

**Town of Mount Desert Planning Board  
Meeting Minutes  
September 8, 2021**

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

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

**Public Present:** Janet Leston Clifford, Todd Taylor, Rodney Miller, Pat Foster, Susan Varney

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

Chair Hanley called the Meeting to order at 6:00PM.

Board Members were noted.

**II. Approval of Minutes**

**August 25, 2021:** MS. LOFTUS KELLER MOVED, WITH MS. ANASTASIA SECONDING, APPROVAL OF THE MINUTES OF AUGUST 25, 2021, AS PRESENTED.

VOTE:

TRACY LOFTUS KELLER: AYE

CHRISTIE ANASTASIA: AYE

DAVID ASHMORE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 4-0.

**III. Land Use Zoning Ordinance Section 6B.11 Lots § (2) Access - No lot may be built upon or otherwise developed unless it has a private road or driveway for access to a public way by a valid right of way benefiting the lot (or a combination of driveway and/or one of more private roads) or by ownership of land abutting the public way. If more than 2 lots are accessed by the same private road, then it must meet the Street Design and Construction Standards of Section 5.14 of the Subdivision Ordinance. If no more than 2 lots are accessed by the same private road or driveway, then it must meet either the said Street Design and Construction Standards or the Driveway Construction standards of Section 6B.6 of this Ordinance. A pre-existing primary access drive that serves up to 2 existing lots need not meet the requirements of Section 6B.6. All lots must maintain safe access for fire, police, and emergency vehicles, as determined by the Fire Chief.**

**Subdivision Ordinance Section 6. Waiver and Modifications of this Ordinance §**

**6.1.1** Where the Board finds that a private road providing access to a lot or lots cannot meet the Street Design and Construction standards of Section 5.14 because (a) the application of land use restrictions would prevent the work required to bring

1 an existing road into compliance or (b) physical conditions of the site render strict  
2 compliance impossible, then the Board may waive such standards. However, in all  
3 such cases, the Board must find that (a) the proposed plan brings the road into  
4 compliance as much as is feasible, (b) the proposed plan will provide safe access to  
5 and from the property, and (c) the proposed plan will allow for access to the site for  
6 emergency vehicles.

7  
8 **PROPERTY OWNER(S):** Todd & Melissa K. Taylor

9 **PROPERTY LOCATION:** Off Buttonwood Lane, Somesville

10 **TAX MAP:** 010 **Lot:** 136 **Zone(s):** Village Residential 2 (VR2)

11 **PURPOSE:** Request a waiver of the Street Design and Construction Standards of  
12 Section 5.14 of the Subdivision Ordinance for an existing private road.

13 **SITE INSPECTION:** 4:45PM

14  
15 CEO Keene confirmed adequate Public Notice. Abutters were notified.

16  
17 Ms. Randolph stated she had a potential Conflict of Interest. She is the daughter-in-  
18 law of abutters Bob and Pat Foster. Because of this Ms. Randolph requested to be  
19 recused. A short discussion ensued. It was noted the Board maintains a quorum if  
20 Ms. Randolph is recused.

21  
22 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, ACCEPTING THE  
23 RECUSAL OF MEREDITH RANDOLPH.

24 **VOTE:**

25 CHRISTIE ANASTASIA: AYE

26 DAVID ASHMORE: AYE

27 TRACY LOFTUS KELLER: AYE

28 CHAIR WILLIAM HANLEY: AYE

29 MOTION APPROVED 4-0.

30  
31 Ms. Anastasia reported on the Site Visit. In addition to Board members some  
32 neighbors were in attendance. They walked from Main Street in Somesville west up  
33 Buttonwood Lane to the Old County Road. Buttonwood Lane has an old, paved road  
34 surface. Old County Road is a cleared dirt road. Vegetation above and on the sides  
35 of the road was observed. A plan was made available at the Site Visit and the  
36 situation was explained by the Applicant.

37  
38 Vegetation is on both sides of Buttonwood Lane. There are no houses on either side  
39 of Buttonwood Lane, but the Foster Real Estate Agency is on Main Street.  
40 Vegetation is close to the road and does not look as if it's been cut back recently.

