

**Minutes
Bar Harbor Planning Board
Wednesday, January 16, 2019
Council Chambers- Municipal Building
93 Cottage Street
4:00 P.M.**

I. CALL TO ORDER

The Chair called the meeting to order at 4:01 PM. Members present: Tom St. Germain, Chair; Basil Eleftheriou, Jr., Secretary; John Fitzpatrick, Member; 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. Fitzpatrick moved to approve the agenda as proposed with the removal of agenda item VII a. "staff discussion on previously approved phased construction timeline for SP-2017-05" at Staff's request. Mr. Eleftheriou, Jr. seconded the motion and the Board voted 5-0 to approve the motion.

III. EXCUSED ABSENCES

There were none.

IV. PUBLIC COMMENT PERIOD

Mr. Stewart Brecher spoke and requested that the Board eliminate Downtown Village II as a district as the intention of a transitional zone before the dense downtown almost makes no sense, as it meets in too few ways the criteria for a transitional district and for a very tight business district.

V. APPROVAL OF MINUTES

January 02, 2018

Mr. Fitzpatrick moved to approve the minutes of the January 02, 2019 meeting as prepared. Mr. Anderson seconded the motion and the Board voted 5-0 to approve the motion.

VI. REGULAR BUSINESS

- a. Public Hearing – A public hearing on an amendment to Appendix A – Historic Properties in the Land Use Ordinance.**

Mr. St. Germain summarized that the amendment to Appendix A is primarily corrections and adding additional information to the list such as adding the year buildings were constructed; minor amendments to approximately two building names; and adding the reason that each building is significant to the list. Mr. Cough asked if a sign was being removed from the list and Ms. Sassaman,

Chair of the Design Review Board, confirmed that yes, this was at the request of the current owner of that property.

Mr. St. Germain opened the public hearing for comments and with no participants, he closed the public hearing.

The Board did not have any concerns.

Mr. Cough moved to recommend this request to the Town Council as submitted. Mr. Fitzpatrick seconded the motion and the Board voted 5-0 to approve the motion.

b. Public Hearing – A public hearing on an amendment to the Design Review Overlay District Map and expansion of the Design Review Board jurisdiction.

Mr. St. Germain summarized that the the Design Review Board sought to expand their overlay district.

Mr. St. Germain opened the public hearing for comment.

Ms. Sassaman, Chair of the Design Review Board spoke to the Board about the intent of the Design Review Board and the reasons for the proposal. She explained that the rationale for the desired change was based on the fact that when district boundaries change, it changes the Design Review Board overlay, resulting in taking lots out of the purview of the Design Review Board that really should be in their purview, and adding properties unnecessarily. Ms. Sassaman expounded that part of the Comprehensive Plan discusses widening and expanding the Design Review Board's purview for historical preservation purposes. Ms. Sassaman also noted that this proposal only affects businesses and not private residences, in order to protect the residential atmosphere for the residents of communities.

Mr. Stewart Brecher spoke of concerns about an expansion of the Design Review Board overlay and noted his concern that personal preferences of members of Design Review Board might be implemented that would be a hindrance for future contemporary development and he would prefer the zoning ordinances be tweaked. Mr. Brecher would like to preserve really great buildings and allow for future contemporary development.

Ms. Erin Cough spoke and noted that the Design Review Board standards outlined in the ordinance are quantifiable and objective. Ms. Cough elaborated that each neighborhood has an independent look and feel that should be protected and in Ms. Cough's opinion, the overlay of the Board will protect those neighborhoods. She added the Board needs to be there to preserve the look and historic character, and keep the Town of Bar Harbor diverse.

Mr. Dave Bowden, owner of the Edgewater Motel and Cottages spoke and inquired how the boundaries were chosen. Mr. Bowden contended that a large percent of the Salisbury Cove area is residential. Mr. Bowden noted that businesses in Salisbury Cove are already limited by zoning and he does not want to increase the purview of the Board which may add to project delays as well as added cost. Mr. Bowden expressed concern with becoming a slave to the opinion of the Board stating that the ordinance is subjective with too much discretion and he would like to wait for the new Planning Director to have a chance to review the amendment, hold some neighborhood workshops, and not rush the process.

Ms. Sassaman rebutted the implication that the Board is in a rush to push this forward and that in actuality, this has been 5 year process. Ms. Sassaman also noted that many of the National Register properties are not within the Board's district, citing the Sea Coast Mission as an example.

Ms. Lauren Donnelly, a Town Hill resident spoke in favor of proposal.

Mr. Pete Bono, spoke as a Bar Harbor resident, business owner, and member of the Design Review Board. He noted that he has no memory of the Board ever rejecting a candidate and have only requested that an applicant return because of missing information and/or inadequate drawings that hinder any ability to determine what is being built. Mr. Bono explained how the Board incorporates the ordinance into their decision making process and that it is not subjective. Mr. Bono quoted excerpts from the Comprehensive Plan and cited that this request of expansion of purview is not of the Board's own volition, but rather the result of the intent of the Comprehensive Plan to study the areas of Hulls Cove, Salisbury Cove and Town Hill to identify which features, structures and visual aspects should be preserved and to prepare and adopt standards in the ordinance. Mr. Bono also noted that Bar Harbor residents have expressed preservation of neighborhoods as being important, which resulted in this being part of the Comprehensive Plan.

