

PLANNING BOARD

PACKET OF MATERIALS

MEETING DECEMBER 5, 2018

Cover page with date

Agenda

Minutes for approval

Applications

Supporting Documents

**Agenda
Bar Harbor Planning Board
Wednesday, December 5, 2018
Council Chambers- Municipal Building
93 Cottage Street
6:00 P.M.**

- 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. November 14, 2018
- VI. REGULAR BUSINESS**
 - a. **Public Hearing: PUD-2017-02 – Planned Unit Development - Village**
Project Location: 25 West Street Extension, Bar Harbor tax Map 103, Lot 48 and 49
Applicant: BHAPTS, LLC
Application: The applicant is proposing to construct four new buildings with two dwelling units in each and to reconfigure the existing dwelling unit layout in the existing four buildings on the site.
- VII. OTHER BUSINESS**
 - a. **Solar Land Use Ordinance Amendment** – Staff request for guidance on how the Board wants to proceed with the application
 - b. **Pending Applications**
 - i. Jones Marsh PUD-O
 - ii. Hamilton Hill Subdivision
 - iii. White Spruce Road Subdivision
- VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA**
- IX. ADJOURNMENT**

Minutes
Bar Harbor Planning Board – Special Meeting
Wednesday, November 14, 2018
Council Chambers- Municipal Building
93 Cottage Street
6:00 P.M.

I. CALL TO ORDER

The Chair called the meeting to order at 6:01 PM. Members present: Tom St. Germain, Chair; Basil Eleftheriou, Jr., Secretary; Joseph Cough, Vice Chair; and Alf Anderson, Member.

Also present: Angela Chamberlain, Code Enforcement Officer and Interim Planning Director; and Catherine Leatherman, Administrative Assistant.

II. ADOPTION OF THE AGENDA

Mr. Anderson moved to adopt the agenda as prepared. Mr. Eleftheriou, Jr. seconded the motion and the Board voted 4-0 to approve the motion.

III. EXCUSED ABSENCES

Mr. Anderson moved to excuse John Fitzpatrick. Mr. Eleftheriou, Jr. seconded the motion and the Board voted 4-0 to approve the motion.

IV. PUBLIC COMMENT PERIOD

There was none.

V. APPROVAL OF MINUTES

November 07, 2018

Mr. St. Germain asked for motion to approve the minutes.

Mr. Jeffrey Crafts, PE representing Betsy Mills and other abutters of PUD-2017-02, addressed the Board and requested an amendment to the minutes with regard to his stance toward the berm and fence.

Mr. Anderson moved to approve the minutes of the November 07, 2018 meeting with a minor correction as requested by Mr. Crafts to reflect that he had not stated that the berm and fence do not comply with the PUD ordinance and this was never his contention or statement. Mr. Cough seconded the motion and the Board voted 3-0-1 to approve the motion with Mr. Eleftheriou, Jr. abstaining.

VI. REGULAR BUSINESS

- a. Continuation of Completeness Review: PUD-2017-02 – Planned Unit Development – Village Project Location: 25 West Street Extension, Bar Harbor tax Map 103, Lot 48 and 49 Applicant: BHAPTS, LLC**

Application: The applicant is proposing to construct four new buildings with two dwelling units in each and to reconfigure the existing dwelling unit layout in the existing four buildings on the site.

Mr. St. Germain pointed out a discrepancy in need of correction on the staff report which incorrectly cited section 125-69M. Mr. St. Germain noted that the relevant section is actually 125-69S. Staff affirmed that this would be corrected.

Mr. Salvatore and Mr. Moore, representing Ocean Properties, asserted that any outstanding items identified on the staff report and discussed at the meeting of November 07, 2018, have since been addressed or provided, with the exception of the Public Works capacity statement, which is still pending.

Mr. St. Germain allowed Mr. Jeffrey Crafts a point of order to discuss a procedural point. Mr. Crafts inquired what the waiver list was that everyone was addressing. Mr. St. Germain clarified with staff that the waiver list is a document that begins in the origin of the process and evolves over time, as the project evolves. Mr. Cough added that this document is a staff suggestion to the applicant in preparation of their application, which may or may not be implemented by the Board. Mr. Cough also discussed evolution of project changes, which would also change a waiver list. Mr. Crafts inquired as to how a waiver suggestion could be challenged. Staff stated that this is an appropriate time to raise waiver concerns while the Board is in discussion regarding the completeness of the application and taking action on additional waiver requests.

Mr. St. Germain explained that the Board needed to discuss, and vote on the additional waivers tonight. He added that other waivers had been granted by the Board at the March 21, 2018 sketch plan review meeting. Mr. St. Germain indicated that he would like to grant the applicant an opportunity to explain the additional waivers.

Mr. Moore explained that this project has been in the works for a long time and had changed from the original meeting. Mr. Moore asserted that many items on the original waiver list had become irrelevant such as the permitting from the Department of Environmental Protection (DEP). Mr. Moore noted that he had met with DEP representatives on site and they determined that the DEP does not have a protected resource within their jurisdiction that would require permitting so this was not a necessary submission anymore.

Mr. St. Germain discussed the staff report and the recent submissions, and offered that other than the Public Works' pending capacity statement, the application appears complete.

Mr. St. Germain opened the floor to Mr. Crafts to discuss procedural interests.

Mr. Crafts addressed the Board and inquired what the "it" is that is marked complete this evening when the Board votes on the completeness of the application. Mr. Crafts requested a complete document available for public view in order to follow the paper trail for this application.

