

PACKET OF MATERIALS FOR THE JUNE 19, 2019 PLANNING BOARD MEETING

Issued June 14, 2019
@ 11:30 AM

To follow

ITEM		
Cover page with date	✓	
Agenda	✓	
Minutes for approval	✓	
Supporting Documents		
SP-2018-07 Jordan TA-1	NA	
Final draft order for dormitory	✓	
Final draft order for procedure for site plan review process	✓	
Other	<ul style="list-style-type: none"> • One comment on dormitory • Bearor's opinion on TA1 dated 04/16/19 	

Agenda
Bar Harbor Planning Board
Wednesday, June 19, 2019
Council Chambers - Municipal Building
93 Cottage Street
4:00 PM

I. CALL TO ORDER

II. ADOPTION OF THE AGENDA

III. EXCUSED ABSENCES

IV. PUBLIC COMMENT PERIOD

The Planning Board allows up to 15 minutes of public comment on any subject not on the agenda and not a pending application before the board, with a maximum of three minutes per person.

V. APPROVAL OF MINUTES

a. June 5, 2019

VI. REGULAR BUSINESS

- a. **Public Hearing on an amendment to the Land Use Ordinance. The purpose of the proposed amendment is to add definitions for Employee Dormitory, Rooming House, and Workforce Housing; amend the definition of Family; allow the activities in certain districts; and provide parking standards and standards specific to these particular uses.**
- b. **Public Hearing on an amendment to the Land Use Ordinance. The purpose of the proposed amendment is to amend the procedure for site plan review process.**
- c. **Public Hearing, Deliberations, and Decision for SP-2018-07 — TA-1**
Project Location: 81 Ledgeawn Avenue, Tax Map 107, Lot 078-000, Downtown Residential District
Applicant: Robert and Kathleen Jordan
Application: The applicant is proposing to operate a TA-1 (Bed & Breakfast accommodations in the private, year-round residence of the host family who live on the premises. Breakfast is the only meal provided).

VII. OTHER BUSINESS

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

IX. ADJOURNMENT

**Bar Harbor Planning Board
Wednesday, June 5, 2019
Council Chambers – Municipal Building
93 Cottage Street in Bar Harbor
4:00 PM**

I. CALL TO ORDER

Chair St. Germain called the meeting to order at 4:00 PM.

Members present were Chairman Tom St. Germain, Vice-chair Joe Cough, Secretary Basil Eleftheriou, Jr., Member John Fitzpatrick and Member Erica Brooks.

Town staff present were Planning Director Michele Gagnon and Code Enforcement Officer Angie Chamberlain.

II. ADOPTION OF THE AGENDA

Chair St. Germain asked for a motion to adopt the agenda for the meeting. Vice-chair Cough made the motion, seconded by Mr. Fitzpatrick. It then carried unanimously (5-0).

III. EXCUSED ABSENCES

There were no excused absences.

IV. PUBLIC COMMENT PERIOD

There were two comments. Donna Karlson asked for a timeline regarding the public hearing for the proposed dormitory amendment. She was informed that the public hearing had been scheduled for June 19. Sarah Keeley said that she wished that the board had addressed the five-night minimum.

Chair St. Germain closed the public comment period noting that comments on vacation rentals would be heard later.

V. APPROVAL OF MINUTES

a. May 15, 2019

Mr. Fitzpatrick moved to adopt the May 15 minutes. Mr. Eleftheriou seconded the motion. The motion carried unanimously (5-0).

VI. REGULAR BUSINESS

a. **Public Hearing, Deliberation, and Decision for SP-2018-07 - TA-1
Project Location: 81 Ledge lawn Avenue, Tax Map 107, Lot 078-**

Call to order @4:00
PM

Quorum – all 5
members present

Agenda adopted

Minutes approved

Jordan TA-1 on
Ledgelawn, SP-2018-07

000, Downtown Residential District

Applicant: Robert and Kathleen Jordan

Application: The applicant is proposing to operate a TA-1 (Bed & Breakfast accommodations in the private, year-round residence of the host family who live on the premises. Breakfast is the only meal provided).

The Jordans were present to represent themselves. Mr. Jordan recounted the history of the property, and said they have always strived to be good neighbors. He said they were seeking approval from the Planning Board to come into compliance with town regulations.

Jordans present, recount history

Chair St. Germain opened a public hearing at 4:07 PM. Donna Karlson spoke and asked about TA-1 requirements in connection with Design Review, both with regard to this project and in general around town. Barbara Sassaman, chair of the Design Review Board, said the board “had absolutely no problem with this application” because there was no change to the building. With no other comments, the public hearing was closed at 4:10 PM.

Public hearing opened at 4:07 PM

Question about Design Review Board

Public hearing closed at 4:10 PM

Mr. Fitzpatrick asked about parking standards and what is required under TA-1. There was discussion on this question. Mr. Fitzpatrick noted a standard modification had been requested. The applicant talked about an alternative idea of a curb cut on the north side of the house for two additional spots, but said he would prefer not to do that because it would result in the loss of one parking spot on the street.

Discussion on parking

Chair St. Germain said he anticipated seeing more applications like this. He wondered if this modification was allowed, what it would lead to in the future. He asked staff if there was precedent for such a modification, and staff could not think of any. More discussion followed, including on 125-67, E(3) which says parking areas shall be designed to allow vehicles to park without other vehicles being moved. Chair St. Germain said that should be cited in the modification, as well.

