

**TOWN OF MOUNT DESERT  
PLANNING BOARD MEETING  
Minutes for June 8, 2022**

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

Gloria Kunje is an Alternate, non-voting member of the Board.

Others Present: Margaret Jeffrey, Tate Bushell, Timothy Taylor, Gordon Beck, Scamp Gray, Sylvia Gage.

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

Chair Hanley called the meeting to order. Board Members were identified.

**II. Approval of Minutes**

May 11, 2022:

MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, APPROVAL OF THE MAY 11, 2022 MINUTES AS PRESENTED.

VOTE:

MEREDITH RANDOLPH: AYE

CHRISTIE ANASTASIA: AYE

TRACY LOFTUS KELLER: AYE

DAVID ASHMORE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 5-0.

**III. Conditional Use Approval Application(s):**

**A. Conditional Use Approval Application #008-2022**

**OWNER NAME(S):** Mount Desert Land and Garden Preserve

**AGENT(S):** Tate Bushell, Director of Natural Lands (MDLGP)

**LOCATION:** Off Peabody Drive

**TAX MAP:** 003 **LOT:** 067 **ZONE(S):** Rural Woodland 3 & Stream Protection

**PURPOSE:** Section 3.4 – Excavation or Filling < 50 cubic yards. Trail Restoration Project along Jordan Stream.

**SITE INSPECTION:** 4:00PM Masks Optional During Site Inspection.

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

Ms. Randolph reported on the Site Visit. The site is a trail that follows very close to the stream. The trail is lower than the stream in some places, and the area gets quite wet. The Applicant plans to cut the trail to follow the hillside, keeping to a higher level than the trail is currently on. The trail proposed will be cut at a slight angle to shed water more easily. Park land near the area has been addressed in the same way.

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  
43

Agent for the Applicant Tate Bushell noted the trail is well-used, but for approximately 100 yards the trail is very close to the stream and at below-stream level. During high water events the stream takes over the trail and erosion increases every year. Additionally, sediment from the trail is pulled into the stream with every high-water event. The Applicant plans to move this section of trail further up the slope, approximately 70 feet from the water. The work will be done by hand; staff will be working on the project with shovels and buckets. The amount of fill is approximately 10 cubic yards.

Chair Hanley asked for public comment. There was none.

MS. ANASTASIA MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND THE APPLICATION COMPLETE.

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

MS. LOFTUS KELLER MOVED, WITH MS. RANDOLPH SECONDING, TO USE THE SHORT FORM.

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

MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, TO APPROVE THE APPLICATION.

A review of the Section 6 Checklist was made and is attached to these Minutes.

It was noted the DEP has already approved the project.

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

1 MOTION APPROVED 5-0.  
2  
3  
4  
5

6 IV. **Land Use Zoning Ordinance Section 6B.11 Lots § (2)(1) Access** - Lots created on or after  
7 June 6, 2015. No lot created on or after June 6, 2015, shall be built upon or otherwise  
8 developed unless it has a private road or driveway for access to a public way by a valid  
9 right of way benefiting the lot (or a combination of driveway and/or one or more private  
10 roads) or by ownership of land abutting the public way. If more than 2 lots are accessed  
11 by the same private road, then it must meet the Street Design and Construction Standards  
12 of Section 5.14 of the Subdivision Ordinance. If no more than 2 lots are accessed by the  
13 same private road or driveway, then it must meet either the said Street Design and  
14 Construction Standards or the Driveway Construction standards of Section 6B.6 of this  
15 Ordinance. A pre-existing primary access drive that serves up to 2 existing lots need not  
16 meet the requirements of Section 6B.6. All such lots must maintain safe access for fire,  
17 police, and emergency vehicles, as determined by the Code Enforcement Officer. In  
18 determining whether lots maintain safe access, the Code Enforcement Office may seek  
19 guidance from 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 cannot  
23 meet the Street Design and Construction standards of Section 5.14 because (a) the  
24 application of land use restrictions would prevent the work required to bring an existing  
25 road into compliance or (b) physical conditions of the site render strict compliance  
26 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 the road  
29 into compliance as much as is feasible, (b) the proposed plan will provide safe access to  
30 and from the property, and (c) the proposed plan will allow for access to the site for  
31 emergency vehicles.  
32

33 **PROPERTY OWNER(S):** Timothy A. & Jean A. Taylor

34 **AGENT(S):** Margaret T. Jeffery, Esq.