Mr. St. Germain expressed to the applicant his concern that there is no clear path from the original proposal of 16 units to 18 units proposed this evening. He discussed that while the Board was shown by presentation how Mr. Moore got from 16 to 18 units, there is no document that demonstrates this evolution.

Mr. Moore noted that the purpose of the meeting tonight was for a determination of completeness. Mr. Moore raised concerns that some of the discussion was leaning toward compliance rather than completeness. He elaborated that it is during the public hearing that the substance of the

submittals address any concerns. Mr. Moore opined that the discussion regarding compliance should not be occurring during the completeness review. Mr. Moore noted that the documents that were requested by the Board for completeness have been provided and that documents such as the plat, which is admittedly a draft document, and concerns of substance should be discussed at the public hearing stage of the process.

Mr. Cough discussed that he recognized the large amount of submittals provided after the binder was submitted originally, which may or may not be organized as intended by applicant, and are not in the format that would be expected of the applicant.

Mr. Crafts addressed the Board and noted that he is concerned with completeness and not compliance this evening and that he would like the "it" of completeness to be voted on by the Board defined.

Mr. St. Germain indicated that the Board would be looking for a complete packet by the applicant.

Mr. Salvatore clarified that what the Board is seeking from him at this meeting, is the finding of completeness, in that all documents are submitted by the applicant and that reorganizing could and would take place after a completeness vote by the Board. Mr. Salvatore also noted that the complete package is available for review in the Planning Board office.

Mr. Moore noted that the ordinance is clear on the applicant's right to submit revised documents up to seven days prior to public hearing date.

Mr. St. Germain described the additional written waiver requests being requested which were submitted on November 09, 2018.

Item 3B. Purchase and Sale Agreement: Applicant requests a waiver as the applicant is the owner on deed provided.

Item 5A. Army Corps of Engineers: Applicant requests a waiver as there are no regulated wetlands or waterways on the property.

Item 7.1B. Individual Well: Applicant requests a waiver as the dwellings will be served by municipal water, not a well.

Item 7.1 E. Approval by MDOT: Applicant requests a waiver as no changes to vehicular entrances is proposed and no anticipation of a measurable increase in vehicular traffic on the existing entrance is proposed.

Item 12A. Drainage Scheme at all Intersections: Applicant requests a waiver as no road changes or new vehicular access changes are being made as part of this project.

Item 12B. Intersections of Proposed Streets with Existing Streets: Applicant requests a waiver as no road changes or new vehicular access changes are being made as part of this project.

Item 12C. Access – Roadway/ROW with edge of Pavement, Shoulders: Applicant requests a waiver as no road changes or new vehicular access changes are being made as part of this project.

Item 12D. Drainage Feature: Applicant requests a waiver as no road changes or new vehicular access changes are being made as part of this project.

Item 13. E911: Applicant requests a waiver as there are no new roads or driveways that would require the E911 identifier.

Item 18B. State Fire Marshal's Preliminary Approval: Applicant requests a waiver and asked that the matter of detailed building plans be delegated to the Code Officer after review by the Fire Marshal's Office.

Item 23. Traffic Impact: Applicant requests a waiver as traffic is tied to units, not number of bedrooms. Applicant also contends that adding two units will not alter traffic impact at this level of development intensity. Additionally, residents of the units are anticipated to use bicycles, walk, or utilize bus services to get from the housing to places of employment.

Mr. St. Germain noted that procedurally, the Board will first vote on waivers, then vote on completeness, then schedule the application for a public hearing.

Mr. St. Germain opened the meeting up for public comment regarding waiver requests and noted that he reserved right to reopen for public comment again regarding completeness, should he so choose.

Mr. St. Germain acknowledged Mr. Crafts and invited him to speak.

Mr. Crafts addressed the Board with a rebuttal on a procedural issue, and noted his confusion regarding waivers and suggested that the Board go down the application checklist, dated December 22, 2017 and titled "The Bar Harbor Planning Department subdivision application checklist", at tonight's meeting in order to determine if the application is complete.

Ms. Chamberlain clarified that this form is intended for the preliminary stage of applications and that the checklist evolves over time, as, often, does the project. Ms. Chamberlain noted that at the time the applicant submits their application, the applicant also submits a written request for waivers. Ms. Chamberlain explained that this checklist is merely intended to be a tool used by the applicant as staff suggestions for potential waiver requests and should not be relied upon as, or confused with, a waiver request that the applicant has actually requested to the Board in writing.

Ms. Chamberlain further explained to Mr. Crafts that it is the written request made by applicant, that the Board is acting upon this evening, not the preliminary checklist completed at infancy of the project, which Mr. Crafts preferred to be utilized. Ms. Chamberlain explained that staff uses the column on the left side of the checklist to document what the Board voted on, as far as whether there was a submittal or a waiver was granted for each item on the checklist.

Mr. Crafts responded by asking the Board for a document that indicates whether there was a submittal or a waiver for each item on checklist. Mr. Crafts noted that he obtained this waiver list on the town website. Mr. Crafts expressed confusion as to what waivers the Board was acting on at this meeting.

Mr. Cough asked Mr. Crafts to explain what items that he would like to see exhibits on.

