

**Bar Harbor Planning Board  
Wednesday, June 5, 2019  
Council Chambers – Municipal Building  
93 Cottage Street in Bar Harbor  
4:00 PM**

**I. CALL TO ORDER**

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

Call to order @4:00  
PM

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

Quorum – all 5  
members present

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

**II. ADOPTION OF THE AGENDA**

Chair St. Germain asked for a motion to adopt the agenda for the meeting. **Vice-chair Cough made the motion, seconded by Mr. Fitzpatrick. It then carried unanimously (5-0).**

Agenda adopted

**III. EXCUSED ABSENCES**

There were no excused absences.

**IV. PUBLIC COMMENT PERIOD**

There were two comments. Donna Karlson asked for a timeline regarding the public hearing for the proposed dormitory amendment. She was informed that the public hearing had been scheduled for June 19. Sarah Keeley said that she wished that the board had addressed the five-night minimum.

Chair St. Germain closed the public comment period noting that comments on vacation rentals would be heard later.

**V. APPROVAL OF MINUTES**

a. May 15, 2019

**Mr. Fitzpatrick moved to adopt the May 15 minutes. Mr. Eleftheriou seconded the motion. The motion carried unanimously (5-0).**

Minutes approved

**VI. REGULAR BUSINESS**

a. **Public Hearing, Deliberation, and Decision for SP-2018-07 - TA-1  
Project Location: 81 Ledgeawn Avenue, Tax Map 107, Lot 078-**

Jordan TA-1 on  
Ledgelawn, SP-2018-07

000, Downtown Residential District

**Applicant:** Robert and Kathleen Jordan

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

The Jordans were present to represent themselves. Mr. Jordan recounted the history of the property, and said they have always strived to be good neighbors. He said they were seeking approval from the Planning Board to come into compliance with town regulations.

**Jordans present, recount history**

Chair St. Germain opened a public hearing at 4:07 PM. Donna Karlson spoke and asked about TA-1 requirements in connection with Design Review, both with regard to this project and in general around town. Barbara Sassaman, chair of the Design Review Board, said the board “had absolutely no problem with this application” because there was no change to the building. With no other comments, the public hearing was closed at 4:10 PM.

**Public hearing opened at 4:07 PM**

**Question about Design Review Board**

**Public hearing closed at 4:10 PM**

Mr. Fitzpatrick asked about parking standards and what is required under TA-1. There was discussion on this question. Mr. Fitzpatrick noted a standard modification had been requested. The applicant talked about an alternative idea of a curb cut on the north side of the house for two additional spots, but said he would prefer not to do that because it would result in the loss of one parking spot on the street.

**Discussion on parking**

Chair St. Germain said he anticipated seeing more applications like this. He wondered if this modification was allowed, what it would lead to in the future. He asked staff if there was precedent for such a modification, and staff could not think of any. More discussion followed, including on 125-67, E(3) which says parking areas shall be designed to allow vehicles to park without other vehicles being moved. Chair St. Germain said that should be cited in the modification, as well.

**More parking talk**

Vice-chair Cough noted several letters were received and asked how to make sure they are included in the record, including one from abutter Jim and Ellen Grover who asked that their letter be read into the record. He said her letter raised some questions he wanted to ask. There was discussion on whether the letter needed to be read aloud, and eventually agreed that it should be. Mr. Eleftheriou read the letter (attached), objecting to the application, aloud. The Grovers accused the applicant of ignoring and violating ordinances.

**Grover letter read aloud, opposing application**

There was discussion of what constitutes a kitchen and whether the applicants have one in their rental unit. It was noted that “kitchen” is not defined in the Land Use Ordinance. There was discussion of a consent agreement that is in

**Discussion of what is or is not a kitchen**

place, whether the applicant is in violation of that and whether that is something that can be considered by the Planning Board. Town staff advised that compliance with a consent agreement is separate from compliance with the Land Use Ordinance.

Discussion on compliance with LUO vs. consent agreement

Mr. Fitzpatrick asserted there were three possible violations of the consent agreement, in his view. He later said he mentioned those items to see if that affected the standing of the application. Mr. Jordan responded to the violation comments, and said he thought he could advertise the space once he submitted his application to the Planning Board.

Discussion on possible violations, Mr. Jordan responds

Chair St. Germain referred to 125-101, A(2). CEO Chamberlain said she felt she would need to go back to the Town Council for permission to take action if she felt there was a violation, and then the town's attorney would need to go to court. Board members shared their thoughts on the matter.

More discussion on consent agreement

Mr. Jordan noted part of what was discussed at the court was pursuing a change of use to TA-1. He responded to several points raised in the letter from the Grovers.

