

**Bar Harbor Planning Board
Wednesday, January 8, 2020 — 4:00 PM
Council Chambers – Municipal Building
93 Cottage Street in Bar Harbor**

I. CALL TO ORDER

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

Call to order
at 4:00 PM

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

Four of five board
members present

Town staff present were Planning Director Michele Gagnon, Code Enforcement Officer Angela Chamberlain, Assistant Planner Steve Fuller and Deputy Code Enforcement Officer Patrick Lessard.

Four town staff
members present

II. ADOPTION OF THE AGENDA

Vice-chair Cough made a motion to adopt the agenda, seconded by Mr. Fitzpatrick. The motion to adopt the agenda carried unanimously (4-0).

Agenda adopted

III. EXCUSED ABSENCES

Vice-chair Cough made a motion to excuse the absence of Mr. Eleftheriou, seconded by Mr. Fitzpatrick. The motion then carried unanimously (4-0).

B. Eleftheriou's
absence is excused

IV. PUBLIC COMMENT PERIOD

Marilyn Kitler of 17 Bishops Way asked about wind turbines being allowed [as a principal use by minor site plan approval] in the Mount Desert Street Corridor district. She asked if any were now, was told there were not, and said she would find any being erected there in the future to be objectionable.

M. Kitler asks about
wind turbines being
allowed in Mount
Desert St. Corridor

V. APPROVAL OF MINUTES

- a. December 4, 2019 (regular monthly meeting)
- b. December 10, 2019 (special meeting)

Mr. Fitzpatrick moved to approve the minutes from the December 4, 2019 regular monthly meeting as well as the minutes from the December 10, 2019 special meeting as submitted. Ms. Brooks seconded the motion. It then carried unanimously (4-0).

Minutes from Dec.
4, 2019 regular
meeting and Dec. 10,
2019 special meeting
both approved (4-0)

Chair St. Germain noted Mr. Eleftheriou typically introduces each agenda item and asked if he could do that instead for this meeting. No one objected. Chair St. Germain then said he would step down for this agenda item and leave the room, as he had in the past, because he is a direct abutter to the project. He turned the meeting over to Vice-chair Cough.

Chair St. Germain
steps down for next
agenda item as he is
an abutter to it; this
lowers voting
membership to 3

VI. REGULAR BUSINESS

a.) Reapproval and re-signing of a Major Subdivision Plan known as Hamilton Hill Subdivision (SD-2018-01)
Project Location: 18 Eagle Lake Road (Tax Map 107, Lots 001-000 and 001-

Reapproval and
re-signing of plan
for SD-2018-01,

002), Village Residential District
Applicant: Kebo Properties, LLC

Application: Reapproval and re-signing of the Hamilton Hill Subdivision application (SD-2018-01, 16 lots) which was previously approved and signed by the board on May 15, 2019, but the approval of which lapsed as the applicant did not provide the Planning Department with proof of recording at the Hancock County Registry of Deeds, as required by §125-75 (Approval and recording) of the Bar Harbor Land Use Ordinance.

Vice-chair Cough asked Planning Director Gagnon to explain the agenda item.

Planning Director Gagnon read the agenda item aloud. She said the applicant did not realize that he had to have the plan recorded at the Hancock Registry of Deeds within a certain period of time. Mr. Fitzpatrick asked what the window of time for recording was, and Planning Director Gagnon said it is 90 days [per §125-75 A. of the Land Use Ordinance]. Mr. Fitzpatrick said it is an administrative reapproval.

Vice-chair Cough asked if the same conditions of approval would still apply. Planning Director Gagnon said they would. Vice-chair Cough said he recalled three conditions of approval, and Planning Director Gagnon said it would be wise to refer to them when making a motion to ensure that everything that was part of the previous approval still holds. She said that way, how the application was approved previously with all the conditions would still be applicable with this decision.

Mr. Fitzpatrick moved to reapprove the Hamilton Hill Subdivision (application SD-2018-01) subject to the conditions of approval signed off by the board on May 15, 2019. Ms. Brooks seconded the motion, and it then carried unanimously (3-0)

Town Attorney Ed Bearor arrived and joined the Planning Board at the head table.

Chair St. Germain returned to the meeting at 4:08 PM.

Before taking up the next agenda item, Chair St. Germain laid out ground rules for the public hearings. He said everyone who wanted to speak would be allowed to speak. He asked speakers to identify themselves at the microphone. He said people would be given three minutes and a single opportunity to speak on each agenda item (that there would not be multiple trips to the microphone for a single speaker on a single item).

b.) Public Hearing — Draft Warrant Article — LAND USE ORDINANCE AMENDMENT — Addressing Officer – Shall an ordinance, dated December 16, 2019 and entitled “An amendment to Article V, Site Plan Review, to use the term Addressing Officer in place of Municipal Tax Assessor” be enacted?