35 **PROPERTY LOCATION:** 5 Birch Way, Northeast Harbor

36 **TAX MAP:** 025 **Lot:** 039 **Zone(s):** Village Residential One (VR1)

37 **PURPOSE:** Request a waiver of the Street Design and Construction Standards of Section 5.14  
38 of the Subdivision Ordinance for an existing private road. Future Land Division.

39 **SITE INSPECTION:** 5:00PM Masks Optional During Site Inspection.  
40

41 Ms. Loftus Keller confirmed adequate Public Notice. Abutters were notified.  
42

43 Ms. Loftus Keller reported on the Site Visit. The Owners wish to divide their lot. The Right

1 of Way (ROW) on Birch Way is 20 feet in width. Trees line the road, making a canopy over  
2 the road. Owners are proposing installing a hammerhead at the end of Birch Way. The  
3 neighbors appear to be in favor of the hammerhead as an alternative to widening the road.  
4 The Fire Chief has approved the proposal. Chair Hanley added that Birch Way is paved to  
5 the back lot. There is available land for the hammerhead.  
6

7 The 14.5-foot vertical and horizontal clearance necessary for safety vehicles can be met  
8 with some tree trimming.  
9

10 Ms. Randolph noted the plan appears to show Birch Way as a through road. However, she  
11 saw no evidence of it being a through road.  
12

13 Agent for the Owners, Attorney Margaret Jeffrey, shared the survey of the property. The  
14 property is on Birch Way, which is a private ROW. It's a 20-foot-wide ROW coming off  
15 Summit Road, and accesses approximately eight lots and therefore must comply with street  
16 standards, which includes a 50-foot ROW. The Applicant is asking for a waiver from the  
17 street standards. To do so, the Applicant must show:

- 18 - The physical conditions of the site, render strict compliance impossible: letters were sent  
19 to all abutters on the road, asking whether they would allow a widening of the road. No  
20 abutter who responded was willing to allow widening.
- 21 - The proposed plan brings the road into compliance as much as is feasible: the Applicant  
22 feels they are doing that.
- 23 - The proposed plan provides safe access to and from the property: the ROW has provided  
24 safe access to the abutters and the Applicant for decades.
- 25 - The proposed plan allows access to the site for emergency vehicles: the Applicant met  
26 with Fire Chief Bender. Chief Bender had concerns which the Applicant was able to allay.  
27 An area for turning a fire truck was a concern. Chief Bender required a hammerhead,  
28 which has been planned for and is on the survey. Another concern was at the beginning  
29 of the road there is a steep rise. The surveyor found the grade is just under 10%; the  
30 maximum allowed is 12%. By meeting these conditions, the Fire Chief has confirmed  
31 this is acceptable for emergency vehicle access.  
32

33 The applicant is asking for the waiver considering these efforts.  
34

35 Ms. Randolph asked about the access to the hammerhead. It appears to have a corner that  
36 extends beyond the ROW and into the lot the Applicant intends to hold. This can create  
37 problems in the future as ownership changes. She wondered if there were a way to keep that  
38 portion of the access within the ROW until it reaches the proposed lot. CEO Keene noted that  
39 alternatively, the Applicant can widen that portion of the ROW to keep that corner of the  
40 hammerhead in the ROW.  
41

42 Chair Hanley opened the discussion for public comment.  
43

1 Neighbor Gordon Beck confirmed he was not in favor of widening the ROW. He noted Birch  
2 Way is a one-way private road. On occasion neighbors meet each other on the road. He was  
3 concerned that more residents will create more traffic hazards.

4  
5 Neighbor Scamp Gray noted he was in favor of the project. He knew of no collisions occurring  
6 on the road.

7  
8  
9 Neighbor Sylvia Gage stated she was not opposed to the project, but she was concerned about  
10 the construction traffic involved in the building of the new house. She is not in favor of  
11 widening the road.

12  
13 Gordon Beck noted that he supports the ROW waiver. Those living on Summit Road have  
14 endured various construction projects for a number of years. Construction usually begins in  
15 the early hours. He hoped the town would limit the early hour that construction begins.  
16 CEO Keene explained there is no ordinance on the start of construction, nor is there a noise  
17 ordinance.

18  
19 Chair Hanley believed maintaining access in and out of Birch Way and maintaining its condition  
20 sounds paramount. The road appears to be in good shape.

21  
22 Ms. Randolph asked about the fact that the survey shows the road going all the way through.  
23 Perhaps rather than creating a hammerhead a through link could be created instead. Unless  
24 this throughway is viable, Ms. Randolph did not see any options for alleviating the concerns  
25 of traffic the neighbors have voiced. Attorney Jeffrey noted there appears to be a fence that  
26 partially blocks the ROW from continuing through. Otherwise, the lot is buildable, and no  
27 one's voiced objection to building on the lot.

