

**Town of Mount Desert Planning Board
Meeting Minutes
6:00 PM, July 8, 2020**

This meeting was held virtually and was recorded.

Public Present:

Melisha Miller, James Beyor, Gail Gladstone, Gerald Berlin, Marie Berlin, Ben Meiklejohn, Roger St. Amand, Irene Driscoll, George Davis

Board Members Present:

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

Tracy Loftus Keller is an Alternate, Non-voting Member.

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

Chair Hanley called the meeting to order at 6:00 PM.

II. Approval of Minutes

There were no Minutes presented for approval.

III. Conditional Use Approval Application(s):

A. Conditional Use Approval Application #007-2020

OWNER NAME(S): Gail S. Gladstone & Brian L. Henkel

LOCATION: 4 Sydneys Way, Mount Desert

TAX MAP: 010 **LOT:** 048-001-18 **ZONE(S):** Residential One

PURPOSE: Section 3.4 – Animal Husbandry 2 (Non-Commercial). The care and keeping of Livestock/Poultry - Chickens and Ducks Construct a Chicken Coop.

SITE INSPECTION: 5:00PM - Masks Required During Site Inspection.

CEO Keene confirmed adequate Public Notice. Abutters were notified.

Ms. Anastasia noted she was an abutter to the property being discussed. The Board discussed whether this constituted a Conflict of Interest. It was determined that no Conflict of Interest was found.

Ms. Anastasia reported on the Site Visit. The Applicants were present. There is a small coop with a run next to it. The owners have four chickens and two ducks. There is a compost bin nearby for waste. The coop's run is in a fence, and the backyard is also fenced.

Ms. Gladstone clarified the permit is being obtained after the fact. The coop has been in place for approximately a year and is as Ms. Anastasia described.

Chair Hanley asked for Public Comment. There was none.

1 CEO Keene noted an abutter inquired about the situation. One abutter was at the Site Visit.

2

3 The Public Hearing was closed.

4

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

6 VOTE:

7 CHRISTIE ANASTASIA: AYE

8 JOANNE EATON: AYE

9 MEREDITH RANDOLPH: AYE

10 DAVE ASHMORE: AYE

11 CHAIR BILL HANLEY: AYE

12 MOTION APPROVED 5-0.

13

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

15 VOTE:

16 MEREDITH RANDOLPH: AYE

17 JOANNE EATON: AYE

18 DAVE ASHMORE: AYE

19 CHRISTIE ANASTASIA: AYE

20 CHAIR BILL HANLEY: AYE

21 MOTION APPROVED 5-0.

22

23 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO APPROVE THE APPLICATION.

24

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

26

27 VOTE:

28 MEREDITH RANDOLPH: AYE

29 CHRISTIE ANASTASIA: AYE

30 DAVE ASHMORE: AYE

31 JOANNE EATON: AYE

32 CHAIR BILL HANLEY: AYE

33 MOTION APPROVED 5-0.

34

35 **IV. Section 4.3.7 Change of Use of a Non-conforming Structure. The use of a non-conforming**
36 **structure may not be changed to another use unless the Planning Board, after receiving a**
37 **written application, determines that the new use will have no greater adverse impact than the**
38 **existing use on: a. the subject or adjacent properties and resources; or b. water body, tributary**
39 **stream, or wetland**

40 **OWNER NAME(S):** George E. & Mary M. Davis, Trustees

41 **LOCATION:** 4 Walls Street, Otter Creek

42 **TAX MAP:** 033 **LOT:** 010 **ZONE(S):** Village Residential One

43 **PURPOSE:** To convert an existing one-story garage/workshop into a Residential Dwelling Unit.

44 **SITE INSPECTION:** 4:00PM – Masks Required During Site Inspection.

45

46 No Conflict of Interest was found.

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

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Ms. Eaton reported on the Site Visit. She and Ms. Loftus Keller were met by the owner. There were numerous neighbors in attendance as well as the abutters; several of whom have signed statements approving the changes proposed. The garage is a 24'x24' one-story building with a single-car garage door. A one-bedroom apartment is proposed for the building, some windows will be replaced, and the overhead garage door will be replaced with a front door. The current driveway would remain in use. Ms. Loftus Keller added that the property line behind the building was looked at, as well as the backyard and other structures.