Mr. Crafts went through the checklist and noted his opinion on each item as follows:

- *Item 4A. Proposed easements covenants: Mr. Crafts noted his objection to a waiver of this submittal.*
- *Item 5B. Maine DEP: Staff noted that there is an exhibit labeled 9R. and Mr. Crafts noted his objection to the exhibit.*
- *Item 6A. Police Capacity Statement: Staff noted that this was provided by applicant.*
- *Item 7D. Fire Hydrants: Mr. Cough verified that it is on waiver list and Mr. Crafts objected. Staff noted that this information was provided on a plan.*
- *Item 6B. Public Works Capacity Statement: This item is not waived and is expected shortly according to Mr. St. Germain. Mr. Crafts agreed that was appropriate.*
- *Item 6D. Schools and busing: Staff noted that this item was previously waived and again explained that this checklist contains items that were already acted upon by the Board in March and that only the new waivers requested on November 09, 2018 in writing by the applicant were being voted on this evening. Mr. Crafts voiced his objection to this waiver.*
- *Item 7H. Stormwater disposal system. Mr. Crafts wants to review the calculations.*
- *Item 7.1A-E: Staff again clarified that 7.1B and 7.1E are requested waivers for this evening, and that 7.1A, 7.1C, and 7.1D were waived in March.*
- *9G., 9H., 9I., 9J., and 9K. Staff noted that items 9G. & 9K. were not waived and 9H., 9I., & 9J. were previously waived.*
- *9T., 9U., 9V., 9W., 9X., 9Y., and 9Z. Staff noted that none of these were waived except 9X. Mr. Crafts had no objection.*
- *9BB. Fire Hydrants and Fire Ponds. Staff noted these were no waived.*
- *Mr. Crafts objected to item 9FF. being previously waived.*
- *Item 12A. Mr. Crafts objected to this new waiver request.*
- *18A. was supplied and item 18B. was a new waiver request. Mr. Crafts objected to the waiver of item 18B. even after staff explained that the Fire Marshal does not look at dwellings.*

Mr. St. Germain acknowledged Ms. Donna Karlson.

Ms. Karlson identified herself as a resident of Bar Harbor. She noted that she resides a little less than 650' from the proposed project. Ms. Karlson declared some learning disabilities and added that she would not be able to follow the organizational piece this evening. She cited sections 125-66D. and 125-69R and stated that she felt the Board needed to see the 99 year agreement that runs with the land for affordable units, which is required in those two places of the ordinance. Ms. Karlson also noted that she understands that the purpose of the meeting was completeness review but she would like to see how the project meets section 125-66 J.(39). It was confirmed by staff that this item was waived previously. Ms. Karlson noted her objection to that waiver, citing that, according to her, this is not in the spirit of the PUD provisions.

Ms. Karlson stated that item 25A. on the checklist goes to noxious noise impacts that, according to Ms. Karlson, has been a concern raised at neighborhood meetings, and she believes that the noise may be considered a noxious effect, by having a large concentration of workers in a small area. She also cited her belief of a police call in August 2018 for disorderly conduct and a noise disturbance. Ms. Karlson stated that, according to her, this could this be considered a noxious noise problem, and inquired if Board would consider this.

Ms. Karlson discussed section 125-67X. and stated that the ordinance requires that the applicants must follow everything in the ordinance. Ms. Karlson's understanding of section 125-67 is that historic sites and properties abutting property should be listed and documented, which she stated was documented in the planning staff report.

Ms. Karlson discussed that her understanding was that a person lives at the development and has children, so she thinks a school capacity statement as outlined in section 125-66F. should be required. Ms. Karlson's also voiced that the Board cannot limit affordable housing to developments that do not allow children, so Ms. Karlson objects to a waiver.

Mr. St. Germain noted that the applicant requested a waiver for Item 25B., which addresses hours of operation for a business, not family housing.

Mr. Moore discussed the legal documents standards under exhibit 4A. Mr. Moore does not agree that this is where the affordable housing agreement belongs. Mr. Moore noted that information provided to date is a condition on the plat that indicates that those units will be provided and maintained in compliance with the ordinance. Mr. Moore cited that his reason for this preference is that if the ordinance changes, then the agreement may change. Mr. Moore elaborated that it is premature to draft an arrangement of how this would be done. Mr. Moore suggested the ability to put a notation on the plat that the legal document is filed with the registry of deeds.

Mr. Moore noted with respect to Item 7D., fire hydrants, the location and details of the hydrants have been provided on the plan. Mr. Moore acknowledged that fire ponds are another issue and that the fire chief had not requested a fire pond for this project.

Mr. Moore discussed the schools and busing exhibit and offered to reach out to the superintendent of schools and get a letter to submit.

Mr. Moore stated that item 7H. was provided to the Board.

Mr. St. Germain opened up discussion to the Board on the new waiver requests that were before the Board. Mr. St. Germain noted that some of the previously requested waivers had been supplemented by exhibits provided by the applicant. Mr. St. Germain noted eleven items that were before the Board for waiver requests this evening.

Mr. Cough expressed preference to go by the checklist and address all waivers, whether previously granted or being deliberated on this evening, so that he could have a full current list in front of him.

Mr. St. Germain noted that the waiver requests for this evenings deliberation could be addressed quickly and proceeded to cite the following:

Mr. St. Germain addressed waiver request of Item 3B. Purchase and Sale agreement. It was noted that the applicant is the owner, as indicated on the deed in exhibit 3A. provided on 10/24/2018. Mr. St. Germain asked the Board for a motion.

Mr. Cough moved to waive item 3B. because there is no purchase and sale agreement as the owner is the applicant. Mr. Anderson seconded the motion and the Board voted 4-0 to approve the motion.