Mr. St. Germain reminded the public that while he permitted Mr. Bowden and Mr. Bono to speak longer than the three minute limit, he would be enforcing the time limit moving forward.

Ms. Donna Karlson spoke briefly about historic development projects in Salsbury Cove. Ms. Karlson stressed that preservation helps business strengthen economic development and communities. She also discussed that the Comprehensive Plan noted that one of the biggest community outcries was a fear of losing neighborhood character. Ms. Karlson inquired as to which is legally binding; the written narrative description of the boundaries or the map.

Mr. Stephen Coston, member of the Bar Harbor Town Council, but speaking as a resident, noted that all development, particularly in Bar Harbor is confusing, expensive, and time consuming. Mr. Coston expressed concerns with the potential of increasing confusion with regard to design and development and he didn't think the cost of this outweighs the benefit.

Mr. Eben Salvatore, of Ocean Properties spoke about the Design Reivew Board, noting it to be a lengthy process which is frustrating to an applicant when it strays from the ordinance.

Mr. Andrew Geel, Design Review Board member, resident of Bar Harbor, and owner of Thornhedge Inn noted that preservation is important. Mr. Geel added that the expansion is needed to protect areas such as Salisbury Cove and noted that the standards of the Design Review Board are quantifiable.

Mr. Robert Garland, a Town Hill resident inquired as to the process for this amendment. Mr. St. Germain clarified that this is step two in a seven step process, that the workshop was step one, this public hearing was step two, then hearings in front of the Town Council and Warrant Committee, then back to the Planning Board for a final recommendation.

Mr. Arthur Greif, Bar Harbor resident spoke and noted that the answer to Ms. Karlson's question regarding whether the written description holds as a matter of law or the map, is the written description. He noted that the concern is not the complexity of the process, but the people from away that don't care about village integrity and will develop something that does not fit within the character of a neighborhood, and he would like to keep the integrity of Salisbury Cove. Mr. Greif noted that the Planning Board alone cannot disapprove an application because of its lack of beauty.

Mr. Poncho Cole, Design Review Board member and resident described to the Board that the concern of the Board is what can be viewed from the road and that they make exceptions for fire codes. Mr. Cole noted that his personal preferences are not a factor in the Board's decisions.

Mr. Dave Bowden spoke a second time to clarify that the zoning approved for Shoreland Development IV was designed to preserve the cottages and has criteria in place to keep the village preserved and protected.

Ms. Sassaman spoke a second time to clarify that the Board wants to change the current overlay boundaries to a map and lot numbering system so that every time the district changes the Board does not lose parcels that should be within their purview or gain parcels that are not relevant to their mission.

Mr. St. Germain asked if everyone had spoken that wished to speak and hearing no other comments, closed the public hearing and opened the deliberation portion of the hearing for the Board.

Mr. Fitzpatrick noted concerns about new overlay district restrictions and questions of grandfathering current businesses. He agreed that the development process is confusing, costly and time consuming and slows development and deters potential investors. Mr. Fitzpatrick expressed a desire to see the Comprehensive Plan updated as it is out of date, in that it is twelve years old, and he would like the new Planner to lead the Comprehensive Plan and hold workshops and see what the current property owners and residents would like at this point in time.

Discussion of the Board continued around this topic and the idea of waiting on a new Comprehensive Plan before moving forward with the expansion of the overlay district.

Mr. Cough clarified some points with regard to awnings, water view parameters and visibility from the road with Ms. Sassaman and suggested isolation of the districts and voting on each one separately.

Mr. Cough verified with the Town attorney the possibility of isolation of nationally registered historic places and bringing only those forward versus the currently proposed expansion of the overlay district.

Mr. St. Germain commented on issues with Article XIII. He noted that neighbors in proposed districts had not been approached by the Design Review Board and that any ordinance changes in the last ten years in the Gateway district have been minor. Mr. St. Germain concluded with several personal observations of the Design Review Board and noted opposition to the expansion as proposed.

Discussion continued regarding historical register properties.

Mr. Cough started a discussion around the topic of preserving specific properties of historical significance and the Board did not want to pursue this avenue at this time.

Mr. Fitzpatrick moved that the amendment to expand the Design Review overlay district not be recommended to the Town Council. Mr. Eleftheriou, Jr. seconded the motion and the Board voted 4-0-1 with Mr. Cough abstaining.

Mr. St. Germain called for a three minute break.

- c. Continuation of 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.**

Mr. St. Germain summarized that at the last meeting on December 05, 2018, findings were made on the base development density calculation and the Town Attorney worked with the applicant's attorney to

negotiate an affordable housing component consistent with 125-69R, as required by 125-69S. Mr. St. Germain asked the attorneys to discuss the affordable housing component and then the Board could address the staff report.

Mr. Eleftheriou, Jr. stated that he wished to hear from the applicant on what has changed since the last meeting and why.

Mr. St. Germain inquired with staff as to the status of the public works capacity statement. Ms. Chamberlain noted that public works capacity statement has not been received but the Board is in receipt of updated fire and sewer capacity statements. Staff acknowledged that the updated plans were received by staff last week and passed along to the public works department.

