

Packet of Materials For the August 5, 2020 Planning Board Meeting

Issued 07/30/2020

Issued on _____

| ITEMS | | |
|---|---|--|
| Cover page with date | ✓ | |
| Agenda | ✓ | |
| Minutes for approval | June 3, 2020 June 10, 2020 July 8, 2020 | |
| Notes | Neighborhood meeting notes JAX Schooner Head Housing PUD-2020- 02 | |
| Supporting Documents | | |
| JAX Schooner Head Housing PUD-2020-02 Completeness review | ✓ | |
| Other Business | | |
| Ch. 31 Art. IX PB - review of proposed amendments | ✓ | |
| PB Rules of Procedures – review of proposed amendments | ✓ | |

Agenda
(revised July 28 to remove agenda item VII. a.)
Bar Harbor Planning Board
Wednesday, August 5, 2020 at 4:00 PM
Council Chambers — Municipal Building
93 Cottage Street

IMPORTANT NOTICE — THIS MEETING WILL BE HELD REMOTELY

1. The public can watch the meeting live on Spectrum channel 1303 or by streaming it online at https://townhallstreams.com/towns/bar_harbor_me.
2. As the town and/or the state declaration(s) of emergency due to COVID-19 remain in effect, the meeting will be held remotely via the online video meeting platform Zoom, instead of in person at the Municipal Building.
3. Members of the public are welcome to take part in the meeting via a conference call. To make a comment or ask a question on an agenda item during the meeting, call 288-1710 when the item comes up and when prompted enter passcode 0139744 followed by the # sign. The line will be muted until the meeting is open to comments and questions, at which time a staff member will come on the line and announce that comments and questions will be accepted. Anyone wishing to speak must stay on the line until that time in order to be heard. Only a certain number of callers can be on the line simultaneously, so in the event the line is busy, please keep trying until you get through. There will be sufficient time provided for all interested people to get on the line and comment or ask a question.

I. CALL TO ORDER

II. ADOPTION OF THE AGENDA

III. EXCUSED ABSENCES

IV. PUBLIC COMMENT PERIOD

The Planning Board allows up to 15 minutes of public comment on any subject not on the agenda and not a pending application before the board, with a maximum of three minutes per person.

V. APPROVAL OF MINUTES

- a. June 3, 2020
- b. June 10, 2020
- c. July 8, 2020

VI. ELECTION OF OFFICERS

- a. Chairman
- b. Vice-chairman
- c. Secretary

VII. REGULAR BUSINESS

(Please note: Agenda Item VII. a. was withdrawn by the applicant on July 27, 2020)

~~a. — Completeness Review for SP-2020-04 (formerly SD-2019-05) — The Crossing at Townhill Subdivision/Site Plan~~

~~Project Location: 1338 State Highway 102; Tax Map 227, Lot 16, totaling 2.0± acres of land in the Town Hill Business zoning district.~~

~~Owners/Applicants: Paul and Jane Weathersby~~

~~Application: To construct a single, new structure containing eight TA 2 units and to additionally convert two dwelling units in a separate, existing building on the property (“the Barn”) into two TA 2 units.~~

b. **Completeness Review PUD-2020-02 - Subdivision/Planned Unit Development (Outlying Area) — Schooner Head Housing**

Project Location: Tax Map 253, Lots 10 and 11 on Schooner Head Road; encompassing a total of ±40.24 acres, according to town tax records. The subject land is all in the Village Residential zoning district.

Applicant/Owner: The Jackson Laboratory

Application: The applicant proposes a multi-family residential subdivision on Schooner Head Road. The first phase is the construction of 44 units in one three-story and four two-story buildings. The project will include peripheral parking areas, internal walkways and communal green space. The project will connect to the town water system and use an on-site private septic system.

VIII. OTHER BUSINESS

- a. Chapter 31 (Boards, Committees and Commissions), Article IX (Planning Board)
- b. Planning Board Rules of Procedure

IX. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

X. REVIEW OF PENDING PLANNING BOARD PROJECTS

XI. ADJOURNMENT

**Bar Harbor Planning Board
Wednesday, June 3, 2020 — 4:00 PM
Council Chambers – Municipal Building
93 Cottage Street in Bar Harbor**

*The meeting was held via the Zoom online meeting platform,
and was broadcast live on Spectrum channel 1303 in Bar Harbor
as well as online via Town Hall Streams (where it is also archived).*

I. CALL TO ORDER

Chair Tom St. Germain called the meeting to order at 4:03 PM.

Call to order at
4:03 PM

Planning Board members present were Chair St. Germain, Vice-chair Joe Cough, Secretary Basil Eleftheriou and members Erica Brooks and John Fitzpatrick.

Five board
members present

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

Four staff
members present

II. ADOPTION OF THE AGENDA

Vice-chair Cough made a motion to adopt the agenda, seconded by Mr. Fitzpatrick. On a roll-call vote, the motion carried unanimously (5-0).

Agenda adopted,
5-0

III. EXCUSED ABSENCES (*None*)

No absences

IV. PUBLIC COMMENT PERIOD

Chair St. Germain opened the public comment period at 4:04 PM and Assistant Planner Fuller read aloud the number for members of the public to call to make comment.

No public
comment

Ms. Brooks asked when the board would resume holding in-person meetings, and Planning Director Gagnon said she was not sure. She said the Planning Department is taking things day by day at this point.

Question about
having in-person
meetings again

As there were no comments, the public comment period was closed at 4:07 PM.

V. APPROVAL OF MINUTES

- a. April 10, 2020
- b. April 29, 2020
- c. May 6, 2020

Assistant Planner Fuller noted that the board had received minutes only from April 10, as the minutes for the April 29 and May 6 meetings are still undergoing the editing process. No changes were made to the April 10

Only April 10
minutes ready for
approval

minutes. Mr. Eleftheriou made a motion to approve the April 10, 2020 minutes, seconded by Vice-chair Cough. The motion carried, on a roll-call vote, 5-0.

April 10, 2020 minutes approved, 5-0

VI. ELECTION OF OFFICERS

- a. Chairperson
- b. Vice-chairperson
- c. Secretary

Vice-chair Cough moved that the election of officers be pushed off until after the appointments to the Planning Board are made, which he said is typical. Mr. Eleftheriou asked when terms expire, in June or July. Chair St. Germain asked for staff guidance.

Planning Director Gagnon replied that July is the time the elections have typically been made but that she was not aware the board generally waited for new members. Mr. Fitzpatrick said that terms expire July 31, 2020 and that “traditionally we had waited for the new folks to roll in before officers were elected.” Vice-chair Cough opined it would be “just cleaner to do it when the proper board is seated for the term.”

Discussion about when elections for board officers typically occur

Vice-chair Cough amended his motion to elect new officers at the first meeting after the appointment of board members. The motion was seconded by Mr. Fitzpatrick. It then carried unanimously (5-0) on a roll-call vote.

Motion to elect officers after appointment of board members: CARRIES, 5-0

VII. NEW BUSINESS

- a. **Completeness Review/Public Hearing/Compliance Review for SD-2019-03 — Destination Health**
Project Location: 124 Cottage Street —Tax Map104, Lot 159, encompassing ±0.16 acres of land in the Downtown Village II zoning district
Applicant/Owner: Destination Health, LLC
Application: To construct a two-story, four-unit apartment building (constituting a subdivision, by unit, under state statute) on the Brewer Avenue end of the parcel.

Completeness Review / Public Hearing / Compliance Review for SD-2019-03, Destination Health

Stewart Brecher was present to represent the applicant. Chair St. Germain asked whether there were any updates to the application; Mr. Brecher said that he believes the applicant has responded to all requests by staff. He commented on stormwater and how the post-development situation differed from the pre-development situation. He noted that although there will now be more impervious surface area, that increased runoff is being directly piped into the town’s stormwater system as opposed to flowing freely.

Stewart Brecher present for applicant

Review of new information

Mr. Brecher asked whether the building permit already applied for can be

modified from the two-unit to a four-unit apartment building or whether the applicant needs to submit for another building permit. He expressed concern about the cost. Code Enforcement Officer Chamberlain responded and explained that permits cannot be modified once issued, but that this will be a change-of-use situation which will cost less than a brand-new building permit otherwise would.

Discussion about building permits and change of use

Chair St. Germain reviewed items that were found to be missing at the last meeting. Mr. Brecher said there were capacity statements and a “very modest landscape plan” featuring planter boxes.

Mr. Fitzpatrick moved to find application SD-2019-03, known as Destination Health, complete per the Bar Harbor Land Use Ordinance Section 125-66. The motion was seconded by Mr. Eleftheriou. There was no further discussion, and the motion carried unanimously (5-0) on a roll-call vote.

Find application SD-201903 complete: CARRIES, 5-0

At 4:19 PM Chair St. Germain opened the public hearing. Assistant Planner Fuller read the contact information aloud. There were no comments and the public hearing was closed at 4:21 PM.

Public hearing, no one speaks

Chair St. Germain noted that although capacity statements received from the Bar Harbor Public Works Department said the site can handle the stormwater runoff, Planning staff had suggested that the board modify standard 125-67 L.

Mr. Fitzpatrick moved to modify standard 125-67 L., Stormwater, as the project is in the downtown on a small historic lot where the ordinance supports density, and where it is close to impossible to detain stormwater, and the town system has the capacity to handle the increase. The motion was seconded by Mr. Eleftheriou. The motion carried 5-0 on a roll-call vote.

Modify standard 125-67 L., Stormwater: APPROVED, 5-0

Mr. Fitzpatrick moved to approve application SD-2019-03, known as Destination Health, per the Bar Harbor Land Use Ordinance sections 125-67 and 125-69 N., Subdivision, per the draft decision dated June 3, 2020 and with the conditions that the water and wastewater construction plans will be reviewed and approved by the Water and Wastewater departments, respectively, prior to the issuance of building permits. The motion was seconded by Vice-chair Cough. The motion then carried unanimously (5-0) on a roll-call vote.

Move to approve SD-2019-03 (Destination Health), with conditions as noted in motion APPROVED, 5-0

b. Completeness Review/Public Hearing/Compliance Review for SD-2019-01 — The Farm Subdivision

Project Location: The subject land is located off of Route 3 and Ledgewood Road, on the following tax parcels: Tax Map 207, Lots 43, 44, 56 and 58; Tax Map 208, Lot 81; and Tax Map 214, Lot 4. The

Completeness Review / Public Hearing / Compliance Review (SD-2019-01, The Farm)

land, totaling ±72.78 acres, is in four different zoning districts: Salisbury Cove Corridor District, Salisbury Cove Rural District, Shoreland Limited Residential District and Resource Protection District.

Applicant: The Farm, LLC

Owner: The Heirs of Chauncey McFarland

Application: The applicant proposes to construct a road and extend public utilities to create a 13-lot residential subdivision and retain approximately 30 acres of land in its current undeveloped state.

Vice-chair Cough requested recusal, as he is the applicant. The board did not take a vote on this, as they had already voted on that subject previously, and it was seen as a continuation of that earlier recusal. With Vice-chair Cough's recusal, the voting membership of the board was reduced to four.

Vice-chair Cough requests recusal; no vote but no opposition, either

Perry Moore, representing the applicant, updated the board on the material that had been provided. Mr. Moore thanked the town staff for the "good work." He noted that the Bar Harbor Town Council had given the applicant a sense that "There would be interest in having potential access [across the applicant's property] to that [adjacent piece of town-owned] property in the future," said Mr. Moore, referring to an earlier discussion on that subject.

Perry Moore present to represent applicant

Mr. Moore refreshed the Planning Board on the details of the project. He noted that the drawings now include details about the 100-year floodplain and areas of flooding and standing water. He reviewed wetland areas and vernal pools. There is a total of 13 proposed lots: one on Route 3, said Moore, the remainder on new roads that will be called Eden Farm Road and another road, Chauncey's Way. The applicant is hoping to have Eden Farm Road accepted by the town while Chauncey's Way would be private.

Review of flood plain, wetlands, vernal pools, etc.

Mention of roads

Potential well sites have been located outside of the well exclusion zones, said Mr. Moore. He noted the proposal is to do the project in phases, building one road and offering the lots for sale then building another road and offering those lots. Mr. Moore said the applicant would also like to discuss the possibility of having Lot 1 made available for sale as soon as conditions of approval are met, since it's on Route 3 and doesn't require access off a new road.

Discussion of allowing Lot 1 to be sold as soon as project is approved

Vice-chair Cough said handling Lot 1 in this way would be an advantage because this has been "a long process" and there's still a tenant living there, and the idea that they would not be able to be left in there "is a little bit odd to me." He said if that weren't permitted he isn't sure what would happen to the current tenant.

Chair St. Germain asked for a summary on the connection of the proposed road (Eden Farm Rad) to Ledgewood Road instead of Route 3, as was discussed previously, and when and why the plans were changed.

Discussion on planned road

Mr. Moore pulled up some site photographs and explained that the existing house on Lot 1 is entirely within the front setback of Route 3. He said he and the applicant consulted with their legal team, and that the feeling was that if they added another road off Route 3 within 75 feet of the house (which it would have to be because of the wetlands) that it would create a nonconformity. "That clearly creates a possibility we don't want to have to deal with," said Mr. Moore, so the access road was moved to connect to Ledgewood Road. "There's no physical access to Route 3 other than right there," he said, due to adjacent ledge, "and that location creates a nonconformity."

Moore addresses legal issues, and nonconformity

Mr. Moore said the location of the road was moved to where it is proposed on Ledgewood Road. He spoke about which trees would stay and which would go, and said a house in the way right now is on blocks and portable, if necessary. He added that Ledgewood Road is hilly and not posted, which means the speed limit is 45 MPH, per state statute. To have sight visibility, said Mr. Moore, the speed limit would need to be dropped to 25 MPH — not just for this project, but for the "safety of the road in general." If it were, he said, there would be adequate sight visibility. The existing driveway doesn't meet the sight visibility either, he added.

Moore speaks about why plan for main road has changed

Mr. Fitzpatrick reviewed what had been identified at the last meeting and what had been provided by the applicant since that time. He asked about narratives on fire protection, traffic generation and sight distance. Mr. Moore responded and Planning Director Gagnon said the department was "all set" on fire protection. Permits from NRPA on vernal pools and the stormwater permit from the DEP would be a condition of approval, noted Mr. Fitzpatrick.

Discussion of missing items from last time

Mr. Fitzpatrick moved to find application SD-2019-01 (The Farm) complete per Bar Harbor Land Use Ordinance Section 125-66. Mr. Eleftheriou seconded the motion and the board continued to discuss the application.

Mr. Fitzpatrick said traffic and sight distance would be a "compliance issue." On the subject of traffic, Planning Director Gagnon said the project is "a very low generator of traffic." She said having the curb cut on Route 3 would be undesirable in an area where "we're trying to keep traffic moving." Adding curb cuts, said Planning Director Gagnon, creates more of an issue in the long term. She acknowledged the concern of residents, but said, "I think that having that road off Ledgewood is a benefit and Ledgewood is able to handle it." She said her belief was based on the fact that it is not a large amount of traffic that's going to be generated.

