

**TOWN OF MOUNT DESERT
PLANNING BOARD MEETING MINUTES**

March 9, 2022

**Town Hall Meeting Room,
21 Sea Street, Northeast Harbor and via Zoom**

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

Public Present: Noel Musson, Roger St. Amand, Rene Coutremagne, Betsy Thomas, Carla Haskall, Juliet Geldi

This meeting was a hybrid of in-person attendance and on-line attendance via Zoom and was recorded.

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

Chair Hanley called the meeting to order at 6:00PM. Board members in attendance were noted.

II. Approval of Minutes

February 9, 2022:

MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, APPROVAL OF THE FEBRUARY 9, 2022 MINUTES AS PRESENTED.

VOTE:

CHRISTIE ANASTASIA: AYE

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

DAVID ASHMORE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 5-0.

February 23, 2022:

MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, APPROVAL OF THE FEBRUARY 23, 2022 MINUTES AS PRESENTED.

VOTE:

CHRISTIE ANASTASIA: AYE

DAVID ASHMORE: AYE

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

CHAIR WILLIAM HANLEY: ABSTAINS

MOTION APPROVED 4-0-1 (HANLEY IN ABSTENTION)

III. Public Hearing – 6:05PM

1 **Land Use Zoning Ordinance and Land Use Map Amendments for the 2022 Annual**
2 **Town Meeting on May 3, 2022.**

3 Noel Musson presented the proposed amendments.

4
5 **WARRANT ARTICLE XX - Shall an ordinance dated May 3, 2022, and entitled**
6 **“Amendments to the Land Use Zoning Ordinance Section 4.5 Non-conforming**
7 **Lots” be enacted as set forth below?**

8 **Explanation: This amendment will address an ambiguity in case law regarding non-**
9 **conforming lots to clarify that if a nonconforming lot is altered by adding acreage,**
10 **but not enough acreage is added to make it conforming, the lot will retain its**
11 **grandfathered status. Due to Shoreland Zoning rules, this will only apply to lots**
12 **that are not wholly or partially in the Shoreland Zone.**

13
14 Chair Hanley opened the Public Hearing. There were no comments.

15
16 Chair Hanley closed the Public Hearing.

17
18 MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, THE PLANNING BOARD
19 RECOMMEND FOR PASSAGE THE ARTICLE AS PRESENTED.

20 VOTE:
21 CHRISTIE ANASTASIA: AYE
22 MEREDITH RANDOLPH: AYE
23 TRACY LOFTUS KELLER: AYE
24 DAVID ASHMORE: AYE
25 CHAIR WILLIAM HANLEY: AYE
26 MOTION APPROVED 5-0.

27
28 **WARRANT ARTICLE XX - Shall an ordinance dated May 3, 2022, entitled**
29 **“Amendments to Section 7.4 Permit Application regarding photographic evidence**
30 **for permits within the Shoreland Zone” be enacted as set forth below?**

31 **Explanation: This Article amends the LUZO to require pre and post construction**
32 **photographs for permits in the shoreland zone**

33
34 Chair Hanley opened the Public Hearing. There were no comments.

35
36 Chair Hanley closed the Public Hearing.

37
38 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, THE PLANNING BOARD
39 RECOMMEND FOR PASSAGE THE ARTICLE AS PRESENTED.

40 VOTE:
41 MEREDITH RANDOLPH: AYE
42 CHRISTIE ANASTASIA: AYE

1 TRACY LOFTUS KELLER: AYE
2 DAVID ASHMORE: AYE
3 CHAIR WILLIAM HANLEY: AYE
4 MOTION APPROVED 5-0.

5
6 **WARRANT ARTICLE XX - Shall an ordinance dated May 3, 2022, entitled**
7 **“Amendments to the Land Use Zoning Ordinance Regarding Accessory Dwelling**
8 **Units for Lots Outside the Shoreland Zone” be enacted as set forth below?**
9 **Explanation: This Article amends the Section 6B.11 to clarify that only one (1)**
10 **accessory dwelling unit is allowed per lot for lots that are totally outside the**
11 **shoreland zone.**

12
13 Chair Hanley opened the Public Hearing. There were no comments.