Ms. Randolph pointed out that there were no plans or elevations submitted. CEO Keene explained that the building is existing and will not change in footprint or elevation.

Mr. Davis noted the tools and machinery currently in the garage will be relocated to a barn approximately 120 feet away. He felt the move will likely be an improvement on noise. The building is currently a workshop with a ten-foot wide overhead garage door and a personnel door and three windows. Currently there is T1-11 siding on the building. There is a tin roof and a concrete floor. The walls and ceiling of the building are insulated. Mr. Davis wants to turn the building into a dwelling for himself; he has no plans to rent it. The size is approximately 560sf. There is no plumbing currently. A well is connected to the building, and sewer line will connect to the Town system.

Chair Hanley asked for Public Comment. There was none.

Chair Hanley closed the Public Hearing.

Ms. Randolph did not feel the proposed changes could be reviewed without plans. There is no information on the building.

CEO Keene noted the building is existing. Elevations are not changing, the door is existing, the windows may change.

Mr. Davis agreed to submit plans and drawings to the CEO.

CEO Keene noted the items to be reviewed include public health and safety, erosion control, water quality, fish habitat, vegetation cover, point of public access to water, natural beauty affected, floodplain, and archaeological sites. These are the only points that require review and none of them require plans.

Ms. Eaton felt because the building is so small, there are not a lot of options affecting change. There will be one bedroom only. The closest abutters have approved the proposed changes. There were no objections voiced at the site visit.

Mr. Ashmore suggested that since there were no objections voiced from neighbors, the Board should proceed with the review and determine whether enough information has been provided for each review criteria.

A review of the Section 4.3.7 Checklist was made and is attached to these Minutes.

1 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, APPROVAL OF THE APPLICATION, AS
2 PRESENTED.

3 VOTE:

4 JOANNE EATON: AYE

5 MEREDITH RANDOLPH: AYE

6 DAVE ASHMORE: AYE

7 CHRISTIE ANASTASIA: AYE

8 CHAIR BILL HANLEY: AYE

9 MOTION APPROVED 5-0.

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11 **V. Subdivision Approval Application(s):**

12 **Completeness Review:**

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

14 **OWNER(S):** Gerald & Marie Berlin

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

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

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

19
20 CEO Keene confirmed Abutters were notified. Public Notice is not required at this time. Plans
21 were submitted and are in CEO Keene’s possession.

22
23 No Conflict of Interest was found.

24
25 The Application was reviewed for Completeness.

26
27 **4.2.1 Information on the Applicant:**

28 **1. Name of applicant (owner) –** Found to be Complete.

29 **2. Name of agent (if other than owner) with attached authorization for agent by owner. –**
30 Found to be Not Applicable.

31 **3. If Applicant is a corporation, state whether the corporation is licensed to do business in**
32 **Maine and attach copy of Secretary of State's Registration. –** Found to be Not Applicable.

33 **4. Name of Applicant's authorized representative and authorization. –** Found to be Not
34 Applicable.

35 **5. Name, address, and number of Registered Professional Engineer, Land Surveyor, or Planner.**
36 – Found to be Complete.

37 **6. Address to which all correspondence from the Board should be sent. –** Found to be
38 Complete.

39 **7. What interest does the Applicant have in the parcel to be subdivided (option, land purchase**
40 **contract, record ownership, etc.)? –** Found to be Complete.

41 **8. What interest does the applicant have in any property abutting parcel to be subdivided? -**
42 Found to be Complete.

43 **9. State whether preliminary plat plan covers entire, contiguous holdings of owner. –** Found to
44 be Complete.

45
46 **4.2.2 Information on Parcel to be Subdivided:**

- 1 **1. Location of property: Map and Lot (from Town Tax Maps.)** – Found to be Complete.
- 2 **2. Survey maps of tract to be subdivided, as well as contiguous property of the owner of the**
- 3 **tract, certified by a Registered Land Surveyor, tied to established reference points (attach to**
- 4 **application).** – Found to be Complete.
- 5 **3. Current zoning district(s) of property.** – Found to be Complete.
- 6 **4. Acreage of parcel to be subdivided.** – Found to be Complete.
- 7 **5. An SSWD, by a licensed soil engineer identifying soil types and a map showing the location**
- 8 **of soil test areas, unless the parcel will utilize public sewer. Based on soil test results, certain**
- 9 **modifications of the Preliminary Plat Plan may be required (attach copy of soils report to**
- 10 **application). There shall be at least one satisfactory soil test per lot.** – Found to be Complete.
- 11 **6. Names of property owners within 1,000 feet from the parcel to be subdivided, and on**
- 12 **opposite side of any road from parcel to be subdivided (show on Plat).** – Found to be
- 13 Complete.
- 14 **7. Any restrictive covenants to be placed on the deeds.** – Found to be Complete.
- 15 **8. Proposed soil erosion and sedimentation control** – Found to be Not Applicable.
- 16 **9. Water supply.** – Found to be Complete.