41  
42 Owner Todd Taylor explained the existing Right of Way (ROW) continues from the  
43 main road all the way to the Old County Road. Vegetation requires trimming. Edith  
44 Mann, who lives at the top of the roadway and is responsible for maintaining and

1 plowing the road, reports no issues with having the driveway plowed. Ms. Mann  
2 preferred the driveway to remain as it is.

3  
4 Mr. Taylor's hope is to meet his goals with as little impact to the forest as possible,  
5 and to keep impact on the neighbors to a minimum. There is a trail that residents  
6 use to access Somes Sound to the East, and trees to the West. Mr. Taylor intends to  
7 keep the trail open for residents to continue to use.

8  
9 Mr. Taylor would like to access his property via a driveway. He'd prefer a gravel  
10 driveway to asphalt. He plans to build a two-bedroom cottage. Additionally, he  
11 intends to erect a permanent tent structure and install a bath house. His  
12 understanding is that he is allowed up to three structures on the property based on  
13 the acreage. He will install septic for the cottage and bath house.

14  
15 CEO Keene summarized that this is a pre-existing non-conforming lot of record  
16 created in 1975. New Ordinance language in 2015 changed minimum lot widths on  
17 roadways and added new access language under Section 6.B.11. The new Ordinance  
18 language did not exempt pre-existing non-conforming lots of record. Mr. Taylor's  
19 property has four ROWs: one 15 feet in width coming off Route 102, one 25 feet in  
20 width, and one 18 feet in width; these ROWs are side by side and they intersect with  
21 the 66-foot ROW on Old County Road. Section 5.14 of the Subdivision Ordinance  
22 requires private road access to three or more lots to meet street design. Mr.  
23 Taylor's ROWs do not meet the minimum ROW requirement under the Subdivision  
24 Ordinance, and he is therefore requesting a waiver. The Subdivision Ordinance  
25 allows the Planning Board to grant a waiver, but the Land Use Zoning Ordinance  
26 does not allow the Planning Board to alter the dimensional requirements.

27  
28 Resident Janet Leston Clifford stated that she represented several people with an  
29 interest in the question of whether the Planning Board may or may not grant a  
30 waiver. Ms. Leston Clifford referenced the matter of the MacQuinn Quarry as  
31 another issue before the Planning Board where the question of waiver has come up.  
32 Ms. Leston Clifford referenced a letter regarding the Quarry matter that the Town  
33 received from Attorney Manahan. Ms. Leston Clifford asserted that the Planning  
34 Board does not have the power to waive a standard contained in the LUZO, even  
35 when the Ordinance states the Planning Board does have such power. She stated  
36 that the Maine Supreme Court has determined such waivers to be invalid because  
37 they conflict with Maine State Law, and only Boards of Appeal have the power to  
38 grant a waiver. She requested the Planning Board deny the request for a waiver.  
39 The Applicant must apply to the Zoning Board of Appeals if they want to pursue a  
40 waiver.

41  
42 Chair Hanley asked for other public comment.

43  
44 There was none.

1  
2 Chair Hanley closed the Public Comments.

3  
4 Regarding the Planning Board's authority to grant such a waiver, Chair Hanley  
5 pointed out such waivers have been granted in the past and as recently as a month  
6 prior. He read the excerpt from Subdivision Ordinance Section 6:

7  
8 *"Subdivision Ordinance Section 6. Waiver and Modifications of this*  
9 *Ordinance § 6.1.1 Where the Board finds that a private road providing*  
10 *access to a lot or lots cannot meet the Street Design and Construction*  
11 *standards of Section 5.14 because (a) the application of land use*  
12 *restrictions would prevent the work required to bring an existing road*  
13 *into compliance or (b) physical conditions of the site render strict*  
14 *compliance impossible, then the Board may waive such standards.*  
15 *However, in all such cases, the Board must find that (a) the proposed*  
16 *plan brings the road into compliance as much as is feasible, (b) the*  
17 *proposed plan will provide safe access to and from the property, and (c)*  
18 *the proposed plan will allow for access to the site for emergency*  
19 *vehicles."*

20  
21 Letters have been submitted stating that abutters are not willing to widen the ROW.  
22 Chair Hanley felt it an important point to consider. The requirement is a 50-foot  
23 ROW. The Applicant has one 15-foot ROW, and a 43-foot ROW area created when  
24 the two ROWs of 25 feet and 18 feet are combined. The property owners of the  
25 land over which the ROW crosses are not willing to widen those ROWs. This makes  
26 it impossible to bring the road up to the Subdivision Standards stated in Section 5.14  
27 of the Subdivision Ordinance.