Mr. Salvatore addressed the Board and explained that a building was eliminated in order to appease Ms. Mills' opposition to the project, and no other components have changed. Buildings E and F are now three story buildings and the number of units remains the same. Mr. Moore expanded by noting that the northeast corner of concern to Ms. Mills was that it remain a woodsy feel. The dumpster is now proposed to be enclosed in a chain link enclosure with a green vinyl privacy feature to reduce visual prominence. Additionally, Mr. Moore has documented on the drawings both the proposed and existing lot coverage. The trees have been changed from native red maple to sugar maple due to the dryness of the soils and the belief that sugar maples should fare better than red maple. Also, the applicant has added fencing along West Street Extension to make the buildings less visible as one drives down the street. Mr. Moore noted that a revised storm water plan which depicts a secondary outflow from the rain garden eliminates the need for a small yard drain which eliminates the need for a modification of standards for the piping, as all piping is now in compliance. Mr. Moore noted that the applicant has also provided a proposed lighting plan with cut sheets of lights installed last year and noted that the lights at entryways to the existing units have been modeled at a 75 watt LED bulb and showed photo metrics. Lighting on the walkway of the new building will be controlled by sensors. Additionally, a section of the site where the utility corridor is has been added with the face of building G and the proposed berm with trees, fence, and sewer with their relationships to property line. Mr. Moore also showed the Board pictures of various views from Ms. Mill's property line of how the site appears now and a simulation of future appearance. Certain trees will remain and specific trees that Ms. Mills requested be spared, will not be removed.

Atty. Hamilton discussed the legal documents that were negotiated between himself and the town attorney and acknowledged a simple marketing plan with a history of Board approval. He further sought to modify the language to be mutually beneficial to both the Town and the applicant. Atty. Hamilton discussed three possible situations that could occur which would make a 99 year term problematic. The use or structures could go away eliminating the requirement for the affordable housing component; a change of zoning; or substantial changes by the applicant to the site plan that the Board would acknowledge that affordable housing would not be required by the applicant. Atty. Hamilton requested that the Board approve the document with the changes that were made and Atty. Bearor, Town Attorney noted that he did not believe the three modifications to be excessive.

Atty. Bearor retracted his approval of a change from the word "moderate" to "median" income in the documents drafted by Atty. Hamilton after acknowledgement that staff pointed out that the ordinance definition section defines moderate income. Atty. Hamilton agreed to strike the word change and leave it to read moderate in terms of income.

Mr. Cough addressed the Board to note an error in the Declaration of Covenants, Conditions and Restrictions, page one, item two, in plain language the months and years, starting with second sentence, which he thought to be badly intertwined.

Atty. Hamilton explained the wording and agreed with Atty. Bearor's suggestion that the word annualized be inserted after monthly rent, to now read "monthly rent annualized."

Mr. Fitzpatrick proposed that the Board modify the marketing plan on page two, the first line, to read "shall provide two rental units" versus "is committed to providing." Atty. Hamilton agreed to the modification.

Mr. Greif addressed a concern of parliamentary procedure to the Board of accepting a document during at the meeting, provided by the Atty. Hamilton, which was not seven days in advance and requested a copy.

Atty. Hamilton and Atty. Bearor pointed out that this was a several day old document that had recently ben redlined by the Town attorney, with a submission date to the Board of the prior Wednesday.

Discussion followed regarding modifications to the 99 year encumbrance in the ordinance and enforcement.

Atty. Bearor noted that the Board could make evidence of compliance a condition of approval.

Mr. St. Germain noted the general discussion of changes to the application and opened the public hearing for comment on that evenings content.

Mr. Greif noted that the agenda for the meeting suggested four buildings which is not what is being proposed by applicant tonight.

Discussion followed regarding Mr. Greif's claim of representation of Ms. Mills.

Mr. Greif noted that the Declaration of Covenants limits occupancy to BHAPTS employees and their families and suggested edits to the Covenants and Marketing plan for requirements that the applicant provides annually, leases signed for affordable units along with any accompanying income verification in order for the Town to have grounds for enforcement actions should they become necessary. Mr. Grief reiterated prior concerns regarding the word resident not being inclusive of seasonal workers and that the PUD and Multifamily II uses were not intended for seasonal workers, but for year-round residents. Lastly, Mr. Greif pointed out that the revised plan of two three-story buildings which are much closer to Ms. Mills historic garden and home and the noise from the third floor of the proposed buildings would not have the noise barrier that the first and second floors now have. Mr. Greif pointed out that the primarily one and two story home neighborhood would now contain three story structures and would like potential noise concerns addressed on the plan. Mr. Greif expressed fears of the applicant's non-compliance with limitation of no more than five unrelated persons residing in a dwelling unit.

Discussion regarding Mr. Greif's representation of Ms. Mills and whether documentation had been provided to the Board. Arguments were made based on standing.

Ms. Kendra Rand, a resident of Bar Harbor inquired as to how many people would be living in each unit and what the living conditions of the residents in the proposed project would be. Ms. Chamberlain stated that five unrelated people per unit was the maximum number of people allowed in one unit per the ordinance, and described potential issues with enforcement.

