

Minutes
Bar Harbor Planning Board
Wednesday, July 7, 2021
Council Chambers of the Municipal Building
93 Cottage Street

I. CALL TO ORDER

Chair St. Germain called the meeting to order at 4:01 PM. Planning Board members present were Chairman Tom St. Germain, Vice-chair Joe Cough, Secretary Erica Brooks, Member Basil Eleftheriou Jr., and Member Millard Dority.

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

Greg Johnston, Marla O'Byrne and Mike Rogers were also present for agenda item VI. a.

II. ADOPTION OF THE AGENDA

Mr. Dority moved to adopt the agenda. Secretary Brooks seconded. The motion carried unanimously, 5-0.

III. EXCUSED ABSENCES

There were none to excuse, as no members were absent.

IV. PUBLIC COMMENT PERIOD

Chair St. Germain opened the public comment period at 4:02 PM and explained the guidelines for public comment. Tim Culbertson began to speak and said he owned property in Bar Harbor. He asked how the town of Bar Harbor has the legal authority to tell residents what they can do in their houses. Chair St. Germain indicated that his comments would be better suited for the public hearing under VI. c. regarding vacation/short term rentals. There was some discussion in the audience; Chair St. Germain said he would not tolerate people speaking out of order, and the public comment period was subsequently closed.

V. APPROVAL OF MINUTES

a. June 2, 2021

Mr. Dority moved to approve the minutes of June 2, 2021. Secretary Brooks seconded. The motion carried unanimously, 5-0.

VI. REGULAR BUSINESS

a. **Public Hearing/Compliance Review for PUD-2021-01 — Jones Marsh Affordable Housing Development**

Project Location: Tax Map 212, Lot 43-1 off of State Route 3 and encompassing a total of 30 acres according to town tax records. The subject land is the Town Hill Residential and Town Hill Rural districts.

Applicant/Owner: Island Housing Trust

Application: The applicant proposes to subdivide a 30-acre property into nine lots (eight lots buildable for residential use and one lot reserved for open space). Six of the buildable lots would have single-family homes and two of the buildable lots would have two-family homes, for a total of ten dwelling units.

Secretary Brooks recused herself as she has done in the past, because she serves on the board of Island Housing Trust (IHT). Vice-chair Cough said she could stay in the room, however. No motion was deemed necessary because this was in keeping with her past practice on this project. Secretary Brooks stayed in the back of the room during this portion of the meeting. **With her recusal from this item, the board's voting membership was reduced to four members.**

Greg Johnston identified himself, joined a few minutes later by Mike Rogers. Mr. Johnston introduced the project and noted some of the changes that had been made since the application was last before the board, including changes to plans for fire protection. While it would be allowed to clear and dig a fire pond within 2,000 feet, the group has secured rights to investigate improving the fire pond serving White Deer Circle, which would be less invasive than constructing an additional fire pond, he said. This would better serve both neighborhoods, he said. Mr. Rogers said the main addition to the Jones Marsh project was changes to driveway length so there would be no parking in the right-of-way.

Chair St. Germain asked about the modifications of standards IHT was seeking, including reduction of setbacks. Because this is a Planned Unit Development (PUD) and there is a "really tight envelope," said Mr. Rogers, IHT had requested shrinking the lot sizes to roughly half with a smaller frontage area to get more homes in a tighter space and not affect wetlands and vernal pools. The driver for much of the design was septic field layouts, which are largely dictated by nature, said Mr. Rogers. The land in aggregate will remain the same, said Mr. Johnston, adding the change to the plan was just a reallocation of space. Mr. Eleftheriou asked for clarity regarding PUD relaxation of standards. Marla O'Byrne explained that IHT had 30 residents in its applicant queue waiting for opportunities for houses that are affordable for them as opposed to offering the houses first to employees of the town of Bar Harbor (as is stipulated in the Land Use Ordinance). Any remaining units would be publicly advertised. IHT had not set income eligibility but had proposed a cap of 140 percent of state median income, the Planning Board was told. Covenants required meeting income eligibility, maintaining year-round-residency, offering IHT a right of first refusal and guiding improvements on the homes, Ms. O'Byrne explained. The resale price would also be tied to median income.

Mr. Dority said the project was "terrific." Vice-chair Cough agreed and asked if there was anything in the IHT covenants precluding weekly rentals. Ms. O'Byrne said yes, any rentals are prohibited. Year-round residency would be defined as 11 months per year, she added.

Chair St. Germain opened a public hearing at 4:15 PM. Mr. Culbertson, from before, spoke first and said the town should spend some money on better microphones. Vice-chair Cough

reminded the audience of rules of order for the public hearing. There was some discussion in the audience; as Mr. Culbertson continued, Chair St. Germain said, "One more comment and I'll ask you to leave." Mr. Culbertson replied, "You can ask me all you want."

Barbara Fenderson spoke next. She asked how eligibility for housing units in the Jones Marsh project would be determined. **Chair St. Germain closed the public hearing at 4:20 PM.**

Ms. O'Byrne spoke about income eligibility. Salary ranges in the applicant queue are taken into account, she said, as is the cost of the housing and infrastructure. IHT will be contributing more than a million dollars to this project, said Ms. O'Byrne. The board requires most recent tax returns and two pay stubs from applicants as evidence of income, said Ms. O'Byrne.

