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**TOWN OF MOUNT DESERT
PLANNING BOARD MEETING
Minutes
January 26, 2022**

Planning Board Members Present: Chair William Hanley, Tracy Loftus Keller, Christie Anastasia, David Ashmore, Meredith Randolph

Public Present: Michael Cuttitta, Applicant Aldo Adriazola, Beth Ingebriksen, Attorney for Mr. Whitman Justin Bennett, Attorney for the Applicant Margaret Jeffrey, cfh, Tim Brochu, Dennis Bracale, Stephanie Reece, Anne Tilney, Roger St. Amand, Paul Nitze

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

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

Planning Board Members present were noted.

II. Approval of Minutes

JANUARY 19, 2022: MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, APPROVAL OF THE MINUTES OF JANUARY 19, 2022 AS PRESENTED.

VOTE:

MEREDITH RANDOLPH: AYE
TRACY LOFTUS KELLER: AYE
CHRISTIE ANASTASIA: AYE
CHAIR WILLIAM HANLEY: AYE
DAVID ASHMORE: ABSTAINS

MOTION APPROVED 4-0-1 (ASHMORE IN ABSTENTION).

III. Conditional Use Approval Application(s):

A. Conditional Use Approval Application #001-2022

OWNER(S) NAME(S): Howard B. Johnson

AGENT/APPLICANT: Dennis Bracale

LOCATION: 20 Rock End Road, Northeast Harbor

TAX MAP: 024 **LOT:** 045 **ZONE(S):** Village Residential One (VR1)

PURPOSE: Section 6B.6 Fences and Walls, exceeding CEO Authority.

SITE INSPECTION: 3:30PM

Ms. Loftus Keller confirmed adequate Public Notice. Abutters were notified.

Chair Hanley reported on the Site Visit. The property has three sections of fence: a longer section on the west side of the property, a short section with a gate, and a small section near the garage facing the road. The fence is six

1 inches off the property line with identical construction on both sides. The back
2 portion of the property is not part of the review.

3
4 Agent Dennis Bracale noted the fence is over six feet, requiring Planning Board
5 review. The height of the fence is intended to keep deer out. Additionally, the
6 gate has a header over it that extends higher than six feet. The fence is custom
7 post and beam, and both sides are identical. The Applicant has talked with both
8 neighbors. The neighbors report no issues regarding the fence.

9
10 Chair Hanley asked for Public Comment. There was none.

11
12 Public Comment was closed.

13
14 No Conflict of Interest was found among the Board.

15
16 MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND
17 THE APPLICATION COMPLETE.

18 VOTE:

19 MEREDITH RANDOLPH: AYE
20 TRACY LOFTUS KELLER: AYE
21 CHRISTIE ANASTASIA: AYE
22 DAVID ASHMORE: AYE
23 CHAIR WILLIAM HANLEY: AYE

24
25 MOTION APPROVED 5-0.

26
27 MS. ANASTASIA MOVED, WITH MS. LOFTUS KELLER SECONDING, TO USE
28 THE SHORT FORM.

29 VOTE:

30 CHRISTIE ANASTASIA: AYE
31 TRACY LOFTUS KELLER: AYE
32 MEREDITH RANDOLPH: AYE
33 DAVID ASHMORE: AYE
34 CHAIR WILLIAM HANLEY: AYE

35
36 MOTION APPROVED 5-0.

37
38 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, APPROVAL
39 OF THE APPLICATION.

40
41 A review of the Checklist was made and is attached to these Minutes.

42
43 VOTE TO APPROVE THE APPLICATION:

44 MEREDITH RANDOLPH: AYE
45 CHRISTIE ANASTASIA: AYE
46 TRACY LOFTUS KELLER: AYE

1 DAVID ASHMORE: AYE
2 CHAIR WILLIAM HANLEY: AYE

3
4 MOTION APPROVED 5-0.

5
6 IV. Continued from December 8, 2021.

7
8 Land Use Zoning Ordinance Section 6B.11 Lots § (2) Access - No lot may be built
9 upon or otherwise developed unless it has a private road or driveway for access to a
10 public way by a valid right of way benefiting the lot (or a combination of driveway
11 and/or one of more private roads) or by ownership of land abutting the public way. **If**
12 **more than 2 lots are accessed by the same private road, then it must meet the**
13 **Street Design and Construction Standards of Section 5.14 of the Subdivision**
14 **Ordinance.** If no more than 2 lots are accessed by the same private road or
15 driveway, then it must meet either the said Street Design and Construction Standards
16 or the Driveway Construction standards of Section 6B.6 of this Ordinance. A pre-
17 existing primary access drive that serves up to 2 existing lots need not meet the
18 requirements of Section 6B.6. All lots must maintain safe access for fire, police, and
19 emergency vehicles, as determined by the Fire Chief.