Discussion of traffic and sight distance

The motion to find the application complete carried without opposition (4-0, with Vice-chair Cough recused) on a roll-call vote.

Find application SD-2019-01 (The Farm) complete: CARRIES, 4-0

At 4:46 PM Chair St. Germain opened the public hearing and Assistant Planner Fuller read aloud the contact information. As no one was heard to be on the line, the public hearing was closed at 4:48 PM. Chair St. Germain subsequently reopened the public hearing at 4:49 PM after there was a late caller, and no one on the board voiced opposition to reopening the hearing.

Public hearing opened at 4:46 PM, closed at 4:48 PM, re-opened at 4:49 PM for late call

Dirk Erlandsen, 28 Ledgewood Road, said the board had been sent a letter from some residents with “some pretty strong concerns” about the subdivision road being located off Ledgewood Road and asked whether there were any studies showing that having the new access road come off Route 3 would be a problem.

Dirk Erlandsen shares concerns about plan for roadway

Mr. Erlandsen also wondered about the extra traffic that might be generated if the subdivision road is eventually accepted by the town and possibly used to connect to an adjacent town-owned parcel. He asked about the extra 30 acres that the applicant plans to potentially hold in conservation or develop. “To us it goes beyond just the 13 lots,” said Mr. Erlandsen. If future development occurred, he asked, “Would Ledgewood Road need to be widened or improved in any way?”

Earlandsen also shares concerns about traffic and speed limit issues

Mr. Erlandsen also asked what the process is to change a 45-MPH-zone to a 25-MPH-zone and wondered whether part of the reasoning for changing the plan and moving the road to Ledgewood is because the applicant would lose a lot by having the road off Route 3.

Planning Director Gagnon noted that her comment about curb cuts was that multiple curb cuts over time creates an issue. “The idea is that one curb cut does not make a difference but over 10, 20 years it adds up,” said Planning Director Gagnon. “You’ve got to make sure you do it well or the whole town is going to pay eventually.”

Discussion between Planning Director Gagnon and Earlandsen

Mr. Erlandsen asked what the difference is between the subdivision traffic coming off the Ledgewood entrances versus coming out of their own road. Planning Director Gagnon said the difference is that this plan does not call for adding another curb cut.

Chair St. Germain said that any future town use would cause an increase in traffic. Vice-chair Cough said that traffic would depend on what the town chooses to do with the land. He said a solar farm, for example, would generate “very little traffic” other than maintenance vehicles, he said. Vice-chair Cough said what was relevant was the application before the board, and he noted that any future application would have to come before the Planning Board for review. He added that the speed limit on Ledgewood Road now exceeds what is safe and in his opinion “should’ve been fixed a long time ago.”

Discussion of possible traffic increase from any future town use on adjacent lot

Visibility on the road is blocked by topography, said Mr. Moore, and the road wouldn't need to be widened. Answering an earlier question, Mr. Moore said that the applicant is not moving the road off Route 3 to get more lots and said that moving it would also improve the habitat for one of the vernal pools.

Moore talks more about moving the road

Chair St. Germain addressed changing the speed limit. There was discussion, and a general consensus that speed limits are the purview of the Department of Transportation. Chair St. Germain said the short answer is that it is something that "doesn't get changed at Planning Board."

Mr. Erlandsen said he and neighbors don't want the road coming off of Ledgewood, and said he thought most of them did not realize the current speed limit was 45 MPH because no one travels that fast. He said he didn't want the applicant to use changing the speed limit "as sort of a selling point." Chair St. Germain closed the public hearing at 5:13 PM.

More discussion on speed limit and traffic

The board moved on to discussing traffic for the project. It generates less than 130 daily trips, considered a "low generator," said Chair St. Germain.

Mr. Fitzpatrick said he had "no concerns" about the traffic study other than getting analysis numbers from Engineer Andrew McCullough. Mr. Fitzpatrick said that, in terms of sight visibility, "You're not going to get 450 feet anywhere on Ledgewood." He added that it did not appear there would be any objection from neighbors, the applicant or the council to lowering the speed limit to 25 MPH. Mr. Fitzpatrick said he would "be inclined to modify" the standard for line of sight on Ledgewood.

The board turned to discussing the legislative boundary of Acadia National Park. Attorney Bearor tried to capture what the boundary is. "It's basically a physical description of areas that the park service may, at one point in the future, decide to acquire and in the meantime attempt to limit uses there in some fashion or another. It's not a legal boundary, it's not a title boundary... the park's not the owner of the land in question," said Attorney Bearor. But the "If this board wants to see that boundary on the plan for whatever reason it's well within your purview to ask the applicant to do so."

Discussion on legislative boundary of Acadia National Park in relation to this project

The boundary, added Attorney Bearor, doesn't impact the applicant's right to propose the development until the federal government decides to take some sort of action on the land, if it ever chooses to do so. "I think it's purely a question of the board's discretion," he said.

"A boundary needs to be surveyed," said Mr. Moore, "In order for us to put it on the plat. I don't think a line on the plat belongs." Ms. Brooks said she thinks it's sufficient to have the boundary "in note form." Mr. Eleftheriou agreed. "There's no ownership there ... Acadia National Park has no legal right to it so I don't see, really, the point."

Vice-chair Cough spoke about fairness and equitability. He said he hoped the board would do the same for other applications in the future if it requested it on this one.

Mr. Fitzpatrick asked for details on the modification of standard relating to road length. "What are the impacts of pulling the cul-de-sac forward 105 feet?" he asked, a figure which would bring the road length back into compliance. Mr. Fitzpatrick also asked what the strategy toward compliance would be should the back 30 acres get developed.

Vice-chair Cough said, "We don't have a plan for anything further than this." He said the party he is in discussions with wants to take two lots as well as the rest of the acreage. Vice-chair Cough said that "may or may not happen" and the subdivision may be smaller. One option would be an outright purchase, said Vice-chair Cough, while another would be a conservation easement.

**Discussion on
modifying
standard relating
to road length**

On the question of moving the cul-de-sac, Mr. Moore said it is located where it is because there is a wetland and steep slope nearby and bringing it back would impact both. The neck of the cul-de-sac is at 1,947 feet, he said, not including the 300-foot circle. He said it could be argued it's not a dead-end as it has access.

"It's conceivable to me that we could have this road connect to the town parcel and then the town parcel have a one-way access either to or from Route 3 so we would no longer be dealing with a 2,000-foot dead end road, there would be a way in and a way out in both directions," said Mr. Moore. But, he added, "That's a pigs-have-wings discussion. When they grow wings, we'll have that discussion."

In response to questions, Mr. Moore clarified that to the cul-de-sac is 1,947 feet, the length of the road around the cul-de-sac is 300 feet, the circumference of the cul-de-sac is 100 feet, while the radius is 50 feet.

Asked for his opinion, Mr. Fitzpatrick said he considers the road going to the heel of the cul-de-sac but said he wasn't sure how DOT would classify it. Mr. Moore said he'd prefer that the board clarify that the road is more than 2,000 feet but that "based upon the site conditions that was appropriate."

Mr. Eleftheriou wondered if Maine Department of Environmental Protection officials looked at the vernal pools; Mr. Moore said yes, that scientists sampled pools one and two in the spring of 2019 and the third one this spring. They counted more than 20 spotted salamander egg masses in all three of the pools and filed a report with the DEP on whether the pools are significant, said Mr. Moore.

**Question about
DEP and vernal
pools**

Mr. Eleftheriou asked for an explanation of the wildlife tunnel. "It's essentially a box culvert," said Mr. Moore, with an open top. It doesn't need to be maintained, he said, but will provide a crossing so amphibians can move up and down without having to cross the road. "It is a very new technology," he said.

Question about wildlife tunnel

Mr. Eleftheriou asked what the timeline for the phases of the project is; Mr. Moore said that as soon as state permits are completed and Lot 1 is monumented, they could sell that lot per the ordinance, (Section 125-85), which prohibits lots from being sold, leased or otherwise conveyed until the street upon which the lot fronts is completed, said Mr. Moore, reading from the ordinance.

Discussion about time frame for the subdivision

Mr. Moore said that if everything works out ideally, the applicant would like to have Eden Farm Road built this fall and paved no later than next spring, and offer those lots for sale after that, about a year from now. Chauncey's Way would follow, said Moore. He noted one variable, however: "Sometimes there's a lot of them on the market and they don't move."

If, for instance, the Eden Farm Road lots did not sell, he said, the applicant would like "to have the flexibility to come back to the board and say, 'This is how much longer we think we need to wait.'"

Mr. Fitzpatrick moved to modify standard 125-67 G. (3) (b) as the dead-end road exceeds the 2,000 feet maximum length by 104 feet and as the proposed "minor street" tangent between stations 3+00 and 4+00 is 3.64 feet short of meeting the required 100 feet, as it does not pose a traffic safety issue, and due to site conditions. The motion was seconded by Mr. Eleftheriou and then carried without opposition (4-0) on a roll-call vote.

Modify standard 125-67 G. (3) (b), exceeding max. road length: APPROVED, 4-0

Mr. Fitzpatrick moved to modify standard 125-67 G. (3) (a) as a sidewalk is not proposed, as the low amount of traffic in this rural subdivision does not warrant a sidewalk to provide for the safety of pedestrians. Mr. Eleftheriou seconded.

Mr. Eleftheriou asked what the procedure is to get the town to add a sidewalk, for instance, on Ledgewood Road. Vice-chair Cough said the first thing would be to decide what the rights of way are for the town on either side of the road; if the town has rights of way then it's just about "ownership and funding," he said.

Modify standard 125-67 G. (3) (a), no sidewalk: APPROVED, 4-0

The motion on 125-67 G. (3) (a) then carried 4-0) on a roll-call vote.

Mr. Fitzpatrick moved to modify 125-67 G. (3) (b) the radius of the cul-de-sac and to substitute a cul-de-sac with a hammerhead on Chauncey's Way, as neither interfere with the ability of public safety to respond. Mr.

Eleftheriou seconded the motion, which then carried without opposition (4-0) on a roll-call vote.; the motion carried, 4-0.

Modify standard
125-67 G. (3) (b),
cul de sac radius:
APPROVED, 4-0

Mr. Fitzpatrick moved to modify 125-67 G. (3) (m) the sight distance requirements at the intersection with LedgeWood Road as it does not currently met the required 450 feet for an unposted road (45 MPH) — it is short 150 feet to the east and 160 feet to the west, as the project engineer stated that the “sight distance appears suitable for the existing and projected traffic volume and function of this road.” Mr. Eleftheriou asked whether this is predicated on the speed limit being lowered; Planning Director Gagnon directed him to the staff report. Mr. Eleftheriou seconded the motion which then carried, without opposition (4-0), on a roll-call vote.

Modify standard
125-6 G. (3) (m),
sight distance:
APPROVED, 4-0

Mr. Fitzpatrick moved to modify 125-67 DD., requesting elimination of installation for underground utilities because of the existing ledge and as the above-ground utilities will not have a dis-harmonious relation to the neighboring properties or the site. Mr. Eleftheriou seconded the motion and it carried without opposition (4-0) on a roll-call vote.

Modify standard
15-67 DD., RE:
underground
utilities:
APPROVED, 4-0

Mr. Fitzpatrick moved to have the town ask the Maine Department of Transportation to conduct a speed limit analysis for the LedgeWood Road to be supported (funded) by the applicant. Mr. Eleftheriou seconded the motion and it carried without opposition (4-0) on a roll-call vote.

Request speed
limit analysis
from MDOT for
LedgeWood Road,
w/ applicant
bearing the cost:
APPROVED, 4-0

Mr. Fitzpatrick moved to approve the application SD-2019-01 (The Farm) per the Bar Harbor Land Use Ordinance sections 125-67 General standards and 125-69 Standards for particular uses, structures, or activities (N. Subdivision) per the draft decision dated June 3, 2020, with the following conditions to be met prior to issuance of a building permit:

1. Provide, in addition to the level of service analysis and peak-hour traffic generation, “an estimate of the amount and type of vehicular traffic to be generated on a daily basis” as required by 125-66 U;
2. Deeds for lots 2 through 13 shall include requirement for residential fire sprinkler system;
3. Secure NRPA, DEP stormwater, and Maine General Construction (MCGP) permits and that they are received prior to the issuance of a building permit.

After discussion and input from Mr. Moore, a fourth condition was added to the motion:

4. Certification from civil engineer, PE, that the proposed subdivision road meets standard engineering practices for safe roads design pertaining to sight distance.

Following discussion on the subject of phasing as presented earlier by Mr.

Moore, and suggested language read aloud by Mr. Moore, the following language was also added to the motion: **That lot #1 will be available for sale upon receipt of a letter from the surveyor that the monuments are in place, lots with frontage off Eden Farm Road will be available when that road is complete with a target completion date of December 2021 and Chauncey's Way will be constructed and complete by 2022; and if not the applicant will return to the board for modification.**

Move to approve SD-2019-01 (The Farm), with conditions as noted in motion
APPROVED, 4-0

Ms. Brooks seconded the motion, as modified and amended, and it carried without opposition (4-0) on a roll-call vote.

Vice-chair Cough returns to meeting at 5:57 PM as voting member of board

At 5:57 PM, Vice-chair Cough rejoined the meeting as a voting member of the board.

c. Completeness Review/Public Hearing/Compliance Review for SP-2019-03 —56 Cottage Street Parking Area

Completeness Review / Public Hearing / Compliance Review for SP-2019-03, 56 Cottage Street parking area

Project Location: 56 Cottage Street —Tax Map 104 Lot 327, encompassing ±0.45 acres in the Downtown Village II zoning district
Applicant/Owner: Karol A. Foss

Application: To develop a private, 42-space private parking area at the corner of Cottage and Kennebec streets. The project would use a single entrance/exit from the existing westerly curb cut on Cottage Street. No entrance or exit is planned on Kennebec Street. The project includes construction of a sidewalk-accessible landscaped esplanade along Cottage Street.

Mr. Eleftheriou and Ms. Brooks both recused themselves as they both are noticed abutters of the project. Both had been recused in the past, and after brief discussion no motion was made or vote taken to formalize the action. With their recusals, the voting membership of the board was reduced to three members.

Members Brooks and Eleftheriou recuse themselves as notified abutters of the project

Engineer Greg Johnston was present to represent the applicant and refreshed the board on the project. Some redesigns were made after an earlier sketch-plan style neighborhood meeting, chiefly changing to a single entrance on Cottage Street.

Greg Johnston present to represent applicant

A planting schedule was included in the packet, Mr. Johnston said, at the board's suggestion. Shade trees and perennials are included. He said a "very specific" soil erosion control plan was also included.