More parking talk

Vice-chair Cough noted several letters were received and asked how to make sure they are included in the record, including one from abutter Jim and Ellen Grover who asked that their letter be read into the record. He said her letter raised some questions he wanted to ask. There was discussion on whether the letter needed to be read aloud, and eventually agreed that it should be. Mr. Eleftheriou read the letter (attached), objecting to the application, aloud. The Grovers accused the applicant of ignoring and violating ordinances.

Grover letter read aloud, opposing application

There was discussion of what constitutes a kitchen and whether the applicants have one in their rental unit. It was noted that “kitchen” is not defined in the Land Use Ordinance. There was discussion of a consent agreement that is in

Discussion of what is or is not a kitchen

place, whether the applicant is in violation of that and whether that is something that can be considered by the Planning Board. Town staff advised that compliance with a consent agreement is separate from compliance with the Land Use Ordinance.

Discussion on compliance with LUO vs. consent agreement

Mr. Fitzpatrick asserted there were three possible violations of the consent agreement, in his view. He later said he mentioned those items to see if that affected the standing of the application. Mr. Jordan responded to the violation comments, and said he thought he could advertise the space once he submitted his application to the Planning Board.

Discussion on possible violations, Mr. Jordan responds

Chair St. Germain referred to 125-101, A(2). CEO Chamberlain said she felt she would need to go back to the Town Council for permission to take action if she felt there was a violation, and then the town's attorney would need to go to court. Board members shared their thoughts on the matter.

More discussion on consent agreement

Mr. Jordan noted part of what was discussed at the court was pursuing a change of use to TA-1. He responded to several points raised in the letter from the Grovers.

Mr. Jordan responds to letter from Grovers

Vice-chair Cough returned to the issue of whether the applicants have a kitchen in the rental area (he said he thought they did). He said he did not agree with the idea that there had to be a stove/oven to classify it as a kitchen. Board members shared their opinions. It was noted that the definition of bed and breakfast does not prohibit a kitchen. Mr. Jordan noted that in the consent agreement, where it originally said "kitchen" was changed to "food preparation area," a change that was made as the agreement was finalized.

More discussion of the question of a kitchen

Mr. Fitzpatrick said as with a previous application for TA-1, he does not believe an exterior room/building/structure qualifies for that designation. He worried what precedent approving this application would set. He said he shared Vice-chair Cough's concern with the kitchen.

Question of whether this qualifies as TA-1

Mr. Jordan offered to connect the barn to the house if it would satisfy Mr. Fitzpatrick's concern. He said they are already connected by utilities.

Vice-chair Cough moved to continue the public hearing and that the board request town attorney Ed Bearor be in attendance at the next meeting on June 19. He said he wanted to hear his take on the kitchen question and residence definition. There was discussion among board members. Chair St. Germain noted attorney Bearor had supplied an opinion on similar questions previously, and that the board had approved a similar application after receiving that opinion. Vice-chair Cough read the definition of TA-1. Mr. Fitzpatrick said he would agree to table the application for two weeks to determine if the application has standing. **Vice-chair Cough**

Motion to continue public hearing until June 19 and have town attorney present to answer questions on kitchen, residence definitions

Board discussion

withdrew his initial motion, then made a new motion to table the application for two weeks until the board's next meeting (June 19) with the understanding that the town attorney will be at the meeting to go over the issue of residence definition as it applies to TA-1 and also the issue of standing for the applicant. Mr. Fitzpatrick seconded the motion. Chair St. Germain said he could not support the motion because he felt the board had already addressed the residence issue, and that to examine it again would be bad practice. On the subject of standing, he said he sees this application as the Jordans' way out of being in violation. Mr. Eleftheriou and Ms. Brooks both offered their own opinions. **The vote was taken, with three in favor and two opposed (Chair St. Germain and Ms. Brooks).**

First motion withdrawn, followed by motion to table application for two weeks until June 19 and have town attorney present to look at definition of residence and question of standing

Board discussion

Motion carries 3-2 (St. Germain and Brooks are opposed)
Rechholtz Subdivision SP-2018-02

b. Public Hearing, Deliberation, and Decision for SD-2018-02 Major Subdivision (amendment to a subdivision)

Project Location: 25 White Spruce Road, Tax Map 110, Lot 038, Village Residential District

Applicant: Robert Rechholtz

Application: The applicant is proposing to subdivide a 40,000-square-foot lot into two, 20,000-square-foot lots and to connect to town sewer.

Vice-chair cough recuses himself

Vice-chair Cough recused himself and left the room.

Rob Rechholtz proceeded to present his project and went through the items that had been requested by the board at the last meeting.

Applicant summarizes project status

At 5:00 PM Chair St. Germain opened the public hearing. There was no comment and the hearing was closed.

Public hearing opened – no comments received.

Mr. Fitzpatrick asked for clarification on a few points.

Mr. Fitzpatrick moved that the water capacity letter requirement be waived from the application. Mr. Eleftheriou seconded the motion. The motion carried unanimously (4-0).

Water Capacity Letter waived

Mr. Fitzpatrick moved to require lot number 2 to be located within 500 feet of a fire hydrant or require a note on the plot plan to be recorded at the Hancock County Registry of Deeds, which says that lot number 2 has a deed restriction "any dwelling unit shall be protected with a residential level sprinkler system." Mr. Eleftheriou seconded the motion. The motion carried unanimously (4-0).

Fire hydrant within 500 feet of lot #2 or provide deed restriction requiring residential sprinkler system

Mr. Fitzpatrick moved that based on the meetings the board has held and the deliberations by the board that it finds that the project meets Chapter 125-67 General Standards and 125-69 N Subdivision Standards for

Determination that project meets the

application SD-2018-02. Mr. Eleftheriou seconded the motion. The motion passed unanimously (4-0).