28  
29 The Ordinance states the Planning Board may waive standards of Section 5.14 based  
30 upon land use restrictions preventing the ROW from coming into compliance or the  
31 physical impossibility of such compliance. In all such cases the Board must find that  
32 the proposed plan brings the road into compliance as much as feasible, the  
33 proposed plan will provide safe access, and the proposed plan will allow for  
34 emergency vehicle access.

35  
36 CEO Keene referred to a letter from the Fire Chief stating that the proximity of  
37 vegetation to the ROW is the most significant obstacle to the necessary 14.5-foot by  
38 14.5-foot clearance required for emergency vehicles.

39  
40 Mr. Taylor confirmed there is no other way to access the lot.

41  
42 The lot is remote. Chair Hanley summarized that abutters have refused to grant a  
43 wider ROW. One of the potential ROWs is in no way close to compliance. There are  
44 criteria that must be met before a waiver can be granted. Ms. Anastasia noted the

1 Fire Chief's letter states concern regarding the issue of vegetation encroaching into  
2 the ROW damaging emergency vehicles. There's a difference between widening the  
3 ROW and clearing vegetation. Expansion from a 15-foot pre-existing ROW to a 50-  
4 foot ROW is a sizable change. Ms. Anastasia did not believe the asphalt surface  
5 would have to be expanded on; vegetation around the ROW can be cleared to  
6 provide the needed clearance for emergency vehicles. CEO Keene restated Fire  
7 Chief Bender's concern that vegetation be adequately cleared and maintained. The  
8 Fire Chief confirmed he can maneuver a vehicle down the ROW. The road is being  
9 plowed.

10  
11 Mr. Ashmore noted the road is currently 15 feet; it meets the minimum requirement  
12 for a driveway. It can meet the clearance required for emergency vehicles if  
13 vegetation is cleared. Additionally, neighbors have been asked and have refused to  
14 allow the ROW to be widened.

15  
16 Rodney Miller, on behalf of abutter Ms. Mann, stated that Ms. Mann has no  
17 problem with granting access to Mr. Taylor.

18  
19 Ms. Loftus Keller added that this is the only method the landowner has for accessing  
20 the lot. If such a waiver is not granted, then the property is landlocked and  
21 unusable. The lack of access is a hardship.

22  
23 Chair Hanley reiterated the criteria the Planning Board must determine in order for a  
24 waiver to be approved:

- 25 - The proposed plan brings the road into compliance as much as is feasible,  
26 - the proposed plan will provide safe access to and from the property, and  
27 - the proposed plan will allow for access to the site for emergency vehicles.

28 He asked how Mr. Taylor intended to meet these criteria.

29  
30 Mr. Taylor reiterated his intent to follow the guidance of the Code to the greatest  
31 extent possible. The driveway exceeds 14 feet. Vegetation can meet the necessary  
32 14.5 foot vertical and horizontal clearance and can be easily maintained. Ms. Mann  
33 gave her permission to remove vegetation as necessary. Mr. Taylor is interested in  
34 preserving the character of the area, to the extent that it meets the minimum safe  
35 passage requirements and the passage of emergency vehicles. Ms. Mann's wishes  
36 are for the character of the driveway to remain as it.

37  
38 Chair Hanley restated the points made thus far:

- 39 - There will be no change in the character of the land.  
40 - The road will be brought into compliance as much as feasible, meaning  
41 maintaining as wide a travel way as possible, thereby allowing for safe vehicle  
42 passage.  
43 - Vegetation can be cleared to allow for 14.5-foot vertical and horizontal clearance  
44 to allow for safe emergency vehicle access as noted in the Fire Chief's letter.

