

Bar Harbor Planning Board
Wednesday, May 1, 2019
Council Chambers – Municipal Building
93 Cottage Street in Bar Harbor
4:00 PM

I. CALL TO ORDER

Chairperson Tom St. Germain called the meeting to order at 4:01 PM.

Meeting called to order at 4:01 PM

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

All five board members present

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

II. ADOPTION OF THE AGENDA

Vice Chair Cough motioned to adopt the prepared agenda. Mr. Fitzpatrick seconded. Vice Chair Cough then modified his motion to allow for either a continuance or delay for that particular agenda item. Mr. Fitzpatrick then confirmed his second. The board then unanimously (5-0) approved the motion.

Board adopts agenda (5-0) - Island Housing Trust's application removed from agenda

III. EXCUSED ABSENCES

Chair St. Germain noted all five members were present so there were no absences to excuse.

IV. PUBLIC COMMENT PERIOD

Chair St. Germain then opened a public comment period.

Public comment period opened

Anne Damm referred to an email she had sent to the board that afternoon, which she said related to density and helping with affordable housing. She then read that emailed message aloud. She referred to the definitions section of the Land Use Ordinance (125-109), and in particular the definition of a family in the context of occupying a dwelling unit. She noted that definition does not allow for more than 5 unrelated persons. She suggested changing to a larger number than the allowed number of unrelated persons (she mentioned 10 as a possibility). She said this would allow larger homes to hold larger numbers of unrelated persons, and gave examples of possible demographic groups that could benefit. She said this higher allowance would be in place year round. She said this could allow increased density without having to change setbacks.

A. Damm offers idea of increasing number of unrelated people allowed under the definition of "family"

Donna Karlson spoke next. She expressed concern with Mrs. Damm's suggestion. She said she would like to take a more comprehensive, holistic view on all of the ways that people of different types will be housed. She questioned how the suggested changes from Ms. Damm would be regulated and enforced.

D. Karlson expresses concern with idea offered by Damm

With no other speakers coming forward, Chair St. Germain then closed the public comment period at 4:08 p.m.

Public comment period closed

V. APPROVAL OF MINUTES

a. April 17, 2019

Mr. Eleftheriou made a motion to approve the minutes from April 17, 2019. Vice Chair Cough seconded the motion, and it then passed without opposition (3-0; Mr. Fitzpatrick and Ms. Brooks, who were not present at the April 17 meeting, did not vote).

Board approves minutes of April 17, 2019 (3-0) Fitzpatrick and Brooks do not vote

VI. REGULAR BUSINESS

a. Public Hearing/Compliance Review: SD-2018-01 — Hamilton Hill Subdivision

Project Location: 18 Eagle Lake Road (Tax Map 107, Lots 001-000 and 001-002), Village Residential District

Applicant: Kebo Properties, LLC

Application: The applicant is proposing to develop a 16-lot subdivision.

Public hearing and Compliance Review for SD-2018-01, Hamilton Hill Subdivision

Before discussion began, Chair St. Germain stepped down as he had at other meetings where this application was discussed. Vice Chair Cough stepped in in his absence. He noted that this meeting was for a public hearing and compliance review.

Chair St. Germain excuses himself from review of application

Mr. Fitzpatrick said he was absent from the most recent meeting, but that he had watched it on video and felt he was up to speed on the application.

Ms. Brooks said she is relatively new to the board and was not present for the earlier meetings, and as such said she felt she should abstain from commenting and voting on the application. Ms. Brooks remained at the table.

Brooks states she will abstain

Mr. Swan offered a recap of the application: a 16-lot subdivision on Hamilton Hill with town water and sewer, and explained how the different lots would be accessed. Jody O'Neal, engineer from Sewall Company, said they were in the process of meeting Maine Department of Environmental Protection (DEP) stormwater standards and site law review process. Mr. Swan said town approval is the first step, and then they will have to meet the DEP standards.

Vice Chair Cough opened a public hearing at 4:15 p.m. No one came forward to speak, and he then closed the public hearing.

Public hearing – no comments

Mr. Fitzpatrick said he had a couple of questions. One was about compliance letters (Condition 1), and Planning Director Gagnon said she was satisfied with what was submitted. Mr. Fitzpatrick asked about sewer flow calculations, several of which he said were under the 2.5-foot per second minimum. He asked the applicant how that would be addressed. Ms. O'Neal said they were not under by much. She gave a mathematical explanation about decimals and why the numbers come out that way.

Mr. Fitzpatrick asked about whether the sewer line would be private or public. Mr. Swan said the line will be taken over (adopted by the town). It will be a private road, he said, but the town will take care of water (including hydrants) and sewer.

Vice Chair Cough asked if a road association was proposed, and Mr. Swan said there would be one.

Vice Chair Cough asked a question about roads and access, and the ability of the town (emergency services) to be able to use Equity Lane in perpetuity. Mr. Fitzpatrick said the concern was that the board was preparing to modify standard 125-64 (which would normally require a cul-de-sac), because emergency vehicles would be able to exit via Equity Lane. He said he thought an easement to the town that allows permanent access would satisfy the concern. "We're modifying the standard with the expectation that that access or egress is there in perpetuity," he said. Vice Chair Cough said if the applicant ever wanted to change it in the future, they could come back to the Planning Board.