Mr. Jordan responds to letter from Grovers

Vice-chair Cough returned to the issue of whether the applicants have a kitchen in the rental area (he said he thought they did). He said he did not agree with the idea that there had to be a stove/oven to classify it as a kitchen. Board members shared their opinions. It was noted that the definition of bed and breakfast does not prohibit a kitchen. Mr. Jordan noted that in the consent agreement, where it originally said "kitchen" was changed to "food preparation area," a change that was made as the agreement was finalized.

More discussion of the question of a kitchen

Mr. Fitzpatrick said as with a previous application for TA-1, he does not believe an exterior room/building/structure qualifies for that designation. He worried what precedent approving this application would set. He said he shared Vice-chair Cough's concern with the kitchen.

Question of whether this qualifies as TA-1

Mr. Jordan offered to connect the barn to the house if it would satisfy Mr. Fitzpatrick's concern. He said they are already connected by utilities.

**Vice-chair Cough moved to continue the public hearing and that the board request town attorney Ed Bearor be in attendance at the next meeting on June 19. He said he wanted to hear his take on the kitchen question and residence definition.** There was discussion among board members. Chair St. Germain noted attorney Bearor had supplied an opinion on similar questions previously, and that the board had approved a similar application after receiving that opinion. Vice-chair Cough read the definition of TA-1. Mr. Fitzpatrick said he would agree to table the application for two weeks to determine if the application has standing. **Vice-chair Cough**

Motion to continue public hearing until June 19 and have town attorney present to answer questions on kitchen, residence definitions

Board discussion

withdrew his initial motion, then made a new motion to table the application for two weeks until the board's next meeting (June 19) with the understanding that the town attorney will be at the meeting to go over the issue of residence definition as it applies to TA-1 and also the issue of standing for the applicant. Mr. Fitzpatrick seconded the motion. Chair St. Germain said he could not support the motion because he felt the board had already addressed the residence issue, and that to examine it again would be bad practice. On the subject of standing, he said he sees this application as the Jordans' way out of being in violation. Mr. Eleftheriou and Ms. Brooks both offered their own opinions. **The vote was taken, with three in favor and two opposed (Chair St. Germain and Ms. Brooks).**

First motion withdrawn, followed by motion to table application for two weeks until June 19 and have town attorney present to look at definition of residence and question of standing

Board discussion

Motion carries 3-2 (St. Germain and Brooks are opposed)  
Rechholtz Subdivision SP-2018-02

**b. Public Hearing, Deliberation, and Decision for SD-2018-02 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.

Vice-chair cough recuses himself

Vice-chair Cough recused himself and left the room.

Rob Rechholtz proceeded to present his project and went through the items that had been requested by the board at the last meeting.

Applicant summarizes project status

At 5:00 PM Chair St. Germain opened the public hearing. There was no comment and the hearing was closed.

Public hearing opened – no comments received.

Mr. Fitzpatrick asked for clarification on a few points.

**Mr. Fitzpatrick moved that the water capacity letter requirement be waived from the application. Mr. Eleftheriou seconded the motion. The motion carried unanimously (4-0).**

Water Capacity Letter waived

**Mr. Fitzpatrick moved to require lot number 2 to be located within 500 feet of a fire hydrant or require a note on the plot plan to be recorded at the Hancock County Registry of Deeds, which says that lot number 2 has a deed restriction "any dwelling unit shall be protected with a residential level sprinkler system." Mr. Eleftheriou seconded the motion. The motion carried unanimously (4-0).**

Fire hydrant within 500 feet of lot #2 or provide deed restriction requiring residential sprinkler system

**Mr. Fitzpatrick moved that based on the meetings the board has held and the deliberations by the board that it finds that the project meets Chapter 125-67 General Standards and 125-69 N Subdivision Standards for**

Determination that project meets the

**application SD-2018-02. Mr. Eleftheriou seconded the motion. The motion passed unanimously (4-0).**

**General and  
Subdivision Standards**

Mr. Fitzpatrick was on a roll and wrapped it up with one last motion.

**Based on the Finding of Facts and Conclusions of Law, Mr. Fitzpatrick moved to approve SD-2018-02, as outlined in the Draft Decision dated June 5, 2019, as amended previously. Mr. Eleftheriou seconded the motion. The motion passed unanimously.**

**Project is approved**

Chair St. Germain, recognizing that the following items on the agenda would be lengthy, called for a short break and the meeting to resume at 5:10 PM. Vice-chair Cough rejoined the board at the table.

**Chair calls for a break**

The meeting resumed at 5:10 PM.

**Cough rejoins the  
board at the table  
Meeting resumes at  
5:10 PM**

**c. Public Hearing on an amendment to the Land Use Ordinance.  
The purpose of the proposed amendment is to amend the  
definition of Vacation Rental**

**Public hearing for  
proposed amendment  
to definition of vacation  
rental**

The public hearing was opened at 5:14 PM.