17
18 **4.2.3 Information on Subdivision:**

- 19 **1. Proposed name of subdivision** – Found to be Complete.
- 20 **2. Number of lots** – Found to be Complete.
- 21 **3. Date, north point, graphic map scale (show on Plat).** – Found to be Complete.
- 22 **4. Proposed lot lines with approximate dimensions and suggested location where known of**
- 23 **buildings, subsurface sewage disposal systems, and wells (show on Plat).** – Found to be
- 24 Complete.
- 25 **5. Location of temporary markers so located as to enable the Board to readily locate lots and**
- 26 **appraise basic lots layout in the field (show on Plat)** – Found to be Complete.
- 27 **6. Location of all parcels to be dedicated to public use, the conditions of such dedication, as**
- 28 **well as the location of all natural features of site elements to be preserved (show on Plat).** –
- 29 Found to be Not Applicable.
- 30 **7. A location map, consisting of a USGS Topographical Map, showing the relation of the**
- 31 **proposed subdivision to adjacent properties and to the general surrounding area. The location**
- 32 **map shall show all the area within 2000 feet of any property line of the proposed subdivision**
- 33 **and shall be attached to application.** – Found to be Complete.
- 34 **8. Location and size of existing buildings and other essential existing physical features (show**
- 35 **on Plat).** – Found to be Complete.
- 36 **9. Location of all wetlands, regardless of size, all water bodies and areas within the State**
- 37 **Shoreland Zone (show on Plat).** – Found to be Complete.
- 38 **10. Location of all drains which shall provide adequate storm water management.** – Found to
- 39 be Not Applicable.
- 40 **11. Location and size of any existing and proposed sewers and water mains, and culverts and**
- 41 **drains.** – Found to be Not Applicable.
- 42 **12. Location, names, and widths of existing and proposed streets, highways, easements,**
- 43 **building lines, parks, and other open spaces (shown on Plat).** – Found to be Complete.
- 44 **13. Names of abutters (show on Plat).** – Found to be Complete.

1 **14. The Subdivider will determine, based on the Federal Emergency Management Agency's**
2 **Flood Boundary and Floodway Maps, whether the subdivision is in a flood prone area. If the**
3 **subdivision, or any part of it, is in such an area the subdivider will determine the 100-year**
4 **flood elevation and flood hazard boundaries within the subdivision. – Found to be Complete.**

5 **15. Other information not indicated above, as specified by the Board. – Found to be Complete.**

6
7 **Section 5:**

8 **5.1 Buffer Strip - Buffering elements or screening in the form of architectural and/or landscape**
9 **design – Found to be Complete.**

10 **5.2 Conformance with other Laws, Regulations - The proposed subdivision shall be in**
11 **conformance with all pertinent local, State, and Federal Ordinances, statutes, laws, and**
12 **regulations. – Found to be Complete.**

13 **5.3 Construction Prohibited - No utility installations, no ditching, grading or construction of**
14 **roads, no grading of land or lots, and no construction of buildings shall be commenced on any**
15 **part of the proposed subdivision until a Final Plat Plan of the subdivision has been prepared,**
16 **submitted, reviewed, approved, and endorsed as provided by this Ordinance, nor until an**
17 **attested copy of the Final Plat Plan so approved and endorsed has been recorded by the**
18 **subdivider in the Registry of Deeds. – Found to be Complete.**

19 **5.4 Ditches, Catch Basins - The Board may require the installation of ditches, catch basins,**
20 **pipng systems, and other appurtenances for the conveyance, control, or disposal of surface**
21 **waters. – Found to be Complete.**

22 **5.5 Easements - The Board may require easements for sewerage, drainage, utilities, or public**
23 **access. – Found to be Complete.**