Mr. Swan said he thought any kind of blockage in the future would be going against the Planning Board's approval. Mr. Swan said the town would already have an easement in place for utilities and access to them. Mr. Fitzpatrick said he thought if the easements were made for utilities and access, and were made to an adequate width, that that would be sufficient. Vice Chair Cough said that would satisfy his concern, and Mr. Swan said it was a doable option. Mr. Eleftheriou asked a question about the specific wording.

Mr. Eleftheriou asked Chief Bartlett to confirm that he had no issue with the modification of standards on the road. Chief Bartlett confirmed that. Mr. Eleftheriou asked if the easement for water and sewer on Equity Lane should be on the plan. There was general discussion on this before O'Neal produced a plan and explained where the relevant language was. Discussion continued on this subject.

Mr. Fitzpatrick moved to modify standard 125-64 as it would protect public health safety and welfare and would not have an effect of altering or nullifying the purpose of the ordinance, the comprehensive plan, or Article 3 of the Land Use Activities and Standards for Equity Lane (no cul-de-sac for a street exceeding 2,000 feet in length) per 125-067-G2h2 as it will remain private and that it is accessible to emergency vehicles. Mr. Eleftheriou seconded the motion, and it carried 3-0 (Ms. Brooks did not vote, and Chair St. Germain was out of the room).

Board modifies standard 126-67-G2h2 (3-0)

Mr. Fitzpatrick then moved to find application SD-2018-01, Hamilton Hill Subdivision, a 16-lot residential subdivision in the Village Residential District, approved, as an allowed use in the current zone, with the following conditions:

Board approves Hamilton Hill Sub with conditions (3-0)

- **Condition 1: Execution of a utility and access easement between the applicant and the town of Bar Harbor for Equity Way and Hamilton Hill Road**
- **Condition 2: With the following to be demonstrated to the Code Enforcement Officer prior to the issuance of any building permits:**
 - **5B: That the Site Location of Development Act permit is secured**
 - **9F: That the lot monumentations be placed in the ground**
- **Condition 3: With water and utilities being installed according to engineered standards approved by the water department and providing the water department the ability to require a third-party inspection and testing of the utilities during the installation process**
- **And other items as outlined in the draft decision dated May 1, 2019.**

Mr. Eleftheriou seconded the motion. There was no discussion, and the motion then carried without opposition, 3-0 (Ms. Brooks did not vote).

Chair St. Germain returned to the meeting following the vote on the Hamilton Hill Subdivision. Vice Chair Cough then asked Mr. Fitzpatrick if his motion had included the findings and conclusions of law. Mr. Fitzpatrick noted he had referenced the draft decision. Vice Chair Cough was satisfied with that.

Chair St. Germain returns to the table

b. Public Hearing/Compliance Review: SP-2018-08 — TA-1

Project Location: 357 Norway Drive (Tax Map 228, Lot 055-000), Emery District

Applicant: Cara Romano and David LaValle

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

Public hearing and Compliance Review for SP-2018-08 TA-1 for Romano/LaValle

Vice Chair Cough noted he was not present at the previous meeting where the application was discussed and said he would not participate in the discussion or voting.

Chair St. Germain recounted the applicant's history at the board, including that they had requested an opinion from the town's attorney at the last meeting and that such an opinion was received and would be part of the meeting's deliberations.

Cough abstains

Ms. Romano explains that she and Mr. LaValle are representing themselves in the planning process and are applying for TA-1 status for their residence at 357 Norway Drive. She said they intend to market their third bedroom on a nightly basis on rental websites. Chair St. Germain summarized the applicant's intent: to have a bedroom located in another structure on the same premises be considered a bedroom that they rent under the TA-1 definition.

Chair St. Germain noted the town attorney had been asked to give an opinion, whether the land use ordinance would allow such a configuration. Chair St. Germain clarified that the question was whether the configuration proposed by the applicant was consistent with the definition of TA-1. He noted that Attorney Ed Bearor's opinion referenced the Planning Board having discretion in the matter, and Chair St. Germain noted it would be the board's decision that night. Mr. Eleftheriou read Mr. Bearor's letter aloud.

At 4:53, Chair St. Germain opened a public hearing.

Public hearing is opened

Ellen Grover came forward to speak. She read her letter aloud, expressing opposition to any "liberal reinterpretation" of a definition of a TA-1. She said the definition of TA-1 should "automatically preclude approval at this juncture" because the applicants do not intend to operate a B&B in their residence. She said a standalone building cannot fall within the definition of TA-1. She said the proof of this could be found in other TA definitions (2, 5, 7 and 8) all of which have language about "building or buildings." She said definitions for TA 3, 4 and 6 all reference an existing building.

E. Grover speaks in opposition to the project meeting the definition of TA-1

She said while the LUO does not define residence it does define dwelling, and read that definition. She said it seemed obvious that a residence constitutes a single building and said it was "an unreasonable stretch to include detached buildings as

part of one's residence." She said no one lives in two buildings. She said the requirement that the host family and the guest live in the same residence provides some assurance that there will be some level of involvement by the host. She asked the board to exercise "judicious restraint" regarding decisions affecting TA-1 usage. She said any departure from, or reinterpretation of, the existing LUO should be subjected to established review practices. She said the LUO is meant to protect as well as enable. She provided copies of her letter to the board.