Vice-chair Cough asked a question about the sale of housing to the general public after the queue of the housing trust's applicants. That differs from ordinance requirements, he said. "Not sure I'm comfortable with that," he said.

Ms. O'Byrne explained what she understood Vice-chair Cough's comments to mean, which would be to offer units for sale to town employees after offering units for sale to those in IHT's queue. Vice-chair Cough wanted something in writing as part of the approval. There was a question about the number of units that this would be applicable to. Mr. Dority asked if it was possible if there were already town employees in the queue as applicants. It didn't matter to Vice-chair Cough if town employees fit both criteria, that would satisfy the requirement in his eyes. Ms. O'Byrne said if the Planning Board were to make approval contingent upon this, she would need to take the matter to the IHT board. Mr. Dority said he was fine with how IHT was presenting it to the Planning Board already, and did not see the need to make a change.

Chair St. Germain asked about waivers, and Planning Director Gagnon responded. Mr. Eleftheriou said he trusted IHT to advance the project. It has a proven track record, he said, and the PUD section of the LUO needs help. "We need housing," he said, meaning the town itself.

Mr. Eleftheriou moved to approve the application PUD-2021-01 — subdivision, Jones Marsh Affordable Housing Development, per the Bar Harbor Land Use Ordinance sections 125-67, 125-69 M., N. and R., and per the decision dated July 7, 2021 with the following conditions and modifications of standards, referencing the Land Use [Ordinance] markers and not the full text, 125-69 R. (3) (a), 125-69 R. (3) (c) [5], 125-69 R. (3) (c) [6], 125-69 R. (3) (i) [1] and 125-109. He said again his motion referenced the decision dated July 7, 2021

Planning Director Gagnon said she believed Mr. Eleftheriou was missing some items (modifications of standards) from page two of the written decision. **Mr. Eleftheriou added the following LUO markers to his previous list of modifications of standards: 125-69 B., ~~125-69 B.-(4)-(a)~~ [note: the written decision which Mr. Eleftheriou was referencing listed this modification as 125-67 B. (4) (a), which is the correct standard. As Mr. Eleftheriou made a point to reference the written decision while making his motion, the written record will reflect**

that the following standard was the one modified:] 125-67 B. (4) (a), 125-67 E. (22), 125-67 DD., and 125-69 M. (6) (b).

Planning Director Gagnon said Mr. Eleftheriou might want to consider adding plan signing, items to be provided to the Code Enforcement Officer and then also items to be provided with each building permit. Mr. Eleftheriou then added the following requirements to his motion: **for plan signing, by August 3, 2021, submit to the Planning Director three [paper] copies of the subdivision plan signed and sealed by a land surveyor, including an updated table of dimensional requirements and showing the required and provided dimensional requirements for both the Town Hill Residential and Town Hill Rural districts for signing by the Planning Board at their August 4, 2021 meeting. In addition, the following information shall be submitted to the Code Enforcement Officer prior to the issuance of a building permit for the construction of the infrastructure: the Maine DEP stormwater permit by rule, clearance from the Maine Historic Preservation Commission referring to the “correct” project, permission from White Deer Circle [to use the] fire pond (easement is correct, just needs to be signed and notarized), demonstration that the town attorney has reviewed the restrictive language and found it acceptable per 125-69 M. (6) (c) [5], and submittal of a road plan that provides for driveway culverts. Lastly, [the following information shall be submitted to the Code Enforcement Officer with building permit applications for dwelling units]: per the stormwater management plan, provide an erosion and sedimentation management plan as well as best practices for stormwater management.**

Planning Director Gagnon noted Mr. Eleftheriou had missed a few items under information to be submitted to the CEO prior to the issuance of a building permit for the construction of the infrastructure, which Mr. Eleftheriou then added to his motion: **MDEP Natural Resource Protection Act Tier 2/3, and MDEP permit by rule for wetlands.**

Vice-chair Cough said he would second the motion if Mr. Eleftheriou would be amendable to adhering to the provision of bringing in town employees [for the affordable units] under the ordinance, up to two as a total, if not otherwise provided for in the IHT queue. Mr. Eleftheriou asked what would happen if no town employees were in the queue. Vice-chair Cough explained the progression, as he saw it. Vice-chair Cough said if IHT had already met the requirement via town employees in its applicant queue, then the provision he was proposing would go away. Chair St. Germain asked if the board would like to hear from the applicant regarding Vice-chair Cough’s idea. Ms. O’Byrne asked if the board would be comfortable inviting interested town employees to apply with IHT. Vice-chair Cough was not comfortable with that approach, although he might encourage it privately.