Hamilton Hill Subdivision (Kebo Properties, LLC)

Project is considered an administrative reapproval

Hamilton Hill Subdivision (SD-2018-01): RE-APPROVED, 3-1

Attorney Bearor arrives

Chair St. Germain returns, voting membership at 4

Chair St. Germain lays out ground rules

Public hearing for Addressing Officer LUO amendment

It was noted that there was a misprint on the bottom of the draft order, in the footer area (that it said Shared Accommodations rather than Addressing Officer). It was noted this could be corrected when a motion was made.

Note on typo, to be corrected

Assistant Planner Fuller gave an overview of this proposed amendment. He said it would bring the Land Use Ordinance into alignment with the Addressing Ordinance passed by the Town Council in 2019, replacing two references to “Municipal Tax Assessor” in Article 5 (Site Plan Review) with the term “Addressing Officer”.

Proposal explained by Assistant Planner Fuller

At 4:11 PM, Chair St. Germain opened a public hearing. No one came forward to speak, and the public hearing was also then closed at 4:11 PM.

Public hearing opened and closed without comment

Chair St. Germain asked if the board wanted to address each proposed amendment individually or deal with them later at the end of the meeting. There was consensus to deal with them one at a time.

Chair St. Germain reviewed a memo provided by staff on possible motions. He noted the next stop in the process would be with the Town Council.

Mr. Fitzpatrick moved to recommend to the Town Council the written request as submitted per §125-9 A. the proposed warrant article addressing the addressing officer, noting that the [incorrect] footnote on both page 1 and page 2 should be removed and the final document forwarded. Vice-chair Cough seconded the motion and it then carried unanimously (4-0).

Board recommends Addressing Officer LUO amendment to Town Council (4-0)

c.) Public Hearing — Draft Warrant Article — LAND USE ORDINANCE AMENDMENT – Permitting Authority for Certain Residential Uses in Certain Districts, Adding a Use in the Shoreland General Development II District, and Removing Uses in the Shoreland Maritime Activities District – Shall an ordinance, dated December 16, 2019, and entitled “An amendment to change the level of permitting for multifamily dwelling I uses from the Planning Board to Code Enforcement Officer (CEO) in 22 specific districts; address an inconsistency in the Land Use Ordinance by making the CEO the permitting authority for two-family dwellings in the Village Historic district; change the level of permitting for single-family dwellings in the Shoreland General Development II district from Planning Board to CEO; add two-family dwellings as an allowed use in the Shoreland General Development II district with permitting by CEO; and prohibit multifamily dwelling I and multifamily dwelling II uses in the Shoreland Maritime Activities district,” be enacted?

Public Hearing for Permitting Authority LUO amendment

Code Enforcement Officer Chamberlain gave an overview of this proposed amendment, noting that the intent is to remove barriers that make developing year-round housing difficult. She said reducing the level of review and complexity of permitting for certain residential development could help the town

CEO Chamberlain explains the proposal and gives overview

to see an increase in housing development. She went on to explain the specific changes proposed as part of the amendment, explaining why each of the changes was included as she did so.

When she finished, Chair St. Germain opened a public hearing on the proposed amendment at 4:15 PM.

Stewart Brecher, a Bar Harbor architect, spoke first and said he supported the proposed amendment. He called it a really good idea and said he only wished it had happened earlier.

Donna Karlson said she also thought the proposal is a good idea but could not support it in its current form. She asked if a multi-family housing development must be for year-round housing or if it can also be seasonal housing or vacation rentals. She spoke of her own experience with Acadia Apartments on West Street Extension. She said she hoped the town could find a way to limit housing for seasonal workers and vacation rentals and instead promote year-round housing.

Marilyn Kitler asked a question regarding formatting within the draft order, and Chair St. Germain answered her question. When no one else came forward to speak, the public hearing on this draft order was closed at 4:21 PM.

Chair St. Germain he was not surprised that Ms. Karlson did not support the proposal. He said the board was getting quite used to not having Ms. Karlson's support. He noted that the Acadia Apartments as approved went through a process of site plan review by the Planning Board (Multifamily Dwelling II, via Planned Unit Development).

Mr. Fitzpatrick noted the proposed amendment would streamline the process and give more certainty to those looking to do multi-family housing. He said that is important because time is money and Maine has a short construction season.