**General and
Subdivision Standards**

Mr. Fitzpatrick was on a roll and wrapped it up with one last motion.

Based on the Finding of Facts and Conclusions of Law, Mr. Fitzpatrick moved to approve SD-2018-02, as outlined in the Draft Decision dated June 5, 2019, as amended previously. Mr. Eleftheriou seconded the motion. The motion passed unanimously.

Project is approved

Chair St. Germain, recognizing that the following items on the agenda would be lengthy, called for a short break and the meeting to resume at 5:10 PM. Vice-chair Cough rejoined the board at the table.

Chair calls for a break

The meeting resumed at 5:10 PM.

**Cough rejoins the
board at the table
Meeting resumes at
5:10 PM**

**c. Public Hearing on an amendment to the Land Use Ordinance.
The purpose of the proposed amendment is to amend the
definition of Vacation Rental**

**Public hearing for
proposed amendment
to definition of vacation
rental**

The public hearing was opened at 5:14 PM.

**The public hearing was
opened**

Sixteen residents spoke. Although no one was against what was presented, there was a sentiment that the board should have considered decreasing the minimum number of days. Other views were also expressed.

Sixteen residents speak

The public hearing was closed at 5:44 PM.

**The public hearing was
closed**

Chair St. Germain explained that although he was in favor of lowering the number of days he explained that the board decided not to change the minimum number of days as there is insufficient information especially pertaining to the number of hosted versus non-hosted vacation rentals. There also is concern that lowering the minimum number of days might open up the floodgate for the sort of investors who has a business of a group of homes.

Vice-chair Cough said that he feels that the board will later tackle the number of days. He also offered that it might be better done in conjunction with addressing density.

Mr. Fitzpatrick explained that his support for not addressing the number of days for short-term rentals, as supported by some of the comments heard tonight, was because to address the housing crisis the town needs data and facts; it needs to figure out what it wants to be as a community and set a series of goals (goals, objectives, strategies, and actions); the Planning Board needs clear direction

from the council of what is to be accomplished; and there is also a need to take a hard look at what is an owner-occupied versus non-owner-occupied vacation rental. Mr. Fitzpatrick felt that moving from five days to three days without having all the information is not prudent and that there would many unintended consequences.

Mr. Eleftheriou agreed with both what was said by Mr. Fitzpatrick and Vice-chair Cough. He explained that insufficient data was a big factor in his decision not to change the number of days. He, again, advocated strongly for the town to conduct a hosing study. He noted that a housing study and data is needed to enable the board to move forward.

Ms. Brooks said that the town has an outdated ordinance, and that the comments that are constantly heard constitute the data and the planning process. The board needs to focus, get to work and change the ordinance. In her opinion, that will help people be in compliance and not force them to have to stop their "side income" which allows them to live here.

Chair St. Germain explained that sometime in July or August there will be a joint workshop of the Planning Board and the Town Council to continue working on this matter.

Mr. Fitzpatrick moved to forward to the Bar Harbor Town Council warrant article Land Use Ordinance Amendment: Vacation Rental; specifically, Shall an amendment dated May 1, 2019 and entitled "An amendment to the definition of Vacation Rental" be enacted for their consideration and inclusion on the warrant for the November election period. Vice-chair Cough seconded the motion. The motion carried unanimously (5-0).

Board moved to forward the amendment to vacation rental to the council for the November vote

d. Public Hearing on an amendment to the Land Use Ordinance. The purpose of the proposed amendment is to adjust the Design Review Board's jurisdiction, amend the Design Review Board Overlay District Map to reflect that expansion, and amend the language in Article XIII to accurately describe the new boundaries of the district within the Land Use Ordinance.

Public hearing for amendment to DRB Overlay and adjustment to area of jurisdiction

The Chair of the Design Review Board (DRB) Barbara Sassaman explained that the DRB is tasked with annually updating Appendix A. The board's jurisdiction is limited to the DRB Overlay District, which is superimposed over several neighborhood zoning districts. Changes to the zoning districts result in automatic changes to the DRB Overlay District. Consequently, several properties listed in the National Register of Historic Places are now out of the DRB's jurisdiction. Conversely, there are properties well outside the main village area that now fall under the DRB's jurisdiction.

Sassaman summarizes the problems with how the Overlay District boundaries are defined

The DRB feels that the changes to zoning districts affect the intent of the original DRB Overlay District boundaries. Rather than being attached to the boundaries of the underlying zoning district, the Overlay District area should be defined by a list of parcels (map/lot). This would eliminate the confusion caused when zoning district boundaries are changed. Presently, the Overlay District does not accurately reflect buildings important to Bar Harbor's overall aesthetics. Having an Overlay District that actually reflects the important buildings is the DRB's goal. The DRB has created a new Overlay District map. In addition, following the policies and strategies of the Comprehensive Plan, the DRB is asking the board to consider increasing the DRB Overlay District to include the Bar Harbor Gateway area; Salsbury Cove, and Hulls Cove.

Sassaman explains how to better define the boundaries of the Overlay District

Ms. Sassaman referenced the policies and strategies of the Comprehensive Plan as follows:

Sassaman explains how the amendments would comply with the Comprehensive Plan

Policy 1H – To preserve scenic approaches to Bar Harbor and designated villages, specifically along Routes 3, 102, and 198.

Strategy 1H3 - Extend design review beyond current application in Downtown and for B&Bs to include the Acadia Byway, a nationally designated scenic byway and the designated Town Hill Village.

Policy 1J – To preserve Bar Harbor historical and archaeological resources.