**The public hearing was  
opened**

Sixteen residents spoke. Although no one was against what was presented, there was a sentiment that the board should have considered decreasing the minimum number of days. Other views were also expressed.

**Sixteen residents speak**

The public hearing was closed at 5:44 PM.

**The public hearing was  
closed**

Chair St. Germain explained that although he was in favor of lowering the number of days he explained that the board decided not to change the minimum number of days as there is insufficient information especially pertaining to the number of hosted versus non-hosted vacation rentals. There also is concern that lowering the minimum number of days might open up the floodgate for the sort of investors who has a business of a group of homes.

Vice-chair Cough said that he feels that the board will later tackle the number of days. He also offered that it might be better done in conjunction with addressing density.

Mr. Fitzpatrick explained that his support for not addressing the number of days for short-term rentals, as supported by some of the comments heard tonight, was because to address the housing crisis the town needs data and facts; it needs to figure out what it wants to be as a community and set a series of goals (goals, objectives, strategies, and actions); the Planning Board needs clear direction

from the council of what is to be accomplished; and there is also a need to take a hard look at what is an owner-occupied versus non-owner-occupied vacation rental. Mr. Fitzpatrick felt that moving from five days to three days without having all the information is not prudent and that there would many unintended consequences.

Mr. Eleftheriou agreed with both what was said by Mr. Fitzpatrick and Vice-chair Cough. He explained that insufficient data was a big factor in his decision not to change the number of days. He, again, advocated strongly for the town to conduct a hosing study. He noted that a housing study and data is needed to enable the board to move forward.

Ms. Brooks said that the town has an outdated ordinance, and that the comments that are constantly heard constitute the data and the planning process. The board needs to focus, get to work and change the ordinance. In her opinion, that will help people be in compliance and not force them to have to stop their "side income" which allows them to live here.

Chair St. Germain explained that sometime in July or August there will be a joint workshop of the Planning Board and the Town Council to continue working on this matter.

**Mr. Fitzpatrick moved to forward to the Bar Harbor Town Council warrant article Land Use Ordinance Amendment: Vacation Rental; specifically, Shall an amendment dated May 1, 2019 and entitled "An amendment to the definition of Vacation Rental" be enacted for their consideration and inclusion on the warrant for the November election period. Vice-chair Cough seconded the motion. The motion carried unanimously (5-0).**

Board moved to forward the amendment to vacation rental to the council for the November vote

**d. Public Hearing on an amendment to the Land Use Ordinance. The purpose of the proposed amendment is to adjust the Design Review Board's jurisdiction, amend the Design Review Board Overlay District Map to reflect that expansion, and amend the language in Article XIII to accurately describe the new boundaries of the district within the Land Use Ordinance.**

Public hearing for amendment to DRB Overlay and adjustment to area of jurisdiction

The Chair of the Design Review Board (DRB) Barbara Sassaman explained that the DRB is tasked with annually updating Appendix A. The board's jurisdiction is limited to the DRB Overlay District, which is superimposed over several neighborhood zoning districts. Changes to the zoning districts result in automatic changes to the DRB Overlay District. Consequently, several properties listed in the National Register of Historic Places are now out of the DRB's jurisdiction. Conversely, there are properties well outside the main village area that now fall under the DRB's jurisdiction.

Sassaman summarizes the problems with how the Overlay District boundaries are defined

The DRB feels that the changes to zoning districts affect the intent of the original DRB Overlay District boundaries. Rather than being attached to the boundaries of the underlying zoning district, the Overlay District area should be defined by a list of parcels (map/lot). This would eliminate the confusion caused when zoning district boundaries are changed. Presently, the Overlay District does not accurately reflect buildings important to Bar Harbor's overall aesthetics. Having an Overlay District that actually reflects the important buildings is the DRB's goal. The DRB has created a new Overlay District map. In addition, following the policies and strategies of the Comprehensive Plan, the DRB is asking the board to consider increasing the DRB Overlay District to include the Bar Harbor Gateway area; Salsbury Cove, and Hulls Cove.

Sassaman explains how to better define the boundaries of the Overlay District

Ms. Sassaman referenced the policies and strategies of the Comprehensive Plan as follows:

Sassaman explains how the amendments would comply with the Comprehensive Plan

Policy 1H – To preserve scenic approaches to Bar Harbor and designated villages, specifically along Routes 3, 102, and 198.

Strategy 1H3 - Extend design review beyond current application in Downtown and for B&Bs to include the Acadia Byway, a nationally designated scenic byway and the designated Town Hill Village.

Policy 1J – To preserve Bar Harbor historical and archaeological resources.

Strategy 1J3 - Update the 1976 History Building Inventory and, as appropriate, designate historic districts in portions of Salsbury Cove, Hulls Cove and Town Hill.

Policy 2B – Examine the zoning in Bar Harbor village to preserve its residential integrity, while acknowledging numerous nonconforming commercial uses.