Vice-chair Cough moved to recommend to the Town Council the written request as submitted per §125-9 A. the draft order dated June 9[, 2020], Permitting Authority for Certain Residential Uses in Certain Districts, Adding a Use in the Shoreland General Development II District, and Removing Uses in the Shoreland Maritime Activities District. Mr. Fitzpatrick seconded the motion, and it then carried unanimously (4-0).

d.) Public Hearing — Draft Warrant Article — LAND USE ORDINANCE AMENDMENT — Employee Living Quarters – Shall an ordinance, dated December 16, 2019, and entitled “An amendment to create and define a new use titled ‘employee living quarters’; allow for the use in 14 specific districts; provide specific standards for the use; amend the definition of ‘family’; create a new definition titled ‘floor area, ground’; and prohibit multifamily dwelling I and multifamily dwelling II uses in the Shoreland Maritime Activities district” be

Public hearing opened at 4:15 PM

S. Brecher speaks in support of proposal

D. Karlson has questions, concerns about proposal

M. Kitler has question, is answered

Public hearing closed at 4:21 PM

Comment from Chair St. Germain

J. Fitzpatrick supports proposal

Board recommends Permitting Authority LUO amendment to Town Council (4-0)

Public Hearing for Employee Living Quarters LUO amendment

enacted?

Chair St. Germain gave an overview of the recent history of the effort to address employee housing, and how this current proposal had succeeded the previous version from mid-2019. The board then opted to have a discussion on the proposed amendment before holding the public hearing.

There was discussion of adding eight words to the proposed definition, those being “and the principal structure is a commercial use.” Those words would be added after the phrase, “where the occupants do not constitute a family or a single housekeeping unit.” Chair St. Germain explained why the board was considering adding these words. Attorney Bearor explained the process that led to those eight new words being proposed. He said a review of the proposed definition showed that it might be “more unwieldy than intended” and that the additional language limiting Employee Living Quarters to an accessory structure on a commercially used property could help clarify and resolve that.

Attorney Bearor said there had been discussion about whether to address conforming vs. non-conforming properties, but said that would be “too small a needle to thread.” He said the proposal is to limit ELQs by making them only accessory to commercial properties. He said he felt it accomplished that purpose.

Chair St. Germain asked what the board would like to do. Vice-chair Cough said he would like to see the new language included in the definition for the sake of clarity.

Vice-chair Cough then made a motion that under the Employee Living Quarters draft order dated December 16, 2019, that in the description [definition] beginning with “An accessory structure attached or detached from the principal structure consisting of a series of rooms containing beds where the occupants do not constitute a family or a single housekeeping unit, and the principal structure is a commercial use [new language underlined for clarity]. It shall be used exclusively for the accommodation of employees for more than 30 days that are employed on or off site as long as the off-site employees are employed by the same company, a parent company or a subsidiary company that owns the parcel where the principal structure is located. Employee living quarters serving a hospital shall not be subject to the 30-day minimum requirement. Employee living quarters must serve another use on the lot, meaning it cannot be the only use on the lot.” Mr. Fitzpatrick seconded the motion, and without further debate or discussion it then carried unanimously (4-0).

Chair St. Germain opened the public hearing at 4:30 PM. Stewart Brecher spoke first and said he thought it was a reasonably good idea. He asked about standards of accommodations for employees (kitchen space, toilet facilities, etc.). Chair St. Germain said the Town Council will create the rules and regulations that will go

Chair St. Germain gives overview of proposal

Discussion of adding eight new words to definition of ELQ to clarify original intent of proposal

Chair St. Germain and Attorney Bearor speak on the subject

Board approves amending definition of Employee Living Quarters by adding words “and the principal structure is a commercial use,” 4-0 in favor

Public hearing opened at 4:30 PM

S. Brecher asks about standards

along with the ordinance. Vice-chair Cough said the Planning Board “shouldn’t be the agent of enforcement.”

Board responds

Mr. Brecher said the licensing rules should reference state standards and “not invent new stuff.” Planning Director Gagnon said the goal, as licensing language is drafted, is to draw from existing codes (NFPA 1, MUBEC, etc.) as much as possible.

Concern about what words will be used in licensing rules

Donna Karlson spoke. She said first that everyone should stick to the discussion on the ideas at hand, rather than make personal comments. She said she was not in support of the ELQ proposal as presented. She said she struggled to understand the definition of ELQ as it had evolved through the process, said she was concerned about the addition of commercial use, and said she was concerned about a legal loophole regarding the off-site provision. She spoke again about Acadia Apartments. She said she felt strongly about multifamily and other forms of housing being for year-round residents. She and Chair St. Germain discussed whether that concern was germane to the ELQ proposal. Ms. Karlson said she was opposed to ELQs being “located in any districts that are residential in nature.” She said she liked the previous employee housing proposal better and that she had supported that effort.

