the
2 Applicant. The Planning Board can then create amended findings of facts and conclusions with
3 something specific to further substantiate the original decisions made but not included in the
4 original findings of fact and conclusion of law. The Application used is not tailored to include this
5 level of specificity. Attorney Hamilton agreed. The Planning Board is generally trying to make a
6 decision and provide basic information regarding how the decision was made. He felt it was
7 within the Planning Board's ability to request of the Applicant to revise their findings to include
8 existing evidence already collected and reference specific exhibits and a description of exactly
9 how Section 4.3.2.D, points 1 through 5 are applied, and tie it to exhibits. This will make clear
10 the Planning Board's decision, and the decision's basis in law and basis in fact, and thus greatly
11 strengthening that decision. Attorney Hamilton agreed it was not easy to discern that the intent
12 is to have a graduated setback, however it was his experience upon review of similar municipal
13 ordinances this is what is intended. There needs to be some discussion of the law in the record.
14

15 Ms. Randolph felt it should be sufficient to state that the Planning Board has done many reviews
16 of this type and consistently found this to be the rule. Ms. Randolph understands where the
17 confusion with the wording lies. Doesn't the Board have to be consistent with their process?
18 Attorney Hamilton agreed the Planning Board needs to be consistent across applications. He
19 suggested citing that point within the Planning Board's findings. Attorney Hamilton stated the
20 decision made by the Planning Board is a practice in other communities with similar ordinance
21 provisions. Attorney Hamilton suggested including more legal analysis to support why the
22 application used is fair. He noted that Attorney Perkins can be invited to make further findings
23 analysis stating why he deems a graduated height is not allowed.
24

25 Attorney Hamilton stated that he was comfortable that the LUZO allows for graduated height
26 restrictions. It will be helpful to invite the Attorneys for the Applicant and the Appellant to submit
27 revised findings. It will result in more information to assist the Board of Appeals' review on a
28 complicated issue.
29

30 Attorney Hamilton suggested that once the Planning Board believes they have all the questions
31 they want the Attorneys for the Applicant and the Appellant to address, they may request revised
32 findings.
33

34 Chair Hanley requested of the Applicant to refer back to a specific LUZO reference section
35 explaining why the building's height can be graduated in the setback zone, and include the
36 specific document presented to the Planning Board evidencing that it is compliant. The Planning
37 Board can then follow the vein that Ms. Randolph noted; the Planning Board's history of
38 reviewing this type of Application for years using this context and understanding. This will
39 provide the Board of Appeals with a quantifiable reference and compliance data, as well as the
40 Town's history of reviewing and approving projects with this understanding.
41

42 Attorney Hamilton suggested that Attorney Perkins' question on height was helpful. It allowed
43 the Planning Board to understand what the Planning Board needs to provide. It might be helpful

1 to ask him to articulate what the setback issues are that are troubling the Appellant, in an effort
2 to provide clarity there as well.

3
4 Attorney Perkins noted there are two issues regarding height. He stated that every section he
5 reviewed refers to what is allowed under sections 4.3.6 or 4.3.2, but a nonconformity cannot be
6 expanded on. The Applicant is expanding a nonconformity, which is a clear violation of the
7 ordinance. The rationale used by the Applicant for this violation is that they have acquired a
8 waiver from the property owners next door. Attorney Perkins noted the Applicant may have
9 some control over that particular property.

10
11 Attorney Perkins stated that there was no question that this will be a new setback violation. that
12 in the vein of construing nonconforming issues strictly, if the Statute states a nonconformance
13 cannot be expanded, then the Planning Board must explain why a waiver negates the issue.

14
15 Attorney Perkins stated that if the Application is being addressed under Section 4.3.6 as a
16 replacement structure the section states the structure cannot be made larger, unless Section
17 4.3.2 permits such an enlargement. Section 4.3.2 does not allow that 30% increase for a structure
18 that has been demolished and completely replaced. The Planning Board must more clearly
19 explain how this issue can be waived.