24 **5.6 Dedication for Year-round housing Reserved – Found to be Complete.**

25 **5.7.1 The lot size, width, depth, frontage, shape and orientation and the minimum setback**
26 **lines shall be in accordance with the Land Use Zoning Ordinance. – Found to be Complete.**

27 **5.7.2 Where individual, on-site sewage disposal systems are to be utilized, the size of each lot**
28 **shall be based on soil characteristics, and shall, as a minimum, conform to M.R.S.A. Title 12,**
29 **Section 4807- A as amended. – Found to be Complete.**

30 **5.7.3 The Planning Board shall determine if a division of land will be reviewed as a Cluster, a**
31 **Workforce or a Conventional subdivision. – Found to be Complete.**

32 **5.8.1 Where any part of a proposed subdivision is located within 1500 feet of a public sanitary**
33 **sewer line, the subdivider shall connect with such sanitary sewer line by means of a main not**
34 **less than 8 inches in diameter, provided however, that the appropriate municipal agencies**
35 **shall first have certified that extending the services will not be an excessive burden on the**
36 **system. – Found to be Complete.**

37 **5.8.2 Where private subsurface sewage disposal is to be utilized, the subdivider must conform**
38 **to all State of Maine Plumbing Code and LUZO requirements. Furthermore: 1. Disposal sites**
39 **shall be totally contained within the lot being serviced. 2. Systems shall be designed to the**
40 **highest standards for the specified use. 3. There shall be no contamination of existing or**
41 **proposed wells, or any other water source. – Found to be Complete.**

42 **5.9 Land not Suitable for Development – Found to be Complete.**

43 **5.10.1 The Board may require that a proposed subdivision design include a landscape plan**
44 **that will show the preservation of existing trees (10" or more in diameter), the replacement of**

1 trees and vegetation, graded contours, streams, and the preservation of scenic, historic, or
2 environmentally desirable areas. The street and lot layout shall be adapted to the topography.
3 Extensive grading and filling shall be avoided. – Found to be Complete.

4 5.10.2 The Board may require that the subdivider reserve an area of land as an open space
5 and/or recreational area for use by property owners in the subdivision. – Found to be Not
6 Applicable.

7 5.11 Wells – Found to be Complete.

8 5.12 Performance Bond – Found to be Not Applicable.

9 5.13 Plan Revisions After Approval – Found to be Complete.

10 5.14 The approval by the Board of a subdivision plan shall not be deemed to constitute or be
11 evidence of any acceptance by the Town of Mount Desert of any street, road, or right-of-way.
12 – Found to be Complete.

13 5.15 Access to Direct Sunlight – Found to be Complete.

14 5.16 Cluster and Workforce Subdivision – Found to be Not Applicable.

15
16 **6A – General Performance Standards**

17 All Sections of 6A deemed Not Applicable with the Exception of Section 6A.5

18 6A.5 Land Suitability – Found to be Complete.

19
20 **6B – Specific Performance Standards for Activities and Land Uses –**

21 All Sections of 6A deemed Not Applicable with the Exception of Sections 6B.11 and 6B.15

22 6B.11 Lots – Found to be Complete.

23 6B.15 Sanitary Standards – Found to be Complete.

24
25 **6C – Shoreland Zoning Standards –**

26 Section 6C found to be Not Applicable – property is not within the Shoreland Zone.

27
28 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO FIND THE APPLICATION COMPLETE.

29 VOTE:

30 MEREDITH RANDOLPH: AYE

31 JOANNE EATON: AYE

32 DAVE ASHMORE: AYE

33 CHRISTIE ANASTASIA: AYE

34 CHAIR BILL HANLEY: AYE

35 MOTION APPROVED 5-0.

36
37 **VI. Continuation from June 25, 2020:**

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

40 **A. OWNER(S):** Irene Driscoll

41 **AGENT(S):** William Hanley, WMH Architects

42 **LOCATION:** 6 Wildberry Way (formally 50 W.I. Pojereno Road), Mount Desert.

43 **TAX MAP:** 009 **LOT(S):** 044 **ZONE(S):** Shoreland Residential Five

44 **PURPOSE:** Sections 4.3.6 & 4.3.5 Reconstruction or Replacement of a Non-Conforming Structure.

