

**Town of Mount Desert Planning Board
Planning Board Meeting Minutes
Meeting Room, Town Hall
6:00 pm, March 9, 2016**

Public Present

David Moyse – Moyse Environmental, Greg Benz, Ann G. Benz, Jonathan Harris – Lambert and Coffin, Jack Russell, Margaret Lerner, Elizabeth S. Roberts, Jules Opton-Himmel – Agent for the Applicant, Annette Carvajal, Hellmut Juretschke, John Collier, Sue Ferrante-Collier, Lewis Waters, Vicki Vandenburg, Ellen Gilmore, Jim Russell, Jim Jordan, Becky Dow, Erick Swanson – Agent for the Applicant

Board Members Present

Lili Andrews, Chairman Bill Hanley, Dennis Kiley

Also present were CEO Kimberly Keene and Recording Secretary Heidi Smallidge

I. Call to Order

Chairman Hanley called the meeting to order at 6:05 pm. Voting members were noted.

II. Approval of Minutes

February 24, 2016: CHAIRMAN HANLEY MOVED, WITH MS. ANDREWS SECONDING, TO APPROVE THE MINUTES AS PRESENTED. MOTION APPROVED 3-0.

March 3, 2016: MR. KILEY MOVED, WITH CHAIRMAN HANLEY SECONDING, TO APPROVE THE MINUTES AS PRESENTED. MOTION APPROVED 3-0.

III. Conditional Use Approval Application(s)

a. Conditional Use Approval Application #032-2014

OWNER(S): James Own Parker Harris c/o Shepard Harris

APPLICANT(S): Parker Harris

AGENT(S): Jules Opton-Himmel and Erick Swanson

LOCATION: Lakeside Road/Echo Lake Road, Mount Desert

TAX MAP: 009 **LOT(S)**: 120-009 **ZONE(S)**: Shoreland Residential 2 (SR2)

PURPOSE: Sections 3.4 & 6.C.7 – Marine and Freshwater Structure Performance Standards

SITE INSPECTION: 2:30 PM

Ms. Andrews confirmed adequate public notice. Abutters have been notified. There was no conflict of interest found.

Jules Opton-Himmel, agent for the applicant, presented the application. He apprised the Board of several changes to the plan since the last review. The location and design of the proposed structure have been changed in an effort to eliminate concerns about the

1 proximity to Dennings Brook. A new survey was provided. Mr. Opton-Himmel pointed out
2 the new location of the proposed boardwalk. The proposed structure will end 50 feet from
3 the southern boundary of Echo Lake. There is a proposed seasonal structure which is
4 outside the 25-foot setback from the abutter's property line. A 150-foot long permanent
5 boardwalk is proposed. The width of the boardwalk will be 43 inches total, with the
6 walkway being 3 feet in width, and support posts making up the difference. There is a 12
7 x12 foot platform proposed for the end for storage and maneuvering of canoes or kayaks.
8 It was the applicant's hope that the height could be kept low enough to avoid the necessity
9 of guard rails. Poles with bases at the bottom will sit on the marsh, supported by firm
10 ground.

11
12 It was noted the water is not deep enough for swimming. Mr. Opton-Himmel canoed from
13 the proposed area to the edge of the lake to show the area can be paddled. Access for
14 canoeing is the primary intent of the boardwalk.

15
16 The footprint of the structure is designed to have as minimal an impact as possible. The
17 posts to be used are pressure treated. Per the DEP, the posts will be cured offsite on dry
18 land for 21 days to diminish the potential for chemicals leaching into the water.

19
20 Regarding the clearing of vegetation, clearing would occur only at the dry end of the site.
21 The line of the platform can be moved as deemed necessary.

22
23 Access will be limited to foot traffic only. Equipment can be stored on the float, and there
24 will be no parking at the area. Mr. Opton-Himmel proposes to use a minor inlet of the lake.
25 Because of this the risk of debris accumulating should be minimal.

26
27 The Maine DEP approved the earlier proposed site. A minor revision has been submitted
28 and Mr. Opton-Himmel foresees no difficulty in receiving DEP approval for this new
29 revision. The Maine Dept. of Inland Fisheries reviewed the project and had no concerns
30 regarding the proposal. The Army Corps of Engineers did not require a permit for the
31 proposed work.

32
33 Attorney Jonathan Harris made mention of the public's concern regarding setbacks. With
34 regard to the 25' property line setback the revisions to the plan allow the boardwalk to
35 comply with this setback requirement. With regard to a 50' setback requirement from the
36 road, Attorney Harris didn't feel the setback applied.