Mr. St. Germain noted that previously all items in exhibit 4 were waived and tonights discussion raised whether components of the affordable housing agreement should be provided as an exhibit. Mr. St. Germain noted that it is in the deed restrictions section where this would apply and queried Mr. Moore with regard to his concerns with this.

Mr. Moore expressed that he would like the information located on the plat, which he observed to be a legal document, filed with the registry of deeds. Exact language would be to the effect of four units would be provided to meet the affordable housing requirement, and the applicant would cite the reference in the ordinance. Mr. Moore noted his position that this way would be more flexible to meet both the needs of the applicant and the Town, should the ordinance ever change.

Mr. Moore noted a belief that the Town's interest in this project is that four affordable housing units are provided per the ordinance in place. Mr. Moore opined that the language, provided on the plat, which he asserts is a legal document, addresses the need for that and he asserts that none of the items on item 4. that otherwise would relate, get to that.

Ms. Chamberlain addressed the Board and noted that the Board needs to insure they have all the necessary documents to make the required findings that the applicant complies with all the requirements of 125-69R. Ms. Chamberlain noted that when the Board begins to make findings, they need to cite the documents that are in front of them that their findings are based on.

Ms. Chamberlain inquired with Mr. Moore if the Director of Public Works, Mr. Reeves had requested an agreement with the Town for a sewer easement.

Mr. Moore noted that the sewer line that currently runs along the property that they share with the farmstead next door, has a public eight inch sewer line but surveys indicate that that had not been memorialized. However the town has a beaten path right that goes with that improvement or an implicit sewer easement that goes over property. Mr. Reeves and the applicant agreed that this easement would be ten feet, which is why the applicant's storm water system is included in that. Mr. Moore added there is no condition yet which requires a legal document and Mr. Moore would like to memorialize on the plat that there is agreement of an easement and the terms of the easement. Mr. Moore does not believe that for completeness review there is a need for a legal document.

Mr. Cough inquired with Ms. Chamberlain how to ensure memorialization on the plat rather than with legal documents and how the Board would be covered should the Board agree to Mr. Moore's request.

Ms. Chamberlain explained that something like that could be a condition of approval, but noted that this would be difficult without seeing the details, as meeting the requirements of 125-69R. is a big part of this project.

Mr. St. Germain inquired with staff if this should be required as an exhibit, as it is part of the application. Ms. Chamberlain affirmed that this is an important piece to the PUD requirements.

Mr. Moore noted that he cited 125-69R. on the plat and that this would be sufficient as a reasonable response to 125-69R. Mr. Moore stated that at a future date, for compliance, not the completeness being addressed tonight, he would be willing to submit future documents per the standards of the ordinance.

Mr. Salvatore reminded the Board that there had been previous discussions between the applicant and the Board regarding how they are getting to the total number of units and the memo submitted by the town attorney of how they arrived at certain numbers, may not be applicable during compliance review and that to require them this evening during completeness may not be necessary.

Mr. Cough noted that under 125-69R., he believes that a plat could be considered applicable.

Ms. Chamberlain clarified with the Board that if the question tonight is whether or not the Board is going to waive the requirement for item 4A. Legal Documents, the Board has two options. If the Board chooses not to waive the item, they do have a document submittal as shown on the plat, and they can discuss if the submittal meets the standards of compliance at the public hearing. Alternately, the Board can waive the item as not required.

Mr. St. Germain clarified that the sewer easement was covered with a submittal that would be vetted for compliance during the public hearing phase of application.

Mr. Eleftheriou, Jr. noted that the number of units was documented on the plat.

Mr. Moore noted that plat is not a numbered exhibit because it is a document that gets sealed and filed with the registry and refers to the affordable housing requirements under 125-69R. and with respect to the sewer easement that notation is located on exhibit 9.1.

Ms. Chamberlain suggested to the Board that they call the plat the plan entitled "subdivision plat dated 10-11-2018 prepared by Plisga and Day."

Mr. Cough moved that item 4A., legal documents, not be waived because the applicant addressed the submittal on the subdivision plat dated 10/11/2018 prepared by Plisga and Day. The sewer agreement or easement with the Town is referenced in exhibit 9.1. Mr. Anderson seconded the motion and the Board voted 4-0 to approve the motion.

The Board agreed to address the waivers that no one was disputing next.

Mr. St. Germain noted that Item 5B. references an exhibit labeled 9R.

Mr. St. Germain acknowledged Mr. Crafts had objected not to 9R. but to Mr. Moore's statement regarding impervious surface. Mr. Crafts requested a calculation of impervious surfaces.

Mr. Moore referred to exhibit 9.1 where there is a table that summarizes lot coverage on the lot and indicates the square foot area of that. Mr. Moore requested that the waiver request be adjusted to note that there is a submittal regarding that the area of impervious surface is provided.

The Board discussed the issue of impervious area and DEP requirements. Mr. Crafts interjected that it is the waiver of DEP storm water management permit that he objects to.

Mr. Eleftheriou, Jr. moved to waive items 5A. and 5B. because they are addressed in item 9R. Mr. Cough seconded the motion and the Board voted 4-0 to approve the motion.

Mr. St. Germain noted that the Public Works Capacity Statement could be a condition of approval if the application was found complete.

Mr. St. Germain noted that items 7.1B. Individual Well was being requested as a waiver as the project will be served by Town water.

Mr. Cough moved to grant waivers for item 7.1.B Individual well, as the development is on town water and item 7.1E Approval by DOT as the applicant asserts no changes are proposed to vehicular entrances and there are no increases in measurable traffic expected on the existing entrance. Mr. Eleftheriou, Jr. seconded motion and the Board voted 4-0 to approve the motion.