Mr. Eleftheriou kept his motion as he made it. Vice-chair Cough withdrew his second. Mr. Dority seconded. Chair St. Germain asked if the board was required to cite the section of the LUO allowing it to modify the standards, (125-69 M. (6)(d) / (e). It’s not required, said Planning Director Gagnon. There was discussion. **Mr. Eleftheriou added it, and Mr. Dority agreed.**

The project is great, said Vice-chair Cough, but he is a stickler for the ordinance and this nags at him. **The motion carried, 3-1, with Vice-chair Cough opposed.**

Secretary Brooks rejoined the board, and with that the board's voting membership returned to five. She reminded the audience of the ground rules for the meeting and noted that, for those having difficulty hearing, the overflow room was active open and had good audio. She noted copies of the draft order were available in the back of the Council Chambers on a table.

b. Public Hearing – Draft Warrant Article - LAND USE ORDINANCE

AMENDMENT - Signage. Shall an ordinance, dated June 2, 2021, and entitled “An amendment to create new, and amend existing, regulations regarding signage;” be enacted?

Assistant Planner Fuller introduced the item and gave a recap of the history of the draft order. This is a revised version, he said, that staff worked on with the Design Review Board. The version that came before the board earlier in the year had some provisions for neon signage; concerns were raised about that at the Warrant Committee level, said Assistant Planner Fuller, feedback that staff took into consideration for this revised version. That provision was left out of this, he said and the language already in the LUO regarding neon signs has been left as is.

Chair St. Germain explained the process of the draft ordinance amendment progression. **He opened a public hearing at 4:39 PM.** Lawrence Donnelly spoke first. She asked about dark sky compliance and neon lighting in Bar Harbor.

Seeing no other comments, Chair St. Germain asked if the chairman of the Design Review Board would answer the question. Barbara Sassaman, chairman of the Design Review Board, said the neon signage is “quite small,” restricted to certain sizes. Some signs in town have been grandfathered. She spoke a bit about her knowledge of the history of neon signage. “We have tried to keep neon signs to a minimum in town,” said Ms. Sassaman. Some went up “before we could stop them,” she said. Assistant Planner Fuller clarified that the draft order adds a definition of neon signs to the ordinance as the LUO at present refers to but does not define neon signs. This definition includes neon-like signs, he said, which, as Ms. Sassaman noted, are now made of LEDs and other materials. Vice-chair Cough asked a question about dates on the document; staff responded. **The public hearing was closed at 4:44 PM.**

No action was taken on this per a comment from Planning Director Gagnon. Before going onto the next item, Secretary Brooks asked the chairman to remind audience members of the proper protocol for a public hearing. As of 4:50 PM, the overflow room was empty. Chair St. Germain noted that there is a 3-minute time limit policy. Speakers have the opportunity to speak once; everyone would be heard, he said. Questions must be addressed to the chairman; board and staff will attempt to answer questions, said Chair St. Germain, and do their best to listen.

c. Public Hearing – Draft Warrant Article - LAND USE ORDINANCE

AMENDMENT – Short-Term Rentals. Shall an ordinance, dated June 2, 2021, and entitled “An amendment to regulate short-term rentals;” be enacted?

Chair St. Germain opened the public hearing at 4:51 PM. First to speak was Ellen Dohmen, chair of the Appeals Board. She noted her 22-year service to the town, and said that she was chair of the Planning Board the first time this issue (short-term/weekly/vacation rentals) came up. This is a “complicated” and “emotional” problem, said Ms. Dohmen. She began to discuss zoning; Chair St. Germain asked her to direct comments to the chair, rather than to the audience. Ms. Dohmen said business is “not a dirty word,” and that it must be applauded and encouraged.

Ms. Dohmen discussed the zoning for different districts. Places renting in a business district are very different from a residential area, she said. She had “real problems” with the definition of VR-1. The number of people allowed to stay per rental registration, the number of cars they can have, are not defined, she said. She worried about an attorney looking for loopholes. Where are they going to park? she asked. Other lodging is required to provide parking. She added that there is no stipulation that the owner actually be at the residence while it’s being rented. Code Enforcement staff cannot be everywhere all the time, she said, and would have a difficult time enforcing this. Ms. Dohmen commented on VR-2. Again, there is no car limit and it’s limited to a minimum of four nights. Who will enforce that? she asked. Then she spoke about VR-2. Ms. Dohmen was concerned about septic and wells. There are no guidelines in the ordinance regarding either, she said. There are too many unforeseen consequences, she said. Adopting it would result in “so many stumbling blocks,” she said, and would be very difficult to undo.

Ben Baxter spoke next. He asked a question about the prohibition on the transfer of registrations. He understood how it came up. He noted a “drastic set of behaviors” in town this winter when preliminary documents were laid out. There was a “flurry” of aggressive sales activity, he said. This was the opposite of what the board intended. This draft locks down transferability, he said. He applauded the board and council for adopting this as promptly as they did. Mr. Baxter said he owns two rental properties and has two daughters. He’d always intended to transfer family property and its value to offspring. He proposed modifying transferability to include allowing for inheritance or gift to protect the common assumption of transferring family property.