37
38 Discussion of the wetland boundary and the right of way ensued. Attorney Hamilton noted
39 that per page 6-32 of the LUZO, "*all marine structures shall require conditional use*
40 *approval of the Planning Board and compliance with the performance standards below*
41 *before conditional use approval can be granted.*" The section references shorefrontage.
42 Section one of Section 6.C of the ordinance notes the definition of "shorefront" being "*the*
43 *length of a lot bordering on a water body or wetland...*" Attorney Hamilton felt that based on
44 this Section, the shoreland doesn't start at the road. It must start at the edge of the
45 wetland. The issue of getting from the road to the upland edge of the wetland has not
46 been satisfactorily addressed. Mr. Opton-Himmel noted the stairs can be removed and

1 the structure can start further out.

2
3 Chairman Hanley requested a report on the site visit be made.

4
5 Mr. Kiley reported that Planning Board members, the Town's attorney, Jules Opton-
6 Himmel and members of the public attended the site visit. Mr. Opton-Himmel walked out
7 to the proposed landing area. The water was over his knees there. Mr. Opton-Himmel
8 took a canoe to the beginning of open water. Mr. Kiley, Chairman Hanley, and Attorney
9 Hamilton then walked the path Mr. Opton-Himmel used. Mr. Kiley felt the water feature
10 where Mr. Opton-Himmel stepped in over his knees was the deepest point in that area.
11 Mr. Kiley estimated it to be about 10 to 12 feet from where the boardwalk ended before the
12 water deepened. It was noted the Board had also been to site visits twice before.

13
14 Mr. Opton-Himmel noted that with the newly proposed design, they had submitted a
15 completely new application. Discussion of completeness ensued. Attorney Hamilton
16 noted a single option for the project plan submittal would be better for the Board's review
17 than the two offered. Mr. Opton-Himmel stated Option 2 would be the preferred option to
18 use.

19
20 Attorney Hamilton felt that with regard to completeness, Section 6C.7 should have more
21 information. CEO Keene referenced 6C.7.13 with regard to the words "*...the facility shall*
22 *be no larger than necessary to accomplish the purpose for which it is designed. Its size*
23 *and construction shall not change the intensity of the adjoining land use and by no means*
24 *shall exceed a total distance of more than 1/3 the width of the coastal wetland or water*
25 *body when proposed for coastal or inland waters."* From a completeness perspective, the
26 dimensions need to be available in order to apply the standard. Attorney Harris noted that
27 communications between the CEO and the DEP have shown the measurement of the
28 wetland to be 550', one third being 181.5 feet and the 100 feet or less structure meets the
29 1/3 requirement. It was pointed out that according to the application, measurement of
30 option one showed a length of 196' and measurement of Option 2 was 193'. Attorney
31 Hamilton noted the figure could be less if the measurement is taken from the edge of the
32 wetland, but that information was not available on the survey.

33
34 Attorney Hamilton stated that lot frontage from the shore needs to be determined. Mr.
35 Opton-Himmel reported that the state determined that. He added that there is no part of
36 the proposed structure that extends past the normal high-water line.

37
38 It was noted that a vote of conditional completeness could be made, or the actual number
39 could be required before completeness was determined. Attorney Hamilton noted a
40 survey with the actual measurements would be a condition.

41
42 Further discussion of the measurements ensued.

43
44 Mr. Moyse pointed out that additional water does not necessarily mean wetland. Erick
45 Swanson, Agent for the Applicant, noted that the water levels vary due to weather.
46 Normally the water will drop five inches in dry weather. If the water drops too low, then the

1 walk can't be used, but it can be allowed to exist. It was agreed the edge of the wetland
2 would be flagged.

3
4 Susan Ferrante-Collier asked how people would get out to the boardwalk if the section
5 from the road to the walk was eliminated. Mr. Opton-Himmel said a pathway would be
6 created. This would not be under the same requirements as the wetlands.

7
8 MR. KILEY MOVED, WITH MS. ANDREWS SECONDING, TO FIND THE APPLICATION
9 COMPLETE CONDITIONED UPON THE APPLICANT PROVIDING CLARIFYING
10 INFORMATION REGARDING SECTION 6C. 7.1 AND REGARDING 6C.7.13. MOTION
11 APPROVED 3-0.

12
13 It was agreed that the survey distances from the edge of the travel surface and from the
14 edge of the right of way to the edge of the wetland should be included on the survey. Mr.
15 Opton-Himmel stated that the upland wetland has been delineated, however the distance
16 isn't shown on the plan.

17
18 Attorney Hamilton read several definitions from the LUZO. He felt, based on those
19 definitions, that the outlet is part of the Great Pond. Based on the site visit, the outlet
20 maintains a water level equal to the inland water. It flows to a point where the water
21 becomes a stream which flows into Little Echo Pond. The water setback of 75' is
22 applicable to this situation. The second setback is the road setback. Both setbacks seem
23 to require starting from the shore of the wetland.