Strategy 1J3 - Update the 1976 History Building Inventory and, as appropriate, designate historic districts in portions of Salsbury Cove, Hulls Cove and Town Hill.

Policy 2B – Examine the zoning in Bar Harbor village to preserve its residential integrity, while acknowledging numerous nonconforming commercial uses.

Strategy 2B4 - Continue monitoring the effectiveness of zoning to protect the existing nature and quality of life on West Street.

Policy 2D - To revise the standards and broaden the scope of design review beyond the downtown business district to address historic and archeological, scenic byways, and other concerns in the rest of the community.

Ms. Sassaman read a quote in the Comprehensive Plan that immediately follows the previous policy. "One of the greatest outcries in neighborhood meetings was fear of what was perceived as being the loss of Bar Harbor's traditional, coastal New England character. The DRB was set up in an attempt to keep the appearance of downtown development consistent with the surrounding architecture while respecting the rights of property owners. It is clear the Town

has benefitted from this necessary review. Because of the possible negative consequence of further development, the Town should consider, after the standards have been revised, extending the Board's jurisdiction." She then went on to quote the following strategy:

Strategy 2D2 – Study the village of Hulls Cove, Salsbury Cove, and Town Hill to identify which features, structures, and visual aspects would be preserved, prepare and adopt standards in the LUO, and expand design review to those areas.

Ms. Sassaman continued by noting that last time the DRB presented to the board the proposed expansion of DRB's jurisdiction, there was opposition from the board, hence the reason the DRB removed Hulls Cove and Salsbury Cove from the plan that is now submitted. The intent of the amendments is to change the language of the LUO to have all properties listed on the National Register of Historic Places included in Appendix A regardless of whether they fall under the Overlay District or not; to slightly extend the Overlay District in Town Hill (this was caused by needing a geographical feature as a boundary marker at both ends of this area); and to expand the Overlay District to the village of Bar Harbor which would include the gateway area. At an earlier meeting with the board, it was stated that none of the owners of the properties along this stretch of Route 3 would do anything to diminish the aesthetic quality of this area. That is fine but it does not take into consideration the fact that properties are sold and owners change. This is the gateway to Bar Harbor and therefore it should reflect the aesthetic of the Town. It is the introduction to the village of Bar Harbor and it should be protected from unchecked development that would adversely affect its appearance and character. Along with this revised Overlay District map, the DRB has also have amended 125-12 (defines the Overlay District). Ms. Sassaman reminded the board that single and two-family dwellings are not under the purview of the DRB unless they are listed in the National Register of Historic places.

Sassaman explains the intent of the amendments

Chair St. Germain opened the public hearing at 6:03 PM.

Three people commented. Stewart Brecher supported the DRB's protection of historic places. He voiced concerns about the proposed standards and the attempt to copy old buildings.

The public hearing is opened

David Witham expressed concerns with the expansion of the Overlay District and with how the guidelines will apply to buildings without historical significance.

Donna Karlson talked about having more clarity on the bylaws.

The public hearing was closed at 6:15 PM.

Board deliberations began. The board had a long and arduous discussion trying to determine if the proposed DRB amendment complied with one of the four pathways of how an amendment can be brought forth. The attorney's opinion, affirming that the process for the DRB amendments met one of the four pathways, was considered in the deliberation.

Public hearing is closed

Discussion about if the proposed amendments by the DRB meets one of the four pathways to amend the LUO

Vice-Chair Cough moved to continue discussion and agreed with Ed Bearor's decision on the issue of moving it forward. Mr. Eleftheriou seconded the motion. During discussion, Vice-Chair Cough moved to call a question (to stop the debate). Although, it was noted that a second was not necessary, Mr. Eleftheriou seconded the motion, to be safe. The motion carried (3-2 with Ms. Brooks and Chair St. Germain voting against it). The initial motion was then voted on and the motion carried (3-2 with Ms. Brooks and Chair St. Germain voting against it)

It was decided that the DRB process had met one of the four pathways to bring the amendment forth

The board then deliberated on the DRB proposed amendments. There were general concerns on the amendments as it pertained to the gateway area/Route 3 section.

Mr. Fitzpatrick moved to recommend that the Design Review Overlay District Map and adjustment of Design Review Board jurisdiction amendment dated March 29, 2019 be moved to the Council with the recommendation "ought to pass." Vice-chair Cough seconded the motion. Debate followed. The vote was 2-3 with Ms. Brooks, Mr. Fitzpatrick, and Chair St. Germain voting against it, and the motion did not carry.

Board moved not to forward the DRB amendments to the council

It was clarified that the "ought to pass" wording was premature and it was agreed that the interpretation of the motion was that it was dead and not being forwarded to the council.

IX. ADJOURNMENT

At 7:28, Mr. Fitzpatrick motioned to adjourn the meeting. Mr. Eleftheriou seconded the motion. The motion carried unanimously (5-0).

Meeting adjourned

Minutes approved by the Bar Harbor Planning Board on June 19, 2019:

Date

**Basil Eleftheriou Jr., Secretary
Bar Harbor Planning Board**

Michele Gagnon

From: Ellen Grover <egrover123@gmail.com>
Sent: Friday, May 31, 2019 2:26 AM
To: planningboard@barharbormaine.gov
Subject: Re: CORRECTION: JUNE 5, 2019 meeting

On Thu, May 30, 2019 at 10:25 PM Ellen Grover <egrover123@gmail.com> wrote:

To: Planning Board Members
Re: SP-2018-07 Jordan TA-1 Application
May 30, 2019

We apologize for being unavailable to attend the June 5 meeting due to prior travel plans. We request this letter be read aloud in our absence so as to be officially recorded. Here for your consideration are our objections to this application:

The letter we prepared for the May 1 meeting (See Exhibit 1) details the reasons we believe this application for TA-1 use has no merit in our Downtown Residential district. The applicants do not intend to operate a Bed and Breakfast *'in their residence'*; any other interpretation of the LUO in this situation is speculative and unwarranted. Bar Harbor does not have spot zoning; if the LUO needs revision, there are established avenues to do so, and that process should be respected. Additionally, we question the appropriateness of granting a parking waiver and the effect it will have in what is supposed to be a residential neighborhood.