Strategy 2B4 - Continue monitoring the effectiveness of zoning to protect the existing nature and quality of life on West Street.

Policy 2D - To revise the standards and broaden the scope of design review beyond the downtown business district to address historic and archeological, scenic byways, and other concerns in the rest of the community.

Ms. Sassaman read a quote in the Comprehensive Plan that immediately follows the previous policy. "One of the greatest outcries in neighborhood meetings was fear of what was perceived as being the loss of Bar Harbor's traditional, coastal New England character. The DRB was set up in an attempt to keep the appearance of downtown development consistent with the surrounding architecture while respecting the rights of property owners. It is clear the Town

has benefitted from this necessary review. Because of the possible negative consequence of further development, the Town should consider, after the standards have been revised, extending the Board's jurisdiction." She then went on to quote the following strategy:

Strategy 2D2 – Study the village of Hulls Cove, Salsbury Cove, and Town Hill to identify which features, structures, and visual aspects would be preserved, prepare and adopt standards in the LUO, and expand design review to those areas.

Ms. Sassaman continued by noting that last time the DRB presented to the board the proposed expansion of DRB's jurisdiction, there was opposition from the board, hence the reason the DRB removed Hulls Cove and Salsbury Cove from the plan that is now submitted. The intent of the amendments is to change the language of the LUO to have all properties listed on the National Register of Historic Places included in Appendix A regardless of whether they fall under the Overlay District or not; to slightly extend the Overlay District in Town Hill (this was caused by needing a geographical feature as a boundary marker at both ends of this area); and to expand the Overlay District to the village of Bar Harbor which would include the gateway area. At an earlier meeting with the board, it was stated that none of the owners of the properties along this stretch of Route 3 would do anything to diminish the aesthetic quality of this area. That is fine but it does not take into consideration the fact that properties are sold and owners change. This is the gateway to Bar Harbor and therefore it should reflect the aesthetic of the Town. It is the introduction to the village of Bar Harbor and it should be protected from unchecked development that would adversely affect its appearance and character. Along with this revised Overlay District map, the DRB has also have amended 125-12 (defines the Overlay District). Ms. Sassaman reminded the board that single and two-family dwellings are not under the purview of the DRB unless they are listed in the National Register of Historic places.

**Sassaman explains the intent of the amendments**

Chair St. Germain opened the public hearing at 6:03 PM.

Three people commented. Stewart Brecher supported the DRB's protection of historic places. He voiced concerns about the proposed standards and the attempt to copy old buildings.

**The public hearing is opened**

David Witham expressed concerns with the expansion of the Overlay District and with how the guidelines will apply to buildings without historical significance.

Donna Karlson talked about having more clarity on the bylaws.

The public hearing was closed at 6:15 PM.



Board deliberations began. The board had a long and arduous discussion trying to determine if the proposed DRB amendment complied with one of the four pathways of how an amendment can be brought forth. The attorney's opinion, affirming that the process for the DRB amendments met one of the four pathways, was considered in the deliberation.

Public hearing is closed

Discussion about if the proposed amendments by the DRB meets one of the four pathways to amend the LUO

**Vice-Chair Cough moved to continue discussion and agreed with Ed Bearor's decision on the issue of moving it forward. Mr. Eleftheriou seconded the motion. During discussion, Vice-Chair Cough moved to call a question (to stop the debate). Although, it was noted that a second was not necessary, Mr. Eleftheriou seconded the motion, to be safe. The motion carried (3-2 with Ms. Brooks and Chair St. Germain voting against it). The initial motion was then voted on and the motion carried (3-2 with Ms. Brooks and Chair St. Germain voting against it)**

It was decided that the DRB process had met one of the four pathways to bring the amendment forth

The board then deliberated on the DRB proposed amendments. There were general concerns on the amendments as it pertained to the gateway area/Route 3 section.

**Mr. Fitzpatrick moved to recommend that the Design Review Overlay District Map and adjustment of Design Review Board jurisdiction amendment dated March 29, 2019 be moved to the Council with the recommendation "ought to pass." Vice-chair Cough seconded the motion. Debate followed. The vote was 2-3 with Ms. Brooks, Mr. Fitzpatrick, and Chair St. Germain voting against it, and the motion did not carry.**

Board moved not to forward the DRB amendments to the council

It was clarified that the "ought to pass" wording was premature and it was agreed that the interpretation of the motion was that it was dead and not being forwarded to the council.

#### IX. ADJOURNMENT

At 7:28, Mr. Fitzpatrick motioned to adjourn the meeting. Mr. Eleftheriou seconded the motion. The motion carried unanimously (5-0).

Meeting adjourned

Minutes approved by the Bar Harbor Planning Board on June 19, 2019:

7.10.19  
Date

  
Basil Eleftheriou Jr., Secretary  
Bar Harbor Planning Board