Mary Galprin spoke next. She observed that limiting future VR-2 licensing to lodging and commercial zones and removing them entirely from residential zones would result in Bar Harbor residents doing rentals in residential zones, similar to how it was before, she said. Ms. Galprin asked why caps and limits on seasonal workforce housing units were not also being considered, if the goal was to increase year-round housing. What percentage of seasonal worker housing units are currently in residential zones? she asked. Ms. Galprin understood the desire to promote a year-round local community, but said it would be difficult to vote for something where she said the goal would be to reduce the value of her property.

Lawrene Donnelly felt it was “too little, too late,” but that a lot of work had been put into it. She supported this effort rather than doing nothing at all. The key to making it work is to prohibit transferability, she said.

Jim Secor of 22 Roberts Avenue spoke next. He noted that he had emailed comments to the board. Chair St. Germain assured Mr. Secor the board read its emails but said Mr. Secor was welcome to read his comments. Mr. Secor read his comments. He and his wife own and operate a VR and have concerns regarding transferability in particular. There is a long history of weekly

VRs in Bar Harbor, said Mr. Secor. With a great deal of money invested in their property, he said, it is unlikely it would sell as an affordable home. He called the proposal a “theft of our investment”. The rental unit is our retirement program, he said. By prohibiting transferability, “you have taken 20 to 25 percent of the property value away from us.” This was attested to by two local real estate brokers during public hearings, he said. Potential income stream is the main driver of higher resale values, he said. People invested in good faith and performed the work required based on zoning and building codes, said Mr. Secor. A non-conformity that is grandfathered may be transferred, he said. Why does the town not want to adhere to its own existing regulation? Mr. Secor asked. “I know there is a need in the community for more housing,” he said, but said he felt the town had singled VR owners out, in part because weekly rental owners do not have lawyers and lobbyists that hotels have. Why has the town not restricted hotels and their seasonal worker housing? he asked. He asked the board to reject the non-transferability section of VR-2. Chair St. Germain noted that Mr. Secor had gone to six minutes and asked him to wrap up. Mr. Secor said he was finished.

Ivan Rasmussen spoke next. He wanted to ensure he correctly understood the language of the draft ordinance. VR would be converted to an allowed activity, is that correct? he asked. Yes, said Planning Director Gagnon. Mr. Rasmussen said he and his wife own a permitted VR in a commercial building on commercial property. The proposed change, he said, would discontinue VR use in Downtown Village I but allow it as an activity when a spot is opened under a cap. But all other lodging uses would remain. He said it seemed discriminatory to disallow this for small business owners while continuing it to allow it for large businesses, said Mr. Rasmussen. He urged the board to remove Downtown Village I and II from the draft ordinance. Taking away a permitted use in commercial building on commercial land would be a “most egregious affront,” he said. Mr. Rasmussen asked a question about the definition of “activity.” Chair St. Germain couldn’t find one. Planning Director Gagnon explained that uses, as listed in the ordinance, refer to a building permit being issued by the code enforcement officer. Activities are those allowed without a building permit. A VR is first and foremost a dwelling unit. That is the use, she said. The activity taking place is the short-term rental of the dwelling unit. It was moved for that reason, she said.

Diane Vreeland, Town Hill resident, spoke next. This is not new, said Ms. Vreeland, who said she was in real estate for 13 year in Kennebunkport and chaired the affordable housing committee. This has been going on for years across the state of Maine, said Ms. Vreeland. The provision allowing homeowners to rent their home has helped allow her to live here. Why would you expect us to be concerned about your 401(k) or your investment? she asked. We have families trying to afford a home, said Ms. Vreeland, and “you’re worried about your 401(k)?” She said she would never expect the town to care about her 401(k). Vice-chair Cough asked comments to be directed to the chair, not the public. Ms. Vreeland said she was irked by those speaking about their retirement savings, 401(k) and investment. The cap will never be reached if transferability is allowed, she said.

Tim Culbertson spoke next. “Does the town really think they have a legal right to tell the people what they can do in their house?” He talked about rules for sensors, security, carbon monoxide and what he believed the town could regulate. He said the town was likely to invite lawsuits if they told people what to do with their property. He called downtown “Tijuana” with the “outside

[seating] areas that you guys passed.” [note: Mr. Culbertson was referring to the parklets, which the Planning Board has not been involved with]. “Let’s not get ridiculous...it has been ‘Bar Harlem’ now with many things that are happening,” Mr. Culbertson said. This comment provoked a negative response from some in the audience. Mr. Culbertson said tens of thousands of dollars have been lost from parking spots by sacrificing those spaces for parklets.

Barbara Dunfee from Waldron Road spoke next. She asked if the language of VR-1 and VR-2 address renters’ pets coming and going, and if not, why not? There’s a lot of renting in her neighborhood, said Ms. Dunfee, who added, “I love dogs,” but those animals that are in a new environment bark “all day long” while owners are out in the park. She wanted that addressed.

Anna Durand spoke next. She said she been in Bar Harbor for 39 years, she said, and a business owner for 30 years. She wrote an op-ed for the *Bar Harbor Times* 23 years ago. “Everything we said would happen has happened.” She said she didn’t always see eye-to-eye with the Planning Board, but “they’ve worked hard to come up with what I think is the right solution.” It’s not easy to live here, she said, and renting spare rooms or houses can make it easier, for our kids and others. But we must step back and ask why we want to live here. “Some people will not be able to make the highest return on investment if you vote, if the town votes, for this article. But there are other ways to calculate wealth in the community,” she said. “This one is better late than never. I hope you vote for it.”