20
21 Chair Hanley asked Attorney Hamilton if state shoreland regulations should be referenced. The
22 Town's ordinance evolves from these regulations and defers to them. Attorney Hamilton agreed
23 the Planning Board often asks the CEO to reach out to the state shoreland zoning division to
24 provide an opinion on a question such as how a particular setback is applied. It will be helpful to
25 get guidance from the state. With a non-conforming use, there are limitations on changing or
26 expanding that use. Attorney Hamilton felt the state would have little difficulty answering the
27 question and recommended the Planning Board direct the CEO to touch base with state
28 shoreland zoning for their opinion on how the regulation should be applied. Regarding the
29 setback waiver Attorney Perkins noted, Attorney Hamilton noted that footnote D is unique to the
30 Mount Desert Land Use Ordinance. It is Attorney Hamilton's experience that no one has ever
31 effectively challenged Footnote D. He suggested allowing the Applicant to explain the evolution
32 of the purchase and how they interpret the application of Footnote D.

33
34 Attorney Costigan stated that regardless of who owns the lots, Footnote D states "*in all districts*
35 *restrictions on setback structures from property lines may be varied or nullified by written*
36 *agreement with the abutting property owner.*" In this case a letter from the abutting landowner
37 was submitted stating that they waive the setback and that the building may be built to the
38 property line. This means the setback is nullified and is no longer considered to be a
39 nonconformity. It conforms to the code because the code contains a provision that says setbacks
40 may be varied or nullified. Chair Hanley added the footnote is unique to the Town of Mount
41 Desert. It was adopted in 1991. It is a mechanism through which agreeable abutters can allow
42 structures to be placed within side yard setbacks. The Town has a form they issue for use of
43 Footnote D. In the context of understanding the encroachment on the setbacks perhaps this was

1 another clarification the Planning Board can request of the Applicant, with reference to the Town
2 document submitted by the Applicant. Attorney Hamilton added the document has been tested.

3
4 Chair Hanley believed the discussion would have to be continued to another meeting. Attorney
5 Hamilton agreed.

6
7 Chair Hanley summarized that discussion has touched upon building height and graduated height
8 conformance, Footnote D, and the ability to nullify a side yard setback. He asked Attorney Perkins
9 if there were other concerns the Planning Board should address.

10
11 Attorney Perkins stated the issue remained regarding whether the structure is deemed new or a
12 replacement. If the structure is deemed a reconstruction, under Section 4.3.6, then the Planning
13 Board must reconcile the language stating a structure can be no larger, unless allowed under
14 Section 4.3.2. Section 4.3.2 structure expansion applies only to an existing structure and not
15 expansion of a replacement or new structure. Attorney Perkins interprets the Section to mean
16 an existing building may be made larger up to 30%. It does not allow an entirely new building, or
17 a building replaced entirely to be larger.

18
19 Chair Hanley made note setback understanding dovetails together in this situation and needs to
20 be better quantified for the Board of Appeals. The 30% allowable expansion within the 75-foot
21 setback and relative to non-conforming structures and what an Applicant can do behind the 75-
22 foot setback. This was perhaps a third point the Applicant can provide more specificity on
23 explaining how the structure straddles the 75-foot setback, requiring two different sets of
24 conditions applying to the same structure.

25
26 Attorney Hamilton stated that non-conforming structures are a matter of compliance with
27 dimensional requirements. The 30% expansion rule has been applied within the 75-foot water
28 setback area. Once outside that setback area, the 30% expansion rule no longer comes into play,
29 and non-conformities are dealt with differently. The crafters of the LUZO follow the state
30 guidelines. It would be relevant to get an opinion from the State. Some guidance may be
31 obtained through the CEO from the State. Additionally, either the Applicant or the Appellant is
32 entitled to have a conversation with the State DEP regarding ordinance obligations and standards
33 and how they are applied to the record of evidence. If the attorneys for the Applicant and the
34 Appellant were willing to revise their findings, Attorney Hamilton felt the issue could be resolved
35 by another meeting.