The applicant received a Certificate of Appropriateness from the town's Design Review Board, said Mr. Johnston. That board asked that the radius of the curb at the intersection of Kennebec and Cottage streets be softened; Mr. Johnston said that area is in the public way but that "as part of our curb we would coordinate that," if the Bar Harbor Public Works Department approved

Discussion of COA from DRB, and its request

of it.

Outstanding capacity statements have been provided, said Mr. Johnston. He also referenced discussion about a performance guarantee for plantings and said that there is a provision on that matter in the ordinance. He said the applicant found that provision to be reasonable and is able to commit to complying with it.

Mr. Fitzpatrick moved to find application SP-2019-03 (56 Cottage Street parking area) complete per the Bar Harbor Land Use Ordinance Section 125-66. Vice-chair Cough seconded the motion and it carried without opposition (3-0) on a roll-call vote.

At 6:04 PM Chair St. Germain opened the public hearing and Assistant Planner Steve Fuller read aloud the contact information necessary to participate. As there were no callers and no comments, the public hearing was closed at 6:06 PM.

Mr. Johnston said he had received phone calls from the public; one caller was concerned about vegetation and the size of the trees that were proposed. "There are at least two layers of tall, large-growth trees" between Cottage Street and the applicant's location, said Mr. Johnston.

Ms. Brooks spoke as an abutter and not as a Planning Board member, she said that the plans look "really great" and that the lot will look "really nice." She said she thought it would add to the neighborhood and had heard similar feedback from her neighbors.

Mr. Fitzpatrick said he thought the project was a good one as presented, and then moved to approve application SP-2019-03 (56 Cottage Street parking area) per the Bar Harbor Land Use Ordinance sections 125-67 per the [draft] decision dated June 3, 2020 and with the conditions that the water and wastewater construction plans shall be reviewed and approved by the Water and Wastewater departments, respectively, prior to issuing a building permit, and to ensure a guarantee of landscape survival the applicant shall provide a bond, escrow, or other documentation acceptable to the Code Enforcement Officer prior to issuance of the building permit consistent with Land Use Ordinance [Section] 125-98. Vice-chair Cough seconded the motion; and it carried unanimously (3-0) on a roll-call vote.

- d. **Completeness Review/Public Hearing/Compliance Review for PUD-2020-01 - Subdivision/Planned Unit Development (Village) — Schooner Head Housing**
Project Location: Tax Map 253, Lots 10 and 11 on Schooner Head Road; encompassing a total of ±40.24 acres, according to town tax records. The subject land is all in the Village Residential zoning

Find application SP-2019-03, 56 Cottage Street parking area, complete: APPROVED, 3-0

Public hearing opened at 6:04 PM, closed at 6:06 PM with no comments

G. Johnston notes comment he received

E. Brooks compliments the proposal, design

Move to approve SP-2019-03 (56 Cottage Street parking area), with conditions as noted in motion APPROVED, 3-0

Completeness Review / Public Hearing / Compliance Review for PUD-2020-01, Schooner Head

district.

Applicant/Owner: The Jackson Laboratory

Application: To develop a 44-unit residential subdivision in five buildings (one three-story, four two-story) on Schooner Head Road.

Mr. Eleftheriou and Ms. Brooks returned to the meeting, returning the board's voting membership to five.

Mr. Fitzpatrick noted that similar to the meeting on May 6, 2020, he would be recusing himself because the applicant is his employer. He said he would be turning his camera and microphone off, but would be available if there were specific questions. With his departure, the voting membership of the board was reduced to four members.

Katy Longley, executive vice president and chief operating officer of the Jackson Laboratory, was present as a representative of the applicant along with engineer Sarah Nicholson of Woodard & Curran, and attorney Andy Hamilton. That team attempted to begin a PowerPoint presentation but there are technical issues and the board decided to take a break beginning at 6:15 PM. Brooke Collier, representing an applicant slated for review later in the meeting, asked if her application could be moved up but there was no response to that request. The meeting resumed at 6:21 PM.

Ms. Longley presented the project and said she hopes the housing (44 units) will build on the town's efforts to increase affordable housing on the island. The housing is a catalyst for the economy, she said. The lab has had to reduce expenditures during the COVID-19 pandemic, said Ms. Longley, but this project has survived because it will bring jobs and opportunities for the local economy. "We really believe it's critical to our ability to recruit and retain employees," she said. She said the project is of "paramount importance" to the lab and is not a wish-list type of idea.

The housing is meant to be year-round housing, said Ms. Longley, not seasonal. She said she was sharing that to dispel any concerns. She said it would provide housing for a "diverse group of employees" ranging from front-line workers in the mouse production facility to students and post-doctoral candidates and from administrators to scientists. She said this project ties in with Strategy 7 from the town's Housing Policy Initiative.

Ms. Nicholson spoke next, laying out details about the project including plans for parking lots, impervious surface, stormwater runoff, dark-sky compliant lighting and walkways. She laid out plans for buffers as well. She said the lab has been responsive to neighbor concerns around buffering, by taking advantage of remaining vegetation along the roadway as possible. She said the lab is trying to minimize its site footprint in terms of impervious surfaces.

Housing

B. Eleftheriou and E. Brooks return to meeting

J. Fitzpatrick recuses himself, voting membership of board down to 4

K. Longley, S. Nicholson and A. Hamilton present to represent JAX

Board takes a six-minute break

K. Longley gives overview of plan

S. Nicholson speaks about plan specifics

Ms. Nicholson said the applicant provided information from a traffic engineer with traffic analysis, which showed no need for a Maine Department of Transportation traffic movement permit (that the project would not trigger such a permit). She said the development is projected to generate 300 trips on a daily basis. The intersection of Schooner Head Road and Route 3, said Ms. Nicholson, will continue to meet the standard for traffic movement capacity.

Mr. Hamilton took over the presentation and spoke to the phasing plan and modification of standards requests. The lab wants to get started immediately, he said, but it will be a three-phased project. He referenced and read aloud Bar Harbor Land Use Ordinance § 125-90 C. (1).

A. Hamilton outlines plan for three-phase project

Mr. Hamilton then discussed the proposed schedule for the project. Phase one would be 44 units, started in 2020 and completed within a year. The second phase would begin in 2023 and be complete in 2024, while the final phase would begin in 2026 and be complete in 2029. The second two phases would each have 28 units, for a total of 100 units between the three phases.

Mr. Hamilton moved into a discussion about the Planning Board's authority to modify standards in relation to the project, citing §125-64 of the Land Use Ordinance and the specific circumstances that allow for such modifications, including particular site characteristics. He said the site "really does demand that we modify standards," and said the lab does not want to crowd the site. Mr. Hamilton also referenced §125-69 S. (7) (a).

A. Hamilton speaks about requests to modify standards

Mr. Hamilton summarized the standards the applicant is seeking to modify, which include §125-69 S. (6) (b), which requires the minimum number of affordable units or lots to be 20 percent of the base development density. The applicant could "max out" the site at 160 units, Mr. Hamilton noted (under base development density), said again the lab doesn't plan to build more than 100 total units. "We are not using the full, maximum development potential," he said.

The applicant is proposing to build 44 units in Phase 1, nine of which would be affordable; and 28 units each in Phases 2 and 3, six of which (an additional 12) would be affordable. Those numbers would exceed the required number of affordable units for each phase, said Mr. Hamilton (8.8 units for the 44-unit phase and 5.6 units for each of the 28-unit phases). The total number of affordable units for all three phases would be 21 out of 100, or 21 percent.

Explanation of phasing and base development density

Mr. Hamilton then explained the reasoning behind the applicant's request for modifying the base development standards. It does not want to build the site out to the maximum 160 units, he said. The applicant considered applying under the §125-69 M., Planned Unit Development — Outlying Area (PUD-O), an option available because the site is in the Village Residential zoning district and is not connected to town sewer (although sewer is 1,000 feet away). Under

Mention of looking at PUD-O

that route, none of the units would be need to meet affordability standards.

The applicant is proposing to pay the capital cost of necessary water, sewer and power extension to the site, said Mr. Hamilton, and proceed under PUD-V. He called this a “more generous way to work with the site.”

Mr. Hamilton described the project as a low-revenue, tailored workforce housing project and not a market, affordable unit of a traditional type. He said the foundational reason the applicant is asking to modify standards is that it would like to tie the percentage of affordable units to the total number of units, rather than the maximum number of units allowed to be built on the parcel. Mr. Hamilton said that is due to “the particular site characteristics and the need to make both standard and affordable units available to JAX workforce.” He said those factors “support a proportional affordable unit approach for the JAX workforce and not the max affordable units for the broader market.”

A. Hamilton’s explanation continues

“Let’s not allow the perfect — the maximum buildout — to become the enemy of the good,” said Mr. Hamilton. He referenced letters of support sent to the Planning Board by local community organizations and said they reflect that this is a meaningful contribution of affordable housing.

Mr. Hamilton then referenced section §125-64 of the LUO as it relates to the public health, safety and welfare of the community. The project would satisfy those requirements by eliminating the need for a septic system in the Bear Brook watershed, reducing vehicle traffic on and off the island by 29 trips per day, eliminating the generation of 145 tons of CO2 annually, preserving 7 acres in open-spaces designation and keeping the Acadia National Park and Friends of Acadia walking trail on the property.

Mr. Hamilton then discussed request to modify a standard. With a traditional market-based housing project, he said, the board would be considering standards including §125-69 R. (3) of the Land Use Ordinance. He read aloud a part of the section. He said it isn’t clear that standard would need to be modified because “these units are not being offered to the market, these are workforce units.”

More discussion of modification of standards

The second aspect of §125-69 R. (3) the applicant is seeking to modify relates to advertising, said Mr. Hamilton, again reading part of it aloud. “Again, we’re not seeking to put these units out into the marketplace,” he said. The applicant is requesting that the preferential selection and advertising criteria be waived to allow use exclusively as JAX year-round workforce housing, he said. All of the units are needed for the JAX workforce. He elaborated on this subject.

Mr. Hamilton then outlined how the project aligns with the town’s comprehensive plan, including the following goals and policies: Policy 1A, protecting ground and surface waters; Policy 1G: protecting air quality; Policy

2E: Continued use of Planned Unit Development provisions; Goal 3: Encourage economic development; Goals 5C and 5G: Proper use of sewer and buildout of water system and Goal 6: To encourage and promote decent and affordable housing opportunities and slow off-island migration. He elaborated on how specific aspects of the plan relate to those policies.

Ms. Longley wrapped up the presentation and said the lab expects many renters will ultimately buy homes on the island; two-thirds of employees commute from off-island and the lab would like to reverse that, she said. Chair St. Germain thanked the applicant for the thorough presentation.

Vice-chair Cough asked why the board is considering phases when the application is for 44 units. Bringing in the phases “changes the dynamic” of the application, he said, adding that it was not “properly advertised” for a public hearing on 100 units, and he said the board should not entertain that idea. Mr. Hamilton replied that the applicant is not looking for approval of 100 units right now but wanted to be transparent about its overall plan.

J. Cough notes his problems with the phasing proposal

Vice-chair Cough said he appreciated the transparency but that the advertising for a public hearing on a 44-unit project does not square with a phased approach. Mr. Hamilton said they can declare that is the intent; he said the lab would rather have support of the project getting underway but wanted to be clear on intention.

Attorney Bearor said the board can’t entertain approving a 100-unit development if it hasn’t been advertised as such; he said the applicant appeared to be most concerned that the waivers would be granted for the future phases so that they wouldn’t be facing the question of whether the waivers would be in place or not.

E. Bearor weighs in on phasing

Mr. Hamilton said they would withdraw the phasing plan but asked the board to fashion a condition saying it is clear that that is the lab’s intent, to have 100 units.

Hamilton: lab will withdraw phasing proposal

Chair St. Germain said that “at some point” it was made clear the lab intends to seek waivers throughout the project’s several phases. He said he wasn’t aware of the timeline but that he was aware of plans for 100 units as a long-term goal; but agreed with Vice-chair Cough that there is a big difference between 44 and 100.

Board members have questions for the applicant

Mr. Eleftheriou said he would approve of guaranteeing that whatever modifications or conditions are made now would apply in the future.

Ms. Brooks asked about the PUD-V language, she said she understood where the lab was coming from about keeping the housing restricted to employees but said her concern was that it doesn’t follow the language of the ordinance and

once such a modification is made for one project, “we need to be consistent.” She added that the board has a precedent that they’ve held certain applicants to certain standards and changing the rules at this point is not what the board is supposed to be doing.

Chair St. Germain the board recently handled a PUD-V in the same zoning district and held the applicant thereto the letter of the LUO, which he said set a precedent. He asked Mr. Hamilton how that relates to this. Mr. Hamilton said he believes this is a very different project from the one mentioned by Ms. Brooks and Chair St. Germain, where the applicant was seeking to maximize development. He added that he “greatly” respects both Ms. Brooks and Chair St. Germain.

Mr. Eleftheriou weighed in and said that the PUD is a “tool to get as much as you can put in.” He said that to ask 20 percent of whatever is being built is a “fair request.” “I like taking what’s said on the pages and enforcing that,” said Mr. Eleftheriou, but in this case, although it’s not the board’s responsibility, “I’d be mindful of what it really takes to cost and develop certain things,” he said. “It’s very expensive to build in this community.”

Vice-chair Cough said he felt the project “doesn’t meet the ordinance,” with respect to the base unit development and number of affordable units. In his view, said Vice-chair Cough, you can’t look at what the intent is, you have to look at the lot. If the lab wanted to separate the lot and make it smaller, it might be able to do this, “but the ordinance is what it is.”

Vice-chair Cough said he did not believe the board is allowed to modify §125-68, Shoreland standards. Mr. Hamilton replied that the board cannot. Cough reads a section of §125-68 B. and said he agreed with Mr. Hamilton. Vice-chair Cough read from more of the ordinance, and said he did not think that the particular standards in question could be modified by the Planning Board.

Vice-chair Cough said that although they’re discussing the potential of a “nice development,” and that while he “happens not” to agree with the standards of the PUD, he said he did not believe the standards can be modified.

Asked to weigh in, Attorney Bearor said he believed §125-64 of the LUO is “broad” and said that “site plan standards can be modified.” He added, “I believe that is general. I view the entire section of Article 5 as being site plan review.” Vice-chair Cough said he differed with Attorney Bearor on this question.

“I don’t think the word ‘site plan,’ as used in Section 64,” said Bearor, “is meant to limit the scope of modifications of standards.” Shoreland zoning standards are “pretty much dictated to us by the state,” said Attorney Bearor, but “I don’t think that your hands are tied and that you cannot apply the power

Discussion on the PUD standards

Discussion on what the board can and cannot do with regard to modifying PUD standards

of discretion that you're given in Section 64 to a PUD and determine the number of affordable units based on the premise that it's a percentage of the units being developed."