28  
29 There were no further public comments.

30  
31 Mr. Ashmore asked about the issue of the small triangle of road leading to the hammerhead  
32 that is outside of the ROW. Ms. Randolph suggested setting as a condition of approval clearing  
33 up the ROW issue, whether by moving the hammerhead access entirely into the ROW, or  
34 widening the ROW to include all of the access.

35  
36 MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, FINDING THAT THE ROAD  
37 SERVES THREE OR MORE LOTS AND THEREFORE MUST COMPLY WITH SECTION 6.1.1 - WAIVER  
38 AND MODIFICATIONS OF THE SUBDIVISION ORDINANCE.

39 VOTE:

40 MEREDITH RANDOLPH: AYE

41 TRACY LOFTUS KELLER: AYE

42 CHRISTIE ANASTASIA: AYE

43 DAVID ASHMORE: AYE

1 CHAIR WILLIAM HANLEY: AYE  
2 MOTION APPROVED 5-0.

3  
4 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, THAT THE BOARD FINDS STRICT  
5 COMPLIANCE UNACHIEVABLE, DUE TO THE FACT THAT ABUTTERS ARE UNWILLING TO  
6 APPROVE THE WIDENING OF THE ROW NECESSARY TO ACHIEVE COMPLIANCE.

7 VOTE:  
8 MEREDITH RANDOLPH: AYE  
9 CHRISTIE ANASTASIA: AYE  
10 TRACY LOFTUS KELLER: AYE  
11 DAVID ASHMORE: AYE  
12 CHAIR WILLIAM HANLEY: AYE  
13 MOTION APPROVED 5-0.

14  
15 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, TO FIND:  
16 - THE PROPOSED PLAN BRINGS THE ROAD INTO COMPLIANCE AS MUCH AS IS FEASIBLE BY  
17 PROVIDING THE REQUIRED HAMMERHEAD TURN-AROUND AT THE TERMINATION OF  
18 THE BIRCH WAY PROPOSED DIVIDED LOT AND CUTTING VEGETATION.  
19 - THE PROPOSED PLAN WILL PROVIDE SAFE ACCESS TO AND FROM THE PROPERTY, AS  
20 BIRCH WAY IS A LONG-STANDING, EXISTING, AND WELL-MAINTAINED TRAVEL WAY AND  
21 IS PAVED.  
22 - THE PROPOSED PLAN WILL ALLOW FOR ACCESS FOR EMERGENCY VEHICLES, PER CHIEF  
23 BENDER'S LETTER OF CONFIRMATION REGARDING MINOR ADJUSTMENTS TO  
24 VEGETATION GROWTH, THE INCLUSION OF THE HAMMERHEAD, AND CONFIRMATION  
25 THAT THE GRADE AT THE ENTRANCE TO BIRCH WAY IS WITHIN THE 12% ALLOWED  
26 GRADE.

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

34  
35 MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, TO SET AS A CONDITION OF  
36 APPROVAL THE ACCESS ROAD EXTENSION TO THE HAMMERHEAD MUST EITHER BE ADJUSTED  
37 SO AS TO BE WITHIN THE EXISTING 20-FOOT ROW, OR THE ROW EASEMENT MUST BE  
38 WIDENED TO ACCOMMODATE THE ACCESS TO THE HAMMERHEAD AS SHOWN ON THE PLAN  
39 UPDATED JUNE 2, 2022.

40 VOTE:  
41 MEREDITH RANDOLPH: AYE  
42 DAVID ASHMORE: AYE  
43 CHRISTIE ANASTASIA: AYE

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

4  
5 MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, TO GRANT THE REQUEST FOR  
6 WAIVER CONTINGENT UPON THE CONDITION SET.

7 VOTE:  
8 CHRISTIE ANASTASIA: AYE  
9 MEREDITH RANDOLPH: AYE  
10 TRACY LOFTUS KELLER: AYE  
11 DAVID ASHMORE: AYE  
12 CHAIR WILLIAM HANLEY: AYE  
13 MOTION APPROVED 5-0.

14  
15 **V. Other**

16  
17 CEO Keene reported there was no meeting scheduled for June 22, 2022. She reminded  
18 members to sign the Birch Brook subdivision plans. Planning Board members must be sworn  
19 in at the Town Office as well.

20  
21 **VI. Adjournment**

22 MS. ANASTASIA MOVED, WITH MS. LOFTUS KELLER SECONDING, TO ADJOURN THE MEETING.

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

30  
31 The meeting adjourned at 7:09PM.  
32  
33  
34