**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

1. **Call to Order**

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

1. **Approval of Minutes**

Minutes were tabled until further review.

1. **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.*

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

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

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

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

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

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

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

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

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

It was restated that the stone structure in question was in too far disrepair to be considered a structure, therefore the Board could not approve repair or maintenance of it, under Section 4.2.2 of the Ordinance.

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

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

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

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

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

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

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

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

There were no additional comments from the public.

1. **Adjournment**

Ms. Randolph moved, with Ms. Renault seconding, to adjourn the meeting. Motion approved 4-0.

Meeting was adjourned at 6:32 pm.