Vice-chair Cough asked Attorney Bearor to clarify whether that means "Anything in the ordinance can be modified by the Planning Board" except for §125-68, Shoreland standards. Attorney Bearor replied that "Section 64 is pretty clear" that the board can modify standards at the request of the applicant and that he did not see it as "limiting language."

Ms. Brooks said the modifications being asked of the board "don't fit" the sentence in §125-90 C. (1), which reads in part: "to protect the public health, safety and welfare." Mr. Hamilton said he was looking to §125-69 S. (7) (a), (b) and (c) to answer the questions of authority the board was wrestling with. "Intent and purpose are relevant," said Hamilton. "It's a flexible tool."

Ms. Nicholson said that you could shrink the site and meet the standard, as Vice-chair Cough suggested, but said that "seems kind of silly" to shrink the site to build less. Building across the whole site is difficult, said Nicholson, and a clustered development is more appropriate. She clarified that the site is not in shoreland.

Chair St. Germain asked Ms. Longley to address median income; she said 81 percent of JAX employees would qualify to live there. Ms. Brooks said that she'd had conversations with many lab employees who say they choose to live off-island because they prefer to. Some still wouldn't choose to live here, said Ms. Brooks.

Ms. Longley replied that out of 1,500 JAX employees, only 340 have a Bar Harbor ZIP code. "There's more than enough interest," she said. The lab has conducted a housing survey that's indicated plenty of demand and wouldn't do this if it didn't believe the units would be rented.

Ms. Brooks said that although the project makes sense and the units would likely be filled, "A lot of larger employers probably feel the same way and if we're holding one person to a standard...unfortunately the ordinance is what it is." She said that in her opinion it isn't complying. Ms. Longley said it's a "good thing" if any employer wants to build workforce housing. Ms. Brooks said the Planning Board recently had a large employer try to move forward with modifications and that the board held them to the standards.

Chair St. Germain said Ms. Brooks raised a "really good point." He said the modification of standard described in §125-64 "may not be applicable here," but that §125-69 S. (6) (b) allowed the board to consider multi-family dwellings otherwise not allowed. He asked Attorney Bearor whether the ability given in that particular part of the LUO is separate from the PUD process or

More discussion on PUD standards and how this project aligns with those

with respect to the rest of the provisions in §125-69 S. He added that the ability to modify the standards in §125-64 may not apply here because “it’s not public health and safety,” it’s affordability. If the board made a modification, said Chair St. Germain, it might be based on §125-69 S. (5), rather than §125-64.

Attorney Bearor said he believed the question is how broadly the board could construe the term “health, safety and welfare.” “Whether it’s affordable housing or whether it’s the quality of your air, I think it all goes to the public health, safety and welfare,” he said. While he said he was not necessarily comfortable “anytime I see an ordinance that gives a board authority to modify standards,” the Bar Harbor Land Use Ordinance “plainly” has vested the board with that authority. §125-64 would be applicable, said Attorney Bearor. He said he didn’t believe it stopped at Section 67, and that he believed it’s applicable to all of the sections under Article V.

E. Bearor offers his thoughts on modifying standards

Chair St. Germain noted the provision of §125-69 R, which stipulated that the housing should be available to all residents of Bar Harbor. He asked about a presentation given by Mr. Fitzpatrick in his work capacity five years ago that the project was meant to be a “crash” place where employees would be living for a short period of time. Rather than ask for the modification of standard as to who will be prospective tenants, said Chair St. Germain, if it truly is a 90- or 180-day place to live, that would only be something a lab employee would want to live at. It would be “unattractive” to other renters, said Chair St. Germain, and the lab would not be asking for the modification. Ms. Longley clarified that that plan is outdated and said this is not intended to be temporary housing of that nature; she said the lab had talked about having a “five year maximum” stay but hadn’t yet made a decision.

Discussion on availability of this housing to lab employees vs. residents of Bar Harbor in general

Ms. Brooks asked whether the letters of support that came in were solicited by the lab or came in organically; Ms. Longley said she wasn’t directly involved. The lab did have neighborhood meetings and asked people, including Acadia National Park, to support the project, but some letters came in naturally.

Planning Director Gagnon said that an ordinance is the “regulation of the law but we need to take projects and find ways to fit into the ordinance. I think that’s important,” she said, as long as it’s within the confines.

Chair St. Germain said the hardest aspect for him to make sense of is having the base development density be something other than what it is explicitly defined as and how that relates to the phased approach that might be undertaken. “The Land Use Ordinance is quite explicit” in how to calculate base development density, he said, but the phased approach complicated that. Should the board require the 20 percent as part of the initial phase, he asked, or acknowledge that it will eventually be more than that?

Discussion of base development density

Vice-chair Cough said the idea of “locking in” something for a future Planning

Board would be “irresponsible.” “It’s what’s before us,” he said, not what the board thinks or hopes might happen. He said the board can’t look at base development anything by acreage and said they have been admonished for doing so by the Board of Appeals in the past.

Mr. Eleftheriou said that board members largely agree that the development is good, particularly the affordability aspect. There are two critical modifications, the 20 percent and the restricting housing to the lab’s employees, he said. He said he’s fine with the 20 percent, but isn’t fine with restricting the housing to the lab’s employees. “I think we ought to have it offered to other town residents,” said Mr. Eleftheriou.

Vice-chair Cough said that if the affordability aspect is important to the board then so, too, is the calculation and making sure more of those units could be affordable and advertised. To limit the percentage class, he said, “is somewhat counterproductive.”

Ms. Brooks agreed. She said she supported the project and thinks the PUD language is somewhat dated and perhaps not applicable. She said she understands why an employer spending so much money doesn’t want to open it up to the public but “That is the way the ordinance reads.” “I wish it was easier to change the ordinance,” said Ms. Brooks, because there might be more development of this type happening.

Chair St. Germain said that the idea of modifying base development density didn’t make sense to him. If someone appealed the board’s decision to modify that it would likely be overturned, he said.

Ms. Nicholson said the lab is asking for the affordability standard, one of the things that comes out of the base unit development, to be applied on an as-we-go-basis. “We’re asking for 20 percent of the units to meet the affordability standard” to be in-line and proportional to the number of these the lab is building as it is building.

The ordinance, Ms. Nicholson continued, would require 32 of the 44 units to meet the affordability standard and would need to be advertised to the town’s people. “It’s a pretty steep ask,” she said.

“I believe this was not anticipated by those who wrote the PUD standards,” said Chair St. Germain, with an applicant asking for it to be proportional. “It’s hard for us to imagine telling a Planning Board of the future that they must adhere to a decision we make now,” he said.

Mr. Hamilton said the applicant might consider the purpose and intent is designed to give flexibility and that he believes the board has the ability to modify the standards.

Discussion among board members and applicant representative about standards, base development

Mr. Eleftheriou moved to find the application PUD-2020-01, Subdivision PUD-V Schooner Head Housing, complete per the Bar Harbor LUO section §125-66. Vice-chair Cough seconded the motion, which then carried without opposition (4-0) on a roll-call vote.

Move to find application PUD-2020-01, PUD-V for Schooner Head Housing, complete: CARRIES, 4-0

At 7:58 PM Chair St. Germain opened the public hearing. Dean Read was on the phone. He said that as a former banker if he had been asked to approve financing for a 44-unit development he would ask whether financial viability of the 44-units depended upon having the 100 completed or if they can stand on their own; if they could stand on their own, Mr. Read said he would consider the 44; if not, he would consider the 100.

Public hearing at 7:58 PM

Mr. Read said that he thought the 44-unit, three-story project, while it may be a good one, “is pretty squeezed in” to a small space and not in conformance with the character of the neighborhood. He said he was also concerned about an increase in traffic. “There are no three-story residential units around here,” said Mr. Read. Hearing no other callers, the public hearing was closed at 8:03 PM.

Dean Read speaks, voices concerns about the project

Ms. Brooks said that when the project was presented earlier in the year the two items were brought up and not much has been done to address them. Vice-chair Cough echoed what she said and that the board alerted the lab that this would be a problem. “The project is a great project; it just doesn’t fit the PUD-V ordinance,” he said.

E. Brooks: good project, but doesn’t fit PUD-V

Mr. Eleftheriou said, “I’m not sure if we’ve ever had a PUD in this town like this.” He said he’s in favor of modifying the standard §125-69 S. (6) (b). Chair St. Germain said he’s in favor of modifying the standard and allowing the lab to restrict housing to the lab’s employees but not modifying the base unit development standard. Chair St. Germain said he sees that aspect of the LUO as providing a “real disincentive” to prospective developers.

B. Eleftheriou OK with modifying one standard, but not base development density

“I don’t think this applicant has a lot of choices,” said Mr. Hamilton. The lab looked at this, he said. “If you’re going to use PUD as a straitjacket and capping off an opportunity...I think that’s a difficult interpretation, a difficult construction of the ordinance.” Mr. Hamilton suggested that the board table the discussion. The lab has “worn itself out” looking at other alternatives, he said. “We’ve got to figure this out.”

A. Hamilton suggests tabling the project

Vice-chair Cough made a motion to table the PUD-2020-01 subdivision application for Schooner Head Housing. Mr. Eleftheriou seconded the motion, which then carried without opposition (4-0) on a roll-call vote.

Table PUD-2020-01, PUD-V, Schooner Head Housing: CARRIES, 4-0

Chair St. Germain thanked everyone, saying “That was not easy.”

Mr. Fitzpatrick rejoined the board at this point, and with that the board’s voting

J. Fitzpatrick returns to board

membership was returned to five members.

e. Completeness Review/Public Hearing/Compliance Review for SP-2019-06 —Theede Pier

Project Location: 481 Eden Street —Tax Map 224, Lot 009, encompassing ±1.73 acres of land in the Village Historic and Shoreland Limited Residential zoning districts (the proposed project is located entirely within the latter district)

Applicant: Frenchman’s Bay Boating Co, Inc.

Owner: Frenchman’s Bay Real Estate Holdings, LLC (Steve Theede)

Application: To construct a new concrete retaining wall fastened to the ledge at the top of the bank with a concrete slab to hold the shore end of a 120’x6’ aluminum pier, with a 10’x10’ transition platform at the end of it to accept the ramp, which is at an angle to the pier. From there, an 80’x4’ gangway extending to two, 16’x24’ timber floats, moored with two granite moorings and chain.

Brooke Collier, present along with Bob Collier to represent the applicant, reviewed the application for the board’s benefit. She noted that the floats will be seasonal, installed in spring and removed in the fall.

Ms. Collier also noted that the applicant had received its permit from the Maine Department of Environmental Protection as well as approval from the Maine Historic Preservation Commission. Board members had no questions or comments about the application.

Vice-chair Cough moved to find application SP-2019-06 (Theede Pier) complete [per the Bar Harbor Land Use Ordinance]. Mr. Fitzpatrick seconded, and the motion then carried unanimously (5-0) on a roll-call vote.

At 8:18 PM, Chair St. Germain opened the public hearing and Assistant Planner Fuller read aloud the information on how to call in and make comment. There were no callers, and the public hearing was closed at 8:19 PM.

Mr. Fitzpatrick moved to approve the application SP-2019-06 Theede Pier, per the Bar Harbor Land Use Ordinance sections 125-67 General Standards and 125-68 Shoreland Standards per the [draft] decision dated June 3, 2020, with the Submerged Land Lease to be secured prior to issuance of the building permit and the Code Enforcement Officer to issue the Flood Hazard [Development] permit. Vice-chair Cough seconded the motion, which then carried unanimously (5-0) on a roll-call vote.

f. Completeness Review for SP-2020-03 –Coastal Computers
Project Location: 1311 State Highway 102—Tax Map 227, Lot 90, encompassing ±2.81 acres of land in the Town Hill Business zoning

Completeness Review / Public Hearing / Compliance Review for SP-2019-06, Theede Pier

Brooke Collier and Bob Collier present to represent applicant

No questions from the board

Find SP-2019-06, Theede Pier, complete: CARRIES, 5-0

Public hearing opened at 8:18 PM, no comments

Approve application SP-2019-06, Theede Pier, w/ condition as noted in the motion: CARRIES, 5-0

Completeness Review for SP-2020-03, Coastal Computers

district.

Applicant/Owner: George Grohs & Kristina Minott, dba Sonoma Properties, LLC

Application: To demolish an abandoned house and construct an office building.

Bill Hanley, Heli Mesiniemi and Mike Gillis were present to represent the applicants. Mr. Hanley gave an overview of the project: a single-use, 2,600-square-foot, one-story building, for the “word headquarters” of Coastal Computers on what is now a vacant lot in the Town Hill neighborhood. There will be two entrances coming off Route 102 and 10 off-street parking spaces.

B. Hanley, H. Mesiniemi and M. Gillis present to represent the applicant, give overview of project

Chair St. Germain opened the public comment period at 8:24 PM and Assistant Planner Fuller read aloud the information on how to call in and make comment. There were no callers and the public comment period was closed at 8:25 PM.

Public comment period at 8:24 PM, no comments

Mr. Fitzpatrick said the board was looking for information on wells; Mike Gillis said no permits are needed because it’s a single-use well serving fewer than 21 people. Mr. Fitzpatrick asked about subsurface wastewater disposal and Mr. Gillis said a plan was submitted as part of the application for this project.

Question and answer about wells

Mr. Fitzpatrick asked if anything had been received from the Maine Department of Inland Fisheries & Wildlife and the State Historic Preservation Office; Mr. Gillis said he had done a self-review of sources for those areas and that Planning Director Gagnon found that to be a sufficient effort for the requirement. Planning Director Gagnon confirmed as much later in the meeting.

Question about state agency review, explanation of self-review

Mr. Fitzpatrick asked about the parking spaces. He said they were annotated on the drawings, but that the board typically asks for spaces to have numbers and dimensions, width length and numerically. Mr. Gillis said he would add that.

J. Fitzpatrick flags items board would like to see on application at next meeting

Mr. Fitzpatrick asked whether the applicant planned to annotate the drawings on the erosion and sediment control plan; as he said the board typically sees it on the drawings to instruct the contractor. Mr. Gillis said he could break it out separately, but also noted it is on the landscaping plan (sheet L3) under the landscaping and buffering section. He verbally explained the erosion plan.

Vice-chair Cough asked Planning Director Gagnon for clarification about some permits regarding information in the staff report and comments made during the meeting. Planning Director Gagnon responded.

Questions from board, staff responds

In response to a question from Mr. Fitzpatrick, Planning Director Gagnon and Code Enforcement Officer Chamberlain discussed requirements for overhead

utility standards. Code Enforcement Officer Chamberlain noted the requirement applies to all projects subject to Planning Board review, not only subdivisions (as had been suggested).