Mr. Cough moved to grant waivers for items 12A. through 12D. Mr. Eleftheriou, Jr. seconded the motion and the Board voted 4-0 to approve the motion.

Mr. Eleftheriou, Jr. moved to waive item 13., E911, because there are no new roads or drives. Mr. Anderson seconded the motion and the Board voted 4-0 to approve the motion.

Mr. Anderson moved to waive item 18B. Fire Marshal preliminary approval, based on the staff indication that the fire marshal does review residential projects. Mr. Eleftheriou, Jr. seconded the motion and the Board voted 4-0 to approve the motion.

The Board discussed item 23. Traffic Impact, with regards to the addition of approximately 23 individuals. Staff indicated that the ordinance states that the standard is for the applicant to provide a statement indicating the number of trips per day and the impact of adding 2 units. Mr. Eleftheriou, Jr. requested an estimated trip generation.

Mr. Eleftheriou, Jr. moved to deny the request for a waiver of item 23A. but waive item 23B. because item 23B. is required for over 100 trips per day. Mr. Cough seconded the motion and the Board voted 4-0 to approve the motion.

Mr. Anderson moved to accept the mitigation plan as shown on exhibit 25A. and waive items 25B. as this is not a business operations application. Mr. Cough seconded the motion and the Board voted 4-0 to approve the motion.

Mr. Moore requested to address item 19. Solid and Hazardous Waste. He noted that item 9GG. covered locations of the different wastes and on exhibit 9. of the site plan the applicant indicates the location of the dumpster which is solid waste and there are no locations of hazardous waste. Mr. Moore requests that the Board be clear that applicant does not have to address hazardous waste as part of the project due to two different standards.

Mr. Cough clarified with staff that the Board does not need to act on this as the applicant has addressed the component of waste that he has, and that is solely solid waste.

Mr. St. Germain indicated that with the exception of the public works capacity statement and the traffic impact statement, the Board has been in the practice of finding applications complete, with the condition that missing items be received by a date certain.

Mr. Eleftheriou, Jr. requested that Ms. Chamberlain provide the Board with a revised check list that covers waivers and submittals to date, prior to the public hearing.

Mr. Moore noted that the last date for any new submittals would be November 28, 2018 per the ordinance.

Mr. St. Germain opened the meeting for public comment on the completeness of the application

Mr. Crafts inquired whether or not anything would occur between this meeting and December 05, 2018. Mr. St. Germain stated that this application appears to be complete with the exception of the Public Works capacity statement and the traffic impact statement, and staff providing a waiver checklist.

Mr. Moore noted that applicant has two weeks, until November 28, 2018, to provide outstanding items.

Mr. St. Germain noted that his discussion was based on completion and that the applicant has until two weeks from tonight to submit all documents.

Ms. Chamberlain read section 125-61 into the record regarding submission deadlines prior to the public hearing.

Mr. St. Germain recognized Ms. Karlson.

Ms. Karlson inquired if the two day deadline for any other party wishing to submit prior to the public hearing was calendar days or business days.

Mr. St. Germain stated that since hearing would be on Wednesday, December 5, 2018, the date for any other party to submit would be Monday December 3, 2018.

Mr. Eleftheriou, Jr. moved to find PUD-2017-02 complete with the exception of item 6B. Public Works capacity statement and item 23A. traffic impact estimate with submittals due no later than November 28th and to schedule the public hearing for December 5, 2018. Mr. Cough seconded the motion and the Board voted 4-0 to approve the motion.

VII. OTHER BUSINESS

a. 2019 Calendar

- i. A draft of the 2019 Calendar is prepared for the Board's review and adoption.*

Mr. Fitzpatrick's email was discussed regarding the impact of public participation and his concern that earlier meeting times would adversely impact public participation. The Board discussed this and did not concur with any adverse impact on public participation. Mr. Anderson noted that public participation does not seem to improve with later meeting times and he preferred getting out earlier in the evening.

Mr. Cough voiced his concern that it may be difficult for certain applicants to attend board meetings at 4:00 PM. Mr. Cough noted that he prefers a 6:00 PM meeting time.

Mr. Anderson moved to adopt the calendar as prepared with the change that the meeting time will be at 4:00 PM for all meetings for the year of 2019, and omit the meeting on July 03, 2019. Mr. St. Germain seconded the motion and the Board voted 3-1 to approve the motion with Mr. Cough against.

Mr. Eleftheriou asked staff if it was possible to amend a meeting time if it was difficult for a particular applicant. Mr. Anderson and staff agreed that this was possible.

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

Staff indicated that there will be no Planning Board meeting scheduled on November 21, 2018 as there were no new applications.

Mr. St. Germain indicated that the dormitory amendment should be on agenda for the meeting on December 19, 2018.

Staff informed the Board that workshop with the Design Review Board will be televised to give the public an opportunity to hear what the Design Review Board is proposing.

Mr. St. Germain noted that he had attended the Town Council goal setting meeting and they support increased densities in areas; increased lot coverages, and decreased area per family standards as ways to incentivize housing. They also support a dormitory definition.

IX. ADJOURNMENT

Mr. Anderson moved to adjourn at 8:44 PM. Mr. Eleftheriou, Jr. seconded the motion and the Board voted 4-0 to approve the motion.

