

**Minutes
Bar Harbor Planning Board
Wednesday, June 19, 2019 at 4:00 PM
Council Chambers – Municipal Building
93 Cottage Street in Bar Harbor**

I. CALL TO ORDER

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

Call to order

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

All 5 members present

Town staff present were Planning Director Michele Gagnon and Code Enforcement Officer Angela Chamberlain. Town Attorney Ed Bearor was also present.

CEO and Planning Director, as well as attorney Ed Bearor

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).**

Agenda adopted

III. EXCUSED ABSENCES

Chair St. Germain noted no members were absent, so there were no absences to excuse.

All present, no excused absences

IV. PUBLIC COMMENT PERIOD

Chair St. Germain then opened the public comment period. Donna Karlson was first to speak. She identified herself as a member of the warrant committee but said she was speaking as a private citizen. She said she wanted to clarify that Article 5, voted on recently, was not written or drafted by Arthur GReiff (nor was Article 4). She also said he did not review it as a lawyer. She also asked for a status update on a land use ordinance amendment prohibiting cruise ship docking at the ferry terminal, after the Planning Board was directed to work on it by the Town Council. Chair St. Germain said he believes there is supposed to be a joint workshop with the Council.

D. Karlson says Grief was not involved in writing or reviewing Article 4 and Article 5

D. Karlson asks about amendment on cruise ship docking at ferry terminal

With no one else coming forward to speak, the public comment period was closed.

V. APPROVAL OF MINUTES

Chair St. Germain asked if there were any corrections or additions to the minutes from the June 5 meeting. No one offered any, and **Mr. Fitzpatrick then made a motion to adopt the June 5 minutes, which was then seconded by Mr. Eleftheriou. It passed unanimously (5-0).**

Minutes from June 5 meeting approved

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.

Public hearing on proposed amendment to dormitory

Chair St. Germain gave an introduction, and noted the board had been working on the matter for a long time. He spoke about the definitions that have been created, and explained what distinguished each one from the other. He said workforce housing in particular is designed to encourage employers to house their own employees. Planning Director Michele Gagnon said there was also a good explanation in a handout provided to the board that night.

St. Germain gives background on proposed amendment

Chair St. Germain opened a public hearing at 4:06 PM after explaining the ground rules for the hearing. David Witham spoke first, noting he had worked with the board for several years on this matter. He said Witham Family Hotels was supportive of the proposed changes — that even if they weren't perfect, it would help accomplish good goals about getting employee housing out of neighborhoods and on-site with employers when possible. He said it seemed possible that part of the last sentence on page 18 had been inadvertently cut off.

St. Germain opens public hearing

D. Witham supports the proposed changes

Next to speak was Bar Harbor resident Jim Mahoney, who noted he and his wife had submitted written comments. He said they had concerns about two of the uses being allowed in the Downtown Residential Zone and said they were not appropriate for that zone. He said he hoped the board would reconsider allowing those uses in that zone. Mahoney voiced concerns about adequate parking and said these uses could potentially displace year-round single-family housing. He spoke about what makes the neighborhood attractive to him and others. He said what is proposed in this amendment is another possible threat to those qualities. Mahoney questioned how a rooming house would help solve the workforce housing issue. He also said the proposal would exacerbate current parking problems. He closed by asking the board to remove Downtown Residential from the proposed amendment.

J. Mahoney is concerned about impacts on Downtown Residential Zone and asks board to reconsider including that district in the proposal

Ellen Grover spoke next. She said she agreed with Mahoney and called residential neighborhoods in Bar Harbor an "endangered species." She said there isn't respect for people living in year-round communities. She said these types of uses do not belong in residential neighborhoods.

E. Grover echoes what Mahoney said, said uses like this don't belong in residential areas

John Reeves spoke next and echoed what Jim Mahoney (his neighbor) said, that he had concern about current parking problems being made worse. He urged the board to not allow these uses in the Downtown Residential Zone, as proposed.

J. Reeves agrees with Mahoney

Donna Karlson spoke next. She reiterated that she was speaking as a private citizen even though she is a member of the warrant committee. She said she likes the proposed amendment in general and said she appreciated the hard work that has gone into it. She said she wanted to make sure workers are safe where they are housed. She said she could not vote in favor of this in November unless she sees the Town Council approve something along the lines of what Planning Director Gagnon had prepared for licensing requirements (the actual safety standards). She said she also wanted to make sure there was adequate enforcement of those standards. Regarding the concerns about the Downtown Residential District, she said she did not know if it could be removed from this amendment or otherwise adjusted before the November vote. Karlson asked if there should be something to clarify that workforce housing is not transient accommodations (30 days or less) and that it is for people to work here seasonally.