Jim Grover then spoke. He said he and his wife, Ellen, have lived in Bar Harbor for 35 years. He said he had read Attorney Bearor's opinion and it seemed he was "parsing pretty heavily from different areas of the LUO" in a way so the board could approve the application. Mr. Grover said he did not think it was a strong opinion, however, and noted the attorney had hedged by using words such as "speculative" and "likely." Mr. Grover said Attorney Bearor was not telling the board to do something, but rather that they could do something ("something" being call this application a TA-1). Mr. Grover said it was possible the LUO needed to be strengthened or clarified but that it should not be done on speculation.

J. Grover comments on the attorney's opinion

Donna Karlson spoke next. She referred to all of the TA definitions and said she noted 1, 3 and 4 pull out "building" as singular. She said other kinds of TAs use singular and plural terms. She noted the reference to Bed and Breakfast and said the definition of B&B talks about it being in a single building. She said she thought Attorney Bearor should look at the issue again more closely. Ms. Carlson said by her count different types of TAs were allowed in 18 of the town's zoning districts, while B&Bs are allowed in eight districts. She encouraged the board to think carefully about what they do when making a decision. She asked about how enforcement can realistically be accomplished.

D. Karlson speaks about the definition of TAs and B&Bs

Nobody else came forward to speak and Chair St. Germain closed the public hearing at 5:07 p.m.

Public hearing is closed

Mr. Fitzpatrick read part of the definition of TA-1. He highlighted "in the private" and "residence." He agreed that the lack of a definition for "residence" leaves some leeway. He referred to Article VII, 125-108A, which talks about definitions. Mr. Fitzpatrick said *Webster's Collegiate Dictionary* defines residence as "a building used as a home." Mr. Fitzpatrick said he did not think anyone contemplated this type of application when the language for TA-1 was created, a home with several satellite cottages or rooms as rental units in a residential district. He said it is clearly a commercial use. Mr. Fitzpatrick said he saw this application as an approach to get around the 5-day minimum requirement.

Mr. LaValle denied that they were trying to circumvent any requirements. Ms. Romano said the application is for the entire property. Ms. Romano said the structure in question is not truly a standalone structure because someone could not survive there on their own (no laundry, no stove).

Mr. Fitzpatrick said if the ordinance needs to change, then it needs to change and not the interpretation of it. He said changing interpretations is what causes trouble.

Ms. Brooks said her reading of Bearor's opinion was that this application would be

an acceptable use under TA-1.

Mr. Eleftheriou said he agreed with Mr. Fitzpatrick. He returned to his point from a previous meeting, and said he was hitched on the words “host family who live on the premises,” and he noted the last word is defined in the LUO. Mr. Eleftheriou said in his mind, the building in question falls under the definition of premises. He said the definition should likely be adjusted. He said he was inclined to approve the project based on the points he made so far.

Chair St. Germain said he agreed with Mr. Eleftheriou. He noted the definition of TA-1 has not been amended before. Chair St. Germain said he did not think it was uncommon for people to have multiple buildings on a property constituting a premises. Mr. Eleftheriou said he was bothered by the fact TA-1 is allowed in as many districts as it is, and said that should be looked at.

Chair St. Germain asked if there were any other issues board members had questions about. There was a discussion on parking and the driveway at the property. Planning Director Gagnon said she was satisfied there was adequate parking provided.

Chair St. Germain noted there was a draft decision supplied by staff. Planning Director Gagnon said that while the TA-1 definition might not be a perfect fit for what the applicant is proposing, it is also not clearly prohibited. She said usually when something is unclear, benefit of the doubt is given to the applicant.

Mr. Eleftheriou motioned to approve application SP-2018-08, as outlined in the draft decision dated May 1, 2019. As part of that motion, he also said that the accessory structure as presented, without kitchen facilities but with shared utilities with the primary dwelling unit on the premises, and that he was making his motion based on the respective definitions of premises and TA-1. Mr. Fitzpatrick seconded the motion. With no further discussion, the motion then carried 3-1 (Mr. Fitzpatrick voted against and Vice Chair Cough did not vote as he had not taken part in the discussion).

Board votes to approve the SP-2018-08 application for TA-1 Romano/LaValle (3-1)

b. Completeness Review: SP-2018-07 — TA-1

Project Location: 81 Ledgeawn Avenue (Tax Map 107, Lot 078-000), Downtown Residential District

Applicant: Robert and Kathleen Jordan

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

Completeness Review for SP-2018-07 TA-1 for Jordan

Chair St. Germain asked the applicants to identify themselves and summarize their application. Robert Jordan said they were applying to change the use on their property to TA-1. He described what they have for buildings and rentals on their property. He said they were submitting the application to conform to the current LUO, based on a consent judgment with the town. He said they were directed by the town to take this approach to achieve compliance.