1  
2 Additionally, Chair Hanley reiterated that the lot was created in 1975, before the  
3 LUZO which was created in 1978.

4  
5 CEO Keene added that the Fire Chief stated there would be no problem with access  
6 to Buttonwood Lane due to the space available via Foster's Real Estate parking lot.

7  
8 Abutter Pat Foster stated that the reason she was unable to widen the ROW was  
9 due to the close physical proximity of her building to the ROW. She did not believe  
10 such a widening was possible.

11  
12 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, THAT THE PLANNING  
13 BOARD HAS JURISDICTION OVER THE MATTER PRESENTED IN ACCORDANCE WITH  
14 SECTIONS 6B.11 LOTS § (2) ACCESS OF THE LAND USE ZONING ORDINANCE AND  
15 STREET DESIGN AND CONSTRUCTION STANDARDS OF SECTION 5.14 AND SECTION 6.  
16 WAIVER AND MODIFICATIONS OF THIS ORDINANCE §6.1.1 OF THE SUBDIVISION  
17 ORDINANCE.

18 VOTE:

19 CHRISTIE ANASTASIA: AYE

20 DAVID ASHMORE: AYE

21 TRACY LOFTUS KELLER: AYE

22 CHAIR WILLIAM HANLEY: AYE

23 MOTION APPROVED 4-0.

24  
25 Ms. Anastasia believed that if a 14.5-foot vertical and horizontal clearance can be  
26 maintained it will satisfy the criteria of Items a, b, and c of §6.1.1. Mr. Ashmore  
27 concurred. Ms. Loftus Keller agreed; the Applicant is meeting the criteria as best  
28 they can, given the circumstances.

29  
30 Chair Hanley noted that regarding proximity of the Foster building, and the access  
31 from Route 102, he'd like the Fire Chief to be more specific on these items. Perhaps  
32 clarification can be set as a condition of approval.

33  
34 Chair Hanley believed that Section 6.B.11 provides the criteria for compliance. If an  
35 Applicant can't comply, §6.1.1 addresses criteria for a waiver. The Motion should  
36 address the specific findings tailored to the criteria stated in §6.1.1.

37  
38 INITIAL DRAFT MOTION:

39 MS. ANASTASIA MOVED THAT THE PROPOSED PLAN, AS PRESENTED TO THE  
40 PLANNING BOARD, BRINGS INTO COMPLIANCE AS MUCH AS IS FEASIBLE THE USE OF  
41 BUTTONWOOD LANE, PROVIDED THAT THE EXISTING 12-FOOT TRAVEL WAY PLUS  
42 THE TWO 2.5-FOOT SHOULDERS ARE MAINTAINED. THE PROPOSED PLAN ALSO, AS  
43 SHARED WITH THE PLANNING BOARD, PROVIDES SAFE ACCESS AND EGRESS TO THE  
44 PROPERTY BY TRAVERSING THE EXISTING TRAVEL WAY. AND ACCORDING TO THE

1 AUGUST 16, 2021 LETTER RECEIVED BY FIRE CHIEF BENDER, IF A VERTICAL AND  
2 HORIZONTAL CLEARANCE OF VEGETATION IS MAINTAINED EMERGENCY VEHICLE  
3 TRAFFIC WILL BE ABLE TO BE ACCOMMODATED. THE PLANNING BOARD WOULD  
4 LIKE FOLLOW UP WRITTEN VERIFICATION FROM CHIEF BENDER THAT ACCESS FROM  
5 BUTTONWOOD LANE TO ROUTE 102 IS CONSIDERED SAFE FOR EMERGENCY VEHICLE  
6 TRAFFIC.

7  
8 Mr. Ashmore believed reference regarding access from Buttonwood Lane was  
9 already included in the Fire Chief's letter. Additionally, the survey provided shows  
10 the width of Route 102 at the point of intersection; there appears to be ample  
11 turning room because the road there is wide. Ms. Anastasia agreed such a reading  
12 can be construed from the letter. Chair Hanley noted the proximity to the building is  
13 another point to consider. He agreed the letter's interpretation could be stretched  
14 to consider access from Buttonwood Lane. Chair Hanley preferred having  
15 clarification in the record. Such an addition will only strengthen the findings. The  
16 Board wouldn't want to create a point where bottleneck could occur, and the Fire  
17 Chief's opinion would be good to have on the matter.