45 Amendment to a previously approved application on March 28, 2018.

1 Chair Hanley noted he had a Conflict of Interest. He is the Agent for the project.

2

3 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, ACCEPTANCE OF CHAIR HANLEY'S
4 RECUSAL.

5 VOTE:

6 JOANNE EATON: AYE

7 CHRISTIE ANASTASIA: AYE

8 DAVE ASHMORE: AYE

9 MEREDITH RANDOLPH: AYE

10 MOTION APPROVED 4-0.

11

12 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, TO NAME MEREDITH RANDOLPH ACTING
13 CHAIR FOR THE DISCUSSION.

14 VOTE:

15 JOANNE EATON: AYE

16 CHRISTIE ANASTASIA: AYE

17 DAVE ASHMORE: AYE

18 MEREDITH RANDOLPH: AYE

19 MOTION APPROVED 4-0.

20

21 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, MAKING TRACY LOFTUS KELLER A
22 VOTING MEMBER FOR THE DISCUSSION.

23 VOTE:

24 JOANNE EATON: AYE

25 CHRISTIE ANASTASIA: AYE

26 DAVE ASHMORE: AYE

27 ACTING CHAIR MEREDITH RANDOLPH: AYE

28 MOTION APPROVED 4-0.

29

30 Mr. Hanley summarized that the question at hand was whether the deck was a pre-existing,
31 grandfathered marine-dependent use. Mr. Hanley reported he'd been in contact with the original
32 owner of the camp. The original owner's family owned the camp as far back as 1964 and sold the
33 camp to the current owner in 2018.

34

35 Mr. Hanley spoke with previous owner Randy Poulton on July 2, 2020. Mr. Poulton wrote a letter
36 to the Planning Board dated July 3, 2020. The letter attests that the marine-dependent structure
37 on the shoreline was in existence prior to the enactment of the Land Use Ordinance. Mr. Poulton
38 confirmed that the structures were there when he graduated high school in 1973. Additionally,
39 aerial photos were obtained dated 1956, 1970, and 1976. These photos confirm the camp's
40 existence. There are areas on the shoreline where structures can be seen.

41

42 It was Mr. Hanley's understanding that this testimony, corroborated by the aerial photos, confirms
43 the structure pre-existed the Ordinance. Mr. Poulton attested to the marine-dependent use of
44 the deck. The deck was used for canoe and kayak storage, fishing, and points of water access.

45

46 Mr. Hanley understood that per the June 25, 2020 Planning Board Meeting, this evidence will
47 allow the Planning Board to make a finding allowing the continuance of the grandfathered use.

48

1 Acting Chair Randolph countered that CEO Keene's research found no evidence of such a deck pre-
2 existing the Ordinance. There is no information confirming the deck's existence in the Town's
3 Map and Lot File. This confirms the deck was never permitted. However, permits were not
4 required prior to the Ordinance. CEO Keene stated that Mr. Hanley's evidence shows there was a
5 structure of some type on the shore. Previous Owner Mr. Poulton attested to the existence by
6 letter. CEO Keene pointed out that the evidence presented does not necessarily guarantee that
7 once a pre-existing structure is torn down it may be rebuilt.

8
9 CEO Keene stated it was the Board's responsibility to determine that the deck was a water-
10 dependent use that has always existed, and that it's a second, grandfathered, water-dependent
11 use. Current LUZO rules state only one water-dependent use is allowed per property. A water-
12 dependent use would have to stay near the water; a sitting deck with no water-dependent use
13 may be moved.

14
15 Mr. Hanley stated that the nomenclature of the "sitting area" included in the submittals made to
16 the Board was simply a term chosen. The deck has a much broader, water-based use.

17
18 Ms. Anastasia asked about permitting not being required by the Town prior to 1978. She
19 wondered if permitting was required at that time by other State Agencies. CEO Keene noted DEP
20 regulations required permitting as far back as 1971. CEO Keene has seen permits prior to 1978,
21 but the enactment of the LUZO was not enacted until March of 1978.

22
23 Ms. Anastasia noted the two marine structures, one being a sitting area and also for boating and
24 fishing. What is the use of the second marine structure? CEO Keene reported the second
25 structure was a dock. Ms. Anastasia asked why two structures were needed for two separate
26 uses. Acting Chair Randolph remembered the Application proposed to attach the dock to the
27 deck, essentially combining the two into one structure. It was CEO Keene's belief that the abutter
28 was not willing to release the setback requirements for placement of the dock. Therefore, the
29 dock remains in its original location.