The applicant has repeatedly misrepresented his intentions and use of said structure since constructed. He remains in violation of the LUO which should preclude consideration or approval of this application. (see Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6)

In speaking during the Completeness Review, Mr. Jordan failed to acknowledge that he was, in fact, fully aware that the permit to build his 'garage/workshop' was allowed only with the understanding that it could not be used as a dwelling unit. (Interestingly, he had already secured a tenant when he first requested the building permit, thus beginning the game of ignoring ordinances that persists to this day.)

Furthermore, at the May 1 meeting, Mr. Jordan responded to direct questions about the nature of his rental unit by stating his 'loft' merely had a bedroom. He further stated that the space did not qualify as a dwelling unit because he was not allowed to have a kitchen.

The text and photos in the applicants' online listings at that time, and presently, tell a much different story (Exhibit 7, Exhibit 8) and reflect the applicants' attitude in regards to respecting town ordinances. (Please visit https://www.airbnb.com/rooms/3562799?guests=1&adults=1&check_in=2019-06-15).

As you can see, the property is being actively advertised and booked (see Exhibit 9, Exhibit 10 Exhibit 11) in a manner that far exceeds the expectations for an auxiliary bedroom. It is being marketed (once again) as an *"Entire home/apt"* and *Entire guesthouse* that include a *"Kitchen ... space where guests can cook their own meals"*, enumerating *"a gas cooktop, microwave, small refrigerator and Toaster/oven, coffee maker, crock pot, many pots and pans and plenty of kitchen gadgets"*. This is hardly within the spirit of the application; it is, in fact the same illegal 'dwelling unit' that the applicants have rented intentionally and continuously for *five seasons* despite being in violation and repeatedly ordered to stop by the CEO of Bar Harbor.

Such habitual disregard for the LUO, the Town, and the neighborhood should no longer be tolerated or (ironically) legitimized.

We are once again in the position of having to address this unfortunate misuse in our backyard: a nuisance that affects both our privacy and enjoyment of *our* property. For years we have tried to work with the town to

resolve this problem to no avail. We wonder why the rights of self-proclaimed "outlaws" apparently trump those of law abiding property owners? And we worry about the viability of our Downtown *Residential* District as it becomes increasingly seasonal, commercial, and monetized. The LUO is meant to be applied and enforced to ensure that all residents of this town, and their property rights, are equally respected and equally protected. It is time to do so.

Respectfully submitted by Jim and Ellen Grover for your consideration 5/30/19

Order
of the Bar Harbor Town Council
For the November 5, 2019 Town Meeting

It is hereby ordered that the following article be placed on the town meeting warrant with voting thereon to be held by Australian ballot.

Warrant Article

LAND USE ORDINANCE AMENDMENT: Shall an ordinance dated May 22, 2019 and entitled "Employee Dormitory, Rooming House, and Workforce Housing" be enacted?

Employee Dormitory, Rooming House, and Workforce Housing

An amendment to Article III, Article V, and Article XII

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is stricken. New language is underlined.]

Article III

Land Use Activities and Standards

§ 125-17 Bar Harbor Gateway.

D. Uses allowed by site plan.

- (1) The following uses shall be permitted by site plan review in any part of this district: bank; bed-and-breakfast I; bed-and-breakfast II; bed-and-breakfast III; bed-and-breakfast IV; bed-and-breakfast V; child-care center; commercial boat yard; commercial fish pier; employee dormitory; ferry terminal; farmers' market; hotel; marina; multifamily dwelling I; multifamily dwelling II; motel; nursing or convalescent homes or congregate housing; parking lot; parking deck; ~~parking garage, also subject to Design Review Board certificate of appropriateness;~~ private compulsory school; professional office building; restaurant; retail; road construction; rooming house; services; take-out restaurant; wind turbines; and wireless communication facilities. In addition, to be permitted by site plan review in any part of this district, the following uses are also subject to Design Review Board certificate of appropriateness: parking garage and workforce dormitory.

§ 125-19 Mount Desert Street Corridor.

D. Uses allowed by site plan.

- (1) Principal uses allowed by minor site plan approval: wind turbines, offices, all types of schools, bed-and-breakfast I and II.
- (2) Principal uses allowed by major site plan: convalescent home; multifamily I and II; theaters; rooming house; and workforce dormitory
- (3) Principal uses allowed by conditional use permit: retail; restaurants; bed-and-breakfast III and IV.
- (4) Employee Dormitory.

§ 125-21 Downtown Village I.

C. Allowed uses:

- (2) Uses allowed by site plan review: hotel; motel; conference centers; multifamily dwelling I and II; all types of child-care facilities, all types of schools; medical and dental clinics; banks; automobile service stations; hospitals; parking lot; parking deck; road construction; automobile sales lot; automobile repair garage; retirement community; employee dormitory; rooming house; and workforce dormitory.

§ 125-21.1 Downtown Village II.

C. Allowed uses.

- (2) Uses allowed by site plan review: hotel, motel; multifamily dwelling I and II; parking lot; parking deck; all types of child-care facilities; all types of schools; hospitals, medical and dental clinics; automobile service stations; redemption centers; automobile sales lot; automobile repair garage; retirement community; veterinary clinic; employee dormitory; rooming house; and workforce dormitory.

