

Town of Mount Desert Planning Board
Planning Board Meeting Minutes
Meeting Room, Town Hall
6:00 pm, March 22, 2017

Public Present

Joseph Carter, Stephen Smith, John T. Kelly

Board Members Present

Chairman Bill Hanley, Meredith Randolph, Beth Renault, Lili Andrews

Also present were Attorney for the Board P. Andrew Hamilton, CEO Kimberly Keene and Recording Secretary Heidi Smallidge

I. Call to Order

Chairman Hanley called the meeting to order at 6:01 pm. Voting members were noted.

II. Approval of Minutes

Minutes were tabled until further review.

III. 5.4 Review Procedures

Pre-Application Procedures – Prior to submitting a Conditional Use Approval Application an applicant or authorized agent may request to appear at a regular meeting of the Planning Board to discuss the proposed project. The pre-application review shall not be construed as representing either the pendency or the commencement of the application process per se.

A. Review of Applicant's request for a preliminary ruling on whether he has standing to apply for Conditional Use Approval Application to erect "side boards" on an old existing stone pier and/or potential expansion.

OWNER(S): Stephen Smith

LOCATION: 19 Grover Avenue, Otter Creek

TAX MAP: 002 **LOT(S):** 031-005 **ZONE(S):** Conservation (C) & Resource Protection (RP)

PURPOSE: To address the nonconforming nature of the old stone pier, and continuing use such that the lawful nonconformity was not abandoned.

SITE VISIT: 3:30 PM

Chairman Hanley reviewed the procedures. It was noted the Review was not advertised. Acadia National Park is the only abutter of the property, and they were notified.

Ms. Andrews reported on the site visit. The Board and Attorney Hamilton was in attendance, as well as John Kelly from Acadia National Park and Owner Stephen Smith. There is a small house or cabin on the shore on the property. The group

1 climbed down the rocks toward the shore. There were rocks that were possibly above
2 high water line. They observed a pile of rocks that looked to be possibly quarrying
3 debris. The entire beach was rocky. It was possible the rock pile had once been a pier
4 but it no longer could be considered a structure.
5

6 Chairman Hanley noted the property was surrounded by Acadia National Park.
7 Accessing the building on the shore meant taking a trail across Park land. He noted
8 the rocks on the shore below the shack. Chairman Hanley stated the purpose of the
9 review: *"To address the nonconforming nature of the old stone pier, and continuing use
10 such that the lawful nonconformity was not abandoned."*
11

12 Attorney Hamilton presented pictures of the site to the attendees. He stated that other
13 than a pile of stones, there was nothing on the beach that could be construed as a
14 structure. Board members agreed. Attorney Hamilton opined that the rocks the
15 Applicant pointed out could not be considered a structure, and therefore could not be
16 considered a non-conforming structure.
17

18 Additionally, Attorney Hamilton conferred with CEO Keene and Assessor Kyle Avila
19 and determined that the property is divided by two zones: Resource Protection and
20 the Conservation District.
21

22 There is a 25-foot setback requirement on the property. The Applicant's proposal is to
23 build in a spot within the setback, requiring a waiver from the abutter. If the abutter will
24 not grant the waiver, the Applicant will have to appear before the Zoning Board of
25 Appeals to request a variance.
26

27 A third choice would be to move the site outside of the setback areas. There is a
28 narrow space where a four-foot wide dock could be placed without requiring a waiver
29 or variance. Attorney Hamilton stated that this option would require a conditional use
30 application for a marine structure. Trying to recognize a non-conforming status to
31 anything on the shore was not feasible; there was nothing on the shore that would
32 constitute a non-conforming structure.
33

34 Mr. Smith pointed out an area of ledge that he stated was the high-water mark and a
35 man-made plateau. The stones in the area were placed there and therefore a
36 structure. Moving the proposed dock would be inconvenient.
37

38 Attorney Hamilton noted there may be clarity issues regarding title of the property,
39 however the Planning Board has no jurisdiction over title questions. The court system
40 would have to address disagreements of title.
41

42 Mr. Hamilton noted the Applicant would have to decide whether he wanted to pursue
43 the path of relocating the proposed dock.
44

45 It was restated that the stone structure in question was in too far disrepair to be
46 considered a structure, therefore the Board could not approve repair or maintenance of

1 it, under Section 4.2.2 of the Ordinance.

2
3 Attorney Hamilton read the definition of the Conservation District. It states that
4 structures may be permitted in the Conservation District. And a new marine structure
5 is necessary because currently there is nothing on the property that can be deemed a
6 marine structure.

7
8 Per Section 6C.8, stairways and similar structures may be allowed with a permit to
9 provide shoreline access in the event of steep slopes. The stairway would have to be
10 directly below the fish house to avoid the setbacks. As the Applicant wants to come to
11 where the water is 12 feet deep, he would be coming out beyond the high-water line.
12 Getting to beyond the high-water line would require a marine structure, subject to the
13 marine structure performance standards.

14
15 The Application must undergo a review and receive approval prior to any dock
16 installation. Additionally, the Application review must allow all public comment from
17 anyone, and most especially the abutter. That being said, the points to consider
18 include:

- 19
20 - Soils, however the dock would be on rock and therefore not an issue.
21 - Interference with existing uses and beaches, however no interference was evident.

22
23 Ms. Andrews asked if a survey would be required. Attorney Hamilton agreed a survey
24 of the area would be easier for the Board's review, though there have been occasions
25 when surveys have not been submitted.

26
27 Mr. Smith felt that if the dock were set in the middle of the property, it would not have to
28 go as far to the water.

29
30 It was restated that if Mr. Smith could obtain a waiver from the park, he could build
31 within the setback.

32
33 Ms. Andrews noted that if the application went before the Zoning Board of Appeals, a
34 hardship would have to be proven. Attorney Hamilton felt the hardship would have to
35 be very clear and evident.

36
37 There were no additional comments from the public.

38
39 **V. Adjournment**

40
41 MS. RANDOLPH MOVED, WITH MS. RENAULT SECONDING, TO ADJOURN THE
42 MEETING. MOTION APPROVED 4-0.

43
44 Meeting was adjourned at 6:32 pm.
45