18  
19 MS. LOFTUS KELLER SECONDED THE MOTION.

20  
21 A review of the Motion was made, and further discussion ensued.

22  
23 REVISED MOTION:

24 MS. ANASTASIA MOVED, THAT THE PROPOSED PLAN AS PRESENTED TO THE  
25 PLANNING BOARD BRINGS THE PROPERTY INTO COMPLIANCE AS MUCH AS IS  
26 FEASIBLE. ACCESS ONTO BUTTONWOOD LANE PROVIDES A 12-FOOT TRAVEL WAY  
27 PLUS TWO 2.5-FOOT SHOULDERS THAT ARE MAINTAINED. IT PROVIDES SAFE  
28 ACCESS AND EGRESS TO THE PROPERTY BY TRAVERSING AN EXISTING TRAVEL WAY.  
29 AND ACCORDING TO THE AUGUST 16, 2021 LETTER RECEIVED BY FIRE CHIEF  
30 BENDER, A 14.5-FOOT VERTICAL AND HORIZONTAL CLEARANCE OF VEGETATION  
31 WILL BE MAINTAINED TO ACCOMMODATE EMERGENCY VEHICLE TRAFFIC. THE  
32 PLANNING BOARD REQUIRES AS A CONDITION A FOLLOW UP WRITTEN  
33 CONFIRMATION FROM CHIEF BENDER THAT ACCESS FROM BUTTONWOOD LANE  
34 ONTO ROUTE 102, AND ALSO THE CLOSE PROXIMITY OF A BUILDING HAVE BEEN  
35 CONSIDERED AND ARE DETERMINED SAFE FOR EMERGENCY VEHICLE TRAFFIC.

36  
37 Mr. Taylor noted that with regard to the 12-foot road, plus 2.5-foot shoulders, the  
38 road does not have that width in the area where the building is. That area is 15 feet  
39 wide. Chair Hanley felt this was more reason for a confirmation from the Fire Chief.  
40 Mr. Ashmore noted the 15-foot width noted by Mr. Taylor does not equal a 12-foot  
41 road, plus two 2.5-foot shoulders. Chair Hanley agreed. CEO Keene pointed out that  
42 14.5-foot clearance within the 15-foot-wide ROW is what is necessary.

43  
44 CEO Keene suggested referring to the 14.5-foot vertical and horizontal clearance

1 required within the 15-foot-wide ROW. Chair Hanley noted that as reviewing the  
2 criteria of §6.1.1, it alludes to bringing the road into compliance as much as feasible  
3 and will provide safe access. The Board tries to make sure they are not creating a  
4 constriction point anywhere along the travel way. Therefore he'd like the Fire  
5 Chief's opinion on the building proximity. Mr. Ashmore agreed. He did not  
6 understand the ROW and shoulder combined width. It does not equal the stated 15-  
7 foot ROW width. CEO Keene agreed it must be corrected. The travel way is 12 feet.  
8 There must be an additional 2.5 feet of clearance for a total of the 14.5 feet of  
9 horizontal and vertical clearance to ensure safe emergency vehicle access. This will  
10 fit within the 15-foot ROW. The Motion should be amended to reflect the  
11 clarification.