Chair St. Germain asked for comments or questions from the board on the application. Mr. Fitzpatrick said he had read something that one of the units did not

comply as a dwelling unit. Mr. Jordan said it was the lack of a kitchen stove. Mr. Jordan recounted some of the history of their property, including going to the appeals board. He said they went to the appeals board to tear down an old garage and replace it with the barn there now. He said the request then was to make the new structure less non-conforming (old garage sat on the property lines). He said the appeals board approval said a dwelling unit could not be constructed unless it was conforming. At the time, the standard for a dwelling unit was 1,250 square feet of area per family. Mr. Jordan said his mistake was to make it conforming in size without going back to the Code office. He said there were many requirements to make it a dwelling unit and so it was made as the barn is there today. "Theoretically, if I had done it back then it would have been a dwelling unit but it's not," he said.

Mr. Jordan said he knew parking would need to be addressed, and that his original plan was to put a second curb cut in and two additional parking spaces on the north side of the house. He said Planning Director Gagnon suggested he ask for a modification instead, as the curb cut would have resulted in a reduction in street parking on Ledgelawn Avenue. Chair St. Germain asked if there were any other questions from the board, and there were none.

Chair St. Germain opened a public comment period at 5:32 p.m.

Ellen Grover returned to the microphone and referenced a letter the board has, which she said she thought spoke for itself. She said she believed the Jordans had not been in compliance, and she said them having a TA-1 at that location did not seem reasonable.

Donna Karlson came to the microphone and said she believed there were 16 districts where TA-1 is allowed. She asked about the floor area ratio and asked if this application met that requirement, and if the information had been submitted. She also asked about lot coverage and a certificate of appropriateness from the Design Review Committee. Chair St. Germain confirmed with the applicant that they had gone to the Design Review Board last year. "We asked them permission to do nothing," Mr. Jordan said, confirming they had gone to the Design Review Board.

Jim Grover came to the microphone and said he was unclear what the modification of the parking standard was that was being requested. Chair St. Germain clarified that it was not a waiver but rather a modification of the standard. He said rather than have parking spaces as generally depicted in the Land Use Ordinance, that the board was being asked to modify the standard and allow that parking to take place in their driveway because if they were held to the normal LUO standard it would eliminate parking on the road by making them provide it on their property (with a second curb cut). Mr. Grover asked about how the parking would be configured. Mr. Eleftheriou said cars would be parked end to end rather than side by side. Chair St. Germain said this particular modification would likely be discussed in more detail later during compliance review.

No one else came forward to speak.

Chair St. Germain moved on to waiver requests. Chair St. Germain noted there is no new construction proposed so there are no design plans or need for design approval.

Discussion on requested parking standard waiver

Public Hearing opened

E. Grover refers to the letter that the board has

D. Karlson asks if the FAR was met

J. Grover asks for clarification on the modification of parking standard

No other comments

Mr. Eleftheriou made a motion to accept the list of requested waivers, noting that the staff report left out title and interest (B and C) and that that should be added. He said accepting those waivers would not unduly restrict the review process because they are inapplicable, unnecessary or inappropriate for completeness review. Mr. Eleftheriou said he also wanted to grant the waiver requested by the staff (statements of capacity and design, not yet provided). He said these waivers would not unduly restrict the review process as necessary for completeness review, with a condition that they shall be provided at the public hearing and compliance review. He further moved, per 125-66 of the Land Use Ordinance, to find application SP-2018-07 complete and to schedule a public hearing for June 1, 2019. Vice Chair Cough seconded the motion with a request to see interior dimensions of the buildings in question. He clarified with the applicant that there are only two buildings on the lot: the house and the barn. In response to questions from Vice Chair Cough, the applicant explained the barn is a two-story building with a loft bedroom.

Board accepts the requested submission waivers; requests staff capacity letters be provided for public hearing/compliance review; finds the application complete; and sets public hearing for June 1, 2019 [later in meeting changes it to June 5] (5-0)

Mr. Eleftheriou asked to rescind his initial motion, which Vice Chair Cough said he was OK with. Mr. Eleftheriou then made a motion to grant the waivers as noted by the applicant and also noted by staff report, as such waivers would not unduly restrict the review process as they are inapplicable, unnecessary or inappropriate for a completeness review. He also made a motion to grant a waiver request by the staff, those items being statements of capacity and design from police, public works, sewer and water, as they would not unduly restrict the review process as it is unnecessary for completeness review with the condition that it shall be provided at the public hearing and compliance review, and that further, per the Bar Harbor LUO 125-66, the application SP-2018-07 be found complete and that a public hearing be scheduled for June 1, 2019. Mr. Fitzpatrick seconded the motion. Without further discussion, the board then voted unanimously (5-0) in favor of the motion.

d. Completeness Review: SD-2018-07 — Major subdivision (amendment to a subdivision)

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

Applicant: Robert Rechholtz

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

Completeness Review for SD-2018-07 for Major Sub/Rechholtz

Vice Chair Cough said Mr. Rechholtz is the stepfather of Mr. Cough's grown children. Vice Chair Cough said he had recused himself during an earlier meeting and that he would keep doing so if the board wished him to do so. Mr. Eleftheriou said he had no problem with Vice Chair Cough participating in this meeting so long as he had reviewed the earlier meeting from which he had recused himself and felt up to speed on the application. Vice Chair Cough said he had not reviewed it and would sit out the discussion. He left the room.