Mr. Salvatore addressed Ms. Rand's questions with a schematic of the unit layout depicting four bathrooms for five persons and acknowledged a requirement on his part to adhere to the ordinance limitation of no more than five persons per unit. Mr. Salvatore noted that Mr. Grief's fear of noncompliance with the ordinance was both unfounded and personally offensive.

Ms. Rand spoke regarding being both a beneficiary and a board member of Island Housing Trust and stated that any prioritization of potential residents should not place any one demographic over another. Ms. Rand worried about making caricatures of specific groups of people and would like the discussion centering around people and groups of people to be a civil discourse.

Ms. Karlson spoke briefly about the history of people being evicted by Ocean Properties upon purchase of the Acadia Apartments. Ms. Karlson expressed a desire to have hotel employees reside on premises in staff housing in order to self-regulate any groups of people coming off late night shifts which may be disruptive to sleep patterns of residents who may be working day shifts. Ms. Karlson also expressed concerns with modifications of internal setbacks between buildings. Ms. Karlson disagrees with any modification of the standards in the absence of rationale of any changes based on reasons of health, safety and welfare or site characteristics. Ms. Karlson did not hear any discussion regarding the proposed project being adjacent to a historical property, nor any mention of Beatrix Farrand. Ms. Karlson noted concerns of light intrusion and noise issues for adjacent properties.

Mr. Crafts cited the following concerns with the proposed project: constant changes to the project; undefined project; late submittals with missing documents; confusion around facts and unit calculations; rushing the project and cost concerns of affordable housing. Mr. Crafts asked the Board to address during deliberation, whether the application meets the standards of PUD-V and affordable housing and that grandfathering, transferring and expanding nonconforming uses and structures against the legal advice to the contrary was correct; and that compliance review covers all pertinent site plan review sections and allows an open dialogue in order to fulfill due process requirements. Mr. Crafts requested that the Board vote against the project and noted that the burden of proof of the project's ordinance compliance should be on applicant, rather than the opposing parties pointing out non-compliance of ordinances which address the project.

With no further parties wishing to speak on the matter, Mr. St. Germain closed the public hearing portion of the meeting and opened up Board discussion on the matter.

Discussion followed regarding base development density calculations and grandfathering non-conformity of lots which was voted on at the December 05, 2018 Board meeting.

Mr. Fitzpatrick reiterated his disagreement with the Board's vote in favor of the calculation of the base development density being rounded up to arrive at nine and the Town attorney agreed that this was erroneous. Further, Mr. Fitzpatrick and Atty. Bearor disagreed once more to the idea of grandfathering of non-conforming lots to further non-conformity.

Atty. Hamilton and Mr. Moore stood by their calculations and the idea that the ordinance supports the project and cited various references in the ordinance.

Atty. Bearor disagreed with the applicant's and Atty. Hamilton's interpretation of the ordinance with regards to the two points that the Board voted on at the meeting December 05, 2018. Atty. Bearor asserted that he still finds the base development unit to be eight and every other unit after that unit needs to be affordable and he never accepted the non-conformity aspect and has not changed his position.

Mr. Eleftheriou Jr. clarified with Atty. Bearor that the reason Atty. Bearor had cited the base development calculation to be nine back in an August 14, 2018 letter, was based on the Town Planner, providing him with the base unit calculation of nine, not his own calculation, and not having plans in front of him. Atty. Bearor explained that once he calculated the base development density personally, he found it to be eight and not nine. He stands by the calculation of eight based on rounding down.

Mr. Fitzpatrick asked the applicant if it is their belief that they could add four more buildings, not exceeding sixteen dwelling units without going through a PUD-V.

Atty. Hamilton stated that the applicant does not take that position.

Mr. Moore noted his negative response was based on the ordinance requirement that in this district, in order for multifamily II use to be allowed, it must be reviewed by the Planning Board under the PUD-V provisions.

Mr. Cough confirmed with staff a hypothetical question that if a vacant property of 8.6 acres and this property was already divided up and one had .6 acres which was created non-conforming by an ordinance change that one would still be able to build on that lot. Ms. Chamberlain affirmed that one can build on a non-conforming lot if it was legally nonconforming.

Mr. Fitzpatrick noted that when the ordinance reads minimum of, you round up and when it reads shall not exceed, you round down. He elaborated that he was relying on Mr. Bearor's judgement. Mr. Fitzpatrick voiced appreciation for the applicant's project going towards helping the housing situation in Bar Harbor as well as their efforts towards addressing opponents' concerns to a large extent.

Mr. St. Germain inquired if the lease is for employees of BHAPTs or some other entity. Mr. Hamilton requested a modification in the Declaration of Covenants, paragraph two the sentence that reads "also the affordable housing units shall be occupied by BHAPTs employees." Mr. Hamilton requests to change phrasing to "also the affordable housing units shall be occupied by employees of BHAPTs and its affiliates and the families of such employees who shall have a moderate income as defined by the Town of Bar Harbor Land Use Ordinance."

Mr. Bearor noted that this amendment is an improvement.

Mr. St. Germain clarified with the applicant that the facilities manager would substitute the idea of ensuring that security is properly provided to employees and that separately a night security team patrols that area.

Mr. St. Germain also clarified with the applicant that a condition of approval must include something along the lines of evidence of compliance.