D. Karlson generally supportive of what is proposed

Has concerns about worker safety, wants to make sure licensing requirements are in place

No one else came forward to speak about dormitories and Chair St. Germain closed the public hearing at 4:25 PM. He then asked for feedback from board members. Planning Director Gagnon said there are two words missing where Witham had noted. She looked to Attorney Bearor for guidance on whether such a change could be made, and he said that it could. He referred to section 125-9 of the Land Use Ordinance. He said he saw the correction Gagnon noted as more of a housekeeping matter that did not necessarily need any formal action by the board to approve.

St. Germain closes public hearing at 4:25 PM

Gagnon notes what words are missing, Bearor cites ordinance and says those can be added

Referring to Ms. Karlson's question, he said he believed the board did have the authority to amend the amendment before them tonight. When Mr. Fitzpatrick asked if that meant both substantive and non-substantive changes, Attorney Bearor indicated yes, that both were OK.

Bearor answers questions about board's ability to make changes

Mr. Fitzpatrick made note of other issues that needed to be addressed: two zones (Hulls Cove Business, 125-24; and Ireson Hill Corridor, 125-31) referred to Workforce Housing being an allowed use, rather than Workforce Dormitory. Mr. Eleftheriou noted a similar issue on the cover page.

Chair St. Germain asked board members for their thoughts on what had been said by members of the public about the Downtown Residential District. Vice Chair Cough said it made the most sense to do this to try and save some of the neighborhoods from workforce housing. He said employers such as David Witham have expressed a strong desire to get their employee housing out of neighborhoods. Ms. Brooks said she agreed with that. She said she believed this will have a better effect than many people may expect. She noted there are some commercial uses within the Downtown Residential District and that is part of living in the downtown.

Board members give their opinions on what is proposed

Chair St. Germain referred to Ms. Karlson's comments earlier and said he believed there was language in the proposed amendment that such types of

St. Germain confirms that these types of housing can't be used for vacation rentals

housing would not be used for vacation rentals (Planning Director Gagnon checked and clarified that applied to all three types of housing addressed in this proposed amendment).

Mr. Fitzpatrick asked for clarity on a couple of items. First, would Design Review have any oversight over Downtown Residential? He said he assumed the answer was no. He then asked Attorney Bearor if the Town Council could pass a change to the municipal code (licensing requirements) contingent upon a Land Use Ordinance amendment being approved by voters. Attorney Bearor said it is feasible if what is voted on by the Council is worded appropriately.

Mr. Fitzpatrick made a motion to forward a warrant article entitled “Land Use Ordinance Amendment — Shall an Ordinance dated May 25, 2019 and titled Employee Dormitory, Rooming House and Workforce Dormitory be enacted to the Town Council for inclusion in the November election?” Chair St. Germain asked if Mr. Fitzpatrick wanted to make note of the wording changes that need to be made which he had identified earlier. Mr. Fitzpatrick noted the amendment shall be modified by changing the word “housing” as noted two times in the warrant article to “dormitory,” as outlined on the cover page, to change “workforce housing” to “workforce dormitory” where discussed and agreed upon on page 4 of 11 and to change the phrase “workforce housing” to “workforce dormitory” as discussed and agreed upon on page 5 of 11. Chair St. Germain said the one other change that needed to be made was the last line of text on the definition of “workforce dormitory” that got clipped. Mr. Fitzpatrick added, and to complete the definition of “workforce dormitory,” line four, as previously written and as noted as omitted on page 14. Planning Director asked if the missing words were “closely associated room,” and Mr. Fitzpatrick said that was what he remembered. Mr. Eleftheriou seconded the motion.

Mr. Cough said these are clearly commercial uses. He wondered if the board would be interested in adding Design Review overlay in the Downtown Residential District for these particular uses. Ms. Brooks said she was not in favor of that idea. She said she thought it would be unfair to single out Downtown Residential and to add it in at the last minute. Vice Chair Cough said he was trying to acknowledge the concerns of some of the people who spoke.