30
31 Mr. Hanley noted that when the amendment was applied for, Mr. Hanley emailed the abutter. At
32 that time the abutter had no objection to the continuance of the marine-dependent use of the
33 deck.

34
35 Mr. Ashmore asked if Grandfathering meant the deck can be rebuilt. Ms. Randolph felt that if it
36 does mean the deck can be rebuilt, it must be rebuilt in a way approved by the Planning Board.
37 CEO Keene agreed it would have to be approved under Sections 4.3.6 and 4.3.5. According to the
38 original plan, the deck boards only were proposed for replacement. As work commenced, it
39 became clear more than board maintenance was required. The entire structure is new.

40
41 Mr. Hanley disagreed. The rot found in the structure was in the supporting cribwork, which is now
42 gone; the cribwork was replaced with natural shoreline structure work approved by the Planning
43 Board. The deck board area is the only area reconstructed. The support and ledge around it
44 remain. The legs holding the deck were rotted to the shore and were not replaced. CEO Keene
45 maintained the work there is more than general maintenance. Mr. Hanley stated he was basing
46 his assessment that it is not a reconstruction on the percentage of the original structure
47 remaining, compared to what was pre-existing. There is actually less structure than was there
48 previously.

1
2 CEO Keene stated the Planning Board voted that the work done was in fact a reconstruction and
3 that they have jurisdiction to review.

4
5 Acting Chair Randolph's recollection came down to defining whether the deck was a
6 grandfathered marine structure or not. The information answering that question has been
7 presented. She felt the Planning Board must now review and make a decision.

8
9 CEO Keene looked into the property and found no documentation supporting a second marine
10 structure in the Town records. This may simply have been due to the age of the structure.
11 Additionally, Mr. Hanley has presented documentation trying to show evidence the structure was
12 pre-existing. The previous owner attested to the use of the deck. CEO Keene felt the Board now
13 must determine whether or not this was a water-dependent marine structure under the
14 Ordinance, and therefore a water-dependent use and pre-existing grandfathered structure.

15
16 Roger St. Amand stated if one were looking at the deck as a structure and not a marine-dependent
17 use, per Section 4.2.2 normal maintenance of non-conforming uses, as well as structures, is
18 allowed. If this is an existing non-conforming use (as opposed to structure) for the deck, then
19 perhaps it falls under maintenance after all. Acting Chair Randolph stated the Board has already
20 determined the deck is a reconstruction; the argument is irrelevant. Mr. St. Amand maintained
21 that the Board based their decision on the deck as a structure, but not as a marine-dependent use.
22 Repair, maintenance, and upkeep is allowed, without expansion, for a use.

23
24 Mr. Hanley felt the task at hand was to first determine if it is grandfathered, and second, to
25 determine if it's a water-dependent marine structure. Acting Chair Randolph stated the Board can
26 still determine whether the Applicant had the right to rebuild it. CEO Keene maintained the
27 Planning Board has jurisdiction to determine the use and if it is a non-conforming structure, then
28 Sections 4.3.6 and 4.3.5 must be applied.

29
30 Acting Chair Randolph felt the Planning Board must vote on whether the structure is legal or not;
31 whether enough evidence was obtained to determine it existed before the LUZO.

32
33 MS. EATON MOVED, WITH MR. ASHMORE SECONDING, THAT BASED ON THE PREVIOUS OWNER'S
34 EMAIL, THAT THE DECK WAS GRANDFATHERED.

35 VOTE:

36 JOANNE EATON: AYE

37 DAVE ASHMORE: AYE

38 TRACY LOFTUS KELLER: AYE

39 CHRISTIE ANASTASIA: AYE

40 ACTING CHAIR MEREDITH RANDOLPH: AYE

41 MOTION APPROVED 5-0.

42
43 Mr. Ashmore felt that because the deck is deemed to be Grandfathered the rule forbidding two
44 marine structures does not apply. Acting Chair Randolph argued that because it is grandfathered,
45 its non-conformity is exacerbated by its presence. Ms. Anastasia pointed out the Board voted to
46 agree it was grandfathered, and it's grandfathered because it existed prior to the Code. It's also
47 grandfathered because there are two marine structures on the property prior to the Code
48 prohibiting more than one marine structure. Ms. Eaton noted the Board has determined the deck