Cough recuses himself

Mr. Rechholtz introduced himself and his project. Chair St. Germain noted a site visit had taken place and that the application seemed relatively straightforward in his opinion. There was a brief discussion about lot sizes and sewer/septic matters. Mr.

Fitzpatrick then noted the board needed to grant a time extension because the time between the original application and when the board was supposed to have heard it had gone by. Mr. Rechholtz said he had put in an application for an extension, and apologized. He said the surveyor had taken a long time. **Mr. Fitzpatrick moved to grant a time extension per 174-B to the applicant and Mr. Eleftheriou seconded the motion. It then carried without opposition (4-0).** Mr. Rechholtz offered additional comments on proposed utility work.

Board grants time extension (4-0)

Mr. Eleftheriou asked if there were any easements, deed restrictions or rights-of-way. Mr. Rechholtz he would provide and how the Emera Maine easement which goes 3/4 of the way up White Spruce Road.

Applicant agrees to provide and show Emera easement on plan

Chair St. Germain said there was a question about whether there would need to be an easement for White Spruce Lane, in order to access the subject properties. Mr. Fitzpatrick said he did not think it was the board's purview to require such an easement, but said he thought it would be wise for the applicant to have one to provide to buyers.

Mr. Eleftheriou made a motion to grant the applicant's list of waivers, as provided in his application SD-2018-02, to accept the requested waivers, as they would not unduly restrict the review process as they were inapplicable, unnecessary, or inappropriate for completeness review; he added that if it is not in the application already, that there is an easement for Bangor Hydro (Emera Maine) and that the applicant will provide that. Chair St. Germain asked if Mr. Eleftheriou wanted to add language to make it clear these waivers would supersede any previously granted waivers. Mr. Eleftheriou said he thought it would be a good idea, and that he agreed with the suggestion. He also added staff waivers to the list, of capacity and design (police, public works, sewer and water), because they would not unduly restrict the review process as they are unnecessary for complete review, with the condition that it be provided at the public hearing/compliance review. There was a question about when the missing material should be provided to town staff.

Board accepts the requested submission waivers; requests that Emera easement be shown and provided to staff by May 20; requests that staff capacity letters be provided for public hearing/compliance review; finds the application complete; and sets public hearing for June 5, 2019 (5-0)

Chair St. Germain noted there was an issue with June 1, a date used earlier in the meeting, because it is a Saturday. He noted that Wednesday, June 5 is the correct date. CEO Chamberlain noted that Mr. Rechholtz's submission would have to be in by Monday, May 20.

Motion carried although it was never seconded

Mr. Eleftheriou then added to his motion that if the Emera material is in fact missing from the application material now, that it be provided to town staff by Monday, May 20. He further moved to find the application, SP-2018-02, complete and that a public hearing be scheduled for June 5, 2019. Chair St. Germain then called for a vote [although the motion had not been seconded] and it was then approved without opposition (4-0).

Mr. Eleftheriou asked what should be done to adjust the incorrect date for the earlier applicants. He then made a motion to make sure that the Jordans knew the meeting was scheduled for June 5, which Mr. Fitzpatrick seconded. The motion carried without opposition (4-0).

Board sets Jordan public hearing for for June 5 (4-0)

e. Sketch Plan Review: PUD-2017-01 — Planned Unit Development (Outlying Area/Subdivision)

Project Location: Off Route 3, in the vicinity of the Mount Desert Oceanarium (Tax Map 112, Lot 043-000), Town Hill Residential and Town Hill Rural districts

Applicant: Island Housing Trust (1366 Maine 102, Bar Harbor, ME 04609)

Project Description: The applicant proposes to subdivide a 30-acre property into 16 lots for residential use.

Sketch Plan Review for PUD-2017-01 for Island Housing Trust

Mr. Eleftheriou noted the application had been tabled until a future meeting. Planning Director Gagnon went and got Vice Chair Cough, who returned to the meeting.

Item tabled

VII. OTHER BUSINESS

a. Design Review Board — request for public hearing

CEO Chamberlain noted the Design Review Board (Design Review Board) had modified its proposed amendment since its last meeting with the Planning Board based on comments. She said they still want to amend the boundaries, but that they had taken out Salsbury Cove and Hull’s Cove. She said they were just adjusting the boundaries of Downtown and Town Hill Business and adding all of the historic buildings to their list. She said the map had changed since the last time, and that most of the text was the same (except for references to the areas removed). She said the DRB would like the Planning Board to schedule a public hearing for June 5 so that the amendment could move forward.

DRB request for public hearing date

DRB proposal: amend boundaries of Downtown and Town Hill Business, remove Salsbury Cove and Hull’s Cove, and add all historic buildings

Mr. Eleftheriou asked how the Planning Board had voted last time. CEO Chamberlain said it was a vote not to recommend the proposed changes. She said what the DRB is proposing now is to not add any new sections of town (i.e., Hulls Cove) to areas that it has jurisdiction over but rather to adjust the boundaries of the existing areas (Downtown and Town Hill Business) and to add all the historic buildings to their purview. Chair St. Germain asked a clarifying question about which properties would be subject to the DRB requirements and when, which CEO Chamberlain and other board members addressed.