36
37 Ms. Randolph asked of Attorney Perkins his interpretation of the expansion section of the
38 ordinance. Did he feel the structure cannot be expanded at all or does he recognize the allowed
39 30% expansion? Attorney Perkins stated that Section 4.3.6 states one cannot expand unless
40 expansion is allowed under Section 4.3.2. Section 4.3.2.D states "*all of the non-conforming
41 principal and accessory structures that do not meet the water body setback requirements may be
42 expanded or altered.*" His interpretation is that the Section is referring to existing structures only.
43 It does not apply to a new or replacement structure.

44

1 Attorney Costigan referred to Section 4.3.3. This Section discusses expansion of replacement
2 structures. She felt there were two issues at hand. The expansion of a replacement structure is
3 affected by what portion of the structure is within the 75-foot setback area. Within the setback
4 structure is when the rules apply. Under the provision of Section 4.3.3, the Applicant could have
5 expanded the proposed replacement structure within the 75-foot setback. The Applicant has
6 opted not to do so. The issue of what can happen within the 75-foot setback and what can
7 happen outside the 75-foot setback applies to both the issue of expansion and the issue of height.
8 Attorney Costigan stated she was willing to propose language that clarifies the question of
9 setbacks and the process.

10
11 Attorney Hamilton reiterated that the Planning Board has the right to request of the Applicant
12 and the Appellant revise their findings and set a date by which they are required. Attorney
13 Hamilton suggested requiring the findings prior to the meeting, so there was a chance for
14 Attorney Hamilton to review and offer any evidence he may have.

15
16 Meeting schedules and submission dates were discussed.

17
18 Attorney Hamilton added that there was a June 25, 2020 letter from Dawn Hurd submitted to
19 the Town with regard to height. Attorney Hamilton found it helpful and would request CEO
20 Keene to make the letter available to the Board and to the parties.

21
22 Discussion of the rest of the Agenda ensued.

23
24 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, TO CONTINUE DISCUSSION TO
25 FEBRUARY 10, 2021.

26 VOTE:

27 JOANNE EATON: AYE

28 CHRISTIE ANASTASIA: AYE

29 MEREDITH RANDOLPH: AYE

30 DAVE ASHMORE: AYE

31 CHAIR BILL HANLEY: AYE

32 MOTION APPROVED 5-0.

33
34
35 **B. James Whitehead would like to have an informal discussion about a proposed**
36 **project proposal in Seal Harbor, as permitted under Section 5.4 (below).**

37 **5.4 Review Procedures**

38
39 **Pre-Application Procedures – Prior to submitting a Conditional Use Approval**
40 **Application an applicant or authorized agent may request to appear at a regular**
41 **meeting of the Planning Board to discuss the proposed project. The pre-application**
42 **review shall not be construed as representing either the pendency or the**
43 **commencement of the application process per se.**
44

1 Robyn Hanson introduced plans for the Acadia Outdoor Center. The center is proposed for 18
2 Main Street, Seal Harbor. The primary function will be retail.
3 They will sell outdoor activity gear, rent bicycles, conduct sea kayak tours, and sell coffee and ice
4 cream, and hopefully have an indoor climbing wall.
5

6 James Whitehead noted the building is in the Village Commercial district. The process has been
7 assisted by Attorney Ed Bearor who is in attendance. Conversations have ensued with CEO
8 Keene. Based on the Town's ordinance the primary functions of the business are retail functions
9 which include sale of outdoor gear, bicycle rental, kayak tours, and coffee and ice cream. This is
10 covered under retail stores, and under the CEO's purview. They are in hopes the center will be a
11 year-round business. The indoor recreational climbing wall which is included in the business plan
12 will require a conditional use permit as an indoor recreational facility. The intent is to apply for
13 that at a future date.
14