Mr. St. Germain also addressed Mr. Craft's assertion of late submissions of documents and expressed his own concern with the absence of the Public Works Capacity Statement along with the easement for the utility corridor on the eastern edge of the property.

Mr. Moore agrees with Mr. St. Germain that the Public Works Capacity Statement should be submitted for the record.

Mr. Salvatore affirmed that all the changes have been made at this time, so that the Public Works Director may feel comfortable completing the capacity statement.

Mr. St. Germain inquired with Staff Attorney Bearor about the comment made about the advertisement this evening for four buildings versus three and Mr. Bearor reassured the Chair that the advertisement of four versus three was not a substantive issue for concern.

Mr. Eleftheriou, Jr. noted that the staff report does reflect the correct number of buildings.

Mr. St. Germain brought up the points in the staff report that the Board needs to address this evening.

Mr. Eleftheriou, Jr. confirmed with the applicant that the parking information was provided in the application.

Mr. Eleftheriou, Jr. started a discussion with the Board about the interior setback requirements with the building being another story higher and Mr. Moore pointed out to the Board that the building heights had not changed with the addition of the third story. The allowable height in this district is forty feet so there should not be a height issue even with the slab taken into consideration.

Mr. Eleftheriou, Jr. noted that the buildings are mis-labeled on the plan.

Mr. Bearor affirmed with Mr. Moore that any additional notes on the plat that would be added by Plisga and Day would not be of significance to the Board.

Mr. Eleftheriou, Jr. noted that the plans still need to be sealed by appropriate professionals.

Mr. Moore showed the Board the internal setbacks proposed for the project between the buildings.

Mr. Greif inquired why there is only 8.3 feet between building E and D.

Mr. Hamilton inquired with Mr. St. Germain that the public hearing portion of the meeting was closed and the Board did not respond.

Mr. Eleftheriou, Jr. noted that the Board is in possession of all capacity statements with the exception of the public works capacity statement.

Mr. Bearor stated that this the Board would need a written easement for sewer and storm water structure maintenance. Mr. Hamilton confirmed that the applicant would get a draft over to Atty. Bearor to review.

Mr. Eleftheriou, Jr. confirmed that the permitted uses standard was covered as allowed under PUD-V review.

Mr. Eleftheriou, Jr. noted that the Board did not discuss whether the affordable units would be rented before final construction or afterward.

Mr. Salvatore noted that it is likely that the affordable units would be in the existing buildings and that they would be rented prior to construction and that one building was already rented.

Mr. St. Germain pointed out that the Board would like a condition of approval to be concurrent rental of units as noted in the staff draft decision.

Mr. Eleftheriou, Jr. noted that since the applicant is removing the storm drain and the undersized pipe, a modification of standards is no longer necessary and the only modification of standards that remains is the reduction of the easement width from 30 feet to 12 feet. Mr. Eleftheriou, Jr. asked the applicant why the Board should reduce the easement width.

Mr. Moore explained to the Board that the modification of standards request was to address site consideration of movement of buildings to this new location, based on the previous building placement being considered undesirable to opponents of the project, therefore the applicant requests a modification of standards for the easement to be reduced to twelve feet.

Mr. Bearor confirmed that no permits would be issued until all conditions, as specified by the Board, were met.

Mr. Cough clarified with Mr. Bearor that the appeal clock begins the date that the decision is signed. Atty. Bearor added that the written decision must be signed within ten days.

Atty. Bearor inquired with the applicant if they would be willing to waive the ten working day requirement of having the written decision signed.

Mr. Eleftheriou, Jr. moved to approve application PUD-2017-02 pending receipt of the following: plans that are required to be sealed by the appropriate professionals; a capacity statement from the public works department; something from the public works department acknowledging approval of a twelve foot easement, that it's adequate, since the standards are for a thirty foot requirement; a sewer easement to be approved by the Town attorney; a final draft copy of the affirmative marketing plan that was discussed at the meeting tonight; the Declaration of Covenants, Conditions and Restrictions approved by the Town's Attorney with the modifications noted; an acknowledgement from the applicant that the affordable housing units will be concurrently rented with the other units, that the Board will make a condition of approval...motion interrupted...

Mr. St. Germain noted that a possible change to Mr. Eleftheriou Jr.'s motion could be that the public works capacity statement should be a condition of approval but the sewer easement, while it is a condition of approval, since it might take longer, that might be a condition of getting a building permit. Mr. St. Germain inquired with Atty. Bearor if the Board could do that. Mr. St. Germain went on to say that what he hears from the applicant is that the sewer easement itself might take longer than the window that has been presented to them; it seems like that window closes on the 31st of January.

Atty. Bearor noted that the Board does not even need a survey, if it's twelve feet wide and it's abutting against the abutting property, the Board has described it as a twelve foot swathe with the westerly boundary being the property of Ms. Mills, and Atty. Hamilton's firm can generate a sewer easement.

Mr. Fitzpatrick asked Mr. Moore if it was a simple pass through.

Mr. Moore responded that it was not. Mr. Moore continued that Mr. Fitzpatrick made a good point at the last meeting that the applicant will also have a Bangor Hydro easement at some point so kicking the can down the road, when all of the easement language is in to the Town is a good idea in terms of the project, so Mr. Moore noted concurrence with holding the issuance of building permits until the sewer easement has been...