20
21 Subdivision Ordinance Section 6. Waiver and Modifications of this Ordinance
22 **§ 6.1.1** Where the Board finds that a private road providing access to a lot or lots
23 cannot meet the Street Design and Construction standards of Section 5.14
24 because (a) the application of land use restrictions would prevent the work required
25 to bring an existing road into compliance or (b) physical conditions of the site
26 render strict compliance impossible, then the Board may waive such standards.

27
28 However, in all such cases, the Board must find that (a) the proposed plan brings
29 the road into compliance as much as is feasible, (b) the proposed plan will provide
30 safe access to and from the property, and (c) the proposed plan will allow for
31 access to the site for emergency vehicles.

- 32
33 **A. PROPERTY OWNER(S):** Robert Lamar Hardy, Jr.
34 **APPLICANT(S):** Aldo Adriazola
35 **AGENT(S):** Margaret T. Jeffery, Esq.
36 **PROPERTY LOCATION:** Off Harborside Road, Northeast Harbor
37 **TAX MAP:** 026 **Lot:** 025-002 **Zone(s):** Residential One (R1)
38 **PURPOSE:** Request a waiver of the Street Design and Construction Standards
39 of Section 5.14 of the Subdivision Ordinance for an existing private
40 road.

41
42 Attorney for the Applicant Margaret Jeffrey summarized that the Applicant is
43 requesting a variance from the street design and construction standards of Section
44 5.14 of the Subdivision Ordinance. Existing physical constrictions do not allow for
45 compliance. Abutters were approached regarding permission to widen the Right of
46 Way (ROW); permission was not granted. The Applicant is working with engineer Tim

1 Brochu and Fire Chief Bender to create an acceptable plan to provide safe passage
2 for emergency vehicles.

3
4 The Fire Chief requires four issues to be addressed:

- 5 - The entrance onto the roadway must be cleaned up. The Applicant proposes to clean
6 up debris on the left side of the road between the travel way and a rock wall. The right
7 side of the road will be widened with packed gravel, accommodating large vehicles
8 while allowing for drainage of water runoff.
- 9 - The roadway must be 12 feet in width, with a 14.5x14.5-foot clearance for emergency
10 vehicles. The road has a 20-foot ROW, so the Applicant can maintain the required
11 clearance.
- 12 - Widening of the road must occur at the curves. Attorney Jeffrey pointed out two
13 curves the Applicant proposes to widen with packed gravel.
- 14 - A hammerhead on the Hardy Lot has been deemed adequate for turn-around
15 purposes.

16
17 Chair Hanley opened the discussion to Public Comment.

18
19 Attorney for abutter Mr. Whitman, Justin Bennett, noted that the ROW was reported to
20 have been relinquished in the 1950s. However, the ROW appears on a 1976 survey,
21 suggesting it is still in effect. The ROW is shown as 12 feet in width and it crosses the
22 subject land.

23
24 Attorney Jeffrey confirmed there is a 1952 release of the ROW from the lot north of the
25 parcel. Title Search shows the ROW was never re-established. The survey shows a
26 clearing of 12 feet in width. The clearing does not imply a ROW easement. The ROW
27 relinquishment is referenced on the survey. Attorney Bennett reiterated that the 1976
28 survey presented shows the ROW going through the land. Additionally, trail maps for
29 the Town show the ROW as the Harborside Trail, a historic trail crossing the land,
30 presumably following the ROW. Mr. Adriazola confirmed access to the Harborside
31 Trail would be allowed to continue.

32
33 It was disclosed that the Applicant altered the survey presented, in an effort to show
34 what they are proposing.

35
36 Engineer Tim Brochu explained that a variety of property information is used when
37 creating a survey, including deed research to establish boundaries. The ROW is
38 shown because it is included in some of the deeds. Mr. Brochu's research confirms a
39 relinquished 20-foot ROW.

40
41 Attorney Bennett stated the survey shows the ROW crossing the septic system.
42 Additionally, it appears to be a width of 12 feet and not 20 feet.