Comments from D. Karlson sharing concerns over ELQ proposal, seasonal employee housing in general

Janice Lowe, of Glen Mary Road, asked if ELQs could be in a residential area. She gave a specific example from her neighborhood. Chair St. Germain said questions would be answered at the end.

J. Lowe asks about ELQs in residential neighborhoods

Carol Chappell, who lives on Roberts Avenue, said she appreciated all the work that had gone into the proposal but respectfully asked that it be changed: that it go back to only allowing ELQs on [the] site [of the use it serves] and only be allowed in areas served by town water and sewer. She described the proposed definition as a “quagmire of possible problems.” She explained the reasoning for her requests. She noted the Shared Accommodations proposal had been modified by removing it from two districts (Downtown Village Transitional and Downtown Residential) and said the ELQ proposal should be modified as well. She suggested going back to only allowing ELQs on site for more voter support.

C. Chappell shares concerns about ELQ proposal, wants to see changes

Additionally, Ms. Chappell suggested adding wording in the ELQ and SA proposals stating that licensing requirements for both would be in effect prior to the amendments coming into force, if they are approved by voters. She said people would have a hard time voting for the amendments if they do not know what the licensing requirements are.

The public hearing was closed at 4:47 PM. Chair St. Germain then preceded to answer the questions from the audience. He noted that some transient accommodation (TAs) levels are allowed in districts seen as residential, and that TAs are one of the uses that ought to be able to avail themselves of an ELQ if so desired. Ms. Chappell attempted to speak, claiming Chair St. Germain had given

Public hearing closed at 4:47 PM

Chair St. Germain answers questions

misinformation at one point. Chair St. Germain said he had not, and continued to explain the reasoning behind the proposal including why specific districts were included.

Vice-chair Cough complimented Chair St. Germain's summary. He added that there are numerous commercial establishments in residential districts, many of which predate the establishment of that area as a residential district. Ms. Brooks added her agreement.

Chair St. Germain made two additional points. He read the definition of "commercial use," and said the reference to that in the amended definition of ELQ was an important addition. Additionally, he said ELQ is essentially a residential use and that as such "it should be expected that residential uses could end up in a residential district." He said the revised definition excludes a single-family house as something that could add an ELQ on to it.

Mr. Fitzpatrick spoke and said employees need to live somewhere. He said districts not included in the ELQ proposal don't allow for large commercial uses that would have a need for many employees. He said the intent was to give such employers opportunities to house their employees on premise. He said he did not see where the concern about an ELQ being built on the same lot as a house or an apartment building had come from, and asked if anyone could point that out to him.

Chair St. Germain spoke about some of the constraints on ELQs, including the cap on density bonuses and limiting ELQs to 25% of the size of the principal structure on the lot. He echoed Mr. Fitzpatrick's invitation for the public to identify what in the definition of ELQ would allow for the situation several had referenced.

Planning Director Gagnon said the definition of ELQ, if read quickly, could possibly be confusing. She parsed the definition and gave examples, and spoke about requirements about visual compatibility.

Chair St. Germain asked if anyone else would like to speak, specifically on the subject of the definition of ELQ and the questions around it. Ms. Karlson spoke again and said she still did not fully understand the definition. She spoke again about Acadia Apartments, and a back-and-forth ensued between her and Chair St. Germain. Mr. Fitzpatrick made a point about the definition of commercial use.

Mr. Brecher said he heard an "incredible frustration" among year-round residents "that their community is being eroded as a place to live." Chair St. Germain said he understood and shared the concern, and noted that addressing employee housing is only one part of the larger housing policy framework approved by the Town Council last year. "I believe your message is being addressed," Chair St. Germain told Mr. Brecher. "Hopefully this is one of the steps to that end."

Other board members agree with Chair St. Germain, comment

Chair St. Germain makes additional points

J. Fitzpatrick offers perspective on ELQ proposal

Board asks public to identify specific area of concern

Planning Director Gagnon speaks

Public hearing reopened for questions

Discussion on the definition of ELQ and commercial use

S. Brecher says folks are frustrated, board empathizes

Janice Lowe spoke about single-family houses being bought for employee housing. Chair St. Germain spoke about the impetus behind this proposal and the background.