Last time board voted “not to recommend”

Mr. Fitzpatrick asked if a June 5 public hearing would allow the amendment to be voted on in November. CEO Chamberlain said either a June 5 or June 19 public hearing would allow for that, but that the DRB preferred June 5. **Vice Chair Cough moved to schedule a public hearing for June 5 to review the DRB’s request.** Chair St. Germain commented that there was no reason to support adding the Bar Harbor gateway to the map last time but that the DRB had added it back in this time. He noted the Planning Board had voted unanimously not to go forward with it. Vice Chair Cough said the Planning Board had not specifically identified areas it did not like. Chair St. Germain said the board had been fairly specific with its unanimous vote. Vice Chair Cough said the board had not specifically instructed certain sections to be removed, however. Discussion ensued. Chair St. Germain asked if the Town Hill Business district is currently in the overlay district and CEO Chamberlain confirmed that it is. More discussion followed. Mr. Fitzpatrick asked to see current and proposed maps.

Discussion about the board direction given to DRB re. excluding the Bar Harbor Gateway

Fitz asks to see current and proposed maps

Mr. Eleftheriou said he liked the changes that had been made but said he agreed with Chair St. Germain’s point and said that expansion might prove to be a problem.

Discussion followed. Mr. Eleftheriou said he thought the DRB had some noble goals in the proposed amendments, but said what was still being added “could torpedo the whole thing.” Mr. Eleftheriou then seconded Vice Chair Cough’s motion. He noted that if the Planning Board voted no, the proposal would not go forward this year. There was some discussion about June 5 being a busy meeting, and then the vote was called and the board voted unanimously (5-0) in favor of the motion.

Board votes to hold public hearing on June 5, 2019

b. Vacation rentals

Vice Chair Cough opened with a question: he has a vacation rental that is licensed but which he does not currently use. He said he had taken out an application that day, but not submitted it yet, and asked what the board’s perspective was on him discussing vacation rentals should an application go in. Mr. Fitzpatrick asked who does not have a vacation rental. Vice Chair Cough said he was raising the question because he thought it was important for the board to be clear about what they have at stake. Ms. Brooks said she did not have a problem with it, and in response to a question said she did not have a vacation rental. Vice Chair Cough said he would like the board to take a vote on whether it thinks he has a conflict. Mr. Eleftheriou said he has a vacation rental. Chair St. Germain said he has one as well. Ms. Brooks said she did not think it was a conflict and Mr. Fitzpatrick agreed with her. Mr. Eleftheriou said he believed Attorney Bearor had weighed-in on the matter before.

Vacation Rental

Discussion about VR bias

Mr. Eleftheriou said he believed Attorney Bearor’s opinion was that it was not a problem. Ms. Brooks said it would be likely that no one could serve on the board because of issues like that or other similar issues, if they were deemed conflicts that prohibited people from serving on the board. Vice Chair Cough said he would not want to have Attorney Bearor write a letter similar to the one in the packet for this meeting “and have to rely on that in court.” Planning Director Gagnon said she sees a conflict of interest as a situation where there is a possibility for financial gain. She said she didn’t think the matter that board members had raised should prevent them from discussing the same matter (vacation rentals). She said the kind of general discussion the board was having was not affecting a particular applicant. Vice Chair Cough said he agreed but that it didn’t hurt to disclose it, and Planning Director Gagnon agreed with that point as well.

Chair St. Germain said the board needed to decide which version of vacation rentals it wanted to move forward with and when it wanted to schedule a public hearing. Planning Director Gagnon said she had presented one version, and that if the board wanted to adjust the number of days it could do that.

Mr. Eleftheriou said he was inclined not to change the number of days. He said a more comprehensive housing study needs to be done. Mr. Fitzpatrick said he had watched the last meeting where the subject was discussed and said he tended to agree with Mr. Eleftheriou. He said he was fine with what Planning Director Gagnon had submitted as is. Chair St. Germain said he had a different viewpoint: that it was more important to address the number of days rather than adding “or portion thereof” to the dwelling unit definition. He said it is important to hear from the public, too, though. Chair St. Germain referenced an email from Eben Salvatore that he said showed an interest in using vacation rentals as a way for a large, global hotel chain to come into Bar Harbor. Chair St. Germain said he would like to schedule a public hearing on vacation rentals and urged board members to do more reading.

Vice Chair Cough said he did not think there was any reason to change the five days. He noted he had suggested five nights instead of days, but said that might be too much for people and that he was fine with what had been submitted.

Mr. Eleftheriou made a motion to schedule a public hearing for June 5 for the definition change of vacation rental as presented by staff. Mr. Fitzpatrick seconded the motion. Vice Chair Cough asked if June 19 would be a better date; after some discussion, the board voted on the motion with June 5 and it passed unanimously (5-0).