Bill Dohmen spoke next. He had two suggestions. The first was to limit VR-2s to business zones and not residential areas, otherwise the entire town becomes a business area, he said. The town of Bar Harbor is not responsible for guaranteeing people’s investments, he said. There’s no guarantee on returns on investments, he said, and the town shouldn’t be worrying about that for people. “They have a right to the risk but they should be taking it,” Mr. Dohmen said.

Sherry Rasmussen spoke next. She identified herself as living in Downtown Residential and said she had worked for 45 years in Downtown Village I. She gave a history of the issue of transferability. There was not ample community representation on the Zoning Advisory Group, said Ms. Rasmussen. There was no property owner representation from Downtown Village I and II on the ZAG, said Ms. Rasmussen. The zones are a commodity and of great value, she said. The VR draft document came to the board from a May 11 Council workshop, Ms. Rasmussen said. The board was not invited and the public was not allowed to speak, she said. The primary discussion at the workshop concerned transferability. She disagreed with a comment she said was made by Planning Director Gagnon that it would be difficult to grant transferability to some and not others. She held up documents, including her property card, and read a quote from staff during the May 11 meeting in which staff indicated that it was easier if all VR zones were to be treated alike for transferability. “With a planning staff of four how difficult can it be to separate out the 48 vacation rentals located in the two business districts?” she asked. She commented on the basic function of zoning. Treating residential and commercial zones the same defeats the purpose of zoning, she said, and asked the board to remove Downtown Village I and II from the draft. Small businesses are the backbone of the Maine economy, she added.

Shawn Farrar spoke next and said he and his wife own two properties in town. “You don’t need to know if they’re vacation rentals or not, in my opinion,” he added. Everyone has something

negative to say about this, he claimed. He asked for clarification regarding transfer of permits for this year. With no transferability it's a "bait and switch," he said. He noted that he was not talking to the board but to the Bar Harbor Town Council. He said it was not true that people who live here can't afford housing, he said. What will happen to the tax base if values decrease? he asked. He commented on community. "This whole thing makes no sense to me," he said. "Don't tell me my community is going downhill because the residents there are changing so frequently."

Peter Miano of 143 Bay View Drive spoke next. He appreciated the comments made. Underlying the conversation is the issue of affordable housing, he said. This is an inadequate answer to the problem of affordable housing, he said. "I've not heard any definition of what affordable housing is." What are the targets? he asked, adding other questions: How long will it take to reach the affordable housing mark? If the draft is adopted, when will housing become affordable?

Jennifer Crandall spoke next. She identified herself as a teacher on Mount Desert Island for roughly 25 years as well as being on the board of Acadia Homes for Students. Affordable housing is a huge problem, she said. Where it overlaps with short-term rentals is that many of the rentals that had been September to June are no longer available. You can make far more money and have less building impact than renting to a family for nine months, she said, adding that she could not count how many superintendent's agreements come through every year because the family has to move to Otis, Hampden or elsewhere. She said she had no stake in short-term rentals, but in terms of impact to the community said she saw that as a real shame. The school enrollment will keep dropping if people can't afford to live here, she said.

Noreen Hunter of Pleasant Street spoke next. She said she has owned a duplex for 33 years. She initially did year-round rentals and began renting weekly 20 years ago. She said she rents through Airbnb, and said it's wonderful and easy to do. She rents her apartment September 7 through the 7 of June. She said she can't fathom how people have kids coming into college asking them to sleep on floors, she said. "I would love to make more money, but I also have a heart," she said. She said she could not go back to yearly rentals. "My house is my retirement," she said, and she intends to give it to her daughter when she can no longer live there.

Jean Seronde said he was a former seasonal resident who recently became a year-round one on Bay View Drive. He worried that the property would be held to the same standard as the property next door, which is much smaller. He said he will likely need to do rentals to pay for taxes. Properties aren't all the same, he said.

Sherry Rasmussen made a comment. Chair St. Germain said he would permit it although it was her second comment. She asked if the draft order could go all the way to voters in November without any changes to the document in its current form. Chair St. Germain said the board would be discussing that. She asked about the format of certain uses. Planning Director Gagnon responded. **At 5:51 PM, Chair St. Germain closed the public hearing.**

Chair St. Germain recapped the questions and statements, which included questions related to parking and the number of people and cars, especially in VR-1s. Well and septic issues were raised, transferability issues and allowance for inheritance or gifts, commercial zones and VR-2s were discussed, as were questions regarding whether those who invested in good faith and

followed the rules were being given due process. Another comment suggested that it's discriminatory to restrict VRs in business districts while allowing other lodging establishments to continue. The question of pet regulation was raised, as was the structure of the Zoning Advisory Group, and how the draft ordinance was sent to the Planning Board from the Town Council. The issues of affordable housing, home values, taxes and targets to affordable housing were raised. Winter rentals were talked about as well. The effect on the overall tax base was also raised, said Vice-chair Cough.