With no further discussion, Chair St. Germain called the vote on Mr. Fitzpatrick’s motion. It was unanimous (5-0) in favor of the motion.

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.

Chair St. Germain explained this amendment is the start of a proposal to reform how site plan review goes. He explained the changes need to go before voters

Question about Council making changes contingent upon later LUO vote

Motion to forward proposed amendment involving Employee Dormitory, Rooming House and Workforce Dormitory to Town Council.

Original motion approved

Public hearing on proposed amendment to procedure for site plan review process

St. Germain explains the amendment

because the site plan review process is part of the Land Use Ordinance. He asked Planning Director Gagnon to provide commentary. Chair St. Germain said this is being done in concert with the Planning Board changing its meeting schedule, so that an applicant will have a much better idea going into their meeting whether their application is complete or not. Planning Director Gagnon agreed that it will be a more efficient process.

Chair St. Germain opened a public hearing at 4:45 PM. No one came forward to speak, prompting him to quip that it was a “fascinating subject,” and that he was “not surprised there was not a long line of people wanting to talk right now.” With that, he closed the public hearing at 4:45 PM as well.

Vice Chair Cough asked Attorney Bearor if it was significant that the municipal officers had changed since the document was first prepared. Attorney Bearor said he believed the clerk could correct that. He also added that the whole paragraph/section being amended should be included, as it appeared it was not in the handout before the board that night.

Chair St. Germain asked if any other members had comments. Hearing none, he said he thought it was a great proposal that will help move the process ahead in a better way. Mr. Fitzpatrick said he agreed. Vice Chair Cough asked for clarification if the first notice of a project being incomplete comes at a meeting. He asked if that was sufficient, or if meeting minutes needed to be approved to constitute that notification. Essentially, is a verbal notification sufficient from a legal perspective? Attorney Bearor said as long as the verbal notification is clear that would be sufficient.

Mr. Fitzpatrick moved to forward to Council the three-page warrant article dated 5/22/2019 entitled “An Amendment to Site Plan Review Procedure” for public vote at the November 5, 2019 town meeting. Vice Chair Cough seconded the motion. There was no further discussion and the motion was then approved unanimously (5-0).

**c.) Public Hearing, Deliberations, and Decision for SP-2018-07 — TA1
Project Location: 81 LedgeLawn 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).

The applicants were both present, along with their attorney, Bill Reiff. Chair St. Germain said the public hearing had been closed previously and he did not envision re-opening it, so he asked the applicant to bring the board up to speed for starters.

Public hearing opened and closed, no one in public comes forward to speak

Cough has question for Bearor on municipal officers listed, Bearor says clerk can adjust

Board members voice support for proposed change

Cough has question on verbal versus written notification

Motion to forward proposed site plan review procedure amendment to Council for vote on November 5, 2019 approved

TA-1 application, Robert and Kathleen Jordan, SP-2018-07

Applicants present with attorney Bill Reiff

Mr. Jordan introduced himself and his wife and gave a brief recap of the application. Mr. Reiff introduced himself and said he was representing the Jordans in this matter. Mr. Reiff recapped his understanding of the project: that the application had been reviewed and found complete and that the public hearing had been closed, but that the board had a question about the owners being on the premises and that the board wished to have input from the town attorney.

Recap from the applicant's position

Chair St. Germain reviewed what had happened: that Vice Chair Cough posed a question at a previous meeting, that Attorney Bearor had answered that question, and that the Planning Board had voted on a similar TA-1 measure at a previous meeting on a different application. He asked Attorney Bearor to provide input.

St. Germain offers recap from board's position

At the suggestion of Vice Chair Cough, Chair St. Germain asked the applicant if he had any additional input before Attorney Bearor spoke. Mr. Jordan said he filed a building permit to build a breezeway between the house and barn, even though he did not think it was necessary, because Mr. Fitzpatrick said at a previous meeting that it would make it easier for him to consider approving the project. Mrs. Jordan noted the buildings are already connected by shared utilities.