Atty. Hamilton interjected noting sewer and power easements.

Mr. Moore responded to Atty. Hamilton that the power comes after it's built, that's the problem, one can't give Emera an easement until one has built it and it has been surveyed, so Mr. Moore noted, that those need to be in the record but that he agrees with Mr. St. Germain's point that they should not be a condition of approval, but a condition of something down the road.

Atty. Hamilton affirmed that they would be a condition of permit issuance.

Mr. Moore went on to suggest that the Board could make the sewer easement tied to the issuance of the building permit for the new buildings, asserting it to be a key point because of plans involving the existing buildings this winter. Therefore, Mr. Moore noted that the sewer easement language might be tied to issuance of the building permit for new structures and that the certificates of occupancy for the new buildings be tied to confirmation of the electrical easement.

Atty. Bearor inquired to the Board if it was common practice to collect the Emera easements.

Mr. Salvatore responded that the Emera easement will not be an issue, as it is going to be all secondary power.

Mr. St. Germain responded to Mr. Eleftheriou Jr.'s original question to the Board in the middle of his motion, asking if he was missing anything. Mr. St. Germain noted that there were two missing things, one that the Board kind of addressed and the other is that the staff decision gives the Board guidance as far as making a finding on 125-69R regarding the affordable units, and Mr. St. Germain noted that there is guidance within the staff draft decision that the Board could make a finding that he would be comfortable with saying that the affordable units shall be made available prior to the other units but if it's concurrent that's fine as well. Mr. St. Germain pointed out that there is guidance within the suggestions in the margins for that. The only thing that Mr. St. Germain noted that he thought was missing from Mr. Eleftheriou Jr.'s motion was dealing with the issue of the internal setbacks and the modification of them.

Mr. Eleftheriou, Jr. asked Mr. St. Germain if he was fine with the building permit the way that he stated it, with the sewer easement and capacity statement, because Mr. Eleftheriou Jr. is of the belief that they will come in short time.

Mr. St. Germain agreed.

Mr. Fitzpatrick inquired with Mr. Salvatore if the survey is the critical path item for the sewer easement.

Mr. Salvatore responded no and noted other concerns, but noted that he was fine with it being a part of the approval.

Mr. Fitzpatrick clarified that he was asking what was in the critical path on getting an easement recorded.

Mr. Salvatore responded that getting it recorded is easy, drafting the agreement takes time.

Atty. Bearor inquired with Mr. Salvatore if he needed bank approval.

Mr. Salvatore responded that he was guessing yes, but he does not know for sure and if it is simple for the Board to put everything on the permit rather than on the decision, he was fine with that.

Mr. St. Germain inquired to Atty. Bearor if the Board had to list the modifications of the marketing plan and the Declaration of Covenants and Restrictions, or could the Board just rely on the discussions that they had that night. Atty. Bearor responded that he thinks that the Board can rely on the record and that he has personally made enough notes that the final document will be easy enough for the attorneys to produce.

Mr. Eleftheriou, Jr. inquired with Atty. Bearor if it would be better, before he continues, using the staff draft decision with findings and conclusions of law, or would it be best to cite it as one whole unit.

Atty. Bearor responded that he could absolutely cite it and get fellow Board members to chime in on whether there is anything about what Mr. Eleftheriou, Jr. had just cited that they want to revise or edit in any way and then adopt it and then Atty. Bearor guessed staff would clean it up.

Atty. Bearor noted that he believes that Mr. Eleftheriou, Jr. is going to put forward that the Board adopted the staff's draft decision and then in the course of discussing the motion if there is anything about the draft decision which each Board has that they want tweaked in any way they can comment on what that is and then the Board can take the vote and if the Board wants to do it, in any way individually, to register a negative vote on any one of the review criteria by any particular member.

Mr. Eleftheriou, Jr. stated that he would continue his motion at this point.

Mr. Fitzpatrick interjected a question to Mr. Bearor using his own profession as an example, he stated that in his job this would be like signing a construction contract that had a bunch of drawings, names, titles and dates that are incorrect with a promise that that an applicant will send the Board new drawings soon, but sign the contract today, and Mr. Fitzpatrick asserted that he would not sign it.

Atty. Bearor inquired to Mr. Fitzpatrick if he was referring to the draft decision which has incorrect information in it, when he says the contract.

Mr. Fitzpatrick stated yes, it's got incorrect information in it, he noted that the Board has four sets of drawings with different revision dates that may or may not show something that aren't sealed.

Atty. Bearor responded that he was attempting to create a format for the Board to engage in discussion.

Mr. Fitzpatrick asked who is going to get to see the final plans before the decision is signed.

Atty. Hamilton stated that he would get them to Atty. Bearor in a couple of days and Mr. Bearor noted that they would get them to the Board.

Mr. Fitzpatrick inquired if any other Board members would get to see the final plans.

Atty. Hamilton responded yes, no worries, they will do it.

Mr. Fitzpatrick inquired before the decision is signed.

Atty. Hamilton responded affirmatively.

Mr. St. Germain responded to Mr. Fitzpatrick that if he wanted to make it a condition that each of the Board members sees it, he would be happy to, through email, inform Mr. Fitzpatrick when the documents are received.