Chair St. Germain explained the process and the board's options. Discussion ensued. Chair St. Germain said there had been disagreement with the Town Council about this proposal. There had been numerous meetings in which the board had voiced opposition, particularly regarding the prohibition of transferability. If the Planning Board votes "ought not to pass," it will require a supermajority to pass at the polls in November. The Town Council is slated to review the final draft language on July 20, said Planning Director Gagnon. A public hearing should be scheduled for the Town Council meeting on August 17.

Mr. Dority was bothered by Chair St. Germain's statement that the Planning Board disagreed with the language. Some members disagree, he said, rather than the board as a whole.

Vice-chair Cough felt at first that having a cap was distasteful. Then the board aimed to be sensitive to the cap. Part of the LUO states the board will basically do no damage to someone's investment, Mr. Cough stated. The board thought that putting a cap on VRs would mean that those selling their houses would be able to continue. It might take longer, he said, but the idea would be to get down to the level (cap) at a slower pace than proposed but still getting there. The board was not disrespectful to the idea of a cap but felt that moving forward the board should honor transferability rather than put a cap in place and not allow anything new to be able to assign a VR-2 permit.

Secretary Brooks felt the board heard a lot of really good feedback but said at this stage no language could be changed. She asked how the draft ordinance tackles the affordable housing problem and said that question has never been answered to her satisfaction. This has been years of work, said Secretary Brooks, years of public hearings and meetings. It's evolved into something different than was discussed months ago but "that's part of the process."

Chair St. Germain didn't like the way it came to the board, from a workshop. Chair St. Germain didn't like that higher-end homes weren't excluded. They have no bearing on the affordable housing market, he said. He said he didn't believe VRs, above a threshold, have a bearing on affordable housing. He was against the prohibition of transferability but said the board is not taking more votes tonight. The board will likely vote on this in September (making a recommendation for the town meeting warrant), he said, and thanked residents for coming.

- d. Public Hearing – Draft Warrant Article - LAND USE ORDINANCE AMENDMENT - Solar Photovoltaic Systems.** Shall an ordinance, dated June 2, 2021, and entitled "An amendment to allow solar photovoltaic systems as principal use;" be enacted?

This came to the board via a vote from the Council, said Planning Director Gagnon. The crux of it would be to allow solar farms as a principal use in Bar Harbor, which is currently not allowed.

Chair St. Germain opened the public hearing at 6:08 PM. Beth Woolfolk was first to speak. She identified herself as a year-round resident of Bar Harbor working with A Climate to Thrive. She thanked the board and the Planning Department for working on and bringing forward solar ordinance. It's clear the board is weighing community costs and benefits, she said. The world's electric grid is changing, and that begins at a local level. The ways we are using energy are also changing, she said. As the town follows through on climate action goals, small and medium free-standing solar arrays are not only "economically rational" but "offer the benefits of a more resilient and reliable electric grid." The ordinance would offer climate and economic benefits to all residents, particularly low- and moderate-income households, said Ms. Woolfolk, by lowering or eliminating power bills. Free-standing solar arrays, if built to Bar Harbor substations' maximum capacity, would use less than 0.04 percent of total land within town lines. She thanked the board members for their consideration.

Dessa Dancy said she was very supportive of the proposed ordinance. She asked about limits on the number of acres and felt having some limit would be critical, particularly to protect forest cover and to avoid potential deforestation of hillsides for this.

Ken Colburn spoke next. He identified himself as a full-time resident of Bar Harbor on Shannon Road and thanked board members for their service. He recently retired from a career in energy and regulatory policy and is on the board of Efficiency Maine Trust as well as being co-chair of the Energy Working Group of the Maine Climate Council. He complimented the board and staff on the "excellent proposal." He said it should be moved forward as a warrant article. He gave an overview of the history of electric generation. There are now cost-effective alternatives to large generating plants, he said. Distributed solar and wind are less costly to operate and maintain than traditional generation, he said. The Department of Energy estimates that \$25.5 million leaves Mount Desert Island for energy of all types. Much of that money could be captured via renewables on the island and stay here. The state has established fairly aggressive climate goals and Bar Harbor can contribute to this goal via this ordinance and other actions. He discussed a grant being pursued by A Climate to Thrive as part of the Department of Energy's Connected Communities Program.

Mr. Colburn spoke about the importance of the lot coverage exemption. Solar arrays are much different than rooftops and parking lots, he said. Shade-tolerant crops can grow under the panels. Panels are impervious, but they are separated and water can run between them. He said this proposed amendment is a key opportunity for the town to continue its climate legacy. He estimated a 5-megawatt (MW) solar farm would need roughly 10-15 acres. People could build larger arrays but they wouldn't enjoy the same positive regulatory treatment that 5 MW and under enjoy today, he added. On a non-solar note, Mr. Colburn thanked the board for approving the parklets [*note: the Planning Board was not involved in any way with the parklets*]. "I've really enjoyed downtown more," he said.