Barbara Sassaman (Design Review Board chairman) noted that Shared Accommodations would be reviewed by the Design Review Board. She asked who would regulate the design of ELQs. Chair St. Germain referred to the standards outlined in the proposal, and said the Planning Board would make the determination during site plan review. Planning Director Gagnon elaborated on that answer, reinforcing Chair St. Germain's answer.

James O'Connell spoke, indicating his opposition to the proposal and noting he has been a landlord for 40 years in Bar Harbor.

David Witham spoke, and said he was hearing the frustration and confusion among other speakers that night. He spoke about the inclusion of the phrase "off-site" in the definition of ELQ. He said he did not agree with the notion that this proposal would only benefit employers. He said he wants to get his employees out of neighborhoods where residents have indicated they are not wanted.

At 5:18 PM, the re-opened public hearing was closed. Mr. Fitzpatrick spoke, and shared a comment he had voiced at a previous meeting. He recounted the history of the proposal, and said it had "covered a lot of ground" in the last six to nine months. He said it was well-vetted, that staff had heard concerns and worked to address them, and that all of this had resulted in "a very good document."

Mr. Fitzpatrick said all the members of the Planning Board share the same concern voiced by Mr. Brecher. He said this proposal was "not a silver bullet," but rather "one bite of the elephant." "We've got to start somewhere," he said. He said this proposal may not revert any single-family homes currently used for employee housing back to their original use, but that it may prevent more single-family homes from being converted to that use.

Mr. Fitzpatrick moved to recommend to the Town Council the written request as submitted per §125-9 A. the draft order dated December 16, 2019 entitled Land Use Ordinance Amendment Employee Living Quarters; following a question from Chair St. Germain, he then added, "as long as it includes the revised definition of 'employee living quarters' as eloquently read by Planning Board member Joseph Cough earlier tonight." Vice-chair Cough then seconded the motion. The motion then carried unanimously (4-0).

Vice-chair Cough then noted that one of his earlier motions should have referenced December 16, 2019 as the date of the draft he was referring to [note: this was the permitting authority amendment]. **Vice-chair Cough then moved**

Question about ELQs and single-family homes

B. Sassaman asks about design standards for ELQs and who reviews

J. O'Connell opposed

D. Witham speaks, shares perspective

Public hearing closed at 5:18 PM

J. Fitzpatrick speaks in support of proposal

Board recommends Employee Living Quarters LUO amendment, with revised definition, to Town Council (4-0)

Vice-chair Cough corrects date from earlier motion

that his motion [for the permitting authority amendment] that referred to a June date and to instead make it December 16, 2019 as presented. Mr. Fitzpatrick seconded the motion, and it carried unanimously (4-0).

Board votes 4-0 to use correct date in earlier vote

e.) Public Hearing — Draft Warrant Article — LAND USE ORDINANCE AMENDMENT — Shared Accommodations – Shall an ordinance, dated December 16, 2019, and entitled “An amendment to create and define a new use titled ‘shared accommodations’ with three levels of the use based on number of occupants; allow for one or more of those three levels of the use in eight specific districts; provide specific standards for the use; make all levels of shared accommodations subject to Design Review Board approval; and amend the definition of ‘family’” be enacted?

Public Hearing for Shared Accommodations LUO amendment

Chair St. Germain gave an introduction to and overview of this proposal, and listed the districts where the new use is proposed to be allowed. He noted that there are three different levels of Shared Accommodations, based on the number of occupants. Planning Director Gagnon offered a clarifying point.

Chair St. Germain gives overview of proposal

A public hearing was opened at 5:28 PM. Gail Conrad asked what would keep someone from building/developing an SA but actually using it as an ELQ. Chair St. Germain asked if there was a specific scenario where she envisioned that happening, and she said she was not familiar enough with the proposal to say but just wondered what distinguished the two uses.

Public hearing opened at 5:28 PM

G. Conrad asks about SA vs. ELQ

Barbara Sassaman asked about parking requirements for SAs, and Planning Director Gagnon responded (in zones where there is no minimum parking requirement, SAs will not be required to provide parking).

B. Sassaman asks about parking standards

Mike Woodard said he had become confused five minutes earlier about the distinction between a standard, traditional apartment and a Shared Accommodation.

M. Woodard has question about what an SA is/is not

Donna Karlson said she was pleased to see that Shared Accommodations seemed to align more closely with commercial districts than Employee Living Quarters. She thanked David Witham for what she described as his thoughtfulness to year-round neighborhoods. Ms. Karlson noted that Shared Accommodations-1 would be permitted with a building permit from the Code Enforcement Office, which meant abutters would not be notified. She suggested SA-1 at least be subject to minor site plan review. She noted there was no specific upper cap on how many people could be in an SA-3. She asked if there would be a prohibition of more than one SA-1 per lot.