**Applicant explains he is proposing to build a breezeway to connect structures, hopefully to allay board concerns
RE: TA-1 status**

Chair St. Germain said updated application materials had been received in recent days. He said a question some board members had last time was whether the board could approve an application with a violation, and whether there was an existing violation. Chair St. Germain asked for Attorney Bearor's position. Attorney Bearor said Mr. Reiff had called him several months ago to talk about the wording in the consent order from the District Court in Ellsworth in 2018. Attorney Bearor referred to Section 125-67, JJ, Violations, which reads, "No plan shall be approved as long as the applicant is in violation of this chapter or of any previously approved subdivision or site plan in the Town of Bar Harbor." He noted the town filed an action against the Jordans last fall, which resulted in a consent judgment (both parties agreed to it). He said it stemmed from alleged violations of the Land Use Ordinance or previously issued permits. He said the Jordans were to refrain from, until they had filed an application and received approval, advertising or renting out the space in question (the space involved in the application before the board tonight). Attorney Bearor said he understood the Jordans had been advertising (he was unclear if they had actually rented the space) and that they should not have been doing that. He said it is a violation. He said even if the advertising stops, it likely remains a violation until it is resolved to the satisfaction of the code enforcement officer. He said there may need to be a sort of "time out" while the CEO works with the applicants to resolve things. He said he did not think the board should entertain, let alone approve, an application while there are violations that need to be resolved. He said otherwise, the Planning Board starts to undercut the authority and efforts of the code office.

Attorney Bearor offers recap of situation, involving consent decree and apparent violations thereof

Bearor advises board not to approve or proceed with review of application while violation questions remain

Mr. Reiff spoke and said what he had heard aligned with Attorney Bearor's position. He said the Jordans had advertised and actually had someone staying in

the space several days ago. He said the Jordans did not feel they were thumbing their nose at authorities, however. He said after the consent agreement was handed down they “followed that to the letter” (noting they had filed their application with the town). He said the Jordans expected the matter would have been resolved (application reviewed and approved) by the time rentals began. He said technically it would be a violation, but expressed hope the board could work with the Jordans. He said the Jordans jumped the gun by assuming they would have been approved earlier. He said the delay in the process originated with the Planning Board and not with the applicant. He reiterated that there is a violation in effect at the moment.

Mr. Jordan spoke. He said as soon as he signed the consent order, he put a notice in his Airbnb listing to say reservations would not be accepted for 2019 (though the page remained up). He said it stayed that way until March 28, after delivering an application to the Planning Office on March 21. He said there were not reservations until the middle of May, and with a public hearing scheduled for June 5 he said he saw no reason the application would be denied after it was found complete. He said he did not expect to have anyone staying in the space prior to receiving Planning Board approval. Mr. Reiff said the advertising was likely still a violation. He said he liked the approach suggested by Bearor of working with CEO Chamberlain, and that perhaps the board could grant conditional approval contingent upon that work being done.

Chair St. Germain said he had a question for Attorney Bearor about Section 125-101 (Proceedings; violations and penalties) — specifically 125-101 A.(2) — and whether that was applicable in this case and whether it could be a way to resolve the issue. He said if other hurdles could be cleared (TA-1 status, parking, etc.), could approval be contingent upon the use of 125-101? Attorney Bearor asked for a moment to review the section in question. He then said he believed it could be used. He reviewed the history of the consent agreement and said it is within the purview of the code officer to resolve the violation. He said he did not see the need for a special Council meeting to authorize CEO Chamberlain to work on resolving this matter.

Chair St. Germain reiterated the second part of his question, whether the Planning Board could make findings and/or approval contingent upon the sort of resolution outlined above. Attorney Bearor said he could not think of a reason why the board could not do that. He said the board could consider attaching a time frame to such a resolution, to make sure it is dealt with in a timely manner.

Vice Chair Cough asked if the board, in taking this possible approach, was somehow litigating the consent agreement. He noted Bearor’s first comment about not considering the application because of the violation, and said he was unsure how the board could then take it up for review. Discussion ensued between board members and Attorney Bearor about the handling of applications where there is a violation.

Reiff agrees there is violation but said applicants tried to do everything by the book and that the delay resulted from the Planning Board and not from anything the applicant did or did not do

Mr. Jordan offers further explanation, said he expected Planning Board approval earlier and had hoped to have everything resolved by the time renters arrived

Question from St. Germain if board can use 125-101 A.(2) as a way to resolve the issue and perhaps grant conditional approval; Bearor said he believed it could be used

General discussion ensues on how to handle applications with violation(s)

Chair St. Germain asked if it could be seen the applicant began the process without any known violations but incurred one during the process. Vice Chair Cough said advertising that began on March 28 constituted a violation, after an application was submitted on March 21. He said he did not think the consent agreement was the board's purview.