After a discussion between board members and staff about waiver requests, **Mr. Fitzpatrick moved to grant the waivers requested by the applicant as listed in the checklist, as such waivers will not unduly restrict the review process, as they are inapplicable, unnecessary or inappropriate for a complete review, with exception of the following items: 1 I (letter of no violation). There were questions about other items possibly needing to be added, but none were. Mr. Eleftheriou seconded the motion, which then carried unanimously (5-0) on a roll-call vote.**

**Move to grant waivers requested by applicant, with exceptions as noted in the motion:
CARRIES, 5-0**

Mr. Fitzpatrick moved to find the application SP-2020-03 (Coastal Computers) complete, per the Bar Harbor Land Use Ordinance section 125-66, with the exception of the following: letter of no violation [from the Code Enforcement Officer], item 9 II, requesting applicant to number and dimension the parking spaces, and item 17 A, requesting applicant to denote erosion and sedimentation devices on the plan (if they're not already shown); and further, if the items are submitted by June 11, 2020 to request staff to schedule a public hearing on July 8, 2020. Mr. Eleftheriou seconded the motion, which then carried unanimously (5-0) on a roll-call vote.

**Find application SP-2020-03, Coastal Computers, complete, with exceptions as noted, and to schedule for public hearing on July 8, 2020:
CARRIES, 5-0**

VIII. OTHER BUSINESS

Planning Director Gagnon noted there was a Planning Board workshop scheduled for the next day (June 4) to discuss vacation rentals. She said the board was sent information last week and that she would be working on language pertaining to transference of license to a family member. Mr. Eleftheriou asked if that was the only change; Planning Director Gagnon said yes.

Vice-chair Cough asked if the rules around transference would be in perpetuity or a one-time transfer; Planning Director Gagnon said she wasn't sure yet and would be working to make sure it's enforceable.

Discussion about vacation rentals

Secretary Eleftheriou asked whether the Planning Board's endorsement matters to the Town Council; Planning Director Gagnon said she believes it does. Discussion on the respective roles of the Town Council and the Planning Board followed.

Chair St. Germain thanked the board for attending several long meetings lately and having to go through a lot of material. Planning Director Gagnon noted that she's taken a different approach in staff reports given to the board and said she's trying to improve the process. She asked the board to share their

Chair St. Germain thanks board members for hard work

thoughts; both Chair St. Germain and Vice-chair Cough said they liked the format.

IX. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

None.

None

X. REVIEW OF PENDING PLANNING BOARD PROJECTS

At 8:48 PM Vice-chair Cough moved to adjourn; Mr. Fitzpatrick asked what was coming up for projects. Planning Director Gagnon said Coastal Computers (for compliance review/public hearing), possibly the Maller/MacQuinn subdivision and maybe the Weathersby subdivision. Mr. Fitzpatrick seconded Vice-chair Cough's motion to adjourn.

Move to adjourn

Questions about upcoming projects

Chair St. Germain noted that there are warrant articles coming up for a vote in July; in the past the board has attempted to put information out to the public (such as in the newspaper) in an attempt to explain the reasoning behind some of the proposals.

Discussion about board voicing support for LUO amendments

Vice-chair Cough noted that Member Brooks had asked earlier when the board would go back to meeting in-person (with the public still participating via Zoom) and voiced his support for such a format. He said he thought it could be more efficient.

Question about returning to in-person meetings

XI. ADJOURNMENT

At 8:54 PM, the vote was taken on Vice-Chair Cough's motion (seconded by Mr. Fitzpatrick) to adjourn. On a roll-call vote, the motion passed unanimously (5-0).

Adjourn meeting at 8:54 PM: CARRIES, 5-0

Minutes approved by the Bar Harbor Planning Board on August 5, 2020:

Date Basil Eleftheriou Jr., Secretary, Bar Harbor Planning Board

Bar Harbor Planning Board
Wednesday, June 10, 2020 — 4:00 PM
Council Chambers – Municipal Building
93 Cottage Street in Bar Harbor

*The meeting was held via the Zoom online meeting platform,
and was broadcast live on Spectrum channel 1303 in Bar Harbor
as well as online via Town Hall Streams (where it is also archived).*

I. CALL TO ORDER

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

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

II. EXCUSED ABSENCES *(None)*

III. ADOPTION OF THE AGENDA

Mr. Eleftheriou moved to adopt the agenda, and Mr. Fitzpatrick seconded. The motion passed unanimously (5-0) on a roll-call vote.

IV. PUBLIC COMMENT PERIOD

Chair St. Germain opened the public comment period at 4:04 PM. Assistant Planner Fuller read aloud the phone number for members of the public to call (and necessary passcode to enter) to make comment. As there were no comments, the public comment period was closed at 4:04 PM.

V. REGULAR BUSINESS

a. Consideration of calling for public hearing on proposed Land Use Ordinance amendment relating to vacation rentals

Chair St. Germain began the discussion by noting that a new category, VR-3, had been added to the proposal and that other changes had been made to the proposal since the board had last seen it. Planning Director Gagnon reviewed those changes and offered an explanation of why they were made, as well, including protection clause and transferability.

Board members discussed the threshold for VR-3, as the feeling was that \$1,000,000 was too high. The board discussed the possibility of using the cost instead of the assessed value. Staff explained that they have access to assessed value and that there were enforceability concerns around using a figure other than assessed value. Per feedback from the board, staff will work on lowering the value to somewhere around two times the value of a median home in the town.

Call to order
at 4:01 PM

All five board
members present

Four town staff
members present

No absences

Agenda approved as
presented, 5-0

No comments from
the public during
public comment
period

Consideration of
calling for public
hearing on proposed
LUO vacation rental
amendments

Presentation of
changes since last
time board saw it

Discussion of dollar
value tied to VR-3
definition

Mr. Fitzpatrick, who was also part of the Zoning Advisory Group that worked on the vacation rental regulatory approaches, presented a VR-2 license model that sets a target for the proportion of VR to year-round housing, which in turn would set the amount of VR-2 licenses to be issued annually. His model used 2010 Census figures with a 10% increase factored in for the number of year-round and seasonal dwelling units for the decade between then and now. The model also used an overall growth rate set at 1% for going forward. Staff will continue refining the model, as well as look at possibly setting the number of VR-2 licenses/permits as a % of the number of single-family dwelling units in town.

J. Fitzpatrick presents model, explains background

Discussion of using different numbers and percentages in the model

There was discussion about if the VR-3 threshold and the number of VR-2 licenses should be in Chapter 125 or Chapter 190. In Chapter 125 (the Land Use Ordinance) it would provide consistency/predictability over time as amendments are done through a ballot vote; however, if corrective action on these numbers was needed, it would take at least six months before a change could be considered by the voters. In Chapter 190 (Vacation Rentals) it would provide for prompt corrective action (less than two months), as the Council can vote to amend the ordinance after a public hearing. But it would mean possibly less predictability over time.

Continued discussion about VR-3 threshold and VR-2 cap, and where such rules belong: 125 or 190

Pros and cons

There was extensive discussion about possible changes that might be made, and what the time frame looked like for the process moving forward. The Planning Board agreed to continue the discussion on Monday, June 15 at a workshop set for 3:15 PM.

More discussion, agreement to hold a workshop on 6/15

Mr. Fitzpatrick moved to request staff to schedule a public hearing for July 8, 2020 to review Chapter 125 (Land Use Ordinance) and Chapter 190 (Vacation Rental Licensing) proposed amendments. Vice-chair Cough seconded the motion. It was noted that Chapter 190 is not the Planning Board's purview, but that it is relevant to the discussion on changes to Chapter 125. The motion then carried unanimously (5-0) on a roll-call vote.

Schedule a public hearing for July 8, 2020 to discuss proposed VR LUO amendments: CARRIES, 5-0

VIII. OTHER BUSINESS (*None*)

No other business

XI. ADJOURNMENT

At 5:46 PM, Vice-chair Cough moved to adjourn and Mr. Fitzpatrick seconded the motion. It then carried unanimously (5-0) on a roll-call vote.

Meeting adjourned at 5:46 PM, 5-0

Minutes approved by the Bar Harbor Planning Board on August 5, 2020:

Date Basil Eleftheriou Jr., Secretary, Bar Harbor Planning Board

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

*The meeting was held via the Zoom online meeting platform,
and was broadcast live on Spectrum channel 1303 in Bar Harbor
as well as online via Town Hall Streams (where it is also archived).*

I. CALL TO ORDER

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

Planning Board members present at the start of the meeting were Chair St. Germain, Vice-chair Joe Cough, Secretary Basil Eleftheriou and member John Fitzpatrick. Member Erica Brooks was not present at that time.

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

II. ADOPTION OF THE AGENDA

Mr. Eleftheriou moved to adopt the agenda. Mr. Fitzpatrick seconded the motion, and it carried unanimously (4-0) on a roll-call vote.

III. EXCUSED ABSENCES

Chair St. Germain noted that Ms. Brooks was running late, but said she would be here at any moment and so the absence did not need to be excused.

IV. PUBLIC COMMENT PERIOD

Chair St. Germain opened the public comment period at 4:03 PM and Assistant Planner Fuller read aloud the number for members of the public to call to make comment. As there were no comments, the public comment period was subsequently closed. Ms. Brooks arrived at 4:05 PM.

V. APPROVAL OF MINUTES

- a. April 29, 2020
- b. May 6, 2020
- c. June 3, 2020

There was a discussion about the June 3 meeting minutes, which were distributed to board members only a short time before the start of the meeting.

Mr. Eleftheriou moved to approve the April 29, 2020 and May 6, 2020 minutes and to table the approval of the June 3, 2020 minutes to the August Planning Board meeting. Ms. Brooks seconded the motion, which passed unanimously (5-0) on a roll-call vote.

Call to order
at 4:00 PM

Four board
members present at
start of meeting

Three town staff
members present

Agenda adopted as
presented, 4-0

Note that E. Brooks
will be here soon

No comments from
the public

E. Brooks arrives at
4:05 PM

Minutes of April 29
and May 6, 2020
approved, minutes
from June 3 meeting
tabled for approval
until August meeting

VI. REGULAR BUSINESS

a. Public Hearing/Compliance Review for SP-2020-03 – Coastal Computers

Project Location: 1311 State Highway 102 — Tax Map 227, Lot 90, encompassing ±2.81 acres of land in the Town Hill Business zoning district and a de minimis amount of land in the Town Hill Residential District

Applicant/Owner: George Grohs & Kristina Minott, dba Sonoma Properties, LLC

Application: To demolish an abandoned house and construct an office building.

Public Hearing /
Compliance Review
for SP-2020-03 —
Coastal Computers

Mike Gillis and Bill Hanley were present, representing the applicant. Mr. Gillis updated the board on changes to the site plans, noting that the plans now reflect more detail on sediment and erosion control, including where silt fences and hay bales would go. Parking spaces are now numbered on the plan, said Mr. Gillis.

Mike Gillis and Bill
Hanley present to
represent applicant

Mr. Hanley shared the site plan via screen share and provided the board and the public with an overview of the project. The project is for the “new world headquarters” of Coastal Computers, said Mr. Hanley. The proposal involves a one-story building with a single commercial occupancy right off Route 102 north of L.E. Norwood in Town Hill. The lot is currently vacant. The applicant is using existing entrances off Route 102 onto the property. There will be public parking in the front and additional parking in the back with a pull-through service garage and employee parking.

Overview of project

Coastal Computers, explained Mr. Hanley, is one of the “local, on-island tech businesses.” There will be space for roughly 10 staff in the building. Mr. Hanley showed the board renderings of the building, an aerial view of the site and floor plans. The lot is fairly straightforward to build on, said Mr. Hanley: “A commercial use in the commercial corridor.”

Chair St. Germain opened the public hearing 4:16 PM. Assistant Planner Fuller read the contact information (phone numbers and passcode) aloud. There were no comments and the hearing was closed at 4:19 PM.

Public hearing at
4:16 PM, no one
speaks

Chair St. Germain asked Mr. Hanley about parking standards in the district. The applicant representatives said they were exceeding the standard for the district with the proposed 10 parking spaces shown in their application. Mr. Fitzpatrick spoke about the parking standard, and agreed that the proposed parking is more than adequate. He went on to say that he thinks it’s a “great project” that will “rehabilitate that lot quite well.”

Parking standards

Mr. Fitzpatrick moved that the board has received all outstanding information requested at the meeting of June 3, 2020. The motion was seconded by Vice-chair Cough, there was no discussion and the motion passed unanimously, 5-0, on a roll-call vote.

Board has all of the
outstanding
information
requested:
CARRIES, 5-0

Mr. Fitzpatrick moved to modify standard 125-67 DD., Utilities, as presented in the application, as the electrical [wires] feeding the building remaining above ground are located in harmony with the neighborhood properties and the site. The motion was seconded by Vice-chair Cough, there was no discussion and the motion passed unanimously, 5-0, on a roll-call vote.

Modify Utilities standard:
APPROVED, 5-0

Mr. Fitzpatrick moved to approve application SP-2020-03 Coastal Computers as it meets the standards of the Bar Harbor Land Use Ordinance Section 125-67 per the [draft] decision dated July 8, 2020. The motion was seconded by Vice-chair Cough, there was no discussion and the motion passed unanimously, 5-0, on a roll-call vote.

Application SP-2020-03, Coastal Computers:
APPROVED, 5-0

b. Sketch Plan Review PUD-2020-02 — Subdivision/Planned Unit Development (Outlying Area) — Schooner Head Housing
Project Location: Tax Map 253, Lots 10 and 11 on Schooner Head Road; encompassing a total of ±40.24 acres, according to town tax records. The subject land is all in the Village Residential zoning district.
Applicant/Owner: The Jackson Laboratory
Application: The applicant proposes a multi-family residential subdivision on Schooner Head Road. The first phase is the construction of 44 units in one three-story and four two-story buildings. The project will include peripheral parking areas, internal walkways and communal green space. The project will connect to the town water system and use an on-site private septic system.

Sketch Plan Review for PUD-2020-2, Schooner Head Housing (PUD-O)

Mr. Fitzpatrick asked to be recused from the meeting as The Jackson Laboratory is his employer. He said he would step away, mute his microphone and turn off his camera but would be available to answer any questions.

J. Fitzpatrick requests recusal

Vice-chair Cough moved that Mr. Fitzpatrick be recused. The motion was seconded by Ms. Brooks and passed without opposition, 4-0, on a roll-call vote (Mr. Fitzpatrick did not vote). Mr. Fitzpatrick turned his camera and audio off, and with his departure the board's voting membership was reduced to four members.

Recuse member J. Fitzpatrick:
CARRIES, 4-0

Kelly Doran, director of engineering and capital projects, was present to represent the Jackson Laboratory. Sarah Nicholson, engineer from Woodward & Curran, was also present.

Board's voting membership at 4

Ms. Doran introduced the project and spoke about the year-round housing shortage and associated challenges in Bar Harbor. "Many of our JAX employees have significant difficulty finding housing nearby," she said, with 66 percent commuting from off-island.

