

**Town of Mount Desert Planning Board
Meeting Minutes
6:00 PM, January 27, 2021**

This meeting was held virtually and was recorded.

Public Present: Roger St. Amand, Barry Stratton, Noel Musson, Sidney Roberts Rockefeller

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

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

Chair Hanley called the meeting to order at 6:03. Board Members were noted.

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

II. Approval of Minutes

No Minutes were presented.

III. Update on Land Use Zoning Ordinance Amendments for the 2021 Town Meeting.

Noel Musson updated the Board on proposed amendments for the Land Use Zoning Ordinance to be voted on at the 2021 Town Meeting.

The presentation was for discussion purposes and allows the Planning Board members a review prior to the Public Hearing. There are three amendments ready for discussion, and a fourth, addressing lighting standards, will be added to the list contingent upon comments received back from Dwight Lanpher of the Sustainability Committee.

Proposed amendments have been reviewed by the Land Use Advisory Committee. Chair Hanley and Mr. Ashmore attended those committee discussions. The Planning Board's Public Hearing on these amendments is scheduled for February 24, 2021.

The following proposed articles were discussed:

WARRANT ARTICLE XX - Shall an ordinance dated May ==, 2021 and entitled "Amendments to the Land Use Zoning Ordinance to remove footnote 4 from some permitted uses in the Resource Protection (RP) District to be in conformance with Shoreland Zoning Standards" be enacted as set forth below?

Explanation: This Article removes footnote 4 from the following permitted uses Clearing or Removal of Vegetation for activities other than timber harvesting, Excavation or Filling < 50 cubic yards, Excavation or Filling of >50 to 150 cubic yards,

1 Excavation or Filling of > 150 cubic yards, and Road & driveway construction. This
2 change will be in conformance to the State's shoreland zoning requirements.

3
4 Mr. Musson explained that the wording in Footnote 4 requires an Applicant to go to
5 the Board of Appeals for a variance for certain things. Such a requirement is not part
6 of the State's mandatory shoreland zoning ordinance. The amendment removes
7 footnote 4 from the LUZO under the stream protection district, which matches State
8 standards.

9
10 Ms. Anastasia inquired why the State changed their mandates. Mr. Musson was not
11 sure the State made any changes; this wording may have been added to the Ordinance
12 in another way. CEO Keene did not believe it had ever been a part of shoreland zoning
13 guidelines.

14
15 Ms. Randolph asked about tree removal on the shore. She thought this was the
16 section under which tree removal on the shore was addressed. Mr. Musson clarified
17 that tree removal in the shoreland zone is addressed in another part of the Ordinance.
18 This section only deals with a variance from the setback for specific activities in the
19 stream protection district. All other regulations within the setback are still in place.

20
21 There were no further questions or comments from the Board.

22
23 **WARRANT ARTICLE XX** - Shall an ordinance dated May ==, 2021 and entitled
24 "Amendments to the Land Use Zoning Ordinance to clarify where the setback is
25 measured from a private road or right-of-way" be enacted as set forth below?

26
27 **Explanation:** This Article moves existing language under the definition of setback to
28 Section 3.5, footnote C to clarify where setbacks are measured from a private right-of-
29 way or road.

30
31 This amendment attempts to clarify where a setback is measured from a private road
32 or right of way. There are no changes or additions being made to this Amendment.
33 The definition of setback is being moved to Footnote C and will provide more clarity
34 on how and where the setback is measured from a private road. This change involves
35 moving the language of one section to another section where the intent is made more
36 obvious.

37
38 There were no questions or comments from the Board.

39
40 **WARRANT ARTICLE XX** - Shall an ordinance dated May ==, 2021 and entitled
41 "Amendments to the Land Use Zoning Ordinance to modify the definition of setback
42 to exclude footpaths and sidewalks." be enacted as set forth below?
43

1 **Explanation:** This Article changes the definition of “setback” so that footpaths and
2 sidewalks are allowed within a setback. In addition, it adds a definition for “footpath.”

3
4 This amendment is an attempt at addressing current standards that do not allow
5 footpaths or sidewalks within a setback. An example being if one has a house, and
6 they want a path from their front door to the road, the path is prohibited from
7 connecting to the road within a setback. Additionally, a definition for “footpath” has
8 been added. The terms “footpaths” and “sidewalks” will be added to the list of things
9 exempted from setback requirements. Dimensional requirements have been added
10 to the description of “footpaths” to prohibit overtly wide footpaths. The ordinance
11 language will try to address the issue of footpath elevation as well. Mr. Musson will
12 consult with the DEP to ensure the wording will not create a conflict with any
13 shoreland standards.