§ 125-21.2 Downtown Village Transitional.

C. Allowed uses.

- (2) Uses allowed by site plan review: multifamily dwelling I and II; parking lot; all other types of child-care facilities; medical clinics; automobile sales lot; automobile repair garage; retirement community; employee dormitory; rooming house; and workforce dormitory.

§ 125-22 Downtown Residential.

- D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Child-care center

Hospital

Multifamily dwelling I

Parking garage and parking lot

Place of worship

Road construction

Rooming house

Transient accommodations (TA-1)

Transient accommodations (TA-3)

Transient accommodations (TA-4)

Wireless communications facility

Workforce dormitory

§ 125-24 Hulls Cove Business.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Bank

Commercial boatyard

Commercial fish pier

Commercial stable

Employee dormitory

Ferry terminal

Hospital

Light manufacturing/assembly plant

Marina

Multifamily dwelling I

Multifamily dwelling II

Municipal school

Parking lot

Recreational boating facility

Research facility

Research production facility

Road construction

Rooming house

Transient accommodations (TA-1)

Transient accommodations (TA-2)

Wireless communications facility

Workforce housing

§ 125-27 Hulls Cove Rural.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial

Campground

Cemetery

Mineral extraction

Mineral extraction and processing

Mobile home park

Municipal school

Place of worship

Retirement community

Road construction

Rooming house

Transient accommodations (TA-1)

Wireless communications facility

Workforce dormitory

§ 125-31 Ireson Hill Corridor.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Bank

Campground

Employee dormitory

Mineral extraction

Mineral extraction and processing

Multifamily dwelling I

Multifamily dwelling II

Municipal school

Parking lot

Place of worship

Road construction

Rooming house

Transient accommodations (TA-1)

Transient accommodations (TA-2)

Transient accommodations (TA-3)

Transient accommodations (TA-4)

Transient accommodations (TA-5)

Transient accommodations (TA-6)

Transient accommodations (TA-7)

Transient accommodations (TA-8)

Warehousing or storage facility

Wholesale business establishment

Wireless communications facility

Workforce housing

§ 125-42 Scientific Research for Eleemosynary Purposes.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Employee dormitory

Parking deck

Parking lot

Road construction

Rooming house

Wireless communications facility

Workforce dormitory

§ 125-43 Town Hill Business.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Automobile repair garage

Automobile sales lot

Automobile service station

Bank

Campground

Commercial boatyard

Eleemosynary, educational or scientific institution

Food processing and freezing (excluding slaughterhouse)

Food processing and freezing

Hospital

Light manufacturing/assembly plant

Mobile home park

Multifamily dwelling I

Multifamily dwelling II

Municipal school

Newspaper or printing facility

Parking garage and parking lot

Research facility

Research production facility

Road construction

Rooming house

Terminal yard and trucking facility

Transient accommodations (TA-1)

Transient accommodations (TA-2)

Transient accommodations (TA-3)

Transient accommodations (TA-4)

Transient accommodations (TA-5)

Transient accommodations (TA-6)

Transient accommodations (TA-7)

Transient accommodations (TA-8)

Upholstery shop

Warehousing or storage facility

Wholesale business establishment

Wireless communications facility

Workforce dormitory

§ 125-44 Town Hill Residential Corridor.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Agriculture, commercial

Campground

Cemetery

Multifamily dwelling I

Multifamily dwelling II

Municipal school

Municipal facility and grounds

Place of worship

Road construction

Rooming house

Transient accommodations (TA-1)

Transient accommodations (TA-3)

Transient accommodations (TA-4)

Wireless communications facility

Workforce dormitory

§ 125-47 Shoreland General Development I.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Cocktail lounge

Commercial fish pier

Commercial structure

Employee dormitory

Essential services accessory to a permitted use or structure

Ferry terminal

Gift shops

Marina

Multifamily dwelling I

Multifamily dwelling II

Municipal facility and grounds

Recreational boating facility

Road construction

Rooming house

Ships chandlery

Transient accommodations (TA-2)

Transient accommodations (TA-3)

Transient accommodations (TA-4)

Transient accommodations (TA-5)

Transient accommodations (TA-6)

Transient accommodations (TA-7)

Transient accommodations (TA-8)

§ 125-49 Shoreland General Development II (Hulls Cove).

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Commercial fish pier

Commercial structure

Eleemosynary, educational or scientific institution

Employee dormitory

Essential services accessory to a permitted use or structure

Ferry terminal

Marina

Multifamily dwelling I

Multifamily dwelling II

Road construction

Rooming house

Single-family dwelling

§ 125-49.1 Shoreland General Development III.

D. Uses allowed by site plan.

- (1) The following uses shall be permitted by site plan review in any part of this district: bank; bed-and-breakfast I; bed-and-breakfast II; bed-and-breakfast III; bed-and-breakfast IV; bed-and-breakfast V; child-care center; commercial boat yard; commercial fish pier; employee dormitory; ferry terminal; farmers' market; hotel; marina; multifamily dwelling I; multifamily dwelling II; motel; nursing or convalescent homes or congregate housing; parking lot; parking deck; private compulsory school; professional office building; restaurant; retail; road construction; rooming house; services; take-out restaurant; wind turbines, and wireless communication facilities.