K. Doran and S. Nicholson present on behalf of JAX

Need for housing

Employees will be nearby campus, said Ms. Doran, and would be able to walk or bike to work. “We’re hoping that this project will bring 44 new families to town in this first phase,” she said, who would in turn support the local economy. The site is approximately 37 acres on the Schooner Head Road. The first phase will be 44 units, a mix of one-, two- and three-bedroom units.

Ms. Doran turned over the presentation to Ms. Nicholson. The project is a multi-family II project, she explained, with five buildings and 44 units. As a clustered development, it will have a reduced footprint and minimize site disturbance, part of the applicant’s efforts to make it environmentally friendly, she said.

The applicant is coming as a PUD-O (Planned Unit Development — Outlying area), Ms. Nicholson explained. Parking will be in front with pedestrian access to the building. It will be dark-sky compliant, buffered in the front and along the northern side, where residents are. The land to the south and east is owned by the Jackson Laboratory, said Ms. Nicholson.

Ms. Nicholson said stormwater management will be along the front of the property in the form of underdrain soil filters. The facilities will be connected to town water, she said, on Schooner Head Road. A communal septic system is being planned for further south on the property from the development site, close to Schooner Head Road. She spoke about the proposed layout of the system. “It’s a significant size septic system,” said Ms. Nicholson, but will be designed and built in accordance with state law.

Ms. Brooks asked a question about septic. Would the proposed septic field, she wondered, be just for phase one or for the entire long-term development?

Ms. Nicholson said they would ensure there is expansion capacity in the system, but that it wouldn’t be built to accommodate the full planned development until the second and third phases come online. The applicant would be coming back before the Planning Board to review the expansion at that point, but “we will account for the desire for future expansion of the housing development” in the plans.

Most likely, said Ms. Nicholson, the septic system will slide further south to accommodate plans for future phases.

In response to a question from Mr. Eleftheriou, Ms. Nicholson said the leach field box is roughly 1 acre. Taking the flow rates required for an engineered septic system per unit, she said, is 180-270 gallons per day flow, depending on the size of the unit, multiplied by the area needed for base units for the septic system. “It’s scaled, but it’s not designed,” said Ms. Nicholson.

Overview of project

Discussion of proposed septic system

Mr. Eleftheriou asked about nitrate analysis in the soils, which is covered in Bar Harbor Land Use Ordinance 125-67 K. (8). He said there is likely to be some scrutiny about that in this case. “You might want to provide as many numbers for your case as you can,” he said. Ms. Nicholson thanked him for the suggestion.

Nitrate analysis

Chair St. Germain wondered how many units will be proposed in total and if there is a framework for subsequent phases. Ms. Nicholson said that the applicant’s assessment is base development density for the site is 80 units and that is their target. She went through the calculation.

Discussion on phasing, base development density

Ms. Doran said that no determination has been made on phases two and three.

Chair St. Germain asked whether there are any modifications of standards that are likely to be requested, and Ms. Nicholson answered no.

No modifications of standards requested

Mr. Eleftheriou pointed out that the cover letter referenced building 80-100 units. Ms. Nicholson said that anything above 44 would come back to the board; anything above 80 would be “another conversation.” There are no outside developers associated with the project, said Ms. Nicholson, in response to a question — only the Jackson Laboratory.

More discussion of modifications

Ms. Brooks wondered about environmental impacts from a large septic system; Ms. Nicholson said that “it is a big system, but you can absolutely engineer a system that will do its job and not create an environmental impact.”

Ms. Doran said the applicant had been in discussions about that. “We do not want to be requesting any modifications for this project,” she said.

At 4:40 PM, Chair St. Germain opened a public comment period. Assistant Planner Fuller read the contact information (phone number and passcode) aloud.

Public comment period opened at 4:40 PM

It is not a public hearing, said Planning Director Gagnon, but the ordinance is clear that the board needs to listen to public comment during sketch plan review. It was not listed in the agenda because it is not a public hearing, she clarified.

Explanation of what the ordinance calls for, how notices were done and sent

Planning Director Gagnon, at the request of Chair St. Germain, also clarified that PUD-O, which is not on public sewer, requires notices to abutters within 600 feet, rather than 300 feet as is required under PUD-V.

“People that may not have received the previous notices when the applicant came under a PUD-V now have received notices,” said Gagnon. The process is

restarting because the applicant effectively retracted the first application and reapplied under PUD-O.

Chair St. Germain referenced an earlier community meeting held at The Jackson Laboratory. Discussion ensued on this subject. Mr. Fitzpatrick unmuted himself. He said that the lab had called a private meeting with neighbors and abutters rather than people from within a certain distance. "Basically, anybody that's within earshot of JAX we just invite as a courtesy," he said. After outlining the approximate geographic area involved he said the invite also went out to other interested parties (such as the town).

Discussion about earlier public meeting at JAX

Ms. Doran asked whether the board agreed with the applicant's calculation of the base development density. "We're really not looking to exceed that 80," she said. The applicant calculated the density based on a requirement of 20,000 square-feet per family on a property without sewer. Discussion followed. Chair St. Germain said that the lab's calculations are correct.

Does board agree with calculation of base development density?

Will Schroeder, a resident who lives at 128 Schooner Head Road, said the online meeting stream has been spotty. He asked about the size of the leach field; Chair St. Germain replied that it is roughly 1 acre. Mr. Schroeder said he appreciated the lab's efforts to make the project environmentally friendly, but that "having a 1-acre leach field is not the most environmentally-friendly thing you can do when you have sewer fairly close by." He said there's a lot of ledge in the area and likely enough drainage to put it in, but that the proposed septic system "doesn't strike me in the ethos of being environmentally-friendly."

Will Schroeder concerned about environmental impacts

Ms. Doran replied that this has been discussed and thought about quite a bit and that "We do believe we can design it to be as environmentally-responsible as possible for the site," she said. The applicant will work within ordinance requirements, said Ms. Doran.

Mr. Schroeder said it seemed like it would be a fairly large clearing that might be visible from Acadia National Park. He then asked what the project will imply in terms of town taxes and whether there will be an increased voluntary contribution from the lab. Ms. Doran said that had not been discussed in detail for the Planning Board application.

Will this project pay property taxes?

There will be increased traffic on the road, said Mr. Schroeder, which will mean more wear and tear on the roads. Neighbors are concerned about noise, traffic and safety, he said. "It would be nice to seriously consider what the traffic impact is," with regard to safety, cost to residents and the potential tax burden.

W. Schroeder concerned about traffic impact

Assistant Planner Fuller re-read the call-in number for anyone who might have missed it. Vice-chair Cough suggested having a screen with the number pop up in a static display in case residents can't hear.

Hearing no other commenters, Chair St. Germain moved on from the public comment period at 4:58 PM.

Planning Director Gagnon noted there was a request to act on submission of waiver requests. She said staff was recommending the Planning Board advise on those requests, rather than act on them. She said that is because this is a pre-application where the applicant has no vested rights, and that it is early in the process to make such determinations. She said the board needed to act, however, under the requirements of the ordinance.

Mr. Eleftheriou moved that the board not act on submission of waiver request as this is only a pre-application, the applicant has no vested rights, and it is too early in the process to make such decisions, and because the board would have to act again on the submission of waiver request at the completeness review meeting.

Vice-chair Cough said he struggled with the idea that the board is making a "negative" motion, and suggested they table any action on it until the next meeting. "It is odd," agreed Mr. Eleftheriou, but said that as the ordinance calls for it "there isn't too much harm."

The motion was seconded by Ms. Brooks. There was no discussion after the second, and the motion passed unanimously, 4-0, on a roll-call vote.

Mr. Eleftheriou moved not to require the applicant to have a conventional layout plan as the applicant has provided sufficient information to determine the base development density.

Vice-chair Cough wondered whether anything in the PUD-O might affect the base development. Mr. Eleftheriou said it can still be discussed at future meetings. Vice-chair Cough said that as long as the board is not giving "tacit approval" to 80 as the base development density he is "fine with that."

Ms. Brooks seconded the motion. Discussion followed.

Ms. Nicholson said that "it's been a little bit of a rocky road getting to this point," and that although the applicant won't be presenting anything more than 44 units in this application, she said "it is important to know that you all don't see any reason why there's anything unusual about this that would change the assessment of the site based on area and area per family." Vice-chair Cough said he doesn't

Public comment period closed at 4:58 PM

M. Gagnon speaks about acting on submission of waiver requests

Board not to act on submission of waiver requests: CARRIES, 4-0

Motion to not require the applicant to submit a conventional layout plan

Discussion on the motion

see anything wrong with the 44 that was presented but that he was not ready to act on anything. "It sounds appropriate," he said, but he "hasn't done the application against the PUD-O," as he wasn't aware the board would be acting on it today. Ms. Nicholson said it was included because it was in the staff report and the applicant didn't want to surprise the board. Mr. Eleftheriou said he was sure by the time there is a public hearing the board would make a motion to confirm the number of 80. Vice-chair Cough agreed.

Motion to not require the applicant to submit a conventional layout plan: CARRIES, 4-0

Planning Director Gagnon said what's in the staff report followed what the Planning Board needed to do at this particular level of review.

The motion carried unanimously, 4-0, on a roll-call vote.

Mr. Eleftheriou moved to schedule a virtual self-guided site visit from July 9, 2020 starting at 10:00 AM until July 15, 2020 ending at 1:00 PM and to schedule a neighborhood Zoom meeting on July 15, 2020 at 3:00 PM. Ms. Brooks seconded the motion, and it carried unanimously, 4-0, on a roll-call vote.

Set self-guided site visit for 7/9 through 7/15 and virtual Zoom neighborhood meeting for 7/15: CARRIES, 4-0

- **Public Hearing – Draft Warrant Article LAND USE ORDINANCE AMENDMENT – VACATION RENTAL.** Shall an ordinance, dated June 18, 2020, and entitled "An amendment to Vacation Rental allowing currently registered vacation rentals to continue operating as long as the registration is renewed annually; creating three types of vacation rentals (VR-1, VR-2, and VR-3) allowed in the same 34 zoning districts where vacation rentals are presently allowed; creating definitions for primary residence and vacation rental license; and regulating the rental of the entire dwelling unit or a part of thereof, the rental period (minimum number of nights), the maximum number of licenses that may be issued, and the transferability of licenses;" be enacted?

Public Hearing on proposed Land Use Ordinance amendment, on Vacation Rentals

Mr. Fitzpatrick reentered the meeting. With his return, the board's voting membership was back at five.

J. Fitzpatrick returns to board, voting membership at 5

Assistant Planner Fuller clarified the plan for the meeting and public hearing, explaining how the public comment period and process would work. There were 16 people attending the webinar, he said.

S. Fuller explains how public participation will work

Mr. Fitzpatrick explained how the process had worked so far. The town assembled a Zoning Advisory Group specifically to look at the pros, cons, issues and benefits of vacation rentals, he said. Six town residents, with a mixture of those who own rentals and those who don't, met to brainstorm and understand what is out there.

J. Fitzpatrick recaps process that led to this point

That built on several listening sessions held by town staff earlier in 2020 in Salisbury Cove, Town Hill and Bar Harbor, said Mr. Fitzpatrick, which gave residents an opportunity to share their thoughts. The board heard repeatedly that vacation rentals were an avenue for year-round residents to be able to afford to live in Bar Harbor, said Mr. Fitzpatrick. "A small minority" said that vacation rentals were disruptive to their neighborhoods and were detracting from the sense of community that once existed in the "not-so-recent past."

More discussion and review of the process

The committee looked at publications, common themes from the meetings and what actions have been taken in other towns. The ultimate goal, said Mr. Fitzpatrick, was to be able to sustain a year-round community and prevent further degradation away from that goal.

"It's a pretty well-thought-out plan to allow folks that want to live here the ability to bring in additional revenue, limit vacation rentals expanding as a commercial activity and allowing other folks to be able to pass on their property to their heirs, if and when the time comes to do so," said Mr. Fitzpatrick, after describing the background and the process that led to the current proposal.

Planning Director Gagnon said that anyone with a current registration would be able to continue operating. She said the board had heard that many people had invested with the intention of renting and wanted to make sure they would get a return on that property if they chose to sell it. "We kind of honored that," she said, which is why the VR-2 language, as written, allowed the license to be transferable.

All three categories are allowed in the same districts that presently allow vacation rentals, said Planning Director Gagnon. VR-1 is targeted toward primary residences, it can be an entire dwelling unit or part of one. It must be either in a primary residence or on the property of a resident's primary residence. Residents are allowed up to two VR-1 licenses and can rent those properties nightly. They are not transferable. "If you meet these requirements," she said, there are no caps and there is no need for transferability.

Planning Director Gagnon gives an overview and explanation of what is in this proposal

VR-2 is not someone's primary residence. It must be the entire unit and the minimum rental period is 4 nights. The maximum number of VR-2 licenses issued, said Planning Director Gagnon, would be capped at 7.5 percent of the town's total dwelling units. As proposed, she explained, the VR-2 license is transferable to a new owner and runs with the land.

The value of a VR-3, said Planning Director Gagnon, must be more than twice the median assessed value of all dwelling units in the town. "We also heard that some of the properties are just not attainable to the median-income person," she explained. It is not a primary residence, the rental period is four nights, there would

be no maximum number of licenses, it would not be transferable and the rental must be the entire unit.

Planning Director Gagnon said that, after hearing comments previously from Ms. Brooks and then consulting with the town assessor, she would like to see the board consider changing the VR-3 threshold to be twice the median sale price of the town's dwelling unit sales for the last five years, rather than the median assessed value. That would be recalculated every five years and would have more current values, said Planning Director Gagnon. It would also be a set number for a period of five years so people have can expect predictability about what is happening.

**Continued
explanation from
Planning Director
Gagnon**

Planning Director Gagnon said she would also like to see VR-3 limited to single-family dwellings. "We keep listening, we keep trying to do a bit better," she said.

If someone has a current registration and falls into one of these three categories, said Planning Director Gagnon, you still can hang onto it. The only difference, she said, is the town would likely not be issuing new VR-2 licenses "for a while." She explained the benefits of each category: VR-1 gives flexibility to homeowners, VR-2 is transferable and VR-3 covers homes not affordable to median incomes.

Chair St. Germain asked whether this would eliminate the definition of vacation rental that is presently in the Land Use Ordinance. Planning Director Gagnon said yes, it would be struck and the VR-1, VR-2, VR-3 categories would be added.

Mr. Eleftheriou asked if someone did not renew their VR-2 license would it go away; Planning Director Gagnon said yes, they would, and that she would recommend that if someone wants to operate in the future that now would be the time to get the license (especially for someone who would fall under the VR-2 category) She reiterated that that is because if the proposal passes as presented, there would not be any more VR-2 licenses issued by the town for a while.