Atty. Bearor noted that they could easily continue until everything has been cited.

Mr. Fitzpatrick responded in the negative noting that he didn't want to do that, he wants to make sure that for the final approval everyone gets to put their eyes on a package and know what's approved. Mr. Fitzpatrick continued that the Board has redlined drawings, conditions, and attestations extensively and he does not want to slow things down but, at the same time does not want to blindly sign something that, for whatever reason, have things not incorporated and the decision gets signed.

Mr. Hamilton reassured the Board that the applicant intends to comply and voiced concern of any postponement, noting imminent loss of a Board member and Mr. Fitzpatrick's planned approved absence for the meeting scheduled on February 6, 2019.

Mr. Moore offered to walk through each exhibit that the applicant has submitted from the last decision if the Board would be more comfortable.

Mr. Fitzpatrick continued that it would be nice to have a conformed set of drawings versus a bunch of loose leaf papers that leaves the Board trying to figure out which is the most recent one and whether the edits got incorporated or not.

Atty Hamilton offered to submit a deadline by which the applicant could submit a conforming package.

Mr. Salvatore interjected that he has submitted on the deadline and that everything is time and date stamped. Mr. Salvatore expressed that the applicant is willing to clean up a packet down the road but questioned scheduling another meeting.

Mr. Moore noted that for the record that there is only one drawing that has to be revised and that all the other drawings are a matter of record.

Mr. Eleftheriou Jr. noted that that the Board is being cautious anticipating an appeal.

Mr. Fitzpatrick noted in response to the applicant stating that despite getting all of the submittals in by the deadline, that while that is great, going back to the 11X17 drawings with light gray print on white paper, and that while the applicant stated that only one drawing is being revised, there are at least ten in their packet that are different from the last package that the Board got in December, and inquired which ones from December are going to carry through and which ones are being overwritten. Mr. Fitzpatrick continued that he cannot decipher this and that if it were him sitting on that side of the table, he would have handed in a conformed set for the entire Board, not a mish mash of updated drawings.

Mr. Salvatore responded that 90% of what the applicant submitted were requests by Mr. Fitzpatrick and the Board, they weren't missing submittals that were required by the ordinance asserting that the ordinance requires 11X17. Mr. Salvatore noted that the Board is requesting a complete packet, but the applicant provided this a week ago, and further noted that it is not going to change; he noted that the only change is what the attorneys will work on, and the easement.

Mr. Fitzpatrick inquired if there are any supplemental materials that are going to carry over from the original application.

Mr. Salvatore responded that there were and that the applicant gave them to the Board by the deadline per the ordinance. Mr. Salvatore followed with how he had met with the neighbors, and made changes, and that projects evolve. He stated that the final plan was submitted, received and the Board looked at it. Mr. Salvatore voiced appreciation for the Board's diligence but from the applicant's stand point, noted that it's not a reason to drag it out to another meeting.

Mr. Moore offered to the Board that the records are in the staff office and that they will ensure that the record set doesn't have any of the old stuff that is not relevant removed from it. Mr. Moore noted that he would not make ten more sets because that is not what the Rules of Procedure say is done.

Mr. Cough inquired if what he had in his possession was the latest iteration of plans.

Mr. Moore affirmed yes that the three building, volume II and what he thought that he said in the cover letter was that this replaces all of the old documents of the same submittal number.

Mr. Cough noted that the cover letter does not indicate that but it does note changes in the site plan to reduce the buildings mass along the property lines. Mr. Cough offered to share with the Board the larger sized plans received January 9, 2019 if they could just be returned to the Planning Office.

Mr. Eleftheriou Jr. continued his motion as follows: I further make a motion that we accept the draft decision dated January 16, 2019 which is based upon the submitted plans, which, as I have stated before needs to be sealed. Also to include the findings and conclusions of law that staff has provided starting on page 2. of the draft decision. To clarify a couple of things written there, to clarify that on page 5, paragraph 4b. that the Board found that PUD-V is a permitted use, so there is no ambiguity there. I would find that on page 2., item number 2., the Board will find that the development will meet the minimum lot standards for Village Residential District, found under 125-69 S.(6)(d)[1]. The Board moves to reduce the distances between buildings as required in 125-67 B(3). These distances are to be shown on exhibit 9.1.2, dated January 06, 2019. To allow the buildings to be clustered to keep larger buffers and open space on the site. Further the Board finds that the development meets the setback and lot coverage standards required in 125-20 B., as allowed in 125-69 S.(6)(d)[1]. Move to remove the distances between buildings as required in section 125-67B.(3) to the distance shown on exhibit 9.1.2 again dated January 06, 2019 to allow buildings to be clustered to create buffers and an open space within the site. Make a motion also to approve the modification of standard request for section 125-67 L.(12), the standard requires the easement to be at least thirty feet of width to the Town allowing maintenance and improvement of storm water drainage system. Move to find that this modification is necessary to protect the public health, safety and welfare, and to address the particular site characteristics and the site characteristics being that the buildings could not be located properly anywhere else within the property confines where they are currently shown on the site plan 9.1.2 next to the property line is the best location for these buildings...motion interrupted...

Mr. Anderson interjected and inquired if this was for the storm water drainage system or for the sewer.