15 Chair Hanley inquired why such a proposal would potentially be before the Planning Board.
16 Attorney for Ms. Hanson and Mr. Whitehead Ed Bearor noted it was unsure what might be
17 required as of earlier in the week. It seems that most of the proposed use will fall under the
18 purview of the CEO. The climbing wall, and anything else the owners might decide to add would
19 be beyond the CEO's authority. It was deemed wise to keep the appointment with the Planning
20 Board. The owners were anxious to discuss it with the Planning Board and get their thoughts.
21

22 Chair Hanley felt it could be a potential question of use for the Planning Board. Attorney Bearor
23 felt that if the use comes before the Planning Board it will not be for the question of retail sales.
24 The question of an indoor recreational facility was the point at which the Planning Board's
25 involvement would be required. There was a chance that an indoor climbing wall may not be
26 added, but a yoga studio is. Would that be considered an indoor recreational facility?
27

28 Mr. Whitehead noted that the number of attendees still at the meeting indicates there is
29 significant interest in the plans for the property. Mr. Whitehead promised to provide those in
30 attendance with his contact information and the contact information of Ms. Hanson should
31 anyone have any questions. They have made their plans with care and concern for the
32 community, and they intend to continue in that vein.
33

34 Chair Hanley agreed significant interest was apparent in the property's potential use. If the use
35 comes before the Board for review, then he would encourage they go through the process of the
36 public hearing.
37

38 Attorney Bearor asked for clarification that if the proposed activity requires a CEO permit it will
39 not come before the Planning Board but if there is any question, or the CEO has a question
40 regarding use, it will come before the Planning Board.
41

42 Chair Hanley noted there have been Applications made for activities that were difficult to
43 determine where the use falls. There is a multi-layered approach. It has to be decided first what
44 the activity is, and then under what section of the LUZO the activity is reviewed, followed by a

1 review of those applicable LUZO standards. He would suggest Mr. Whitehead and Ms. Hanson
2 put an application together and come before the Planning Board and formalize the discussion.

3
4 Attorney Bearor inquired if there is a retail store, it does not go before the Planning Board for
5 review. He was unsure what is being asked of the owners. Chair Hanley agreed, he was not sure
6 what the owner's plans will entail which made it difficult to offer direction. Without a specific
7 list of the numbers and types of varied uses planned there was no way to determine what
8 category the issue will fall under.

9
10 Mr. Whitehead noted the building was constructed in the mid-1960s. It is housed through the
11 years all the uses the owners are proposing and more, with the exception of the climbing wall. It
12 has never been classified as anything other than retail.

13
14 Chair Hanley reiterated that it sounded like there were varied, multiple uses. It will have to be
15 determined where or how those uses are classified within the context of the LUZO and the
16 Planning Board review process. Putting together an actual project plan and Application together
17 will help clarify the direction the proposal should go and allow the Planning Board to offer better
18 guidance. He encouraged Ms. Hanson and Mr. Whitehead to put an Application together.

19
20 Ms. Randolph pointed out discussion occurring in the Chat Room function of the Zoom venue.
21 She noted there seemed to be concerns being vetted there. The owners might gain insight by
22 reviewing those. She added that upon completing an Application, CEO Keene will be able to
23 inform the Applicant of whether Planning Board review was required of their proposal.

24
25 Mr. Whitehead noted there is ample parking associated with the structure. Chair Hanley advised
26 that the more complete the Application is the better it can address concerns.

27

28 **V. Adjournment**

29 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO ADJOURN THE MEETING.

30 VOTE:

31 MEREDITH RANDOLPH: AYE

32 JOANNE EATON: AYE

33 CHRISTIE ANASTASIA: AYE

34 DAVE ASHMORE: AYE

35 CHAIR BILL HANLEY: AYE

36 MOTION APPROVED 5-0.

37

38 The meeting adjourned at 10:14PM