

**TOWN OF MOUNT DESERT
PLANNING BOARD MEETING
Minutes for May 25, 2022**

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

Gloria Kunje is an alternate, non-voting member.

Others Present: Greg Johnston, Mount Desert Public Works Director Tony Smith, Margaret Jeffrey, Rodney Eason, Chris Stevenson, Storey Litchfield

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

Chair Hanley called the meeting to order at 6:00PM. Board Members were identified.

II. Approval of Minutes

No Minutes were presented.

III. Conditional Use Approval Application(s):

A. Conditional Use Approval Application #007-2022

NAME: Town of Mount Desert

AGENT: Tony Smith, Public Works Director

LOCATION: Beech Hill Cross Road

TAX MAP: 010 **NEAR LOT(S):** 002, 009-103 & 009-104

ZONE(S): Shoreland Residential 2 (SR2)

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

Culvert replacements within Beech Hill Cross Road. Slope stabilization along Beech Hill Cross Road.

SITE INSPECTION: 5:00PM

CEO Keene confirmed adequate Public Notice. Abutters were notified.

Ms. Loftus Keller reported on the Site Visit. The existing culvert connects to the heath. Water from the heath drains via the culvert. Director Smith is working with the DEP to replace the culvert. They are using the Smart Stream system, which allows for a more natural flow and will reduce water in the heath, as well as create a more natural travel way for wildlife. Guardrails will also be installed.

Director Smith noted the Smart Stream culverts will have a 15'x6' opening with rocks lining the interior and floor of the culvert.

The culvert must be place between mid-July and October 1, per DEP mandates. These dates avoid fish runs. Director Smith has learned the culvert will be unavailable for installation until approximately May of 2023.

Approval of the Conditional Use Application expires after one year if work has not been started. Discussion ensued regarding whether work of any substance could be started within that timeframe to ensure any approval granted does not expire.

Ms. Randolph suggested the delaying the Application's review to later in the year.

1 MR. LOFTUS KELLER MOVED, WITH MR. ASHMORE SECONDING, TO CONTINUE THE DISCUSSION TO
2 THE SEPTEMBER 14, 2022, PLANNING BOARD MEETING.

3 VOTE:

4 TRACY LOFTUS KELLER: AYE

5 DAVID ASHMORE: AYE

6 MEREDITH RANDOLPH: AYE

7 CHRISTIE ANASTASIA: AYE

8 CHAIR WILLIAM HANLEY: AYE

9 MOTION APPROVED 5-0.

10
11 IV. **Subdivision Approval Application(s):**

12
13 **5.13 Plan Revisions After Approval**

14
15 **5.13.1** No changes, erasures, modifications, or revisions shall be made in any Final Plat
16 Plan after approval has been given by the Board and its written endorsement has
17 been recorded on the Plan, unless the Plan is first resubmitted, and the Board
18 approves any modifications.

19
20 **5.13.2** Applicants for revisions shall submit at least eight (8) copies of any proposed
21 revision. If the revision involves the creation of additional lots or units, or extends
22 the boundaries of the subdivision, a public hearing shall be required. Otherwise,
23 the Board shall determine if a public hearing is required.

24
25 **A. OWNER(S) NAME(S):** Mount Desert Land and Garden
26 Preserve.

27 **AGENT:** Greg Johnston, G.F. Johnston & Associates

28 **LOCATION:** 92 Cooksey Drive, Seal Harbor

29 **TAX MAP:** 001 **LOT(S):** 006 (Lot #10 on Subdivision Plan)

30 **ZONE(S):** Rural Woodland 3 (RW3)

31 **PURPOSE:** Modifications to a previously approved and recorded
32 Subdivision. (Amendment #3 of the Birch Brook
33 Subdivision – First Amendment – File 30 Number 75
34 recorded April 12, 2001 & Second Amendment - File 32
35 Number 140 recorded May 25, 2004).

36
37 **B. OWNER(S) NAME(S):** Eyrie Properties, LLC **AGENT:** Greg
38 Johnston, G.F. Johnston & Associates **LOCATION:** Rock Garden
39 Way, Seal Harbor

40 **TAX MAP:** 001 **LOT(S):** 006-004 (Lot #2 on Subdivision Plan), 006-006 (Lot
41 #4 on Subdivision Plan), 006-011 (Lot #9 on Subdivision Plan).

42 **ZONE(S):** Rural Woodland 3 (RW3)

43 **PURPOSE:** Modifications to a previously approved and recorded
44 Subdivision. (Amendment #3 of the Birch Brook
45 Subdivision – First Amendment – File 30 Number 75
46 recorded April 12, 2001 & Second Amendment - File 32
47 Number 140 recorded May 25, 2004).