43
44 It was noted there is no surveyors stamp on the survey presented by the Applicant.

45
46 Mr. Brochu explained a 12-foot notation on the survey refers to a hammerhead the

1 Applicant overlaid onto the survey. Mr. Brochu clarified that he was not at the site
2 when the survey was done. Measuring from the center of the road, 10 feet from both
3 sides, should determine the ROW.
4

5 Chair Hanley felt the ROW should be graphically conveyed on the survey, so
6 proposed modifications can be considered in context.
7

8 Attorney Jeffrey pointed out that access to the Hardy lot is the only issue before the
9 Planning Board. The Applicant is proposing a plan that the Fire Chief approves of,
10 and it will work for the neighborhood and for the safety of the road.
11

12 Neighbor Anne Tilney voiced several concerns:

- 13 - The trail crosses where the house and the septic are proposed to be.
- 14 - The road is less than 15 feet from Mr. Whitman's property.
- 15 - Ms. Tilney has concerns about the septic system, in relation to the amount of water on
16 the property, including small springs and streams.
17

18 Attorney Jeffrey noted site evaluator Roger St. Amand is in attendance if septic design
19 is deemed pertinent, in relation to access to the Hardy Lot. Chair Hanley agreed that
20 septic system design is not the purview of the Board, but placement of the
21 hammerhead could impact placement of the septic system.
22

23 Mr. St. Amand reported a site was found for septic on the property. Based on the
24 survey, Mr. St. Amand did not believe the hammerhead affected the location of the
25 septic system site.
26

27 Neighbor Paul Nitze voiced his concern regarding the proposal. The lot, though
28 grandfathered, is less than half the normal lot size in the area and heavily ledged with
29 thin soils. Mr. Nitze disputes the statement of the relinquished ROW. The survey
30 shown at this meeting was the first time Mr. Nitze has seen it, and possibly the first
31 time others at the meeting have seen it. The ROW alleged to be relinquished is
32 shown, as is a proposed dwelling location and other, further modifications. Mr. Nitze
33 would like to retain legal representation, conduct a title search, and craft his position
34 on the issue.
35

36 Ms. Tilney noted her concern regarding widening the road going past her property and
37 wondered how widening would work. The sections of road proposed to be improved
38 are shared. She reiterated her concerns regarding the septic system in relation to
39 water already on the land.
40

41 The Applicant's plan is to widen within the 20-foot ROW with gravel such that an
42 emergency vehicle can access the area safely. Ms. Tilney reiterated her preference to
43 keep her property as it is. She noted a drainage issue at the point where her land
44 stops and reverts to Hardy land. BCM Construction created a drainage system on the
45 left side of the driveway.
46

1 Ms. Randolph pointed out that the hammerhead appears to cross the property line
2 onto the Whitman property. Attorney Jeffrey believed the survey reflects the location
3 of the roadway. Relocating the road was not in the Planning Board's purview.
4

5 Attorney Bennett noted he had never seen the plan being presented and could not
6 offer an opinion on the survey.
7

8 Chair Hanley stated that, procedurally, the fact that the survey was not shared prior to
9 the meeting is a problem. The survey is not in the Town's packet of submissions,
10 therefore, no review has been made. Other Planning Board members confirmed they
11 had not received the survey.
12

13 Ms. Randolph believed when ROWs wander over property lines, they require
14 resolution. Chair Hanley agreed; and if a ROW does wander over a property line, then
15 consent of the property owner is required.
16

17 Chair Hanley noted the survey must be made accessible to interested parties. The
18 issue necessitates another meeting continuation.
19

20 Ms. Randolph added that there are other issues, such as groundwater and septic, not
21 relevant to the ROW and not within the Planning Board's jurisdiction. Chair Hanley
22 agreed. Attorney Bennett asserted that it was stated at the last meeting that issues
23 like septic and land use were relevant to how the Planning Board would make its
24 decision.
25

26 Chair Hanley explained that with waiver requests there is a broad spectrum for review.
27 There are many pieces to this project. The biggest concern is providing both the
28 Planning Board and the public appropriate time to review the survey.
29

30 Mr. Ashmore would like to see the actual location of the 20-foot ROW leading to the
31 property, and not just the traveled way.
32

33 Discussion ensued regarding whether or not aspects such as septic should be
34 considered. Ms. Randolph noted the question of the hammerhead and its ability to
35 function on the lot must take into consideration the placement of the septic and
36 whether both can exist on the lot together. This may be the cause for confusion
37 regarding the Board's discussion points and their jurisdiction.
38

39 Mr. Ashmore disagreed. The hammerhead must be shown on the property, or if not
40 fully on the property, then permission must be given for any overage. Criteria such as
41 size of lot is not in the Planning Board's jurisdiction to consider.
42

43 Mr. Nitze pointed out that the survey's building site appears to have changed since the
44 previous meeting. He would be interested to know where the proposed dwelling site is
45 – it appears to have changed in relation to the proposed hammerhead or existing
46 road. He inquired about the type of septic system to be used.