D. Karlson has concerns about proposed amendment

Carol Chappell spoke and asked for clarification of how licensing requirements would be put in place. She said knowing specifically what was happening with licensing requirements “would help a lot of us feel better about this process.”

C. Chappell asks about licensing requirements

The public hearing was closed at 5:40 PM.

Planning Board members and Planning Director Gagnon spoke to points raised by Ms. Karlson. There was a question whether someone could build an SA and use it as an ELQ. Code Enforcement Officer Chamberlain answered the question. Mr. Fitzpatrick noted SAs are considered a residential use, and are not an accessory to a commercial use.

A question from Mr. Woodward was addressed: does Bar Harbor's zoning allow for two principal structures on a lot? Code Enforcement Officer Chamberlain said there can be multiple principle uses on a property.

Planning Director Gagnon said in deciding where SA-1, 2 and 3s would be allowed, a thorough comparison to other uses allowed in those zones was done. "We made sure it stayed in line with what was allowed overall," she explained.

Janice Lowe asked a question relating to structures in her neighborhood and their use as employee housing. Staff spoke to her question.

On the question of whether SA-1 should go through CEO or site plan review, Chair St. Germain noted the maximum occupancy of eight is only three higher than what is allowed in a unit already and said he had no problems with CEO review. Ms. Brooks and Mr. Fitzpatrick expressed agreement with this. There was further discussion of multifamily I and multifamily II dwellings, and two-family dwellings and the differences between them.

Chair St. Germain addressed parking. To the question of what distinguishes SAs from traditional apartments, Mr. Fitzpatrick gave an answer to this and Mr. Woodward said from the audience that this cleared up the matter for him. Chair St. Germain offered additional explanation.

Barbara Dunham spoke and shared concerns about housing units that are not run properly and asked what she should do when she knows of such a situation. She also asked how this proposal would help with the matter of affordable housing.

Planning Director Gagnon explained how the proposed licensing requirements would work. She noted that with licensing, SAs would be reviewed annually (unlike site plan review, which is a one-time process). She spoke to the larger process and approach. Ms. Dunham asked what assurances people will have that the licensing will be taken care of, and both Chair St. Germain and Vice-chair Cough said that question had been answered as best it could be already.

Chair St. Germain said this proposal is part of a long-term approach, and that it requires faith and understanding that all are working toward a good objective.

Vice-chair Cough said initially, the Planning Board had tried to dovetail

Public hearing closed at 5:40 PM

Board responds to D. Karlson's concerns

Question on principal structures is answered

Planning Director Gagnon explains how proposal was written

J. Lowe has question, staff answers

Board speaks to SA-1 only having CEO review, rather than site plan

Question of what an SA is/is not is answered

More discussion of licensing, what people should do when they have concerns about employee housing

Board speaks to overall vision

regulations for this type of housing with the Land Use Ordinance. But he said they found it is “really not our job to legislate in the Land Use Ordinance certain elements of licensing.” He then questioned whether there should be language in the draft orders memorializing that they will be subject to licensing requirements approved by the Town Council.

Board explains why Council should deal with licensing

Attorney Ed Bearor said he did not think there was anything the Planning Board could do to compel the Town Council to take a specific action. He said he would not tell the Planning Board they could not do that, but said he would not encourage members to take that action (directing the Town Council to do something). Vice-chair Cough spoke of the licensing work being done by staff as soon as possible and approved by the Council as soon as possible, well prior to the public vote in June. Chair St. Germain said a motion could be made along those lines, in the form of encouragement.

Attorney Bearor says board cannot compel Council to act on licensing, but no problem with encouraging them

Vice-chair Cough moved to recommend to the Town Council the written request as submitted as per §125-9 A. the draft order dated December 16[, 2019] regarding Shared Accommodations. Mr. Fitzpatrick then seconded the motion, and it carried unanimously (4-0).

Board recommends Shared Accommodations LUO amendment to Town Council (4-0)

Vice-chair Cough then moved that the Planning Board ask the chairman to send a letter to the Town Council that references the urgency of getting the licensing components of the Shared Accommodations and the ELQs [Employee Living Quarters] approved as soon as possible for educational and comfort purposes for the voters. Ms. Brooks seconded the motion and it then carried unanimously, 4-0.

Board directs chair to communicate to Council the urgency of addressing licensing ordinance (4-0)

Chair St. Germain noted that a second Zoning Advisory Group had been convened to address vacation rentals. Planning Director Gagnon and Assistant Planner Steve Fuller both mentioned the upcoming public listening sessions on vacation rentals and year-round housing.

