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2 **Town of Mount Desert Planning Board**
3 **Meeting Minutes**
4 **November 10, 2021**
5

6 This meeting was a hybrid virtual/in-person meeting and was recorded.
7

8 **Board Members Present:**

9 Chair William Hanley, Tracy Loftus Keller, David Ashmore, Meredith Randolph, Christie Anastasia
10

11 **Public Present:**

12 William Fernald, Ruth Brunetti, Tom Fernald, Carroll Fernald, Sheila Swanson, Sean Thies for
13 Haley Ward
14

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

16 Chair Hanley called the meeting to order at 6:00PM. Board Members were noted.
17

18 **II. Approval of Minutes**

19 **October 27, 2021:**

20 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, APPROVAL OF THE OCTOBER 27,
21 2021 MINUTES AS PRESENTED.

22 VOTE:

23 MEREDITH RANDOLPH: AYE

24 CHRISTIE ANASTASIA: AYE

25 DAVID ASHMORE: AYE

26 TRACY LOFTUS KELLER: AYE

27 CHAIR WILLIAM HANLEY: AYE

28 MOTION APPROVED 5-0.
29

30 **III. Subdivision Approval Application(s):**

31 **Public Hearing**
32

33 **A. Subdivision #004-2021**

34 **OWNER NAME(S):** A.C. Fernald Sons, Inc.

35 **AGENT(S):** Jeff Teunisen, Haley Ward

36 **LOCATION:** 1049 Main Street, Somesville

37 **TAX MAP:** 010 **LOT:** 147 **ZONING DISTRICT:** Village Commercial (VC),
38 Shoreland Residential 3 (SR3) & Shoreland Commercial (SC)

39 **PURPOSE:** Section 5.13 of the Subdivision Ordinance - Plan Revisions After Approval
40 – Creation of a new lot from a previously approved Subdivision. (Original Plan File 41
41 No. 136, recorded April 2, 2013 & Amendment #1 Plan File 41 No. 146, recorded April
42 23, 2013).

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CEO Keene confirmed adequate Public Notice. Abutters were notified.

The Application was found Complete at the October 27, 2021 Meeting.

Chair Hanley stated this was a Public Hearing for the Application, followed by a determination on Compliance. Chair Hanley opened the Public Hearing.

Neighbor Sheila Swanson asked for clarification regarding some of the points brought up at the Completeness Review.

CEO Keene explained the Board has no jurisdiction in dictating what can and can't be built. The Board reviews the lot to ensure dimensional requirements for the zoning are met when a new lot is being created. The lot being created is slightly over two acres and includes the Kittridge Building. Any future development would likely be permitted through the CEO, although some uses would require Planning Board review. CEO Keene did not believe there was dedicated green space included in the Application.

The lot being created will come in off Route 102 via two entrances. Ms. Swanson asked about access to the other lot from which this new lot is being created. At the last meeting it was stated that no construction was proposed, no landscaping was proposed, and there was no erosion plan. CEO Keene explained the lot being created is already developed. Should construction be proposed at a future date, permits and approval will be required at that time.

Ms. Randolph inquired about the original lot. Both lots must meet all requirements.

CEO Keene explained that the original lot is a large one. She showed on the plan the cell tower lot and the lot for electricity within the original lot area. A residential lot within the original lot was never a part of the subdivision. She pointed out the road to the original lot. The residential lot that is not part of the original lot has an easement over the cell tower road to access the residential lot's driveway.

Chair Hanley asked for further public comment. There was none.

Chair Hanley closed the Public Hearing and discussion regarding compliance ensued.