12  
13 FINAL REVISED MOTION:  
14 MS. ANASTASIA MOVED, WITH MS. LOFTUS KELLER SECONDING, THAT THE  
15 PROPOSED PLAN AS PRESENTED TO THE PLANNING BOARD BRINGS THE PROPERTY  
16 INTO COMPLIANCE AS MUCH AS IS FEASIBLE. THE BOARD FINDS THAT  
17 BUTTONWOOD LANE PROVIDES A 14.5-FOOT VERTICAL AND HORIZONTAL  
18 CLEARANCE THAT IS MAINTAINED. IT PROVIDES SAFE ACCESS AND EGRESS TO THE  
19 PROPERTY BY TRAVERSING AN EXISTING TRAVEL WAY. ACCORDING TO THE AUGUST  
20 16, 2021 LETTER RECEIVED FROM FIRE CHIEF BENDER, A 14.5-FOOT VERTICAL AND  
21 HORIZONTAL CLEARANCE OF VEGETATION WILL BE MAINTAINED TO  
22 ACCOMMODATE EMERGENCY VEHICLE TRAFFIC. THE PLANNING BOARD REQUIRES  
23 AS A CONDITION A FOLLOW UP WRITTEN CONFIRMATION FROM CHIEF BENDER  
24 THAT ACCESS FROM BUTTONWOOD LANE ONTO ROUTE 102, AND ALSO THE CLOSE  
25 PROXIMITY OF A BUILDING HAVE BEEN CONSIDERED AND ARE DETERMINED TO BE  
26 SAFE FOR EMERGENCY VEHICLE TRAFFIC.

27 VOTE:  
28 CHRISTIE ANASTASIA: AYE  
29 DAVID ASHMORE: AYE  
30 TRACY LOFTUS KELLER: AYE  
31 CHAIR WILLIAM HANLEY: AYE  
32 MOTION APPROVED 4-0.

33  
34 **IV. Other**  
35 Discussion regarding meeting venue and the impact of Covid ensued.

36  
37 Mr. Ashmore hoped that meetings could be advertised as 100% in-person, 100%  
38 Zoom, or as both as the situation changed. He didn't like the idea of locking the  
39 Board into an in-person meeting. Ms. Randolph agreed. If Board Members are  
40 quarantining due to possible exposure, they can't compromise people's health by  
41 being at an in-person meeting. The Board must have the latitude to say it is not safe  
42 enough to meet in person. Mr. Ashmore agreed.

43  
44 Chair Hanley believed the Board has the leeway to hold meetings as circumstance



1 allowed. Ms. Randolph asked what would have happened if Ms. Loftus Keller had  
2 not been able to attend the current meeting in person. Ms. Randolph believed at  
3 least one member was required to be in attendance. Chair Hanley believed that the  
4 Board would have the leeway to adjust as circumstances dictate. The transition time  
5 to full, in-person meetings was likely to be a long one. As Chair, he is willing to be at  
6 a meeting in person as he's able. He did not believe serious repercussions would  
7 ensue should the Board have to modify the way they meet due to changing  
8 conditions.

9  
10 Mr. Ashmore did not feel there could be an in-person Planning Board meeting  
11 without a Planning Board member present in person.

12  
13 CEO Keene noted the remote policy states the Board should try to be at a meeting in  
14 person. There needs to be a reason approved by the Chair regarding why a member  
15 does not attend in person.

16  
17 Chair Hanley believed there are going to be instances of in-person attendance  
18 issues. Even if no Board Members are present, the public will be able to attend in  
19 person and participate.

20  
21 Mr. Ashmore plans to be in Florida from December to May. He's willing to  
22 participate via Zoom. He feels participating via Zoom for that length of time could  
23 be problematic. Chair Hanley felt this was a good reason for participating remotely.  
24 The agreement enforces the notion that Boards will be trying to transition back to  
25 in-person meetings at some point. The circumstances of that transition are  
26 unknown.

27  
28 **V. Adjournment**

29 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, TO END MS.  
30 RANDOLPH'S RECUSAL.

31 VOTE:

32 CHRISTIE ANASTASIA: AYE

33 DAVID ASHMORE: AYE

34 TRACY LOFTUS KELLER: AYE

35 CHAIR WILLIAM HANLEY: AYE

36 MOTION APPROVED 4-0.

37  
38 MS. LOFTUS KELLER MOVED, WITH MS. ANASTASIA SECONDING, TO ADJOURN.

39 VOTE:

40 MEREDITH RANDOLPH: AYE

41 CHRISTIE ANASTASIA: AYE

42 TRACY LOFTUS KELLER: AYE

43 DAVID ASHMORE: AYE

44 CHAIR WILLIAM HANLEY: AYE

- 1 MOTION APPROVED 5-0.
- 2
- 3 The Meeting adjourned at 7:28PM.