Signed as approved:

Basil Eleftheriou, Jr., Secretary
Planning Board, Town of Bar Harbor

Date



Town of Bar Harbor Planning Department Staff Report

Application:

PUD-2017-02

Meeting Date:

March 21, 2018 – Sketch Plan Review

June 20, 2018 – Continuation of a Sketch Plan Review

September 19, 2018 - Continuation of a Sketch Plan Review

November 7, 2018 – Completeness Review

November 14, 2018 – Continuation of Completeness Review

December 5, 2018 – Public Hearing

Applicant:

BHApts. LLC

1000 Market Street

Building One, Suite 300

Portsmouth, NH 03801

Applicant's Representative:

The Moore Companies

P.O. Box 120

Hulls Cove, ME 04644

Project Location:

25 West Street Extension

Map 103, Lots 048-000 and 049-000

Land Use District:

Village Residential District

Permitted Use:

PUD-V

Project Description:

The applicant proposes to construct four new buildings with two dwelling units in each and reconfigure the existing dwelling layout.

Applicable Laws:

- Bar Harbor Land Use Ordinance section 125-66 lists all submission requirements the applicant is required to provide as part of the site plan/subdivision application.
- Bar Harbor Land Use Ordinance section 125-67 contains the General Review Standards the Planning Board shall use to verify site plan compliance.
- Bar Harbor Land Use Ordinance section 125-69 S. contains the standards for Planned Unit Development – Village.
- Bar Harbor Land Use Ordinance section 125-69 R. contains the standards for Affordable Housing.
- Bar Harbor Land Use Ordinance section 125-69 N. contains the standards for Subdivisions.

Staff Recommendation

Section 125-72 A. – Sketch Plan Review - The Board held sketch plan meetings on March 21, 2018, June 20, 2018, and September 19, 2018. The Board conducted a site visit on April 19, 2018 and held a neighborhood meeting directly following.

Waivers – The Board acted on the applicant’s waiver requests at the March 21, 2018 and November 14, 2018 meetings.

Section 125-61 E. – Completeness Review –

The Board found that application complete at the November 14, 2018 meeting but asked the application to supply documents for:

1. Exhibit 6B. Public Works Department Capacity Statement **(Still outstanding, expected prior to the December 5, 2018 meeting.)**
2. A traffic impact statement for exhibit 23A. **(Provided)**

Section 125-67 – Suggestions for Compliance:

The applicant submitted the following new documents on November 28, 2018:

1. Exhibit 23. “Trip Generation Estimate”.
2. Exhibit 17.1 “Maine Erosion and Sediment Control BMP’s”
3. Exhibit 17.0.1 “Grading, Drainage and Erosion Control”.
4. Exhibit 11.0a “Landscape, Buffering and Lighting”.
5. Subdivision Plat with a date of 11.28.2018.
6. Stormwater Modeling and Calculations.

Public Comment – Staff recommends that the Board accept any brief public comment on whether the proposed development will comply with the review standards set forth in sections 125-67 and 125-69.

Section 125-64 - Modification of Standards – The applicant is asking for a modification of standards as allowed under section 125-64. The request for a modification is for sections 125-67 L.(5) and 125-67 L.(12). The applicant noted 125-67 L.(10) in their request but I believe they cited the wrong section. The Board needs to take action on those requests.

Draft Decision

I prepared a draft decision for your review. I have highlighted areas that need additional attention from the Board. In the draft decision I noted the following:

1. The plans prepared by Maine Licensed professionals need to be sealed.
2. The Board needs to make a motion to accept the reduced setbacks between buildings as allowed under section 125-69 S. (6)(d)[1]. I prepared draft language in two areas of the decision that can be modified as the Board sees fit.
3. The Board needs to make a decision on the finding that the development meets the municipal services standard without the Public Works Capacity statement.
4. The Board needs to make a decision on the finding that the development meets the legal documents standard without the sewer and stormwater easement language, and the standards that pertains to the affordable housing provisions of section 125-69 R.
5. The Board needs to clarify whether the permitted use allowance in section 125-69 S. is not applicable or meets the standard.
6. The Board needs to give additional attention to the requirements of section 125-69 R. I was not able to cite findings on the standards because there is no documentation to support findings.
7. The Board could make the requirement that the affordable housing units will be constructed first, or be located within the existing buildings, to ensure that the affordable units are completed for occupancy before the other units a condition of approval.
8. The Board asked the applicant to provide a narrative on how the number of affordable units was calculated. That information has not been provided.

**TOWN OF BAR HARBOR
Planning Board**

93 Cottage Street, Suite I
Bar Harbor, Maine 04609-1400
Tel. 207-288-3329 Fax 207-288-3032

DRAFT DECISION

Date: December 5, 2018

Application: PUD-2017-02 Planned Unit Development –Village

Project location: 25 West Street Extension, Tax Map 103, Lots 048-000 and 049-000

Applicant: BH Apts., LLC

Application: The applicant is proposing to construct four new buildings with two dwelling units in each and reconfigure the existing dwelling layout.

Zoning district: Village Residential

Permitted Use: PUD - V

To the Code Enforcement Officer:

Under the authority and requirements of the Land Use Ordinance Article V, Section 125-61. F, at the properly noticed public hearing on December 5, 2018, by a motion duly made and seconded, it was voted to approve the noted application.