Question of when the violation(s) began

Mr. Fitzpatrick said he thought the terms of the consent agreement were probably violated with advertising, further violated when deposits were accepted, but that the Land Use Ordinance was definitely violated when people started living in the space. He said he thought the board would set precedent by moving forward with this application when previous applicants with standing violations were turned away from getting to the Planning Board. He said the board should not vote to approve something, even conditionally, when there is a violation. Attorney Bearor referred to 125-66 B.(2), and said he saw it as referring to the state of things at the time of application (and that there seemed to be agreement that there was no violation when the application was submitted). Attorney Bearor said the board could take either approach, conditional approval or delay acting on the application until the violation is resolved.

Fitzpatrick does not want the board to move forward with this application in light of violation(s), worries about setting precedent

Bearor: Board can approve conditionally or wait

Mr. Eleftheriou said he agreed with Mr. Fitzpatrick. He said he is not a fan of conditional approval, and that going that route could open up the board to an appeals process.

Eleftheriou. Fitzpatrick agree on not liking conditional approval approach

Chair St. Germain said he thought if the violation did not exist the board would likely be approving the application that night. He said the board could address the parking and general TA-1 questions that night, however. Mr. Fitzpatrick said he would be OK with that, though he would prefer to take no action until the next meeting and deal with all of the issues then. Chair St. Germain asked what other board members thought. Vice Chair Cough asked Mr. Fitzpatrick for his thoughts on the matter of standing, and Mr. Fitzpatrick said he did not think standing was fully resolved. Attorney Bearor said he did not see that there was a violation when the application was filed.

St. Germain offers his thoughts, asks if board can address questions of TA-1 status and parking issues separately

Question of standing and how violation(s) affect (or do not affect) that

Vice Chair Cough commented if an item fails, by extension an application fails (or will fail). He asked if the applicant wanted to hold off on review, in case there was an unfavorable vote on a particular item. Mr. Reiff said if all issues except the violation question could be resolved, it would speed things up somewhat. Chair St. Germain reiterated the question, to ensure the applicant was comfortable with the approach. Mr. Jordan said it would fail or succeed, and though he liked the idea of conditional approval. Mrs. Jordan asked if the board had any guidance, and Chair St. Germain said it was solely the applicant's decision.

Questions of timing

Chair St. Germain asked if anyone would make a motion dealing with the request for a modification of standard under 125-64, requesting that the required parking is allowed in the driveway (which is different than the normal standards for TA-

St. Germain asks if the board will consider taking up parking matter

1). Section 125-67 E.(3) states, "Parking areas shall be designed to permit each vehicle to proceed to and from any parking stall without requiring the moving of any other vehicle."

Mr. Fitzpatrick moved to modify the parking standard 125-67 E.(3), to eliminate the use of a single parking lane without having to require the owner to move cars to access or remove other cars in the parking lot to address site characteristics, and that the board find it will not alter the intent or nullify the purpose of the ordinance. Chair St. Germain asked if there was another part of the ordinance the board needed to refer to in order to grant the modification. Mr. Eleftheriou offered 125-64, Modification of standards. **Mr. Fitzpatrick struck his motion.** Chair St. Germain referred to 125-67 D.(3)(b), Parking requirements/transient accommodations. He then referred to 125-67 E.(4), Parking stalls and aisle layout, and said it was not applicable in this particular application and that the standard was being modified. Planning Director Gagnon said the board could refer to 125-67 E. in general. Discussion continued.

Mr. Fitzpatrick moved that the board, per section 125-64, grant a modification of standard which would address site characteristics and would not alter the intent nor nullify the purpose of the ordinance, as follows: grant a modification of the parking standard 125-67 E., to allow three cars to park in an existing driveway that is at least 57 feet in length, in compliance with 125-55 E.(3). Others questioned if that number was correct and Chair St. Germain offered that he meant 125-67 D.(3)(b), to which Mr. Fitzpatrick agreed. **Mr. Fitzpatrick amended his motion to refer to 125-67 D.(3)(b) as the basis for calculating the required number of parking spaces.** Chair St. Germain said the intent is also to grant a modification of standard 125-67 E.(3), and Mr. Eleftheriou noted the motion already referred to section 125-67 E. in general. **Mr. Cough seconded the motion, for discussion.**

Mr. Cough asked Mr. Jordan how many guest rooms there are, as part of the application. Mr. Jordan said one, in addition to his own residence and an apartment (third-floor, year-round rental) that is located in the same building as his residence. He said that means he is required to have three spaces. Mr. Cough asked about parking requirements in general for this property, the way it is configured. Discussion ensued among board members.