Board votes to hold a public hearing on June 5, 2019 (5-0)

c. Dormitories

Planning Director Gagnon explained she had removed any language relating to licensing (i.e., kitchens). She said it was important not to clutter the Land Use Ordinance with things that did not belong there. She said it is not good to mix licensing and land use. She said it was not a case of the things being taken out not being important, but rather that they belong somewhere else. She said relevant departments could do a yearly sign-off (or share concerns) with the Town Council. If there are issues, she said, questions could be asked. She said she made the change after meeting with Chair St. Germain. She said work done by previous Planning Director Janna Richards had to be adjusted because it referred to Appendix C, which no longer exists.

Dormitories

Vice Chair Cough said he would like to see a copy of what language was pulled from the proposal (as referenced by Planning Director Gagnon at the beginning of her remarks). Vice Chair Cough said, he appreciated Chair St. Germain's active participation but said he did not want all decisions being made by him and Planning Director Gagnon. He said that was not how decisions should be made or how the board should operate.

Vice Chair Cough said, he was OK with scheduling the public hearing but wanted to make sure board members had a chance to read and review the relevant documents before the hearing was held.

Mr. Fitzpatrick said it was important to know how licensing requirements would be incorporated if/after they are removed from the dormitory amendment. Mr. Fitzpatrick agreed the licensing rules might be better suited elsewhere (he noted the Land Use Ordinance allows bars in certain areas but does not address their liquor licenses, for example), but said it is important licensing rules get put in place somewhere. Planning Director Gagnon said the conversation could be continued at the next meeting. Mr. Eleftheriou said it would be important to keep the Council in the loop as the process progresses. He said it would be helpful to have draft language in the margins at a public hearing (licensing requirements), because he anticipated questions about that coming up at the next meeting.

Mr. Eleftheriou said he had some more questions. He said he liked the idea of conditional use, but said it is impossible to know what the composition of the board will be when such an application comes forward. He asked what "teeth" the board has on such applications. CEO Chamberlain responded and said she had seen such an application turned down before and referenced the standards the board has

available.

Vice Chair Cough said, his concern would be the scope of a building in relation to other buildings it is abutting (a much larger building coming in next to smaller buildings, even if it is an allowed use). He said he did not have a problem with the conditional use aspect of it. He said he thought it was helpful. He recounted some of the history of the board's discussions on the matter. Chair St. Germain asked CEO Chamberlain about a comment she made earlier, that she had seen a conditional use application denied because a neighbor spoke up in relation to one of the standards. She confirmed that. She said there is a particular finding that the board will find a proposed use will allow abutting property owners "continued peaceful enjoyment of their land." She said another says it won't adversely affect the value of adjacent properties. She said she had seen neighbors use that argument.

Chair St. Germain asked if conditional uses are supposed to be reviewed annually. CEO Chamberlain said she did not think so; Vice Chair Cough said they are not so long as they remain in use (if they go unused for a year or more, they are re-reviewed). There was additional discussion on this subject. Planning Director Gagnon said anything that needs to get reviewed annually should not be in the land use ordinance. Vice Chair Cough envisioned a scenario in which an applicant could be brought back for conditional use review.

Ms. Brooks asked if it made sense not to refer to conditional use and to instead go back to site plan review.

Mr. Eleftheriou said it might be a harder sell to the public. Ms. Brooks noted there would still be standards with site plan review. Mr. Eleftheriou said he agreed with that point, but repeated it would be hard when it came to a public vote. Chair St. Germain said conditional use basically "codifies the NIMBY approach to opposition to a project." Mr. Eleftheriou said he agreed with that too, but repeated his concern about obtaining a positive vote. He said it would require some education. Mr. Eleftheriou said he sensed the public would feel there is more of a system of checks and balances in place with conditional use, though Ms. Brooks said she had not heard that from people. She said she thought site plan review would be sufficient for this type of use.

Mr. Eleftheriou noted there was language in the amendment that employee dormitories would not be used as vacation rentals or sold separately as condos; he asked if there should also be language safeguarding against utilization as hotel rooms. Ms. Brooks asked what the concern was, Mr. Fitzpatrick said it was that buildings would get built as employee dormitories and that then employees would gradually be phased out of living there and the rooms would be rented out.

Planning Director Gagnon said if it's a conditional use and the applicant then does something different with it, it is not allowed. Mr. Eleftheriou asked why anything like vacation rentals should specifically be listed there, and Planning Director Gagnon said because that is what the board came up with previously. Discussion continued among board members. Mr. Fitzpatrick said it could be amended to say it applies to any TA, and Chair St. Germain said he thought Mr. Eleftheriou's concern was a valid point. Mr. Fitzpatrick said the board cannot allow projects to be built

“only to be transformed into something else.”

Planning Director Gagnon suggested adding under 125-69-V, an A, B and C – A would be employee dormitories, and 6 would say they cannot be used for any other uses than employee dormitories, then have the same language repeat for rooming house and workforce dormitory. It would say no other use, including vacation rental — that is what you’re allowed to do, and nothing else.

Mr. Eleftheriou referred to the employee dormitory definition, and the phrase “and other businesses.” He asked why that was there. He said the language was not present in another similar location (A-2). Mr. Eleftheriou said he didn’t want to have conflicts and Planning Director Gagnon said she could adjust it. Vice Chair Cough referred to 129-65 W-2, and discussion ensued among board members. Chair St. Germain said he thought the “and other businesses” phrase was added previously to cover something the board might not have thought of. Mr. Eleftheriou said either section should be adjusted so they match one another.