Discussion of work on vacation rentals

Ms. Karlson asked if there could be more than one SA-1, SA-2 or SA-3 on a single parcel of land, if conventional controls such as lot coverage and setbacks are met. Planning Director Gagnon said it was potentially possible, but that there would be a lot of factors in play for that to happen.

Question from D. Karlson about multiple SAs on one lot

At 6:16 PM, the board agreed to take a five-minute break. It lasted longer than that, however, and the board returned to business at 6:25 PM.

Board takes a break

f.) Public Hearing — Draft Warrant Article — LAND USE ORDINANCE AMENDMENT — Official District Boundary Map Amendment For Hulls Cove Business and Shoreland General Development II districts, and Amendments to Create and Define a New TA Use and to Add Two New Uses to the Shoreland General Development II District – Shall an ordinance, dated December 16, 2019 and entitled “An amendment to the Official Neighborhood

Public Hearing for Hulls Cove zone change, new uses LUO amendment

District Map by extending a portion of the boundary of the Shoreland General Development II district to encompass all or part of the following parcels: Tax Map 223, Lots 011 and 014 and Tax Map 224, Lots 001 and 022 (all four of which presently have portions in both Hulls Cove Business district and Shoreland General Development II district); additionally, to create and define a new level of transient accommodation use (proposed as “TA-9”) in §125-109 and to establish a parking standard for that use in §125-67 D.(3)(b)[2]; and lastly, to amend §125-49 D. of the Land Use Ordinance (Shoreland General Development II) to allow “TA-9” and “campground (shoreland districts)” as uses permitted with site plan/Planning Board approval in the Shoreland General Development II district” be enacted?

Vice-chair Cough again noted his business relationship with Perry Moore, representing the applicant in this application and who is also working with Vice-chair Cough on multiple projects. Chair St. Germain said he was still satisfied with the way the board handled it last time, no one else voiced any objections and the board proceeded with Vice-chair Cough participating in the discussion.

Mr. Moore recapped the discussion that had taken place last time. He said the proposal had been modified to create a new category of Transient Accommodations, TA-9, which would be capped at 75 guest rooms. He said the other issue had to do with controlling the footprint of the project, and he said parking requirements and lot coverage would address that.

He recapped the proposal: move the boundary between Shoreland General Development II and the Hulls Cove Business district, create/define a new use (TA-9), create a parking standard for that use, and add TA-9 and “campground (shoreland district)” as allowed uses in Shoreland General Development II. Eben Salvatore, there with Mr. Moore, thanked Vice-chair Cough for the suggestion of the TA-9 use at the board’s meeting in December. “That really made what we were trying to do a lot simpler,” said Mr. Salvatore. He said a lot of time had been spent wrestling with the proposed definition of “cabin” and that this new use avoided that issue. He said the reason for the zoning changes is “to limit what we are able to do on that site.” He said the proposed cap of 75 rooms is a few more rooms than what are in the building presently standing on the site.

Mr. Salvatore said this proposal would not allow for density that isn’t already allowed. He said the company is interested in an eco-friendly, small-scale plan. He said he hoped to have a site plan in front of the Planning Board prior to the June vote on the amendment proposal so that people can visualize what is being proposed. Mr. Moore gave an overview of the site on the map. In response to a question from Chair St. Germain, Mr. Moore said all properties directly affected by this zoning change are under the ownership umbrella of Ocean Properties.

Chair St. Germain opened a public hearing on this proposal at 6:34 PM. Donna Karlson said she was trying to get a sense of the size, scale and impact of this

Vice-chair Cough notes his work with P. Moore, board does not object

P. Moore gives overview of revised proposal: new use, TA-9, is proposed

P. Moore recaps remainder of proposal

E. Salvatore notes why upper cap of 75 rooms is proposed

Continued overview, applicant responds to questions from the Planning Board

Public hearing opened at 6:34 PM

proposal. She asked how many rooms for guests were available in the structure there now when it was operated as the Park Entrance Motel. Mr. Salvatore said 58. With no other comments, the public hearing was closed at 6:35 PM.

One question

Public hearing closed at 6:35 PM

Vice-chair Cough said he liked the proposal overall, but asked what would prevent someone in the future from taking the large lot and splitting it and putting a TA-9 on each individual lot. Mr. Moore said lot coverage rules would prevent that, as would the requirements for one parking space per guest room. He said other factors that would come into play, also as limiting factors, would include the size of the rooms, the size of the lot(s) in question and size of the parking area.