Ms. Randolph asked about adequate road frontage for the back lot. CEO Keene confirmed the lot in question has a 50-foot Right of Way (ROW) called Someshenge Way. The lot has road frontage in addition to the ROW. CEO Keene affirmed the

1 subdivision road meets all requirements. The road in question was reviewed by the
2 Planning Board and approved during the 2013 cell tower hearing. Ms. Randolph
3 believed the road was not developed. CEO Keene confirmed the road is in
4 compliance; the Planning Board discussed a Performance Bond for the road in 2013,
5 the Fire Chief inspected the road, and a cul de sac was constructed. The road was
6 approved by the Planning Board in 2013; the Board is now reviewing the lot being
7 created to ensure it meets dimensional requirements. The lot being created has 261
8 feet of road frontage in the Village Commercial District; more than the 20 feet of road
9 frontage required. The lot is over 2 acres in size; more than the 5000 minimum square
10 feet required. The lot is on Town sewer and meets all setbacks.

11
12 Ms. Randolph asked for clarification of the placement and shape of the original lot.
13 Mr. Thies showed the lot on a tax map overlay. Ms. Randolph noted the map does
14 not show lots for the cell tower or electric. CEO Keene explained that the cell tower
15 and electrical are leasing the land they are on within the larger lot. Therefore,
16 additional lots are not created from their placement.

17
18 Ms. Randolph argued that the map designates these spaces as lots. CEO Keene
19 disagreed; the space is labeled as leased. Ms. Randolph worried that such a situation
20 allows a property owner to bypass subdivision requirements through leasing lots. CEO
21 Keene explained subdivision requirements apply to dwelling units, leasing, or sale of
22 lots. Leased area does not, however, show on a tax map because it's leased.

23
24 It was shown that the ROW extends past the leased area. The lot being proposed is
25 next to the 50-foot ROW that goes to the other lot. None of the 50-foot ROW is within
26 the lot being proposed. Ms. Randolph was under the impression the road did not
27 meet subdivision standards. She thought it was a driveway to the residence. CEO
28 Keene clarified that the ROW serves three lots and the leased area. A driveway
29 branches off the 50-foot ROW to the residence. The ROW extends from Route
30 102/Main Street, beyond where the driveway branches off, and all the way up to the
31 electrical building. That road serves three or more lots and is 50 feet in width.

32
33 Ms. Randolph stated that the plan shows the ROW and the driveway are the same.
34 CEO Keene explained the driveway is within the 50-foot ROW running alongside the
35 road. The ROW is 50 feet in width all the way to the roadway as required for the
36 subdivision.

37
38 Ms. Anastasia noted the section labeled "driveway" goes to lot 148, which is not a
39 part of the subdivision. CEO Keene agreed. Ms. Randolph argued that the driveway
40 and the ROW seem to both exist in the same space. This makes it appear the gravel
41 driveway is the ROW. CEO Keene explained the private residence accesses the

1 beginning of the ROW to reach the driveway to the lot. They branch off the ROW to
2 their lot. The driveway is within the roadway of the subdivision. Ms. Randolph argued
3 that it should be either a subdivision road or a driveway, but it shouldn't be both.
4

5 Mr. Ashmore believed the residential house has a 33-foot ROW to access their
6 property. That ROW is shown extending to the road. Where the two are together, it
7 shows the 50-foot ROW. There are lines for both ROWs. What is shown appears to
8 be accurate.
9

10 Ms. Randolph believed this would cause problems with maintenance and repair of the
11 road. The driveway should stop at the edge of the subdivision road. CEO Keene
12 explained that the responsibility of maintenance and repair depends on what is
13 included in the easement.
14

15 Mr. Ashmore believed the 33-foot-wide easement must be shown. The 33-foot-wide
16 easement goes to the road. It's possible to have two easements in the same location.
17 Ms. Randolph argued that it may be possible to have two easements in the same
18 location, but they're different roadways with different standards. CEO Keene stated
19 the responsibility of maintenance lies with the property owners. There are laws
20 regarding easement ROWs and subdivision associations.
21