§ 125-51 Marine Research.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Eleemosynary, educational or scientific institution

Employee dormitory

Nonresidential facility for education and scientific purposes

Parking deck

Parking lot

Research facility

Residential facility for use by employees, students, trainees or visiting scientists and academicians, such facilities being necessary for the furtherance of the institutional mission

Road construction

Rooming house

Transient accommodations, nonprofit

Wireless communications facility

Workforce dormitory

§ 125-51.1 Educational Institution.

D. Activity or structure requires site plan approval. Activity or structure requires approval through site plan review process before it may be commenced or built:

Eleemosynary, educational or scientific institution

Employee dormitory

Museum

Parking deck

Parking lot

Pier, dock, wharf, breakwater or other use projecting into the water

Road construction

Rooming house

Student housing

Wireless communications facility

Workforce dormitory

Article V

Site Plan Review

§ 125-67 General review standards.

D. Parking Requirements

- (3) Except as otherwise provided in this chapter, the following minimum off-street parking shall be provided and maintained in the case of new construction, alterations or changes of use which would increase the parking demand according to the standards set forth below, or any increase in the area used which increases the number of persons using the premises. In the event of such construction, alterations, change or increase, the entire premises or use, and not just that portion constructed, altered, changed or increased, shall become subject to the following requirements.

(x) Employee dormitory shall not be required to provide parking.

(y) Rooming house: one parking space.

(z) Workforce dormitory: one space plus one space for every 10 occupants based on maximum capacity or fraction thereof rounded up.

§ 125-69 Standards for particular uses, structures, and activities.

125-69 W Employee Dormitory.

A. Employee Dormitory. All employee dormitories shall meet the following standards:

(1) Employee dormitories can be attached or stand-alone structures on the same parcel as the principal use.

(2) The gross floor area of an employee dormitory shall not exceed twenty-five (25) percent of the gross floor area of the principal building(s) on the lot.

(3) Density Bonus: Employee dormitories, and provided parking and necessary accesses, are exempt from lot coverage calculations. All other uses, activities, and structures, on the lot, shall be subject to meeting the requirements of this chapter. A

use or an activity taking place on or over the employee dormitory shall result in the loss of the density bonus and shall be subject to meeting the requirements of this chapter.

(4) Employee dormitories shall not be used as vacation rentals and units shall not be sold separately as condominiums.

(5) Parking benefitting from the density bonus shall be used exclusively by the occupants of the employee dormitory.

125-69 X. Rooming House.

A. Rooming House. All rooming houses shall meet the following standards:

(1) Rooming Houses shall not be used as vacation rentals and units shall not be sold separately as condominiums.

125-69 Y. Workforce Dormitory.

A. Workforce Dormitory. All workforce dormitories shall meet the following standards:

(1) Workforce dormitories shall not be used as vacation rentals and units shall not be sold separately as condominiums.

Article XII

Site Construction and Definitions

§ 125-109 Definitions

EMPLOYEE DORMITORY – An accessory use to hotels, motels, hospitals, restaurants and transient accommodations, and other businesses where a building or portion of a building is used for group sleeping accommodations solely for on premise employees in one room, or a series of closely associated rooms.

FAMILY – Two or more persons related by blood, marriage, adoption or guardianship, or not more than five persons not so related, occupying a dwelling unit (including a vacation rental) and living as a single housekeeping unit that includes living, sanitary, sleeping, and cooking facilities, such a group to be distinguished from a group occupying a rooming boardinghouse, lodging house, employee dormitory, workforce dormitory, club, fraternity or transient accommodations.

ROOMING HOUSE – A building or portion thereof in which group sleeping accommodations are provided for more than 5 but less than 16 persons who are not members of the same family in one room, or a series of closely associated rooms intended to be used for living and sleeping.

WORKFORCE DORMITORY – A building or portion of a building in which group sleeping accommodations are provided solely for employees of one or more businesses or institutions for more than 16 persons who are not members of the same family in one room, or a series of closely

Explanation:

This article creates and defines three new uses, all requiring site plan approval - Employee Dormitory, Rooming House, and Workforce Housing. Employee Dormitory is only allowed as an accessory use. All three uses are allowed in the Bar Harbor Gateway, Mount Desert Street Corridor, Downtown Village I, Downtown Village II, Downtown Village Transitional, Hulls Cove Business, Ireson Hill Corridor, Scientific Research for Eleemosynary Purposes, Marine Research, and Educational Institution districts. In the Bar Harbor Gateway district, a Workforce Dormitory will also require a certificate of appropriateness from the Design Review Board. Only Rooming House and Workforce Dormitory are allowed in the Downtown Residential, Hulls Cove Rural, Town Hill Business, Town Hill Residential Corridor, Shoreland General Development I, Shoreland General Development II (Hulls Cove), and Shoreland General Development III districts. Parking is required for Rooming House and Workforce Dormitory but not for Employee Dormitory, as it is an accessory use. A density bonus provision is provided for the Employee Dormitory. There is language prohibiting any of these uses (Employee Dormitory, Rooming House and Workforce Dormitory) from being used as vacation rentals or sold separately as condominiums.

Given under our hands and seal at Bar Harbor this XX day of XXXX, 2019.

Municipal Officers of the Town of Bar Harbor

Gary Friedmann, Chair

Matthew A. Hochman, Vice Chair

Paul A. Paradis

Joe Minutolo

Stephen Coston

Erin E. Cough

Judith C. Noonan

Order
of the Bar Harbor Town Council
For the November 5, 2019 Town Meeting

It is hereby ordered that the following article be placed on the town meeting warrant with voting thereon to be held by Australian ballot.

Warrant Article

LAND USE ORDINANCE AMENDMENT: Shall an ordinance dated May 22, 2019 and entitled "An amendment to site plan review procedure" be enacted?