Mr. Eleftheriou asked if it would strengthen the argument for granting the modification to note that doing so would avoid the need for an extra curb cut and reduce stormwater. Mr. Fitzpatrick said he was not opposed to adding it, and Mr. Cough said he was also OK with it. **There was an agreement that this constituted an amendment to the original motion, and without further discussion the amendment (as modified) was approved unanimously (5-0).**

Chair St. Germain said the question now was if this is being treated as a TA-1.

Motion to modify parking standards, allowing cars to park behind one another, as doing so will not alter intent/nullify purpose of ordinance

Motion is then struck

Discussion ensues about applicable sections of ordinance

Motion, per 125-64, to modify parking standard (allow three cars to park in driveway) as it will not alter intent/nullify purpose of ordinance

Board refers to 125-67 D.(3)(b)

Motion is seconded, discussion ensues

Discussion of how many rooms/dwelling units are on the property and what that means for parking needs

Eleftheriou asks to add reasons why modification is being proposed, motion maker and second are OK. Motion as amended approved

Discussion returns to whether this is TA-1

Planning Director Gagnon agreed that needed to be addressed. Chair St. Germain recounted some of the history on the board's recent discussion about TA-1. Mr. Fitzpatrick said he did not express a wish for the buildings to be connected in this case, but said he had commented he would be more comfortable with that approach. He asked Attorney Bearor for a "more definitive interpretation" on whether outbuildings can qualify as being part of a residence than the one he provided in a letter dated April 16; and additionally, whether it is a bedroom or a dwelling unit, based on having everything in a kitchen except for an oven (he said he did not believe there could be three dwelling units on the Jordan site, and he noted that the original building permit denied it).

Fitzpatrick asks for clearer/more definitive guidance from Attorney Bearor on questions relating to TA-1, bedroom vs. dwelling unit, etc.

Mr. Fitzpatrick read some of the language from Attorney Bearor's April 16 letter and said while he intended no offense, "I wouldn't go take a loan out with those words." Mr. Fitzpatrick said he thought "sprinkling bedrooms out in the back 40 just defies all logic" as well as his own direct interpretation of what is in the Land Use Ordinance. Attorney Bearor said he did not know this would be an issue at this meeting, and said he would have to rely on his April 16 opinion even though it contained qualifying language. He said it is up to the board to make the decision, and said he could not say he had given the board a definitive opinion. He said if the board would like a more thoughtful opinion before there is any further review of the application, he would ask for the opportunity "to give you something more definitive... and see if I agree with myself."

Bearor says he can provide the board with a more definitive opinion if that is what they wish to have

Mr. Jordan restated his original question, whether his intent to connect the residence and the outbuilding with a breezeway would address some of the questions the board has about TA-1. He noted the history of the structure (barn) and its status as non-conforming or conforming. Chair St. Germain asked if there was an issue with setbacks, and Mr. Jordan said he is in compliance with setback requirements.

Mr. Jordan asks if breezeway will satisfy TA-1 concern about connectivity

Vice Chair Cough posed two questions to CEO Chamberlain: has a building permit been issued for the work Mr. Jordan had proposed, and would one ever be issued while there is an outstanding violation? CEO Chamberlain said the answer to both questions was no. Vice Chair Cough said in his view, much of the board's possible action going forward hinges on what Attorney Bearor says. Vice Chair Cough said the board was being asked two things: could it make the TA-1 contingent upon approval, and secondly, can it make an approval based on a building permit that has yet to be taken up? He said he wants to make sure the board gets the general issue of TA-1 correct.