The approval is based upon the following submitted plans:

1. "Subdivision Plat" dated 11.28.2018 and prepared by Plisga and Day, Land Surveyors.
2. "Stormwater modeling and calculations" dated November 28, 2018 and prepared by The Moore Companies.
3. "Grading, Drainage and Erosion Control" dated November 27, 2018 and prepared by The Moore Companies.
4. "Landscaping, Buffering and Lighting" dated November 27, 2018 and prepared by The Moore Companies.
5. "Proposed Site Plan" dated 10.18.2018 and prepared by The Moore Companies.
6. "Existing Site Plan" dated 10.18.2018 and prepared by The Moore Companies.
7. "Utility Plan" dated 11-7-18 and prepared by Andrew McCullough, Engineering Consultants.
8. "Sitework Details D-1" dated 10/15/18 and prepared by Andrew McCullough, Engineering Consultants.
9. "Sitework Details D-2" dated 10/15/18 and prepared by Andrew McCullough, Engineering Consultants.
10. "Sitework Details D-3" dated 10/15/18 and prepared by Andrew McCullough, Engineering Consultants.
11. "Existing Floorplans" dated 11.9.2018 and prepared by TMS Architects
12. "Buildings A, B, and C Proposed Floorplans" dated 11.9.2018 and prepared by the TMS Architects.

Commented [AC1]: The plans need to be sealed by the appropriate professional as required.

13. "Building "G" Elevations and Section" dated 10/16/2018 and prepared by TMS Architects.

This approval is based upon the following FINDINGS AND CONCLUSIONS OF LAW:

1. Based on the documents received, this application meets the requirements under the Land Use Ordinance Article V.
2. Based upon the documents received, and accepting the work of the professionals who have prepared the documents, this application meets the requirements of Section 125-67 as found below:
 - a. The Board finds the use, Multifamily II, is allowed by Planned Use Development in the Village Residential district per section 125-20 E. of the Bar Harbor Land Use Ordinance.
 - b. The Board finds that the development will meet the minimum lot standards for the Village Residential District. As allowed under section 125-69 S. (6)(d)[1], the Board moved to reduce the distances between buildings as required in section 125-67 B.(3) to the distances shown on exhibit 9.1 dated 10.18.2018 to allow the buildings to be clustered to create larger buffers and open space on the site.
 - c. The Board finds that the development will meet the maximum height requirements for the Village Residential District as shown on exhibit A1.0c.
 - d. The Board finds that the development meets the requisite parking standards as shown on exhibit "Subdivision Plat" dated 11.28.2018.
 - e. The Board finds that the development meets the minimum parking areas and driveways standards as shown on exhibit "Subdivision Plat" dated 11.28.2018.
 - f. The Board finds that the minimum loading requirement is not applicable to this application.
 - g. The Board finds that the streets, sidewalks and access standards are not applicable to this application.
 - h. The Board finds that the development will meet the buffering and screening requirements as shown on exhibit 11.0a dated 11.27.2018.
 - i. The Board finds that the public water supply standard is not applicable to this project.
 - j. The Board finds that the development will meet the municipal water standards as shown in exhibit 6E.
 - k. The Board finds that the groundwater standards are not applicable to this application.
 - l. The Board finds that the development will meet the stormwater management standards as shown in exhibit 17 "The stormwater modeling and calculations" and dated November 28, 2018, exhibit 17.0.1 "Grading, Drainage and Erosion Control" dated 11.27.2018,

Commented [AC2]: Feel free to modify as the Board sees fit.

and exhibit 17.1 "Maine Erosion and Sediment Control BMP's" dated 10/2016.

- m. The Board finds that the development will meet the municipal sewer facilities standards as shown in exhibit 6C.
- n. The Board Department finds that the private sewage waste disposal standards are not applicable to this application.
- o. The Board finds that the soils information are not rated severe or very severe where this development is shown in exhibit 10.
- p. The Board finds that the development meets the landscaping standards as shown in exhibit 11.0a "Landscaping, Buffering and Lighting" dated 11.27.2018.
- q. The Board finds that the development will not cause unreasonable soil erosion as shown on exhibit 17.1 "Maine Erosion and Sediment Control BMP's" dated 10/2016.
- r. The Board finds that the hundred year flood standards are not applicable to this application.
- s. The Board finds that the air pollution standards are not applicable to this application.
- t. The Board finds that the development will meet the refuse disposal standards as shown on exhibit 9.1 "Proposed Site Plan" dated 10.18.2018 and in exhibit 19A. dated November 9, 2018.
- u. The Board finds that the dangerous and hazardous materials and wastes standards are not applicable to this application.
- v. The Board finds that the vibration standards are not applicable to this application.
- w. The Board finds that there are no significant spawning grounds or wildlife habitat in this development as shown in exhibit 9T.
- x. The Board finds that there are no rare and irreplaceable natural areas in this development as shown on exhibit 9U.
- y. The Board finds that the radiant heat standards are not applicable to this application.
- z. The Board finds that the development meets the lighting standards as shown in exhibit 21 and exhibit 11.0a "Landscaping, Buffering and Lighting" dated 11.27.2018.
- aa. The Board finds that the Noise Ordinance is not applicable to this application.
- bb. The Board finds that the sign standard is not applicable to this application.
- cc. The Board finds that the development does not include the outdoor storage of materials.
- dd. The Board finds that the development will meet the utilities standards as shown on exhibits D-1 "Sitework Details" dated 10/15/18, D-2 "Sitework Details" dated 10/15/18, and D-3 "Sitework Details" dated 10/15/18..
- ee. The Board finds that the development meets the Municipal Fire Department standards as shown in exhibit 18.