Questions about how TA-9 could play out in the future

Mr. Fitzpatrick asked about the possibility of two, 50-unit TA-9s in the future. Mr. Salvatore spoke about limiting factors including setbacks, and said it would also not make sense from a business perspective. Mr. Moore said each room and associated parking space would require about 1,200 square feet of area, and said that did not include any allowances for amenities that the applicant is looking at.

Mr. Fitzpatrick gave a rough breakdown: the current site (per Mr. Moore) is about 8 acres, or 320,000 square feet, with an allowance for 70% lot coverage (in Shoreland General Development II). That reduces the developable area down to 224,000 square feet. Using the 1,200 square feet figure above for each room/parking space, Mr. Fitzpatrick said that would allow for up to 112 rooms (again, not allowing for any amenities). Mr. Moore said that sounded right, but added, "We're not going to build a big hotel that doesn't have amenities."

Breakdown of what could happen on site, using figures from P. Moore

Mr. Fitzpatrick asked what the current use of the property and building is. Mr. Salvatore said floats are stacked there in the fall, and that transients and employees are housed in the building. Mr. Fitzpatrick asked where the employees housed there now would go if this amendment is approved and the site is redeveloped. Mr. Salvatore said they would go to either Acadia Apartments on West Street Extension or Sonogee on Eden Street. He and Mr. Moore reiterated that they would have a concept plan before the board prior to the June vote on this proposed amendment.

Discussion about current use of site, where workers who live there now would go instead

Mr. Fitzpatrick asked how creating a TA-9 use and adding it to Shoreland General Development II would benefit others in the district. Mr. Salvatore spoke first, and then Mr. Moore said that it could make some current non-conforming uses (such as cabins) conforming. He said there is not another piece of land in the district big enough to put a motel on. Mr. Salvatore noted Shoreland General Development II is a small zone.

Question on how rest of district would be affected by this

Vice-chair Cough asked Attorney Bearor for his opinion. Attorney Bearor said he did not see anything legally deficient with the proposal. He said there was nothing that prevented the board from recommending the proposal, should they

Attorney Bearor: no legal deficiencies with this proposal

choose to. He asked if there were any other sections of Shoreland General Development II elsewhere in town, and the applicants said no, there are not.

Board members asked what would limit future development on the site to just 75 units (guest rooms/accommodations). Mr. Fitzpatrick said he was “just trying to picture what could be” with this proposed change, and Ms. Brooks said it seemed possible that there could be more than 75 units at some point in the future.

Mr. Moore said there is a standard under site plan review that when the board reviews a plan, they review its consistency with the comprehensive plan. “That’s your insurance,” Mr. Moore said. He noted that subject, consistency with the comprehensive plan, was addressed in the initial application for this proposal.

Mr. Salvatore noted that TA-8s (25 or more rooms) were allowed in that area at one point. He said the purpose of this proposal, with the cap of 75 rooms, “is to show a limit.”

Attorney Bearor acknowledged Mr. Moore’s comments on the comprehensive plan, but said unless the board “had a lot better reason for denying an application, basing it on inconsistency with the comprehensive plan is pretty shaky ground. It’s not the best of things to base a decision on.”

Vice-chair Cough moved to recommend to the Town Council the written request as submitted as per §125-9 A., referencing the draft warrant article changing the Official District Boundary Map in Hulls Cove [Business District] and Shoreland General Development II, and an Amendment to Create and Define a New TA Use (TA-9), and to Add Two New Uses to the Shoreland General Development II district. Ms. Brooks seconded the motion, and it then carried 3-1 (Mr. Fitzpatrick opposed).

VII. OTHER BUSINESS (None)

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

Chair St. Germain said the board’s next meeting would be on Wednesday, Feb. 5.

IX. ADJOURNMENT

At 6:55 PM, Vice-chair Cough moved that the board adjourn the meeting. Mr. Fitzpatrick seconded the motion, but it then carried unanimously (4-0).

Minutes approved by the Bar Harbor Planning Board on February 5, 2019:

3.04.20 [Signature]
Date Basil Eleftheriou Jr., Secretary / Bar Harbor Planning Board

More discussion of what could happen in the future on site

P. Moore says board can reject anything inconsistent with comprehensive plan

Attorney Bearor says P. Moore’s point above is not strong argument for Planning Board

Board recommends Hulls Cove zone change, new uses LUO amendment to Town Council (3-1, J. Fitzpatrick opposed)

Note that the board’s next meeting will be Wednesday, Feb. 5

Meeting adjourns at 6:55 PM