14
15 Chair Hanley closed the Public Hearing.

16
17 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, THE PLANNING BOARD
18 RECOMMEND FOR PASSAGE THE ARTICLE AS PRESENTED.

19 VOTE:
20 CHRISTIE ANASTASIA: AYE
21 MEREDITH RANDOLPH: AYE
22 TRACY LOFTUS KELLER: AYE
23 DAVID ASHMORE: AYE
24 CHAIR WILLIAM HANLEY: AYE
25 MOTION APPROVED 5-0.

26
27 **WARRANT ARTICLE XX- Shall an ordinance dated May 3, 2022, entitled**
28 **“Amendments to the Land Use Zoning Ordinance to change the Land Use District**
29 **designation of Tax Map 009: Lot 010-006” be enacted as set forth below?**
30 **Explanation: This Article removes the RP zone on Tax Map 009, Lot 010-006 as the**
31 **Resource Protection Zoning District overlay is not consistent with State Shoreland**
32 **Zoning standards for RP Districts.**

33
34 Chair Hanley opened the Public Hearing. There were no comments.

35
36 Chair Hanley closed the Public Hearing.

37
38 MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, THE PLANNING BOARD
39 RECOMMEND FOR PASSAGE THE ARTICLE AS PRESENTED.

40 VOTE:
41 MEREDITH RANDOLPH: AYE
42 DAVID ASHMORE: AYE

1 CHRISTIE ANASTASIA: AYE
2 TRACY LOFTUS KELLER: AYE
3 CHAIR WILLIAM HANLEY: AYE
4 MOTION APPROVED 5-0.

5
6 **IV. Nonconformity – Sections - 4.3.6 & 4.3.5 Non-conforming Structures –**
7 **Reconstruction or Replacement. Section 4.3.2 – Expansions in the Shoreland Zone.**

8 **OWNER(S):** Summerscape Realty Trust – Elizabeth Carlisle Thomas

9 **LOCATION:** 18 Northern Neck Road, Mount Desert.

10 **TAX MAP:** 017 **LOT(S):** 012 **ZONE(S):** Shoreland Residential Two (SR2)

11 **PURPOSE:** Sections 4.3.6 & 4.3.5 Reconstruction or Replacement and Section 4.3.2
12 Expansions of a Non-Conforming Structure.

13 **SITE INSPECTION:** 4:30PM

14
15 Ms. Loftus Keller confirmed adequate public notice. Abutters were notified.

16
17 Chair Hanley reported on the Site Visit. Three people were in attendance. The
18 existing building is a low mid-century camp that follows the shoreline, and an
19 existing garage. There is a primary underground utility line between the camp and
20 the garage. There is mature tree growth on the property directly behind the house
21 and to the west. An addition is proposed for the south side of the building. A deck
22 cantilevers over the water. Some of the existing footprint under the roofline will be
23 claimed as interior space taking some existing deck area.

24
25 Agent for the owner Ms. Geldi explained the existing footprint of the camp as well as
26 the proposed expansion.

27
28 Project engineer Mr. Coutremagne pointed out the existing septic tank and utility
29 corridor. The Applicant hopes to reuse these features. The septic field site is
30 currently unknown. The septic tank will be replaced on the site of the current tank
31 and a new field will be installed. The intent is to work within the current site and
32 topography and avoid cutting mature trees. Some grading and a 2-foot retaining
33 wall will be installed to mitigate grading toward the house, and redirect drainage
34 away from the house.

35
36 Ms. Geldi shared plans of the proposed expansion. The goal is to work within the
37 current footprint. The increase proposed is under 30%. A primary bedroom with
38 bathroom and laundry area and a screened porch will be added. The site for the
39 proposed addition was staked out at the Site Visit. The decking on the north end will
40 be replaced and a portion enclosed, and a non-compliant railing will be replaced.
41 Much of the first-floor framing will be reused. The current entryway will be raised to

1 be on level with the first floor. Varying floor levels will be made even. The current
2 foundation will be reused.