1 is grandfathered. The question to answer next is should wording specifically stated in the permit
2 previously issued have been included allowing the deck to be rebuilt. Acting Chair Randolph felt
3 the issue was vague because it was presented as a “sitting area”. Arguments later revealed that it
4 should be left where it is because due to its water dependency. If the Board feels it is a “dock”,
5 then the Board can’t ask the Applicant to move it away from the water.
6

7 Mr. Hanley stated there are two levels to the grandfathering. The first level – the structure pre-
8 existed the Ordinance. The second level – the use, which has never changed. The deck was and
9 has always been a water-dependent use. He suggested the Board look for a finding on that fact.
10

11 Acting Chair Randolph felt that the Board needed to determine whether, as a result of their
12 review, the deck can be rebuilt in its original location. CEO Keene agreed. She did not feel the
13 Board was required to review the details from the beginning. The Board is looking at this as an
14 amendment to the Application reviewed in 2018, and whether the Board agrees with what was
15 done on the property.
16

17 CEO Keene agreed it was confusing. It is an amendment to an approved amendment, because the
18 applicant did not build in compliance of what was approved in the amendment. It is an
19 amendment to a previously approved non-conforming structure reconstruction/replacement. The
20 Board felt the deck was not part of the original review process. Originally it was shown on the
21 plan as replacing deck boards, but not the entire structure. CEO Keene felt the Board should
22 create Findings of Fact and a Conclusion of Law pertinent to just the deck area. All other parts
23 have been addressed.
24

25 Acting Chair Randolph felt the last discussion reviewed the deck step by step as if it were its own
26 independent structure. She inquired whether the next step was Findings of Fact and Conclusion of
27 Law determining whether the deck can remain, or whether the Board feels it is not legitimate to
28 have rebuilt the deck in that location.
29

30 CEO Keene felt it should be looked at as part of the Application reviewed in 2018. The Application
31 was reviewed by the Board in 2018 and part of a submission packet. The information in the
32 packet submitted was very different regarding the area in question and the work done. Originally
33 it was proposed to replace deck boards. It was CEO Keene’s understanding that the foundation
34 under the deck would remain in place. Instead, the area was completely rebuilt.
35

36 Acting Chair Randolph agreed the deck was reviewed as part of the previous Application. It was
37 also reviewed independently. Findings of Fact and Conclusion of Law deeming whether or not the
38 deck is a water dependent structure and can be permitted.
39

40 Mr. Hanley argued that foundation was included as being replaced in the original Application. It
41 was proposed in the original Application to remove the cribwork and creating a naturalized shore.
42

43 CEO Keene inquired whether plans showing decking to be replaced were submitted to the DEP.
44 Mr. St. Amand noted that the plans submitted to the DEP noted the deck would remain. The rest
45 of the retaining wall in that area was being removed and naturalized. When the area was rebuilt,
46 it was found that the rot in the structure was more widespread, and the deck was replaced.
47

48 Acting Chair Randolph felt that the question at hand was that if the work done had been included

1 in the Application, would the Board have allowed the Applicant to rebuild as it had been. CEO
2 Keene wrote the violation because it was her understanding per the Application that the deck
3 boards, or part of that structure was to remain. However, the entire structure was replaced.
4 Acting Chair Randolph stated that during the 2018 discussions, the issue of two docks was never
5 discussed, nor the other aspects of the work. If the work done had been clear in the Application,
6 would the Board have allowed the deck to be rebuilt?
7

8 MS. EATON MOVED THE FINDING OF FACT TO BE TO AMEND THE ORIGINAL REQUEST TO INCLUDE
9 WHAT HAS BEEN DETERMINED TO BE A GRANDFATHERED WATER-DEPENDENT STRUCTURE AND
10 THAT IF IT HAD TO BE COMPLETELY REBUILT THE REBUILD WOULD BE ACCEPTABLE AND WOULD
11 FIT INTO THE PLANS. THE CONCLUSION OF LAW BEING THAT UNDER SECTIONS 4.3.6 AND 4.3.5
12 REBUILDING THE DECK WOULD BE COVERED.
13