Margaret Jeffrey spoke next. She identified herself as a resident and lawyer in Bar Harbor and as a member of the town's Climate Emergency Task Force as well as A Climate to Thrive. Solar

arrays are a technology, not a product, she said. They do not need to be replaced after being built in the way gas and other products need to be replaced. She thanked the board and staff for their work. She felt concerns regarding solar array development taking away land for affordable housing were “a red herring.” She said it was not a reasonable argument that a 10-acre parcel slated for solar would be better used for affordable housing when there are larger undeveloped parcels adjacent and around it that are undeveloped or being developed for high-end housing. Secondly, she asked the board to keep the exemption for lot coverage. There is a lot of diverse life under the panels, she said, and the exemption is in line with other solar ordinances in Maine. The adoption of this ordinance would allow Bar Harbor the opportunity to “put our oars in and contribute to the upstream struggle to decrease carbon emissions and combat climate change.”

Alifair Durand McDonnell, an intern with A Climate to Thrive who was raised on MDI, spoke next. She thanked the board for its time and consideration. “We are living in a climate emergency,” said Durand McDonnell. “I do not want my most comforting memories of Acadia to become precious.” Ms. Durand McDonnell spoke about the importance of decarbonizing the grid and the value of youth using their voices to influence adults who can vote on such measures.

Kevin Buck, a selectman for the town of Tremont, spoke next. He brought up the issue of lot coverage. Tremont has a solar array on its capped landfill. The water runs off but there’s “absolutely no effect on the ground.” Before the solar array was put up, there were lupine and deer; that’s still true, he said. “The runoff problem just doesn’t exist,” he said.

Erin Cough, Bar Harbor town councilor, spoke next. She asked if energy substations are allowed as principal uses why would this not be allowed as a principal use?

Peter Jeffrey spoke next. He agreed with Mr. Buck. The lot coverage should be considered the ballast, not the panels, he said. “I totally support this,” he said.

Chair St. Germain invited Beth Woolfolk to give the board an answer regarding the size of farms. She noted that new rules were recently passed and that 2 MW would now be the new economically attractive development size. In theory, she said, between 3 and 7 acres are required per MW, which takes into consideration space between panels and setbacks. The Department of Environmental Protection regulates what is between and below panels and requires permeable soil. “It’s highly regulated already,” she said.

Planning Director Gagnon clarified that the proposed lot coverage exemption is for panels and arrays. All other aspects of the development would still be subject to lot coverage. There must be soil, vegetation and healthy ground cover, she said. She discussed the financial implications and substation requirements. “The sweet spot is the community farm between 1-5 MW.” That’s what’s being prioritized by the state, she said. A 5 MW farm would require roughly 25 acres; without the lot coverage exemption you would need 25 acres for a 1-MW farm. That’s another reason to consider the exemption, she said. There won’t be an abundance of solar developers knocking at the door — you have to be within a certain distance of the substation, and it has a threshold/capacity limit. Additionally, she said, the price of land in Bar Harbor is going to be a hurdle. There are also visual impact requirements.

Seeing no more speakers, Chair St. Germain closed the public hearing at 6:37 PM.

CEO Chamberlain noted why solar farms do not meet the definition of public utility installation.

Vice-chair Cough said Ms. Dancy had made a good point about upper limits. What is to prevent someone from clear-cutting a large parcel to put up a farm? Chair St. Germain asked Planning Director Gagnon to elaborate on this.

Planning Director Gagnon said the visual impact assessment requires developers to have the least amount of impact to surrounding resources. She couldn't speak to someone buying a piece of land and clear-cutting it to put up a solar farm, but added that they would have to include landscaping, replanting, fencing, screening and other aspects. There would be a major site plan review, said Mr. Dority. Mr. Eleftheriou appreciated Vice-chair Cough's comments but said everything in the LUO is very specific. The board will have discretion. It protects visual character and compatibility with surrounding uses. "I think that gives the board the power," he said. "I don't think it's necessary to further regulate." This is a high bar to be met, this visual impact assessment, said Planning Director Gagnon. The visual impact assessment is a defined term already, noted Assistant Planner Fuller, with six specific components/requirements.

Chair St. Germain said the ordinance would go back to the Town Council for a public hearing.

- e. Public Hearing – Draft Warrant Article - LAND USE ORDINANCE AMENDMENT - Bonus Dwelling Units.** Shall an ordinance, dated June 2, 2021, and entitled "An amendment to allow bonus dwelling units;" be enacted?

Chair St. Germain introduced the article, which was essentially proposed by the board. It would allow a bonus dwelling unit, restricted from use as a vacation rental (VR), in order to hopefully create more dwelling units lived in by year-round residents. It has ignored the area per family normally associated with dwelling units. Planning Director Gagnon noted that this bonus dwelling unit would be a second dwelling unit on the same lot where only one single-family dwelling unit exists. It would be permitted by the CEO, she said. The primary dwelling unit could still be registered as a VR. It would be allowed in thirteen districts, which were chosen because the area per family is presently the same as the minimum lot size.

Chair St. Germain opened the public hearing at 6:49 PM.