3
4 The roof will be replaced and reconfigured to allow water to drain away from the
5 pond and tie into the drainage system. Existing elevations are 20 feet above the 61-
6 foot mean high-water line. The Applicant will use that height as the highest point.
7 Exterior walls will be clad in stained wood siding.

8
9 The interior configuration will create open space between the kitchen and living
10 room. One of the two sets of stairs leading to the deck will be removed.

11
12 The floor is at grade and signs of ice damming and water damage are evident. Ms.
13 Geldi noted damage to the framing; some of it must be replaced.

14
15 The decision to expand to the south was because expansion to the west would
16 necessitate cutting into the grade. Ms. Geldi noted that expanding south would
17 encroach on the space proposed for the septic system, impact the grade of the land,
18 and also encroach on the site for the retaining wall. It is unknown whether ledge is
19 in that area. Large trees are in that area as well. The trees are aesthetically pleasing
20 and also provide screening from the neighbors.

21
22 The existing garage was pointed out. It is approximately five feet from the house.
23 Some trees must be removed to alleviate hazards regardless of the status of the
24 project.

25
26 Chair Hanley asked for Public Comment. There was none.

27
28 Chair Hanley closed the Public Comment.

29
30 A review of the Checklists were made and are attached to these Minutes.

31
32 **Section 4.3.6**

33 Chair Hanley read from Section 4.3.6:

34 *"Any non-conforming structure which is located less than the required setback from*
35 *a water body, tributary stream, or wetland and which is removed by 50% or less of*
36 *the market value, or damaged or destroyed by 50% or less of the market value of the*
37 *structure, excluding normal maintenance and repair, may be reconstructed in place if*
38 *a permit is obtained from the Code Enforcement Officer..."*

39
40 Chair Hanley explained the Board must deem whether the reconstruction is more
41 than 50% of the market value of the building to determine jurisdiction in hearing the
42 issue.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

Ms. Randolph asked about evidence that the work will be more than 50% of the market value. Will this be considered an expansion or a reconstruction? CEO Keene believed the tax card would provide a value, and therefore a letter from an appraiser would not be necessary.

Ms. Haskell reported the foundation, floor structure, and exterior walls would be kept. An interior wall will be removed. A dining room area will be added. The interior will be gutted for health and safety reasons. The entire roof is being replaced. All wiring and plumbing is being replaced. The foundation and floor structure are sound and will be reused.

CEO Keene confirmed that, per the tax card, the replacement value of the building is \$111,900.00, 50% of which is \$55,950.00. It was agreed the cost of the work to be done will be more than 50% of the value.

Ms. Haskell noted the roof would be replaced at a flatter level, sloping toward the west.

MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, THE MARKET VALUE OF THE BUILDING IS FOUND TO BE \$111,900.00 PER THE TAX CARD. THE PROPOSED RECONSTRUCTION AND EXPANSION IS MORE THAN 50% OF THE MARKET VALUE, AND THEREFORE, THE PLANNING BOARD HAS JURISDICTION TO HEAR THE ISSUE.

VOTE:
MEREDITH RANDOLPH: AYE
CHRISTIE ANASTASIA: AYE
TRACY LOFTUS KELLER: AYE
DAVID ASHMORE: AYE
CHAIR WILLIAM HANLEY: AYE
MOTION APPROVED 5-0.

Section 4.3.2

Chair Hanley read a portion of Section 4.3.2:
“All other nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable standards of this Ordinance are met and the expansion is not prohibited by Section 4.3.2 and subsections (a), (b) or (c) above.

(i) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to an area greater than 1,000

1 *square feet or 30% larger than the footprint that existed on January 1, 1989,*
2 *whichever is greater.”*

3
4 Ms. Geldi confirmed the pre-1989 existing combined total footprint is 2712 square
5 feet. 30% of that number is 814 square feet. The expansion is proposed to be 812
6 square feet.