48
49 The revisions described in Items IV.A and IV.B are part of the same revision and affect the same
50 subdivision. The Board was in agreement to review the Items simultaneously.
51

1 CEO Keene stated Public Notice and notification of Abutters were not necessary at this time.

2
3 Agent Greg Johnston explained that with regard to the subdivision lots affected, Lot 2 consists of
4 two sections on the east and west sides of the road.

5
6 The first modification is to merge the eastern portion of Lot 2 with Lot 4.

7
8 The second modification is to merge the western portion of Lot 2 and Lot 9 with Lot 10.

9
10 This results in losing Lot 2 and Lot 9. No additional lots are being created, and the boundary of the
11 subdivision is not being extended.

12
13 MS. LOFTUS KELLER MOVED, WITH MS. RANDOLPH SECONDDING, THAT PER THE CRITERIA OF
14 SECTION 5.13.2 OF THE SUBDIVISION ORDINANCE, THE BOARD FINDS THAT NO ADDITIONAL LOTS
15 ARE BEING CREATED, AND THE BOUNDARY OF THE SUBDIVISION IS NOT BEING EXTENDED.
16 THEREFORE, A PUBLIC HEARING IS NOT NECESSARY.

17 VOTE:

18 TRACY LOFTUS KELLER: AYE

19 MEREDITH RANDOLPH: AYE

20 CHRISTIE ANASTASIA: AYE

21 DAVID ASHMORE: AYE

22 CHAIR WILLIAM HANLEY: AYE

23 MOTION APPROVED 5-0.

24
25 Mr. Johnston noted that the east portion of Lot 2 had tree-topping rights, and has a no-build zone,
26 and those rights will remain with the land as it merges with Lot 4.

27
28 The west portion of Lot 2 had height clearing restrictions to benefit Lot 9. As Lot 9 and the western
29 portion of Lot 2 are merging with Lot 10, that benefit becomes a moot issue.

30
31 It was agreed that all conditions, easements, and restrictions contained on land within the
32 subdivision will remain unchanged by the modification.

33
34 Mr. Johnston shared some minor changes on the plat plan with the Board. Changes include:

- 35 - Administrative typing errors.
36 - Removal of a line showing the lots were joined.
37 - The tree-topping easement will remain on the eastern portion of Lot 2.
38 - The moot tree-topping easement on the western portion of Lot 2 will be removed and the
39 description of this portion will be clarified.

40
41 CEO Keene pointed out a statement added to the plan:

42 *"The Planning Board further acknowledges that amendments to the*
43 *subdivision declaration of covenants are not part of the Board's purview of review.*
44 *Future amendments to those private documents shall not require Planning Board*
45 *review and approval."*

46
47 CEO Keene did not believe such a statement was necessary.

48
49 Attorney Margaret Jeffrey requested the language be added. The reason for the addition is that
50 there is a sentence in the Declaration of Covenants in Section E, Amendment of the Declaration:

51 *"No amendment will become effective until it is approved by the Town of Mount Desert's Planning*
52 *Board and recorded with the Hancock County Registry of Deeds."* Requiring this approval has

1 created difficulty because the Planning Board has no jurisdiction over such covenants. Ms. Jeffrey
2 hopes the Board will adopt the wording as included in the plan, and the subdivision can then adopt
3 changes to the section to remove the jurisdictional contradiction. Mr. Johnston noted the
4 covenants cannot be revised until such an addition is made, which the Planning Board must
5 approve. At that point future changes to the covenants will be done within the rules of the
6 subdivision. Attorney Jeffrey pointed out that the first, and possibly the second covenant
7 amendments were certified by the Planning Board. There have been no amendments since that
8 time. The Board concurred it makes sense to include such a statement.

9
10 MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, THAT DUE TO THE LANGUAGE IN
11 THE FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, WHICH IS CONTRARY TO THE
12 BOARD'S JURISDICTION, THE PLANNING BOARD APPROVES THE ADDED LANGUAGE TO THE
13 SUBDIVISION PLAT, CONTINGENT UPON THE TOWN ATTORNEY'S REVIEW.

14 VOTE:

15 MEREDITH RANDOLPH: AYE
16 TRACY LOFTUS KELLER: AYE
17 CHRISTIE ANASTASIA: AYE
18 DAVID ASHMORE: AYE
19 CHAIR WILLIAM HANLEY: AYE
20 MOTION APPROVED 5-0.

21
22 V. **Other**

23 There was no Other Business.
24

25 VI. **Adjournment**

26 MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, TO ADJOURN.

27 VOTE:

28 MEREDITH RANDOLPH: AYE
29 DAVID ASHMORE: AYE
30 CHRISTIE ANASTASIA: AYE
31 TRACY LOFTUS KELLER: AYE
32 CHAIR WILLIAM HANLEY: AYE
33 MOTION APPROVED 5-0.

34
35 The Meeting adjourned at 7:01PM.