Mr. Eleftheriou Jr. responded both and inquired if he left the sewer out.

Mr. Anderson replied that Mr. Eleftheriou Jr. had read it as it was written and didn't know if they needed to add that.

Mr. Eleftheriou Jr. inquired if the Board is still going by the applicant waiving the ten day findings of fact.

Mr. Salvatore affirmed that the applicant had agreed to this.

Mr. Eleftheriou Jr. asked if there was a limit to that.

Atty. Bearor noted that the Board infers that they will do this by the next regularly scheduled meeting on February 06, 2019.

Atty. Hamilton noted that it should read on or before that because the Chair and a couple of Board members said that if they could review the materials and come in and sign, that is good. Atty. Hamilton went on to state that the formal final approval of the decision happens on February 6, 2019.

Mr. Eleftheriou Jr. also wanted to acknowledge that the applicant agrees to waive the ten day findings of fact notice requirement.

Mr. St. Germain inquired if Mr. Eleftheriou Jr. had addressed the affordable unit part of that.

Mr. Eleftheriou Jr. noted that he had mentioned the concurrent affordable housing.

Mr. Cough seconded the motion.

Mr. Eleftheriou Jr. inquired if the motions that were made in the previous meeting with regard to the vote on base development density and the number of affordable units should be included or if that is part of the public record already.

Atty. Bearor stated that no, the Board should have that as it is a very important part of their decision to mention in the draft decision that this is for eighteen units, two of which must be affordable. Mr. Bearor noted that the Board does not necessarily need to describe the Board's rationale and how the Board got there, but noted that the Board just needs to acknowledge that what the Board concluded was that this is going to be an eighteen unit multifamily project that requires two affordable units.

Mr. Eleftheriou Jr. asked Mr. Cough if he needed to remove his second, and Mr. Cough declined noting that he would just agree to the amendment of the motion.

Mr. Eleftheriou Jr. amended the motion to add that at the previous meeting the Board found that the base density was arrived at nine for a total of eighteen units, with two of them being low income housing with provision of I25-69R.

Mr. St. Germain noted no further discussion and called the vote. The Board voted 4-1 to approve the motion with Mr. Fitzpatrick against.

VII. OTHER BUSINESS

a. Discussion regarding recommendations for decreasing density and lot size requirements

Mr. St. Germain noted the idea of Mr. Fitzpatrick that any decreased densities may be excluded from vacation rentals, and Mr. St. Germain believes that zoning changes may be possible for this.

Mr. St. Germain noted that there were ordinance district changes in 2010 and invited the Board to discuss the combining of Downtown Village I and Downtown Village II into one district.

b. Dormitory amendment

Mr. St. Germain noted that the Board was in possession of the latest iteration of the dormitory amendment and that the Board was close to having a set of proposed amendments including definitions. He proposed that the Board might share these with the Council in advance of the workshop on February 13, 2019 as he does not anticipate much work, at least the definitions section. Mr. St. Germain recognized that the previous Town Planner had intended to investigate whether or not the definitions were in conflict with the ordinance and confirmed with staff that no progress has been made and acknowledged that this might be considered in the Board's decisions.

c. 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

Ms. Chamberlain noted that Bay Ferries was seeking site plan approval for the Ferry Terminal and noted a prior conversation with Atty. Bearor that acknowledged that while it was already a permitted use, it still required site plan approval based on many years of dormancy. Ms. Chamberlain inquired with the Board whether this would require a minor or a major site plan review.

Mr. Cough volunteered that a full review would be in order and Mr. Fitzpatrick agreed that the Board should conduct a full review.

Discussion followed regarding whether a minor or a major site plan should be used for the terminal.

Ms. Annette Higgins described the timeline of this project which was critical to construction schedules and that the use remains the same despite dormancy.

Mr. Fitzpatrick verified with staff that a minor site plan review would only involve notification to abutters whereas a major site plan would involve a public hearing.

Mr. St. Germain observed that a public hearing would be beneficial to the Town.

Mr. Eleftheriou Jr. raised concerns with staff regarding appropriateness of minor site plan and staff verified that the standard allows a minor site plan review if the Board finds that there is no significant impact on the neighborhood or on the environment and meets the purpose of site plan review without public review.

Mr. Anderson noted that transparency was important to the Town with regard to the Ferry Terminal and therefore a major site plan was in order.

Mr. Cough voiced concern that this item was not given public notice and that the Board should not take action on whether it would be minor or major site plan review. Mr. Cough would like major site plan review in order to give residents a chance to voice their opinions. Ms. Chamberlain noted that she did not require a vote, but guidance in order to know which site plan to assist the applicant to prepare.

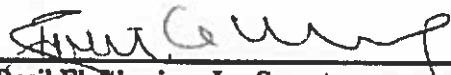
The Board recognized the outgoing Interim Planning Director, Ms. Chamberlain and the outgoing Board member, Mr. Anderson.

The Board noted that Ms. Rand who spoke at earlier portion of meeting would be a potential candidate to be a member of the Board in the future.

IX. ADJOURNMENT

Mr. Anderson moved to adjourn at 9:41 PM. Mr. Fitzpatrick seconded the motion and the Board voted 5-0 to approve the motion.

Signed as approved:


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

2-06-19

Date