14 Acting Chair Randolph agreed it has been determined the Applicant has grandfathered rights to
15 having a second water-dependent structure. And because of that, the Board cannot request that
16 the deck be relocated to behind the setback.
17

18 Acting Chair Randolph and Ms. Anastasia voiced confusion over the fact that all the original
19 documentation referred to the deck as "sitting area". CEO Keene concurred; a water-dependent
20 use relies on being near the water. A "sitting area" does not rely on being near the water. Acting
21 Chair Randolph agreed a "sitting area" could not be allowed to remain on the water, but the
22 determination of it being a water-dependent structure changes the situation.
23

24 Ms. Driscoll noted that the term "sitting area" was a label chosen by her Agent. She hoped a label
25 wouldn't negate the deck's historic use as a water-dependent structure. She added that previous
26 owner Mr. Poulton stated the deck was also an erosion control measure as well. The earth there
27 erodes and there are trees in the area. The deck protects from further erosion and root exposure.
28 She reiterated the deck was used for storage of kayaks and canoes, launching kayaks and canoes,
29 storage of swimming gear, and fishing. Ms. Driscoll added she intended to live in the residence
30 year-round. The other dock in the water is seasonal. This deck will be used for year-round water
31 access.
32

33 Ms. Anastasia inquired about water access from the deck. It appears to be surrounded by rocks.
34 Ms. Driscoll noted kayaks are stored on the deck and then pushed on and off the deck for use.
35 Ms. Driscoll added that when the deck fell apart, she was not made aware of the situation. The
36 contractor saw it collapse and in good faith rebuilt it, without being aware of the consequences.
37 She pointed out that if the broken pieces had been left in place there would have been no issue.
38

39 Acting Chair Randolph noted that the deck has also been claimed to be part of the embankment.
40 She felt arguments were contradicting each other.
41

42 Ms. Driscoll maintained that per previous owner Mr. Poulton the deck had been repaired and
43 maintained many times over the years because its placement was essential for erosion control.
44 Discussion ensued regarding who built the original deck.
45

46 Mr. Ashmore stated that the deck has been determined to be a grandfathered structure. There
47 was no need for further discussion regarding the question of its original building.
48

1 A review of the Motion was made.

2

3 MR. ASHMORE SECONDED THE MOTION.

4

5 After Discussion, the Motion was amended to the following:

6

7 MS. EATON MOVED, WITH MR. ASHMORE SECONDING, THE FINDING OF FACT TO BE TO AMEND
8 THE ORIGINAL REQUEST TO INCLUDE THE WATER-DEPENDENT STRUCTURE ON THE NORTHWEST
9 PORTION OF THE PROPERTY ON THE LONG POND SHORELINE AS IDENTIFIED ON THE SITE PLAN
10 DATED JANUARY 25, 2018 SUBMITTED FOR REVIEW IS DETERMINED TO BE A GRANDFATHERED
11 WATER-DEPENDENT STRUCTURE BASED ON TESTIMONY – A LETTER FROM PREVIOUS OWNER –
12 ATTESTING THAT THE EXISTING USE WAS A WATER-DEPENDENT STRUCTURE, AND ALSO AN
13 AERIAL PHOTO DATED 1970. AND IF IT HAD TO BE REBUILT, THE CONCLUSION OF LAW IS THAT
14 THE BOARD FINDS THAT RECONSTRUCTION IS PERMITTED.

15

16 VOTE:

17 JOANNE EATON: AYE

18 DAVE ASHMORE: AYE

19 TRACY LOFTUS KELLER: AYE

20 CHRISTIE ANASTASIA: AYE

21 ACTING CHAIR MEREDITH RANDOLPH: AYE

22 MOTION APPROVED 5-0.

23

24 **V. Other**

25 CEO Keene reported that the Town Meeting schedule will likely force the Planning Board's August
26 12, 2020 Meeting to be cancelled.

27

28 **VI. Adjournment**

29 MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING, ADJOURNMENT.

30 VOTE:

31 JOANNE EATON: AYE

32 TRACY LOFTUS KELLER: AYE

33 CHRISTIE ANASTASIA: AYE

34 DAVE ASHMORE: AYE

35 ACTING CHAIR MEREDITH RANDOLPH: AYE

36 MOTION APPROVED 5-0.

37

38 The Meeting adjourned at 8:38PM.

39