An amendment to Site Plan Review Procedure

An amendment to Article V

The Town of Bar Harbor hereby ordains that Chapter 125 of the Town Code is amended as follows:

[Please Note: Old language is ~~stricken~~. New language is underlined.]

Chapter 125 , LAND USE ORDINANCE

ARTICLE V Site Plan Review

§125-61 Review procedure.

A. Preapplication meeting.

(1) Major site plans. ~~At least seven business days p~~Prior to submitting a formal application for site plan review to the Planning Board, an applicant shall meet with the Planning Department for

EXPLANATION:

This amendment is to streamline the processing of applications.

Given under our hands and seal at Bar Harbor this XX day of XXXX, 2019.

Municipal Officers of the Town of Bar Harbor

Gary Friedmann, Chair

Matthew A. Hochman, Vice Chair

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Joe Minutolo

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Michele Gagnon

From: Walter Healey/ <4falmouthrd@gmail.com>
Sent: Thursday, June 13, 2019 12:19 PM
To: mgagnon@barharbormaine.gov
Subject: Employee Dormitory, Rooming House, and Workforce Housing

Dear Ms. Gagnon,

Here are some of my thoughts, opinion, and observations concerning the Public Hearing.:

- Residential Housing Districts should be preserved for non corporate housing. These areas are needed to preserve the community nature of the village area.
- in another way, the downtown area/village areas should be available for seniors (I'm one) for "aging in place". Also for families with children so that children can WALK to school or have school nearby for as many students as possible.
- definitions of "FAMILY", "Resident" etc., should be recognizable to the average, " dictionary", meaning. My common sense understanding of this is that a "family" / "family unit" be blood related individuals, or guardians of legal non blood children, etc., such as adopted persons. ANY current definition in the LUO should be returned to this "common sense " meaning. ODD definitions that have crept into the ordinances, should be purged !!!!.

Dormitory, and Workforce Housing, should be located on the Corporate property of the specified employer, e.g. Jackson Lab?, or National Park Service?, or Jordan Pond House?. I 've heard this is true in Canada e.g. St Andrew's By the Sea HOTEL. Transportation should be provided by the employer to the work area if this is necessary. Also some sort of "TAXI/ BUS" service for access to the town during non work need for transportation.

No spurious use of " GRANDFATHERED"!!. If a new LUO is intended to enhance the nature of our town/ village, NO NOT use some misuse of this procedure to avoid good intentions of more recent updates/ changes. Also any current written guidelines to avoid the intent of " the best intent" of newer guidelines should be reversed back to the " best interest of the town/village " . There should be COMMUNITY guidelines not merely CORPORATE interests. There was some discussion of this recently about the 10,000 vs 5,000 square feet requirement (but this is somewhat opaque to me, so KEEP IT SIMPLE and clear, no arbitrary back and forth by Board VOTING without input from Neutral or Town Attorney.

The Planning Board should be require to RESPECT the input of the TOWN ATTORNEY if he/she says some new recommendation does not meet the intent of the guidelines, LUO. I.E. the various BOARD should not be permitted to override a TOWN ATTORNEY opinion on some split vote, e.g. 3 - 2 .

Major changes of HOUSING, DORMATORY, ROOMING HOUSE rules should be sent to the VOTERS at a regular JUNE VOTING

session or November balloting event. This is again to avoid a split vote in some town boards when the consequences have multi-year consequences.

Do not allow any reduction in LOW INCOME housing availability or other changes to be "ad hoc" changed in the LUO without some review by a more neutral or independent body. We need the Residential Housing space for lower income families and seniors on limited incomes. (in the village area)

Any dormitory , rooming house, or workforce housing should be of a reasonable quality and design, eg landscaping, spacing of buildings, sidewalks, open space,..... so that if the complex reverts to a different type of ownership (in some near or distant future time) the complex is "convertible" to other uses, .i.e.. low income apartments, or some other "enhancing" aspects of small town / quality of life.

Thanks for listening, Walter J. Healey
Bar Harbor senior citizen

Michele Gagnon

From: Edmond J. Bearor <ebearor@rudmanwinchell.com>
Sent: Tuesday, April 16, 2019 5:35 PM
To: 'mgagnon@barharbormaine.gov'; ceo@barharbormaine.gov
Cc: Stephen W. Wagner; Katie R. Foster
Subject: determination if use meets the definition of TA-1

Michele, Angie,

We conclude the use likely falls within the scope of TA-1. It seems reasonable to think that "in the private, year-round residence of the host family" is not necessarily limited to a single structure and could include multiple buildings under certain circumstances. "Residence" is not defined in the LUO. There isn't anything in the Ordinance suggesting that one's residence can't also be thought to include detached building structures. The other TA definitions seem to use the terms building (singular) and buildings (plural), indiscriminately, suggesting that the lack of such a distinction in TA-1 means that is not a critical criterion for determining if the Lavallee's proposed use is a TA-1 use.

Looking at TA-1 as a whole, it seems that the intent is to allow a limited number of accommodations within what "feels" like a home. So I think the question for the PB is whether this bedroom operates like an extension of the home or is really a completely separate and independent unit that could (assuming it was allowed) serve as a free-standing residence. The fact that the utilities are connected and the structure is only a bedroom (assumption on my part, notes are not clear) tends to show it operates more like a bedroom than a separate residential unit. While this interpretation is a bit speculative, it seems to me all the TA-1 definitions were intended to be somewhat flexible, perhaps giving the PB some discretion to determine whether the use fits. For example, some of the TA definitions include phrases like "where it is felt." The legal soundness of these definitions is, needless to say, questionable, since, they likely give too much discretion to the planning board.

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