Planning Director Gagnon suggested taking it out of #2 on page 7, and then leave it in the definition. Ms. Brooks said that seemed sensible. Planning Director Gagnon noted that it is not a standard, but an accessory to another use. Mr. Eleftheriou said it seemed good to him.

Mr. Eleftheriou referred to language about “sleeping accommodations on the premises for more than 16 persons in one room.” He asked what the upper limit was, if there was one. Discussion ensued. He asked what would dictate the upper limit of people in a room — something such as the International Building Code? CEO Chamberlain said it probably would not. Planning Director Gagnon said she thought employers would allow sufficient room for their employees to live comfortably with adequate space. Planning Director Gagnon said something like X amount of square footage per person could be covered through licensing. “I have concerns to micromanage everything in a land use ordinance when the purpose of a land use ordinance is the impact to the environment, to the economy, to traffic, to society — but not necessarily to that level of nitpicking.” Mr. Eleftheriou said he agreed but just wondered how it would be handled going down the road as far as enforcement. Planning Director Gagnon said she thought there was a lot of concern on the subject, especially when lot sizes are small.

Planning Director Gagnon said good licensing regulations would help address the situation.

Vice Chair Cough motioned to schedule a public hearing for dormitories on June 5. Mr. Fitzpatrick seconded the motion. He amended his motion for discussing the dormitory amendment to June 19. The amended motion then carried unanimously (5-0).

Board sets public hearing for June 19 (5-0)

d.) Review process matters (added by Planning Director Gagnon)

Planning Director Gagnon said she had given board members something to be looked at for discussion at the May 15 meeting, a memo called amendments to review procedure. She said the “very small changes” would allow the board to better navigate the process and handle applications. She said currently staff have three days

Review Process

from when an application it submitted to send out public notices. She said she thought that could be changed while still providing proper notification to people.

Planning Director Gagnon said the second thing she would like to talk about at the next meeting was a bigger issue, but one that did not require an ordinance change: going back to one planning board meeting a month.

Chair St. Germain asked if a motion was necessary to get those items on the next agenda. Planning Director Gagnon said it would be good. **Vice Chair Cough made a motion to add the two items with memos presented that night to the agenda for the May 15 meeting. Mr. Fitzpatrick seconded the motion, and it then carried unanimously (5-0).**

Mr. Eleftheriou asked if the board could have a second monthly meeting to focus on policy issues, such as a workshop, and Planning Director Gagnon said that was certainly a possibility. Planning Director Gagnon said having workshops that are not televised can sometimes allow for discussions that are more productive.

Vice Chair Cough said he was fine with the suggested format. He said he thought workshops are productive. He said his issue with the memo, particularly the one relating to the change in meeting schedule, was that reviewing things in a timelier format could be accomplished by the master checklist idea suggested earlier. He said that could help the board with its review process.

Planning Director Gagnon noted the Planning Board ordinance gives the board the ability to set its own schedule. She recognized her proposal would be a change from recent practice, but asked board members to give her idea consideration.

Mr. Fitzpatrick asked if the meeting schedule went to once a month, if the department heads had bought into the proposed schedule. Planning Director Gagnon said they supported it at least conceptually, if not with the exact time and dates listed. Mr. Fitzpatrick said if it runs in the same way in which he experienced it in Ellsworth in his role with The Jackson Laboratory, that he would be a "huge supporter" of the change. He spoke positively about that experience. Planning Director Gagnon explained that one of the key ideas is being able to spend less time on completeness review and more time on compliance and standards. Mr. Fitzpatrick said he believed that if all the changes were paired together that the process would move faster even though there would be meeting less often.

Chair St. Germain asked Eben Salvatore, sitting in the audience, if he had any comments to add. Mr. Salvatore said he agreed with CEO Chamberlain, that the conditional use section is "pretty much a nightmare for anyone that would want to do a dormitory project." He expressed support for moving the review into site plan. He said he supported getting something passed in a way that developers can use it, rather than just getting something passed for the sake of passing it.

Board votes to add review process and board schedule to the next agenda (5-0)

E. Slavatore does not support reviewing dormitories under CU

VII.) BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

No board members had any other comments to add.

No new comments

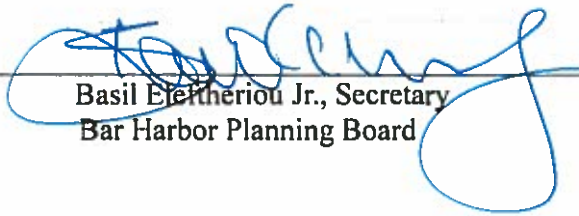
VII.) ADJOURNMENT

Vice Chair Cough made a motion to adjourn the meeting. Chair St. Germain seconded the motion, and without any discussion the motion passed unanimously (5-0) and the meeting adjourned at 7:25 p.m.

Board adjourns at 7:25 p.m. (5-0)

Minutes approved by the Bar Harbor Planning Board on May 15, 2019:

5.15.19
Date



Basil Eleftheriou Jr., Secretary
Bar Harbor Planning Board