**Questions from
board members**

"We've been talking about this for a while," said Planning Director Gagnon. She said the town is aware of one instance in which someone is struggling because a building is currently under construction but that at least two of the four units in the building will probably be able to get a VR-2.

Mr. Eleftheriou asked for clarification about what is in Chapter 15 and what is in Chapter 190. Planning Director Gagnon responded. In response to a question from Vice-chair Cough, she said there are 2,759 dwelling units in town at the moment.

Staff has done a "great job" on this, said Mr. Fitzpatrick. He noted VR-1 addresses the concerns of VR-1 owners and that VR-3 has addressed homes out of reach to average-income citizens, but he said VR-2 has been "watered down." Being able

to transfer the license ad infinitum will never get the town down to 7.5 percent of the housing stock, he said — not if those licenses can recirculate forever.

Planning Director Gagnon said there are 152 licenses that would qualify as VR-1s at the moment; Mr. Fitzpatrick, meanwhile, said there are more than 280 that would qualify as VR-2s. “I think this is a case where it’s for the good of the majority, not the good of the minority,” he said.

Ms. Brooks said she did not believe this was an appropriate time to be tackling this intense and complicated issue with a pandemic going on. She said she appreciated the work that had gone into this, but believed there is a lot of work to do and was concerned there are upcoming things on the ballot that could open more affordable housing that would be “more constructive.” She said it wasn’t fair to those who might be in hardship and forcing them to get a VR-2 license to protect themselves for the future.

E. Brooks expresses opposition to the proposal, outlines her reasons

The VR-3, said Ms. Brooks, would create a “a lot of additional work” for town staff for a “not-so-positive outcome.” She said she wished the matter could be tabled and pushed off into the future.

Vice-chair Cough asked Planning Director Gagnon what twice the median sale price of the town’s dwelling unit sale price for the past five years would be; Gagnon said that figure is \$750,000.

Ms. Brooks said she worried if the country were to enter a major recession in the next year it would skew that number and that while a sales price is more accurate than an assessed value, it would not be worth the amount of work it would take to calculate the number and would not necessarily create the outcome the town wants.

At 5:42 PM, Chair St. Germain opened the public hearing. He noted that the normal rule of three minutes per person, and one turn per person, would apply. He said the board would listen to comments but would not respond.

Public hearing opened at 5:42 PM

Assistant Planner Fuller explained how participants in the Zoom webinar could speak during the public hearing. The following comments were made:

- Norman Beamer said he has a vacation house in Hulls Cove and a current vacation rental permit. He said he was not sure he would make it to Bar Harbor this season. He said he supported the idea of a VR-3 and that his property might fall under that. Higher-end properties, he said, aren’t in competition for year-round residents who want to live on the island. It’s unlikely, he said, that he would ever rent his house to someone year-round. He said he doesn’t believe that’s impeding the market the town is

Norman Beamer speaks, likes VR-3, and also has questions

interested in. Mr. Beamer asked how staff would determine sales price of a property — whether it would be what it sold for 10 years ago, or whether a resident would have to present current financial evaluation.

- Michael Farkas thanked staff for their hard work. He asked how the plan would treat currently pending applications for a rental license, which is the situation he is in, he said. Mr. Farkas said his application has been pending for more than a year. In his case, the fire chief noted certain improvements that needed to be made. The pandemic, he said, has meant certain parts (for windows) have been on backorder for months and that has held his improvements up. He asked if there would be any allowance for pending applications in light of such circumstances.
- Sean Sweeney, who said he sat on the Appeals Board for years, said he felt the plan “gives a pass to the wealthy” but uses the value of their homes in determining the average assessed value, forcing up the number of homes affected, as well as their value. “I doubt one would consider a \$600,000 or \$750,000 home a low-income home,” he said, “but that’s what you’ve done.” The sale value differentials between homes that are able to be rented and those that aren’t, said Mr. Sweeney, are “significant” and affects the cash value of all homes belonging to residents of Bar Harbor that are not weekly rentals, he said. “For the average person, their home is their greatest cash investment, and you are now taking away their ability to realize this when they sell it.” Sweeney said he has spoken with three real estate agents and they’ve said the plan will cost those who didn’t join the “weekly rental bandwagon” a “great deal of money.” He asked the board to table the plan and find alternate ways to encourage ways to increase affordable, year-round housing stock.
- Ed Damm said he did not understand the non-transferability of VR-1. He said he would rather hear it clearly state that it is transferable. Mr. Damm said that in regard to VR-3, he did not think it was fair that it seemed like someone with an expensive house would automatically get a license. He said he also worried hotels would buy up those houses. Mr. Damm said he lived at 24 Ledge lawn for more than 25 years and never had any problems with vacation renters. He asked the board to table this issue because it is a “terrible summer,” with many people backing off on doing vacation rentals. “I just don’t think that much of this is fair,” he said.
- Kimberley Wolfe said she has a rental that would qualify as a VR-2 and asked whether that is transferable to a new owner. She said she had trouble hearing the meeting on the town’s online stream. Ms. Wolfe asked why there is a minimum of four nights, because people seem to want to be doing shorter stays. She said the discussion should be postponed until after the pandemic.

M. Farkas asks about how pending applications would be treated/impacted

S. Sweeney questions legality, and also dollar figures used in plan

E. Damm wants clarity on VR-1 and transferability, thinks this is bad time for proposal

K. Wolfe asks why VR-2 has 4-night minimum, says discussion should wait until later

- Joseph Bonaventura said that he owns a VR-2-type rental and that he felt VR-2 licenses should be transferable. He said he was happy to see that changes had been made. He asked questions about the specific mechanisms of the how the proposal would work.
- Christine Yetka said that while she is not a formal resident, she sees herself as a resident because she spends “the majority” of her time here (although Bar Harbor is not her primary residence, as defined in this proposal). She purchased a home in September and has a pending VR registration and is waiting for a fire department inspection, she said she told the fire chief not to hurry because she hadn’t planned to rent during the pandemic. She said she is now worried about getting the license before this goes to a vote. Ms. Yetka said she would like to see a clearer definition of primary residence.
- Leslie Tibbetts asked about the number of VRs. She asked what 7.5 percent of the dwelling units is for this year. Ms. Tibbetts also asked how many vacation licenses there are now and how many more will be able to be licensed in the future.
- Garric Worcester thanked staff and the Planning Board for the work being done and wanted to know what happens when a VR-2 property is sold — what would happen to that VR permit/license.
- Abigale Parker said she felt the plan, as written, would advantage the rich and disadvantage the middle class. She said it seemed “counterproductive” to the larger, overall goal. Homes owned as second homes that aren’t rented, she said, don’t contribute to the tourist economy, which she said is the primary way people make their living in Bar Harbor. That is something positive contributed by vacation rentals. The current zoning and rules, Ms. Parker said, really discourage year-round rental on one’s property. She encouraged the board to reconsider the direction and provide Bar Harbor residents more opportunity, rather than less.

J. Bonaventura likes transferability for VR-2

C. Yetka wants clearer definition of primary residence, also has concern about pending registration

L. Tibbetts has questions

G. Worcester has questions

A. Parker has concerns about proposal, thinks it is counterproductive to stated goals

Planning Director Gagnon answered some of the questions raised. If a license is transferable, it’s transferable, whether it’s being sold or inherited, she said. VR-2 licenses would be transferable under the plan as presented (the license would run with the land).

M. Gagnon works on responding to questions raised by speakers

Planning Director Gagnon said there are roughly 438 vacation rentals, about 286 of which are VR-2s. A 7.5-percent-of-dwelling-units target would be 210 rentals, she said, meaning the town has a surplus of roughly 76 at present.

Planning Director Gagnon said that language around pending rentals and those waiting for inspections “got no traction,” so she took it out. Code Enforcement Officer Angela Chamberlain said there are about 60 pending applications, some of which have been in the queue since early 2019 and many of whom rushed to get an application in when it seemed there would be changes to the ordinance. “Not necessarily everyone had the intention of renting,” she said, so they’re just sitting there, because “these people aren’t necessarily really in a hurry.”

A. Chamberlain speaks about pending registrations

CEO Chamberlain said a line has to be drawn somewhere. “Just because you thought in your head, ‘I might rent someday down the road,’ I don’t think we should include those people.” That would take away from the numbers in the future, as they’d be counted toward the 7.5 percent, said Chamberlain. Letting people sit there taking up space on the list, she said, would be “counterproductive.”

There was further discussion about transferability. As for how sale prices get calculated if the property hasn’t been sold in a long time, Gagnon said it was a good question. She said perhaps the language should stay as twice the median assessed value, rather than tying it to sale price. The median assessed value is \$297,500, so double that would be just under \$600,000. “At least you have a value on the books,” she said.

Discussion about dollar value for VR-3

Vice-chair Cough said he worried that if the board was not coming through clearly on the audio for the viewing public, which was mentioned by several speakers, he said he was not sure the public hearing was serving its proper purpose.

Discussion about ability of public to follow the meeting

Assistant Planner Fuller said he was not aware of any factor on the broadcast end that would be causing it. He said that those people in the webinar had said the audio was good. Broadcaster Stan Short informed Assistant Planner Fuller that there was an issue with Spectrum, affecting those watching on television.

Chair St. Germain noted the board also received numerous comments via email prior to the meeting, roughly 6 to 10 at least, on the subject of vacation rentals.

Discussion about public comments

Ms. Brooks said she felt it was pretty clear from comments that there was more opposition to the proposal than there was support.

Planning Director Gagnon said that the town had sent a mailing to every address in the assessor’s database explaining the proposal. She said that, respectfully, for a mailing of 3,000 or so pieces she thought there would be more comments that would come in.

Ms. Brooks said that she was referring mostly to her sense that in the past year that the board has been working on this, the majority of people she’s heard from are in opposition to the proposal.

Mr. Eleftheriou asked whether the moratorium on vacation rentals is in effect; Planning Director Gagnon clarified that the moratorium had been discussed but never enacted.

Mr. Eleftheriou said that while he felt it was a “hard nut to swallow at this time,” there had been a lot of work put into it. He said the board would love to look at other issues affecting housing. This has been discussed for a couple of years, he said, and it’s not the end-all, be-all fix to housing, but one facet. He said he thought it was a start and noted that the Town Council had directed the Planning Board to discuss the issue.

In response to a question, Planning Director Gagnon said the Town Council would review final draft language on July 21, if the Planning Board sent it along. She said there was room for adjustment on the language that night and with the Town Council at its meeting as well. She proposed again that VR-3 be limited to single-family dwellings.

Mr. Eleftheriou said the Town Council “really wanted this done,” and that what was presented was “pretty good,” with room for improvement down the road. The Town Council could choose not to advance the proposal if the feedback at its public hearing is negative, he said.

Vice-chair Cough said it was important the Planning Board do this properly so it doesn’t end up coming back. He said he did not know if the board was there. “We’re just ignoring the other elements,” he said, citing density as an example. That had not been addressed, said Vice-chair Cough. There are no dates in the proposal, he said, meaning there was no protection for those who have already applied for vacation rentals. The Town Council could backdate the proposal or put it off, he said. Vice-chair Cough said he did not think the proposal was ready yet, and he said he thought that was sad.

Mr. Eleftheriou said he agreed with Vice-chair Cough and that he would have preferred to have done a comprehensive housing study instead. But, said Mr. Eleftheriou, “We were directed by the Council to do this.”

Vice-chair Cough said he thought the Planning Board needed to do what the Town Council directs but added, “We have to do it right.” Does it make sense, he asked, to look at this and say it’s largely there and we may look at it for June of 2021 (rather than for November of 2020). The Town Council could still put a moratorium on it, he said, although he hoped they would not. But putting something forward would not be the right answer right now, he said.

Discussion among board members about pros and cons of moving forward

Mr. Fitzpatrick said he felt this was one tool in the toolbox. The solution, he said, will be made up of a dozen different little actions, like “eating the elephant one bite at a time.” The board took initial action a year and a half ago to address housing issues, he said, and there are proposed ordinance changes relating to housing on the July 14 ballot.

This, said Mr. Fitzpatrick, will help to sustain the housing stock that’s available for year-round town residents and will over time return more housing units to the overall available stock. He said he doesn’t want to use the word affordable, because “Nobody making \$31,000 a year is going to be able to afford a home in Bar Harbor, probably ever,” he said, adding that he preferred the word “accessible.” But a dual-income family, said Mr. Fitzpatrick, making \$100,000 or \$120,000 should be able to afford to buy a home in the town that they work in. He said the ordinance changes, as proposed currently, address the goals the committees came up with.

Mr. Fitzpatrick said he understood the concern about creating two classes, but the “meat and potatoes market” they’re looking to bring back on the island is not looking at the \$750,000 home in the VR-3 category. The majority of VR-2s, costing between \$200,000 to \$350,000, have a chance of coming back and being year-round rentals or homes for purchase — and that’s the goal, he said.

Continued discussion among board member about whether this plan and the timing are right

There will never be a good time to do this, said Mr. Fitzpatrick. He said he believed the proposal addressed the majority of concerns, although he disagreed with the transfer of VR-2 licenses. He said less than 1 percent of the housing units in Bar Harbor had commented on the plan. “I think the silence says a lot,” he said.

Chair St. Germain said the set of proposals should move forward but that it should move forward accompanied by plans to address density. He said that while it’s a good proposal this was not the right time and said he felt it had been rushed. He said he was afraid of potentially making a mistake by moving too quickly.

Vice-chair Cough said he felt the issue came up initially because there were VR-1s not in compliance (i.e., length-of-stay issues), but that there’s been little desire to “come down on them for that.” If that’s the case, said Vice-chair Cough, it’s up to the Town Council to decide whether that will continue if the Planning Board pushed this proposal out six months. He said he felt the board was “close on this, but I don’t think we’re there.” He said the winter months could be a good time to look at the proposal in more detail.

Chair St. Germain said there is a citizen’s initiative on the July 14 ballot that addresses the length of stay. The outcome of that, he said, could be an indicator for the Planning Board to think about going forward.

Planning Director Gagnon echoed Mr. Fitzpatrick and said the timing would never be perfect. She said that while this may not be perfect, unless it's legally deficient and going to cause problems there should be no issue with sending it to the Town Council and seeing what happened. The Town Council can decide at that point; if it does move forward, then the residents would ultimately decide. The proposal was "diluted considerably" to take into account comments, she said, adding that she was not sure what plans could be put in its place.

Planning Director Gagnon weighs in

Planning Director Gagnon suggested adding the word "single-family" to VR-3 and clarifying transferability to VR-1, saying "transferability is not applicable." The Town Council could also tweak this, she said, adding that she was not sure what would change in the next six months.

Vice-chair Cough said he remembered one of the efforts the Planning Board previously made getting kicked back.

Chair St. Germain said Planning Director Gagnon made good points. If the board sent it to the council, there would still be an opportunity to comment, he said. Would it be better to put the framework in front of voters on its own, he asked, or would it be better served pairing it with another part of the large housing policy framework? Advocates, he said, state there is no good time to deal with this "rather unpleasant subject."