14
15 The width of a footpath is proposed to be six feet in width. Mr. Ashmore inquired
16 whether the width includes travel surface only or travel surface plus shoulder area.
17 Mr. Musson noted such detail was not included. Mr. Ashmore suggested it be clarified
18 in the language.

19
20 Chair Hanley asked about the wording “six feet in width and may or may not include
21 stairs”. He inquired about the necessity of including “may or may not”. Mr. Musson
22 agreed the wording could say “may include stairs”. He pointed out that sometimes
23 more explanation was better than not enough. The definition used for “footpath”
24 was derived from other definitions.

25
26 CEO Keene suggested adding the term walkways along with footpaths, to incorporate
27 walkways, sidewalks, and driveways. Mr. Musson felt it could be included. CEO Keene
28 wanted it clear that these ways are not intended for motorized vehicles, such as ATVs
29 and four-wheelers. Mr. Musson concurred the definition of footpath is not intended
30 for ATVs.

31
32 Chair Hanley inquired about in-town walkways and bicycles parking on them. Mr.
33 Musson felt bicycles would not count as motorized vehicles. Mr. Musson wondered
34 about e-bikes.

35
36 CEO Keene inquired about motorized wheelchairs. Chair Hanley felt the federal ADA
37 guidelines override any LUZO standards addressing motorized vehicles.

38
39 It was Mr. Musson’s suggestion to keep the wording as simple and clear as possible
40 for now.

41
42 Ms. Randolph suggested removing bicycles completely for the sake of simplification.
43 Bicycles are not supposed to be ridden on sidewalks. Either remove bicycles from the
44 wording or limit the wording to footpaths.

1 Otherwise, different definitions for walkways and sidewalks will be necessary. Ms.
2 Randolph felt all these terms fall under the definition of footpaths. Mr. Musson hoped
3 to keep sidewalks in the amendment, as there are different applications for sidewalks.

4
5 Ms. Anastasia noted that there is no State law prohibiting bicycles on sidewalks.
6 Those guidelines fall to Town and City ordinances.

7
8 Mr. Musson wondered if they were not overcomplicating the issue. The problem the
9 ordinance amendment is trying to address is that there are no rules in the ordinance
10 allowing a resident to connect a path from their property to outside their property
11 over a setback. Rectifying this issue is the goal of the amendment. Mr. Musson noted
12 as an example that the new MD365 building cannot connect the sidewalk leading from
13 their building to the parking lot because of this rule. There are residents that cannot
14 have a walkway from their door connect to the sidewalk.

15
16 Mr. Musson recommended keeping the wording simple and clear, and also set
17 controls so it cannot be used for something for which it was not intended.

18
19 Ms. Randolph noted that the definition of footpath is six feet. Perhaps someone could
20 decide to put a seven-foot-wide walkway in. She felt for this reason the term
21 “walkway” should be omitted. Mr. Musson agreed to take the term out.

22
23 He asked whether bicycles should be omitted or left.

24
25 Ms. Randolph wondered about someone physically challenged using a motorized
26 scooter or wheelchair. She mentioned e-bikes. She wondered what was allowed on
27 the carriage roads.

28
29 Ms. Anastasia noted the ADA rules are an entirely different issue and independent of
30 the Town’s LUZO. She suggested that the LUZO be written with a vision of how the
31 Town wants it to be. For people who have a right to use ADA modifications, the
32 modifications they use and where they use them is completely independent of the
33 LUZO. Because ADA is federal law, it does not need to be addressed in the LUZO. Ms.
34 Anastasia suggested removing bicycles and leaving pedestrians. She pointed out that
35 technology would always be ahead of the policy.

36
37 There were no further questions or comments from the Board.

38
39 The last LUZO amendment proposed for the Town Meeting will address lighting. Mr.
40 Musson is waiting for comments back on the draft amendment from Sustainability
41 Committee member Dwight Lanpher. Last year the Sustainability Committee wanted
42 to amend the lighting standards. The issue is complicated, and the request came in
43 late so there was little chance to act on it. Mr. Musson incorporated suggestions
44 proposed last year and simplified the wording in the ordinance.