24
25 Chairman Hanley opened the Public Hearing.

26
27 Jack Russell stated he represented 18 families from the neighborhood. He asserted that
28 there were several conditions of the LUZO that have not been met with regard to the
29 application.

30
31 Regarding the road setback, in Section 3.5 and the 50-foot setback to be measured from
32 the "*edge of the road surface or edge of legally established right of way if no road exists*".
33 It makes no inference that this does not apply when the road or right of way is within a
34 property lot.

35
36 Regarding functional viability, Mr. Russell pointed out that the applicant has removed the
37 intent for access for swimming, a previously proposed function. Letters from the applicant
38 noted that enjoying nature was one of the intents of the structure. Mr. Russell pointed out
39 the area is shallow, and dangerous to swim. He felt that Mr. Opton-Himmel was not
40 paddling so much as pushing his canoe along because it did not properly float. The
41 residents don't feel the boardwalk is functional.

42
43 Mr. Russell noted the 50-foot setback is fundamental and not met by the applicant. The
44 question of removal of vegetation at the road edge and establishing a clear line of sight is
45 a point of contention. Mr. Russell noted that an environmental impact assessment can be
46 requested by the Board. He felt there were serious issues with regard to environmental

1 impact.

2
3 Attorney Hamilton did not feel the Board could use as a basis for denial fundamental
4 viability, however it is within the purview of the Board to consider it. He cautioned
5 consideration of the 50' road setback and Section 6C.7.

6
7 There was a short recess.

8
9 MS. ANDREWS MOVED, WITH MR. KILEY SECONDING, TO CONTINUE THE
10 MEETING CONDITIONAL USE APPROVAL APPLICATIONS # 001-2016 AND #002-
11 2016 UNTIL THE MEETING ON MARCH 23, 2016. MOTION APPROVED 3-0.

12
13 The Public Hearing resumed. Greg Benz noted he was a licensed architect and
14 professional planner. He voiced concerns about the environmental impact. He noted that
15 in addition to the boardwalk posts being set in the wetland, the shade resulting from a
16 boardwalk will change the environment. He noted that the likelihood of people wading
17 through the wetland or dragging their canoes or kayaks through the wetland, rather than
18 carrying them along the length of the boardwalk will also impact the plant life in the area.
19 He questioned the enforceability of a parking ban at the site.

20
21 Ms. Ferrante-Collier shared concern about the seasonal structure at the end of the
22 boardwalk.

23
24 Ms. Andrews asked about 5.9.4 in the checklist and whether the structure would have
25 impact on "*spawning grounds, fish, aquatic life, bird, or other wildlife habitat*". She noted
26 the inland fisheries do not seem to look at the site, just at a database. Discussion ensued
27 regarding the necessity of visits from the IF&W or DEP to determine impact. Attorney
28 Hamilton stated that the Board is asking for more clarification in writing from the IF&W or a
29 biologist to prove how the standards of 5.9.4 are met. Ms. Andrews requested more than
30 a reiteration of what the State said. Attorney Hamilton noted that the Board is asking for
31 evidence of the presence or absence of environmental resources and impacts. Mr. Opton-
32 Himmel pointed out that the State reports they've made two visits, one in 2014 and one in
33 2015. Mr. Moyses felt the lack of evidence was due to the project being considered to be
34 simple and very low impact. Mr. Opton-Himmel pointed out on page five in Section 14 of
35 the application, the DEP did rule that "*based on the Findings of Fact...the proposed*
36 *activity will not harm any significant wildlife habitat, freshwater wetland...*"

37
38 Discussion ensued regarding continuing the meeting to a later date. It was agreed to
39 continue the public hearing.

40
41 It was agreed to take a short recess to review schedules.

42
43 The meeting resumed. Discussion ensued regarding whether another site visit was
44 necessary. Mr. Kiley hoped to see the stakes marking the edge of the wetland. It was
45 asked who makes the determination of a wetland. Mr. Moyses noted that a certified
46 surveyor makes the determination of a wetland. It was agreed that CEO Keene and Mr.

1 Kiley would look at the staked edge.

2
3 Discussion ensued regarding whether three Board members deciding the application was
4 acceptable to the applicant.

5
6 CHAIRMAN HANLEY MOVED TO CONTINUE THE MEETING TO APRIL 20, 2016 AT
7 6PM. MR. KILEY SECONDED. MOTION APPROVED 3-0.

8
9 **Adjournment**

10 CHAIRMAN HANLEY MOVED, WITH MR. KILEY SECONDING, TO ADJOURN THE
11 MEETING. MOTION APPROVED 3-0. Meeting was adjourned at 9:15 pm.

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