1
2 Chair Hanley believed the meeting should be continued. Items the Planning Board
3 would like to see include:

- 4 - A stamped survey plan.
5 - the boundaries of the 20-foot-wide ROW, or at least the centerline of the ROW must
6 be shown on the survey.
7 - A design on the survey showing the hammerhead pulled solely onto the lot, or
8 alternatively, proof that the hammerhead has a legal right to overhang onto the
9 Whitman lot.

10
11 Chair Hanley cautioned the Applicant against taking a licensed professional's drawing
12 and modifying and then submitting it. Chair Hanley requested the survey be submitted
13 unmodified. If there are modifications or changes the Applicant would like to show,
14 they must be very clearly noted as such on an additional survey.

15
16 Attorney Jeffrey read the description of the ROW from the deed as "*together with the*
17 *Right of Way in common with others over a 20-foot Right of Way from the above-*
18 *described premises to Harborside Road.*" The fact that it is a historic road defines the
19 ROW. The ROW is where the road is.

20
21 Mr. Ashmore hoped to see the full ROW included on the survey. A surveyor can
22 establish the centerline and then draw out to include the 20-foot ROW. Mr. Brochu
23 confirmed a ROW can be shown, relative to the centerline of the roadway as it exists,
24 but it must be noted on the survey that the road can move. The language is vague
25 and there are no metes and bounds. Improvements made within the current 20-foot
26 ROW are within the Applicant's right. Mr. Ashmore asked if a surveyor would be
27 willing to confirm the center of the road is the center of the legal ROW on a stamped
28 survey. Mr. Brochu affirmed they can do so, as of the date of the survey.

29
30 Attorney Jeffrey believed that because this is a historic road, the road establishes the
31 location of the 20-foot ROW. Attorney Bennett disagreed. The 1976 survey plan
32 shows the road. He suggested a new survey showing where the 1976 ROW was
33 located, compared to where it is currently. There is historic evidence of where the
34 ROW was.

35
36 February 23, 2022 was agreed upon for the continued meeting date.

37
38 Ms. Randolph wanted to clarify the discussion. She felt perhaps it was best to stick
39 strictly to the points the Planning Board must consider. Should those points create
40 issues elsewhere, they are the purview of the CEO. Chair Hanley agreed. The
41 resolution of the hammerhead and where the ROW lies on the land will be the focus of
42 discussion. As this is a public hearing, public comment will be allowed, the Board
43 must let those in attendance give voice to their concerns.

44
45 Ms. Randolph informed the Applicant that the LUZO Advisory Committee is planning a
46 change to the LUZO that could affect this issue. Perhaps the Applicant would like to

1 review the proposed LUZO change and decide whether it would be of benefit to wait
2 until after the Special Town Meeting scheduled in March to see whether the change is
3 approved before moving further with this Application.
4

5 MS. ANASTASIA MOVED, WITH MS. LOFTUS KELLER SECONDING,
6 CONTINUING THE DISCUSSION TO THE FEBRUARY 23, 2022 PLANNING BOARD
7 MEETING. THE APPLICANT WILL SUBMIT:

8 - A LEGAL, STAMPED SURVEY PLAN SHOWING THE BOUNDARIES OF THE
9 20-FOOT-WIDE ROW.

10 - AN ADDITIONAL DOCUMENT SHOWING PROPOSED MODIFICATIONS
11 FOR BOARD CONSIDERATION.

12 VOTE:

13 CHRISTIE ANASTASIA: AYE

14 TRACY LOFTUS KELLER: AYE

15 MEREDITH RANDOLPH: AYE

16 DAVID ASHMORE: AYE

17 CHAIR WILLIAM HANLEY: AYE

18
19 MOTION APPROVED 5-0.
20

21 **V. Other**

22 There was no Other Business.
23

24 **VI. Adjournment**

25
26 The Meeting ended at 7:44PM.
27