22 Ms. Randolph asked about the Applicant's request for waivers.
23

24 Chair Hanley clarified the requests for waivers are for the landscape plan and the
25 performance bond. There is no construction proposed requiring a performance bond.
26 The landscape plan does not appear to be required either; the Applicant is simply
27 proposing to create boundaries for an already developed lot.
28

29 Ms. Randolph argued that there is no dedicated Open Space. The Open Space
30 requirement should not be ignored.
31

32 Chair Hanley reiterated that in the past performance bonds have not been required
33 for lot creation unless there's construction associated with it. Ms. Randolph allowed
34 that a performance bond was not necessary if the Applicant is not proposing
35 construction. Chair Hanley agreed; therefore, it was deemed Not Applicable.
36

37 MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, APPROVAL OF THE
38 REQUEST FOR WAIVER OF THE PERFORMANCE BOND, AS NO NEW CONSTRUCTION IS
39 PROPOSED.

40 VOTE:

41 CHRISTIE ANASTASIA: AYE

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

6
7 CEO Keene referred to Open Space Provisions of Section 5.10.1 of the Subdivision
8 Ordinance. It states *“The Board may require that a proposed subdivision design
9 include a landscape plan that will show the preservation of existing trees (10" or more
10 in diameter), the replacement of trees and vegetation, graded contours, streams, and
11 the preservation of scenic, historic, or environmentally desirable areas. The street and
12 lot layout shall be adapted to the topography. Extensive grading and filling shall be
13 avoided.”* The Applicant is not proposing any development, and therefore such a
14 requirement is not applicable. Regarding a landscape plan, there are no streams on
15 the property, street layout is already in place and nothing more is being added, and
16 there is no grading planned. Section 5.10.2 of the Ordinance states, *“The Board may
17 require that the subdivider reserve an area of land as an open space and/or
18 recreational area for use by property owners in the subdivision.”* This requirement is
19 typically for a large residential subdivision. Additionally, there is a large amount of
20 undeveloped land.

21
22 Mr. Thies noted it was his interpretation that Open Space is intended as a requirement
23 for a residential subdivision for recreational purposes. The Ordinance states the
24 Board may require such a space. It was his feeling the Applicant would not reserve
25 area for Open Space unless the Board requires it. CEO Keene did not believe such a
26 requirement applies. Chair Hanley concurred.

27
28 MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, APPROVAL OF THE
29 REQUEST FOR WAIVER OF OPEN SPACE.

30 VOTE:

31 MEREDITH RANDOLPH: AYE
32 DAVID ASHMORE: AYE
33 CHRISTIE ANASTASIA: AYE
34 TRACY LOFTUS KELLER: AYE
35 CHAIR WILLIAM HANLEY: AYE
36 MOTION APPROVED 5-0.

37
38 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, FINDING THE
39 APPLICATION IN COMPLIANCE IN ACCORDANCE WITH SECTION 5.13 OF THE
40 SUBDIVISION ORDINANCE - PLAN REVISIONS AFTER APPROVAL – CREATION OF A NEW
41 LOT FROM A PREVIOUSLY APPROVED SUBDIVISION

1 VOTE:
2 CHRISTIE ANASTASIA: AYE
3 DAVID ASHMORE: AYE
4 MEREDITH RANDOLPH: AYE
5 TRACY LOFTUS KELLER: AYE
6 CHAIR WILLIAM HANLEY: AYE
7 MOTION APPROVED 5-0.

8
9 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, APPROVAL OF THE
10 APPLICATION.

11 VOTE:
12 CHRISTIE ANASTASIA: AYE
13 DAVID ASHMORE: AYE
14 MEREDITH RANDOLPH: AYE
15 TRACY LOFTUS KELLER: AYE
16 CHAIR WILLIAM HANLEY: AYE
17 MOTION APPROVED 5-0.

18
19 **IV. Other**

20 There was no other Business.

21
22 **V. Adjournment**

23 MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, TO ADJOURN THE
24 MEETING.

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

32
33 The Meeting adjourned 7:56PM.