7
8 Chair Hanley read another portion of Section 4.3.2:

9 *“(ii) For structures located less than 75 feet from the normal high-water line of a*
10 *water body, tributary stream or upland edge of a wetland, the maximum height of*
11 *any structure may not be made greater than 20 feet or the height of the existing*
12 *structure, whichever is greater. “*

13
14 Ms. Geldi confirmed the existing calculated high points of the roof is at 81 feet, or 20
15 feet in height from the mean original grade at the downhill side of the structure.
16 The highest point of the proposed roof will be at the same height. CEO Keene noted
17 a condition must be set that a surveyor determine that height as accurate.

18
19 CEO Keene confirmed there’s been no expansion made to the building since January
20 1, 1989. The deck was reconstructed in 2000, with no change to the footprint.

21
22 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, THE PROPOSED
23 PROJECT MEETS THE CRITERIA OF THE 30% MAXIMUM ALLOWABLE EXPANSION,
24 AND THE HEIGHT REQUIREMENTS AS STATED IN SECTION 4.3.2.

25 VOTE:

26 MEREDITH RANDOLPH: AYE

27 CHRISTIE ANASTASIA: AYE

28 TRACY LOFTUS KELLER: AYE

29 DAVID ASHMORE: AYE

30 CHAIR WILLIAM HANLEY: AYE

31 MOTION APPROVED 5-0.

32
33 It was noted conditions for Section 4.3.2 include:

- 34 - Approval is pending DEP approval
35 - Contingent upon surveyor confirmation of the height of the structure as
36 determined from the mean original grade at the downhill side of the structure.

37
38 **Section 4.3.5**

39 Discussion ensued regarding how to review Section 4.3.5. Ms. Randolph hoped for
40 detail to be included on each of the criteria in order to address whether the building
41 can or should be relocated. She noted that regarding the first of the criteria- size of
42 the lot - the lot appeared to be large enough to relocate the building.

1
2 Regarding the second of the criteria, topography/slope of the land, Mr.
3 Coutremagne noted that his hope is to be able to reuse the existing foundation.
4 Excavation and removal of that foundation will have a sizable impact on the
5 property. It appears that the grades to the west are not severe. The finish floor of
6 the existing building is at such a low level that to try to expand west cuts into the
7 slope of the land. A four- to five-foot retaining wall would be required in some areas
8 on the west side. Ms. Randolph clarified that the question is not about expansion.
9 The question is whether the building can be completely relocated. Mr.
10 Coutremagne did not believe a complete removal of the existing building was
11 necessary. Ms. Randolph concurred, however the Planning Board must address
12 whether or not the building can be relocated to behind the 75-foot setback. Mr.
13 Coutremagne noted full topographical data for the back portion of the property was
14 not available. The slope is not excessively steep.

15
16 Chair Hanley suggested a single Motion at the end of Section 4.3.5, which addresses
17 each of the criteria.

18
19 Ms. Randolph stated that due to the vegetation and disruption of soil, the disruption
20 to the environment on the lot will be significantly minimized by working within the
21 current footprint, as opposed to relocating it to behind the 75-foot setback. Chair
22 Hanley concurred. Ms. Randolph believed moving the building could necessitate
23 relocating the garage as well. Chair Hanley noted the location of the garage was not
24 a limiting factor in relocation, however it might not be aesthetically pleasing, and it
25 may not have a useful orientation in relation to a newly relocated structure.

26
27 The fact that the building's framework and foundation remain in place lends
28 credence to keeping the building site in place.

29
30 Discussion on creating the Motion ensued.