1 The amendment has been sent to Mr. Lanpher for his comments; Mr. Musson expects
2 a response by the end of the month. The goal is to add some standards to provide
3 clarity for things like dark sky provisions. Lighting was likely to be a complicated issue.
4

5 There were no further questions or comments from the Board.
6

7 Mr. Musson hoped to tackle Application formatting in the upcoming year. The
8 Subdivision Ordinance will be reviewed for amendment at some point in the near
9 future as well. A model Subdivision Ordinance is being looked at in the Land Use
10 Advisory Committee. There are some village planning issues to tackle as well.
11

12 Ms. Randolph mentioned the need for Solar Rights included in the LUZO. As an
13 example, COA is planning for solar panels on their building. There needs to be
14 protection for the right to benefit from the sunlight should someone build or plant
15 trees that block sunlight. Mr. Musson agreed to look into it.
16

17 Chair Hanley thanked Mr. Musson for this work.
18

19 There were no other questions or comments from the Board.
20

21 **IV. Conditional Use Approval Application(s):**
22

23 **A. Conditional Use Approval Application #001-2021**

24 **OWNER(S) NAME(S):** Charles C. Butt

25 **AGENT:** Roger St. Amand, Atlantic Resource Co., LLC

26 **LOCATION:** 84 Manchester Road, Northeast Harbor

27 **TAX MAP:** 027 **LOT:** 006-001 **ZONE(S):** Shoreland Residential 2 (SR2)

28 **PURPOSE:** Section 3.4 – Excavation or Filling of >150 cubic yards.

29 Shoreline Stabilization.

30 **SITE INSPECTION:** 3:30PM Masks Required During Site Inspection.
31

32 CEO Keene confirmed adequate public notice. Abutters were notified.
33

34 No conflict of interest was found on the Board.
35

36 Ms. Eaton reported on the Site Visit. The Application includes three sections on the
37 property requiring fill. Stones from previous erosion control attempts are visible
38 along the high-water line. They will be incorporated into the project. Work will span
39 from the stairway to the property line, heading toward the ledges. Heading south
40 towards out of the sound there are another two places where erosion has been more
41 severe, and damage to tree roots has occurred. The Applicant proposes to place large
42 stones hauled in by barge, add fill behind the stones, and plant trees and vegetation.
43
44

1 Agent for the Applicant, Roger St. Amand, stated the project consists of shoreland
2 stabilization for about 380 linear feet of shoreline. It starts at the line where previous
3 stabilization efforts can be seen to the north. The area in front of the residence
4 looking north up the sound is where the most severe erosion has occurred. That area
5 is approximately 150 linear feet. There has been a previous attempt to stabilize the
6 shore in that area. The project's intent is to maintain as much of the existing shoreline
7 and vegetation and existing mature trees as possible. There will be minimal impact
8 to the trees there. Mr. St. Amand estimated one or two trees may require removal
9 during stabilization efforts.

10
11 Mr. St. Amand shared images of the area in front of the residence where the worst of
12 the erosion has occurred. Moving around the corner of the property there are some
13 ledge outcroppings coming into the narrows of the sound. The ledge is a stable base,
14 and erosion control is not as necessary there. Vegetation will be maintained, and soft
15 stabilization efforts will be made to protect the roots as much as possible.

16
17 Moving south, there are two small coves where erosion is substantial. Erosion has
18 pushed back the coast approximately 10 or 15 feet. The project will end at the stairs.
19 The intent of the project is to hold the bank and hold the existing mature vegetation
20 and trees. The plan is for large boulders interspersed with planting pockets.
21 Vegetative measures like shrubs and blueberry sod will be incorporated at the upper
22 end on the north side to match the existing grade. At the other end, the measures
23 will consist more of woody vegetation and shrubs. Much of the work will occur via
24 barge to minimize the amount of disturbance to the existing shoreline.

25
26 Mr. St. Amand pointed out boulders used in previous erosion control efforts. Tree
27 roots are now exposed in some areas. The fill needed is estimated to be
28 approximately 400 cubic yards.

29
30 Chair Hanley asked for public comment. There was no public comment. Public
31 comment was closed.

32
33 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO FIND THE APPLICATION
34 COMPLETE.

35 VOTE:
36 MEREDITH RANDOLPH: AYE
37 JOANNE EATON: AYE
38 CHRISTIE ANASTASIA: AYE
39 DAVE ASHMORE: AYE
40 CHAIR BILL HANLEY: AYE
41 MOTION APPROVED 5-0.

42
43 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO USE THE SHORT FORM.
44 VOTE:

1 JOANNE EATON: AYE
2 MEREDITH RANDOLPH: AYE
3 CHRISTIE ANASTASIA: AYE
4 DAVE ASHMORE: AYE
5 CHAIR BILL HANLEY: AYE
6 MOTION APPROVED 5-0.

7
8 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, TO APPROVE THE
9 APPLICATION.

10
11 A review of the Checklist was made and is attached to these Minutes.

12
13 Mr. St. Amand noted the Application has DEP approval. Approval from the Army
14 Corps of Engineers is not required.

15
16 VOTE:
17 CHRISTIE ANASTASIA: AYE
18 DAVE ASHMORE: AYE
19 MEREDITH RANDOLPH: AYE
20 JOANNE EATON: AYE
21 CHAIR BILL HANLEY: AYE
22 MOTION TO APPROVE THE APPLICATION APPROVED 5-0.