Ellen Dohmen was first to speak. She said the town is overdue for a new comprehensive plan. "I think we need some real zoning definitions," she said. This is to encourage in-fill development, she said. She went over the history. She was concerned about unintended consequences particularly allowing bonus dwelling units in zones not on town water and sewer given a water table that is "8 or 10 inches down." This would be best in areas where infrastructure already exists, she said. "You need to think about the impact on the entire environment" and infrastructure, including increased traffic, parking, septic and wells. That's why there are different zones, she said.

Jake Jagel of Town Hill asked several clarifying questions. Is the existing dwelling exempt from

the minimum area per family? he asked. He also asked whether there are size restrictions on bonus units. He asked if he were to move his family into a bonus dwelling unit would he be able to rent his primary dwelling unit as a VR.

Dessa Dancy spoke next. She said she appreciated the board's intent and said she was initially supportive of the idea. She had concerns about allowing such units in areas not on town water and sewer. She urged the board to consider removing five districts with no access to public water and sewer: Emery, Hulls Cove Rural, MacFarland Residential, MacFarland Rural and Town Hill Rural. It would not be responsible to violate the area per family in those areas, she said.

Carol Chappell of Bar Harbor spoke next. She asked how the districts were chosen. Are there parameters beyond what Planning Director Gagnon mentioned? she asked.

Anna Durand of Bar Harbor spoke next. These would not be allowed in her district, she said. If this really is about affordable housing, it seems as though there would be a way to allow these in her district as well, said Ms. Durand. If you take into account people saying "protect my investment" regarding VRs, she said, similar considerations should be taken into account with this. She liked the intent of the ordinance.

Seeing no more speakers, Chair St. Germain closed the public hearing at 7:04 PM.

Vice-chair Cough said the CEO reviews septic plans and would have to be aware of any septic changes. The board did discuss limiting this to those districts on town water and sewer but wanted to go beyond that, he said, although to take a small bite at first. Planning Director Gagnon also offered an explanation of how districts were chosen and gave an example. "I don't think it says just go willy-nilly and just add a dwelling unit," she said. Dimensional requirements in the town are "well beyond" meeting health and safety requirements, she said, adding: "If we are going to have more housing we can't keep going with these dimensional requirements." The intent of changing VRs is to slow down the conversion of year-round dwelling units. "If we are serious about a year-round town... we have to look at these things," she said. Increasing housing can't all or only happen in areas with town water and sewer, she said. Secretary Brooks noted that projects would be required to conform to setbacks. Chair St. Germain said the board had voted unanimously in support of this.

- f. Public Hearing – Draft Warrant Article - LAND USE ORDINANCE AMENDMENT - Nonconformity.** Shall an ordinance, dated June 2, 2021, and entitled "An amendment to address an error of omission regarding nonconformity;" be enacted?

Planning Director Gagnon gave an overview of the item, which would correct an omission that created a loophole that was not intended, she said. **Chair St. Germain opened the public hearing at 7:14 PM. Seeing no speakers, the public hearing was closed.**

- g. Public Hearing – Draft Warrant Article - LAND USE ORDINANCE AMENDMENT - Accessory Dwelling Units.** Shall an ordinance, dated June 2, 2021, and entitled "An amendment to address an error of omission regarding

accessory dwelling units;" be enacted?

Planning Director Gagnon gave an overview of the item. The ordinance definition presently provides zero incentive to do accessory dwelling units, she said. This was a remnant that should have been removed previously, she said. **Chair St. Germain opened the public hearing at 7:16 PM, no one spoke and the public hearing was closed.**

h. Signing of Minor Subdivision Plan for MSD-2021-01 – Orchard Phippen Subdivision

Project location: Bar Harbor Tax Map 227, Lot 046-004, 26 Orchard Road, Town Hill Rural district

Applicant/Owner: Alec and Hannah Phippen

Application: The applicant proposes to modify the existing right-of-way of the Orchard Ridge Subdivision recorded in the Hancock Registry of Deeds as Plan 37, File #47. The modification would change the perimeter of the applicant's lot (Tax Map 227, Lot 046-004) at the cul-de-sac. The proposal does not increase the number of lots or expand the subdivision.

Planning Director Gagnon explained the item and apologized to Vice-chair Cough and the board for not providing them with a copy of the decision. All conditions have been met, she said.

VII. OTHER BUSINESS

Led by Chair St. Germain, board members thanked Mr. Eleftheriou for his service. Chair St. Germain said Mr. Eleftheriou had been a valued member and that the board would miss his contributions.

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

None.

IX. REVIEW OF PENDING PLANNING BOARD PROJECTS

Planning Director Gagnon mentioned the Elizabeth Mills' remand (BHAPTS, LLC at 25 West Street). The next step will be to ask the town attorney to give guidance on how best to proceed. She added the Maller project in Hulls Cove would likely come back before the board soon.

X. ADJOURNMENT

At 7:21 PM, Mr. Eleftheriou moved to adjourn the meeting. Vice-chair Cough seconded. The motion carried unanimously, 5-0.

Minutes approved by the Bar Harbor Planning Board on September 1, 2021:

09.01.21

Date



Millard Dority

Secretary, Bar Harbor Planning Board