31
32 MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, IN DETERMINING IF OR
33 WHETHER THE BUILDING RELOCATION MEETS THE SETBACK TO THE GREATEST
34 PRACTICAL EXTENT THE PLANNING BOARD HAS CONSIDERED THE FOLLOWING:
35 **SIZE OF THE LOT** – THE PLANNING BOARD HAS FOUND THAT THE SIZE OF THE LOT IS
36 1.7 ACRES IN SIZE AND THEREFORE NOT A PARTICULARLY LIMITING FACTOR IN THE
37 CONSIDERATION OF THE RELOCATION OF THE NONCONFORMING STRUCTURE
38 BEHIND THE 75-FOOT SETBACK,
39 **TOPOGRAPHY/SLOPE OF THE LAND** – THE SLOPE OF THE LAND IS SOMEWHAT
40 GENTLE, AS SEEN ON THE SITE VISIT, AND NOT AT A SEVERE GRADE, AND
41 THEREFORE NOT A LIMITING FACTOR IN THE CONSIDERATION OF THE RELOCATION
42 OF THE NONCONFORMING STRUCTURE BEHIND THE 75-FOOT SETBACK,

1 **POTENTIAL FOR SOIL EROSION** – POTENTIAL FOR SOIL EROSION WOULD INCREASE
2 IF THE STRUCTURE IS RELOCATED BEHIND THE 75-SETBACK BECAUSE SUCH
3 RELOCATION WOULD ENTAIL NEW CONSTRUCTION, AS WELL AS THE REMOVAL OF
4 THE CURRENT STRUCTURALLY SOUND FOUNDATION,

5 **LOCATION OF OTHER STRUCTURES ON THE PROPERTY AND ADJACENT PROPERTIES**

6 – THE CURRENT LOCATION OF THE GARAGE ON THE PROPERTY IS LIMITING BUT NOT
7 NECESSARILY A BARRIER TO RELOCATING THE NONCONFORMING STRUCTURE
8 BEHIND THE 75-FOOT SETBACK,

9 **LOCATION OF THE SEPTIC SYSTEM AND OTHER ON-SITE SOILS SUITABLE FOR**

10 **SEPTIC SYSTEMS** – THE PROPOSED REPLACEMENT SEPTIC SYSTEM AS PRESENTED ON
11 THE SITE PLAN IS NOT A LIMITING FACTOR FOR THE RELOCATION OF THE
12 NONCONFORMING STRUCTURE BEHIND THE 75-FOOT SETBACK,

13 **VEGETATION TO BE REMOVED TO ACCOMPLISH RELOCATION** – CURRENT
14 SIGNIFICANT, ESTABLISHED, MATURE TREE GROWTH ON THE PROPERTY (E.G.
15 VEGETATION) IS A PRIMARY LIMITATION IN THE RELOCATION OF THE
16 NONCONFORMING STRUCTURE BEHIND THE 75-FOOT SETBACK.

17 AND THEREFORE, THE PROPOSED RECONSTRUCTION OF THE NONCONFORMING
18 STRUCTURE IN ITS PRESENT LOCATION MEETS THE CRITERIA OF SECTION 4.3.5 TO
19 THE GREATEST PRACTICAL EXTENT, AS DETERMINED BY THE PLANNING BOARD.

20 VOTE:

21 CHRISTIE ANASTASIA: AYE

22 MEREDITH RANDOLPH: AYE

23 TRACY LOFTUS KELLER: AYE

24 DAVID ASHMORE: AYE

25 CHAIR WILLIAM HANLEY: AYE

26 MOTION APPROVED 5-0.

27
28 **V. Other**

29 Ms. Anastasia noted she will not be at the March 23 Planning Board meeting, and
30 possibly not at the March 24 Planning Board Meeting.

31
32 There was no Other Business.

33
34 **VI. Adjournment**

35 MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, TO ADJOURN THE
36 MEETING.

37 VOTE:

38 DAVID ASHMORE: AYE

39 MEREDITH RANDOLPH: AYE

40 CHRISTIE ANASTASIA: AYE

41 TRACY LOFTUS KELLER: AYE

42 CHAIR WILLIAM HANLEY: AYE

- 1 MOTION APPROVED 5-0.
- 2
- 3 The Meeting adjourned at 8:07PM.
- 4