23
24 **V. Other**

25 CEO Keene apprised the Board of items on the February 10, 2021 Planning Board
26 Agenda.

27
28 The deadline for submittals for the College of the Atlantic Application was January 22,
29 2021. Submittals requested on parking were not received. The Application was found
30 complete contingent upon receipt of that information.

31
32 The Otium LLC remand from the Board of Appeals will also be heard at the next
33 meeting.

34
35 Ms. Randolph inquired about the Applicant's failure to meet the deadline for the
36 College of the Atlantic proposal. CEO Keene noted they are appearing before the
37 Select Board February 1, 2021 to discuss parking.

38
39 Sidney Roberts Rockefeller inquired how the once-active traffic committee could be
40 reinstated to discuss the Town's parking issues. Ms. Eaton agreed parking was a
41 serious problem for the Northeast Harbor downtown area. Chair Hanley encouraged
42 Ms. Rockefeller to voice her concerns at the next meeting.

43
44 CEO Keene suggested Ms. Rockefeller discuss the possibility of reestablishing the

1 traffic committee with the Town Manager. Ms. Randolph wondered if the Land Use
2 Ordinance Advisory Committee should be a part of the issue as well.
3 Requiring parking for new buildings should likely be part of the LUZO. CEO Keene
4 agreed parking requirements, once established, would have to be added to the
5 Ordinance. Reestablishing the traffic committee will play an important part in making
6 such requirements happen as well.

7
8 Ms. Rockefeller noted the Gray Cow parking lot is off limits in the winter due to snow
9 removal. She wondered if there were a way to use part of it in the winter for overnight
10 parking. CEO Keene felt that was another question for the Town Manager.

11
12 Ms. Randolph observed that several lots in Town have maxed out their lot space with
13 construction. This allows for no chance to add on-site parking. Perhaps the ability to
14 max out lot coverage with construction requires review. CEO Keene noted that inland
15 zoning does not count parking and driveways toward lot coverage. Adding that into
16 the count would maximize development. Chair Hanley felt parking requirements
17 needed perhaps to be tied to the site on which a structure is being developed, rather
18 than relying on satellite parking. Ms. Rockefeller recollected a traffic study done years
19 ago. It should not have changed much, and it might be worthwhile to review.

20
21 CEO Keene reminded the Board of the Seal Harbor project discussed at the last
22 meeting. A brochure was sent out to some Seal Harbor residents by those proposing
23 the project. The project has been scaled back and now comprises the sale of outdoor
24 gear, kayak, and bike rentals, and selling ice cream and coffee. Maine Municipal
25 Association considers these activities retail and that means the project is under the
26 CEO's purview. CEO Keene has reached out to the DOT regarding traffic but has not
27 heard back.

28
29 CEO Keene did not believe there was any rules against renting a kayak and taking it to
30 Seal Harbor Beach for use. Ms. Randolph noted that she had heard the proprietors
31 were hoping to obtain contracts with the cruise ships for kayak and bike trips. This
32 would include bussing cruise ship passengers to Seal Harbor.

33
34 CEO Keene wondered if it had been scaled back in light of residents' concerns. CEO
35 Keene has asked the proprietors to pinpoint exactly what they planned to do on the
36 site and who has jurisdiction for review. The site has nine or ten parking spots. Ms.
37 Keene has heard nothing about busses.

38
39 Ms. Randolph inquired whether there was anything in the code prohibiting a business
40 to sign contracts with cruise ships to bring passengers into Seal Harbor. Is there any
41 reason even to disclose that information? CEO Keene did not believe so.

42
43 Ms. Eaton felt cruise ships would require more oversight of passenger activities than
44 simply dropping them off and leaving them to their own devices.

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Chair Hanley asked how kayak rental was an issue for Long Pond, but not for Seal Harbor Beach. CEO Keene noted the use at Long Pond is not a permitted use. The rental place there is grandfathered. The Long Pond area is in Shoreland and Resource Protection zoning districts. Ms. Anastasia would have safety concerns about bicyclists trying to bicycle from that point of origin.

Ms. Eaton felt that CEO Keene should address the proposal, and if it changes in a way that requires Board activity, then it can be brought to the Board. CEO Keene noted that an Application decided by her can be appealed.

VI. Adjournment

MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, ADJOURNMENT.
VOTE:
JOANNE EATON: AYE
MEREDITH RANDOLPH: AYE
CHRISTIE ANASTASIA: AYE
DAVE ASHMORE: AYE
CHAIR BILL HANLEY: AYE
MOTION APPROVED 5-0.

The Meeting adjourned at 7:49PM.