- ff. The Board finds that the development conforms to the Comprehensive Plan.
- gg. The Board finds that development will meet the financial and technical capacity standard.
- hh. The Board finds that there is no registered farmland in Bar Harbor.
- ii. The Board finds that the Town is able to provide municipal services to the proposed development.
- jj. The Board finds that there are no known violations of the Bar Harbor Land Use Ordinance as shown in exhibit 2B.
- kk. The Board finds that the development meets the legal documents standard.
- ll. The Board finds that there are no historic and archaeological resources on the property as shown on exhibit 9V.
- mm. The Board finds that there are no natural features of interest located on the property as shown on exhibit 9U.

Commented [AC3]: Still waiting on the Public Works capacity statement and whatever conditions or comments the Public Works Director has.

Commented [AC4]: There will be a sewer easement with the Town and there is no proposed language for it. There are no legal documents to show compliance with section 125-69R.

3. Based upon the documents received, and accepting the work of the professionals who have prepared the documents, this application meets the requirements of Section 125-69 N. as found below:

- (a) The Board finds that the monuments standard is not applicable to this application.
- (b) The Board finds that the blocks standard is not applicable to this application.
- (c) The Board finds that the development meets the lot standards.
- (d) The Board finds that the development meets the road frontage standard.
- (e) The Board finds that the double frontage and reverse frontage standard is not applicable to this application.
- (f) The Board finds that the lot lines standard is not applicable to this application.
- (g) The Board finds that the future development standard is not applicable to this application.
- (h) The Board finds that the development meets the lands not suitable for development standard.

4. Based upon the documents received, and accepting the work of the professionals who have prepared the documents, this application meets the requirements of Section 125-69 S. as found below:

- (a) The Board finds that the development meets the parcel size and eligibility standards.
- (b) The Board finds that the permitted uses allowance is not applicable to this application.
- (c) The Board finds that the development meets the number of allowable units standard.

Commented [AC5]: Not sure if this standard should be n/a or meets the standard.

- (d) The Board finds that the development meets the affordable units and lots standards.
- (e) The Board finds that the development meets the open space standard.
- (f) The Board finds that the development meets the setback and lot coverage standards as required in section 125-20 B. As allowed under section 125-69 S. (6)(d)[1], the Board moved to reduce the distances between buildings as required in section 125-67 B.(3) to the distances shown on exhibit 9.1 dated 10.18.2018 to allow the buildings to be clustered to create larger buffers and open space on the site.

Commented [AC6]: Feel free to modify as the Board sees fit.

5. Based upon the documents received, and accepting the work of the professionals who have prepared the documents, this application meets the requirements of Section 125-69 R. as found below:

Commented [AC7]: The Board does not have the documents to make these findings at this time.

- (a) The Board finds that the applicant has demonstrated that the units shall be rented to qualified moderate-income buyers as defined.
- (b) The Board finds that the applicant has submitted to the Planning Board an agreement to preserve the long term affordability of the units to moderate-income households.
- (c) The Board finds that the applicant has demonstrated that the mandatory affordable housing provisions will run with the land.
- (d) The Board finds that the affordable housing units will be constructed and completed at least concurrently with the remainder of the multifamily project.
- (e) The Board finds that when calculating the proportionality, the applicant rounded any fractional sum down to the nearest whole building unit.
- (f) The Board finds that the condominium documents standards is not applicable to this development.
- (g) The Board finds that the applicant has demonstrated that the affordable rents, including utilities, shall be limited to 30% of the annual income of a household whose income is the median income for Hancock County.
- (h) The Board finds that the buyers of affordable units standards are not applicable to this development.
- (i) The Board finds that the applicant has demonstrated that the renters of the affordable units will have a moderate income as defined.
- (j) The Board finds that the applicants submitted an affirmative marketing plan.
- (k) The Board finds that the affordable housing lots standard is not applicable to this development.

Commented [AC8]: Could be a condition of approval.

The applicant is advised of the following:

1. No modifications shall be made to this approval including changes to the plans, accompanying documents, and conditions without a review for a modification under the requirements in Section 125-88 of the Land Use Ordinance.
2. This permit does not relieve the applicant from any other local, state or federal permits that may be required for this proposed development.
3. Please refer to Article VIII for standards conditions that will be applied to the construction of this project. No performance bonds are required.
4. Building permits are required for this project.
5. There is an appeal period for any interested party of 30 days to appeal this decision of the Planning Board. It is the risk of the applicant to commence construction during this period.
6. Violations of any conditions placed upon this approval are subject to enforcement per Article IX, Section 125-100 B of the Land Use Ordinance.

Conditions of Approval:

- 1.

Modification of Standards:

1. The Board approves the modification of standard request for section 125-67 L. (5) which requires the minimum pipe size for any storm drainage plan to be 12". The Board finds that this modification is necessary to protect the public health, safety or welfare or to address particular site characteristics because

2. The Board approves the modification of standard request for section 125-67 L. (12) which requires an easement of at least 30' in width granted to the Town allowing maintenance and improvement of a stormwater drainage system. The Board finds that this modification is necessary to protect the public health, safety or welfare or to address particular site characteristics because

Commented [AC9]: The Board needs to act on this request and provide justification for granting the modification if the Board chooses to.

Commented [AC10]: The Board needs to act on this request and provide justification for granting the modification if the Board chooses to.

Tom St. Germain, Chair
Planning Board, Town of Bar Harbor

Dated

Appeals of this decision may be made to the Board of Appeals pursuant to section 125-103 of the Bar Harbor Land Use Ordinance within 30 days of this date of this decision.