Cough says board's future actions depend largely on advice and guidance to be received from Bearor

Desire to get TA-1 correct in general

Ms. Brooks said the building permit application that has been submitted is not a requirement to achieve TA-1 status. She said it is already considered connected. Mr. Eleftheriou said on TA-1, it refers to the year-round residence of the host family who live on the premises. He said while there is not a definition for residence, there is one for premises (which he read). He made particular note of the words "and other structures thereon." He said he would like for that to be

Discussion continues on TA-1 both with regard to this project and to the matter in general

St. Germain notes board already approved one project

looked at by Attorney Bearor as well. Chair St. Germain noted the board had approved an earlier TA-1 application based on the definitions that Mr. Eleftheriou raised. He said it would be hard to imagine approving one applicant and then saying to a second applicant with “basically the same configuration” that it is not a TA-1. “It seems hard to imagine telling consecutive parties different things,” Chair St. Germain said. He said he would like to see a motion that what the Jordans proposed falls under TA-1. Attorney Bearor offered commentary and said he would be glad to offer a further opinion on the overall matter if that was requested by the board. Mr. Eleftheriou said he did not see any harm in waiting two weeks for such an opinion, and did not see any value in “stumbling through this right now.” Chair St. Germain referred again to precedent, while Mr. Fitzpatrick agreed with Mr. Eleftheriou: “What do we gain by making a judgment tonight that we lose by waiting two or three weeks for the next meeting?” Mr. Fitzpatrick said waiting would not delay the applicant.

very much like this, and worried about telling similar applicants different things

Board members wish to put this off for now, get guidance from Bearor and address it again in a few weeks

No one makes motion or second to deal with this application tonight

Chair St. Germain summarized that the board would wait to take action until it received an opinion from Attorney Bearor, unless anyone made a motion and a second to vote that it is in fact a TA-1. No such motion or second was made. He said the appropriate action would be to continue the application until the July 10 meeting. Mr. Jordan sought clarification there would not be another public hearing, and Chair St. Germain noted it was opened and closed at the last meeting and not re-opened tonight.

Mr. Cough made a motion to continue the application to the next meeting, which Mr. Fitzpatrick seconded. Without discussion it then passed unanimously (5-0).

Motion to continue application to July 10, 2019 — passes

Mr. Eleftheriou noted the agenda for tonight’s meeting had the words “Public hearing” in it and asked if that should be removed for the July 10 meeting. There was discussion on whether the board closed the public hearing at its last meeting. CEO Chamberlain said while public comment had been closed, the board was still in the public hearing phase. As such, the same agenda item wording will be used.

VII. OTHER BUSINESS

None.

No other business before board tonight

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

Mr. Fitzpatrick asked where things stood with regard to marijuana as there has been a lot of news coverage about it lately. Planning Director Gagnon said it was on the to-do list, and that she would meet with the town manager to prioritize the list and then come back to the Planning Board for further discussion. Mr. Fitzpatrick asked if a clock has started ticking, and Planning Director Gagnon

Fitzpatrick asks about marijuana regulations, Planning Director Gagnon gives update

said the opt-in clause protects the town indefinitely. She said the town is receiving calls of interest on the subject. Members agreed the Council would take the lead on the issue, rather than the Planning Board.

Council will likely take lead role on this

Mr. Fitzpatrick asked Attorney Bearor to also offer an opinion on what constitutes a kitchen. Mr. Cough said he was also interested in having that. Mr. Fitzpatrick said he saw it as a loose end that needed to be addressed, and that doing so would be helpful to CEO Chamberlain.

Board wants Bearor to opine on what constitutes a kitchen

Mr. Fitzpatrick asked what the timeline looked like for getting things on the warrant for Town Meeting in June of 2020. CEO Chamberlain said the final public hearings at the Planning Board would have to be on January 8, 2020, with final language submitted by December 26, 2019.

Question about time frame for June 2020 warrant articles, Chamberlain shares relevant dates

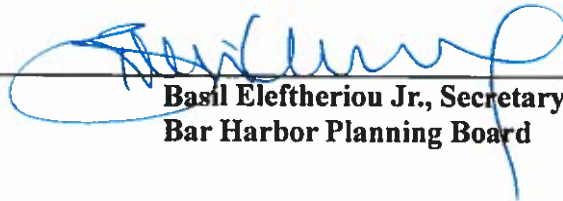
IX. ADJOURNMENT

Mr. Fitzpatrick motioned to adjourn the meeting. Vice Chair Cough seconded the motion. Without discussion, the motion carried unanimously (5-0) and the meeting adjourned at 6:05 PM.

Meeting adjourns at 6:05 PM

Minutes approved by the Bar Harbor Planning Board on July 10, 2019:

8.12.19
Date


Basil Eleftheriou Jr., Secretary
Bar Harbor Planning Board