Mr. Fitzpatrick said he'd like to see these rules in place before density is addressed so that new dwelling units could be controlled as they're created. As the number of dwelling units go up, under this model, so would the number of licenses, he pointed out.

More comments from board members about what is the appropriate course of action at this time

Planning Director Gagnon said that the process from here on is consensus. There will be a lot of questions, she said; the Town Council could stop the process. The Warrant Committee and Planning Board will indicate to voters how they feel about the issue if it does appear on the ballot, she said.

Ms. Brooks referenced the speaker from earlier who said that he was on the Appeals Board who said he did feel it was legally deficient. Planning Director Gagnon said the town's lawyer was reviewing the language and would say whether the language was deficient or not.

Vice-chair Cough said that if the board increased density, that would likely increase VR-1s and possibly single-family homes. He expressed some concern about how that process might play out. With the 60 pending applications that are in process, he said it would be a long time before the town gets to that level, possibly 20 to 30 years, before attrition would come into play.

Planning Director Gagnon recommended that under VR-1, transferability, the board add “not applicable.” Under VR-3, where the proposal referenced an “entire dwelling unit,” she suggested changing the language to “an entire single-family dwelling unit.”

Mr. Fitzpatrick asked whether they could make a change to say that VR-2s would be non-transferable. Planning Director Gagnon said that while she did not believe transferability was in the best interest of what the town was trying to do, she felt it would be the fair action to leave the proposal as it is, given the comments staff had received.

Mr. Fitzpatrick moved to recommend that the draft order [on vacation rentals] move forward to the Town Council with the [condition that the] revisions that Planning Director Gagnon previously mentioned were made. Mr. Eleftheriou seconded the motion.

In discussion, Chair St. Germain explained that if the board voted in favor of sending the proposal on to the Town Council, where the Town Council would be able to review it and decide whether to send it to voters. It would also go to the Warrant Committee and come back to the Planning Board, with both bodies getting to make a recommendation on whether they feel the proposal ought to pass. Chair St. Germain said he felt it was fair to let the process play out. He said short-circuiting the process would not be in the best interest of the discussion that had evolved during the process. Ms. Brooks noted her continued opposition to the proposal.

When the vote was called, the board split 3-2 in favor of the motion on a roll-call vote, with Vice-chair Cough and Ms. Brooks opposed.

VII. OTHER BUSINESS

Planning Director Gagnon said there would be a roundtable involving developers and other interested parties in the future to discuss what hurdles to housing development are with regards to the Land Use Ordinance. She said staff would also be looking at solar as a stand-alone use.

Ms. Brooks asked when the board might return to in-person meetings. Planning Director Gagnon said the Town Council had said that not before August, at the earliest. With the physical distancing required between board, staff and applicants it would be difficult to find a large-enough space. Directive will come from the Town Council, she said. Vice-chair Cough said he thought in person meetings could be manageable, even with distancing requirements.

Motion to send the proposal on to the Town Council: CARRIES, 3-2 (Cough and Brooks opposed)

M. Gagnon mentions roundtable discussion planned on Hurdles to Housing

Discussion about returning to in-person meetings

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

Mr. Eleftheriou asked whether Planning Director Gagnon could address the underground utility portion of the ordinance. She said staff would add that to the list.

Underground utilities requirement in LUO

Mr. Eleftheriou asked whether there is a way to do things concurrently, even though many of the issues are very time-consuming, including housing. Planning Director Gagnon said that staff are looking at the Town Council’s vision and goals but if the Planning Board has issues it would like addressed it can raise them. “It becomes so difficult to stay connected to the topic and be able to answer questions when you have so many going on at once,” she said. It depends what the Planning Board feels staff should be looking at. If they only work on big things, she said, there will be smaller issues that need addressing. Mr. Eleftheriou suggested possibly having a professional facilitator at the “Hurdles to Housing” roundtable. Planning Director Gagnon said that would “have value.”

Discussion about how best to proceed with LUO amendments moving forward, with timing and process

IX. REVIEW OF PENDING PLANNING BOARD PROJECTS

None.

No review

X. ADJOURNMENT

At 7:03 PM, Mr. Eleftheriou moved to adjourn the meeting.

Chair St. Germain acknowledged Mr. Fitzpatrick’s contributions to the Planning Board over the years. Vice-chair Cough said Mr. Fitzpatrick had “set the bar high” and thanked him for his contributions. Mr. Eleftheriou also thanked Mr. Fitzpatrick.

J. Fitzpatrick is thanked for his service on the Planning Board

Mr. Fitzpatrick seconded Mr. Eleftheriou’s motion, and it then carried unanimously (5-0) on a roll-call vote.

Meeting adjourned at 8:37 PM, 5-0

Minutes approved by the Bar Harbor Planning Board on August 5, 2020:

Date Basil Eleftheriou Jr., Secretary, Bar Harbor Planning Board

Schooner Head Housing — PUD-2020-02 (PUD-O) — Applicant: The Jackson Laboratory

Site Visit: Done as a self-guided site visit at 42 Schooner Head Road (Tax Map 253, Lot 10 — currently a vacant lot) across from The Jackson Laboratory's northern entrance to its main campus on Schooner Head Road. Self-guided format used due to COVID-19 pandemic; site was open to visitors (per a vote of the Planning Board on July 8, 2020) from Thursday, July 9 at 10 AM to Wednesday, July 15 at 1 PM.

Neighborhood Meeting: Done as a virtual neighborhood meeting on Wednesday, July 15 at 3 PM via Zoom, and broadcast on Spectrum Channel 1303 (in Bar Harbor) and on townhallstreams.com. Notice for both the self-guided site visit and virtual neighborhood meeting was sent out to abutters within 600 feet, as required by the Land Use Ordinance, on Thursday, July 9.

Attendance (Neighborhood Meeting):

- **Planning Board:** Chair Tom St. Germain, Vice-chair Joe Cough, Secretary Basil Eleftheriou, Member John Fitzpatrick and Member Erica Brooks. Note: Member Fitzpatrick was in attendance as part of the team for the applicant, rather than a Planning Board member, as The Jackson Laboratory is his employer.
- **Town Staff:** Planning Director Michele Gagnon, Code Enforcement Officer Angela Chamberlain and Assistant Planner Steve Fuller
- **Applicant:** Kelly Doran, director of engineering and capital projects for The Jackson Laboratory; Sarah Nicholson, engineer with Woodard & Curran; Leah Graham, government affairs strategist with The Jackson Laboratory; Kate Homer, associate director of the office of the chief operating officer at The Jackson Laboratory.

Virtual neighborhood meeting began at 3:07 PM, when all participants had joined the Zoom meeting.

Kelly Doran spoke first, and explained the lab's need for this project: that there is a year-round housing shortage in Bar Harbor, that two-thirds of the lab's workforce lives off of Mount Desert Island, and that this project will promote sustainability in the community by making walking or biking to work possible for employees who now commute. She said the project involves a mix of 1-, 2- and 3-bedroom units.

Sarah Nicholson spoke next and showed two site plans, which showed where the housing would be located on the property and how the five buildings (four of them two-story and one a three-story building) would be located in relationship to one another. She spoke about vegetation and buffering.

Nicholson said the project will be connected to town water that runs along Schooner Head Road and will utilize an on-site communal septic system. The existing trail that crosses the property will be rerouted, likely down to the existing path along Schooner Head Road. The lab is working with Acadia National Park and Friends of Acadia on this matter. Dark-sky compliant lighting will be used throughout the site.

There were no questions from Planning Board members when the presentation concluded. Assistant Planner Steve Fuller read aloud the information how to call in and make a comment or ask a question, and the necessary numbers to do so were also displayed on the screen.

Dean Read, 3 Garden Way, called in. He asked how the view from the street would be affected by the construction, expressed particular concern about the three-story building, asked if the housing would be for new and/or existing employees (he said that concern related to traffic) and overall said he thought

the project was too concentrated in a neighborhood where existing development is less dense. "The development seems to be too big for the neighborhood," he said.

Doran and Nicholson said keeping existing vegetation, along with additional buffering that is proposed, will help minimize what can be seen from the road. Nicholson said the "low, shrubby stuff" on site now is very good buffering. She said drivers will be able to see down the entrances as they pass by. Regarding employees, Nicholson said "the building of these units does not increase employment at the lab."

Read asked which building will be three stories, and Nicholson answered. He asked if there was any consideration given to making that a two-story building. Nicholson said not at this time, because the lab is aiming for 44 units. Doran said the three-story building will be situated behind a two-story building, and that as a result someone passing by "will only notice a small increase, if at all, from the point of view of a vehicle driving down the road."

Read asked if the lab was proposing to pay to help the town maintain Schooner Head Road. Nicholson said Schooner Head Road is a public road, and therefore a town responsibility and that this project does not change that at all. Read mentioned and asked about an agreement between the lab and the town.

Fitzpatrick said the lab entered into a memorandum of understanding about a decade ago with the town. He said two items were part of that: paying to help rebuild/repave the road from Route 3 to just past a particular culvert (with each party picking up half of the cost), and paying for a traffic study looking at the intersection of Schooner Head Road and Route 3. He said when the study was completed, the town of Bar Harbor and Maine Department of Transportation ultimately decided not to make any changes to the intersection. Fitzpatrick said the lab paid for 50 percent of the cost of the study, too.

Read said Schooner Head Road is a secondary road but that it has a lot of heavy truck traffic on it as a result of the lab's operations. Fitzpatrick referred back to Nicholson's answer, and noted everything the lab has done in that area has been approved by the Planning Board and other departments as needed.

Read said he would have more to say later in the process, with regard to the planned septic system.

Eleftheriou, acknowledging it was outside of the review process for this project, asked about the memorandum of understanding between the lab and the town and also about any other lab housing.

Fitzpatrick spoke in greater detail about the MOU. He said one of the factors that led the town and MDOT to not pursue any changes to the Route 3/Schooner Head Road intersection is that it would have required taking property from other owners (eminent domain) to make it work.

Fitzpatrick spoke about the lab's 12-unit apartment building as well as three duplexes between Paluga Lane and the lab's main campus, and said for those units the lab did not take them off the tax rolls and is still paying taxes on them. In the case of several single-family homes, Fitzpatrick said the lab did take those off the tax rolls but had simultaneously increased its PILOT (Payment In Lieu Of Taxes) to the town by an amount equal to what it would have paid in property taxes.

Eleftheriou asked what approach the lab would be taking with this project, with regard to taxes, and Fitzpatrick said the lab was taking it one step at a time.

The neighborhood meeting ended at 3:31 PM.



Town of Bar Harbor Planning Department

STAFF REPORT

Completeness Review for PUD-2020-02 Subdivision/Planned Unit Development (Outlying Area)/ Schooner Head Housing

Project Location: Tax Map 253, Lots 10 & 11 on Schooner Head Road; encompassing a total of ±40.24 acres, according to town tax records.

District: Village Residential district

Applicant/Owner: The Jackson Laboratory

Application: To develop a 44-unit residential subdivision in five buildings (one three-story, four two-story) on Schooner Head Road.

Allowed Use: MFII

Meeting Dates: Sketch – July 8, 2020
Self-guided site visit – from 10 AM on July 9 to 1:00 PM on July 15, 2020
Virtual Neighborhood Meeting – July 15, 2020 @ 3:00 PM
Completeness – August 5, 2020

Applicable Laws for Completeness Review:

Bar Harbor Land Use Ordinance §125-66 Submission Requirements.

Review Process:

1. Applicant presents application
2. Questions and comments from the board
3. Public comment period (optional)
4. Waiver requests

Proposed motion: **Move to grant the waivers requested by the applicant as listed on page 7 of the application cover letter dated July 16, 2020, as such waivers will not unduly restrict the review process, as they are inapplicable, unnecessary or inappropriate for a complete review.**

5. Review of Submission Requirements 125-66/checklist

Proposed motion: **Move to find the application PUD-2020-02 Schooner Head Housing Project complete, per the Bar Harbor Land Use Ordinance section 125-66, with the exception of capacity letters from the Water and Public Works departments and the letter of No Violation from the CEO to be submitted by August 13, 2020 and to schedule a public hearing on September 2, 2020.**

Staff Comments:

- 1) Need capacity statements from Water and Public Works departments.
- 2) Need to provide water flow in gpm and peak flow to water dept.
- 3) Need letter of No Violation from CEO.
- 4) Applicant will seek to have the SLOD permit (which will include Ch. 500 SW review) as a condition of approval.
- 5) Lots will need to be merged so that the setback requirements cease to exist.
- 6) DHHS approval for HHE 200 to be submitted at compliance review meeting.
- 7) Report for groundwater analysis to be submitted at the compliance review meeting.
- 8) Final site evaluation report/septic design to be submitted at compliance review meeting.

Chapter 31

Boards, Committees and Commissions

Article IX Planning Board

§ 31-121 Mission.

The Planning Board (Board) shall have all the authority and be subject to all the duties set out in the provisions of the Maine Statutes relating to municipal planning boards.

§ 31-122 Powers and duties.

A. The Board shall make land use decisions that are consistent with the Town's Comprehensive Plan, the Town's Land Use Ordinance, as well as with policies and plans formally adopted by the Town Council.

B. The Board shall consider staff reports, capacity statements, consultant reports, and citizen comments when making decisions.

~~A. The Planning Board may adopt bylaws, consistent with statutes and ordinances, governing its deliberations. In the absence of any other applicable rules, rules, ordinances or statutes, proceedings of the Board shall be governed by the latest edition of Robert's Rules of Order.~~

Moved to
Bylaws
§31-133

~~B.C. The Planning Board may request the Planning Department to obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose.~~

§ 31-123 Qualification and skills of members.

Board Members shall should have:

A. Preferably, a working knowledge of the land use ordinances Land Use Ordinance of the Town of Bar Harbor.

B. Experience with planning ~~and/or~~, architecture, law, civil engineering, geology, economics, construction, or related field but it is not critical (as these are skills that are available to the Planning Board from staff or hired consultants if necessary and from the applicant and their professional designers).

C. Ability to be judicious – apply common sense, good judgement, and balance.

D. Commitment to serving the public interest.

E. Interpersonal and decision-making skills including being a good communicator, detail oriented, a critical and objective thinker, and open-minded.

F. Ethics – good moral principles.

§ 31-124 Application and Appointment process.

Residents interested in serving on the Board shall complete a A general boards and committees application form is available from the Town Clerk or at barharbormaine.gov. The aApplications should be returned to the Town Clerk for consideration by the Town Council Appointments Committee. The Appointments Committee will contact candidates with interview times and make their its recommendation to the Town Council at the next Town Council meeting. The Town Council will vote on the nominations. It is best for nominees to attend the nominating meeting, in case Councilors have questions. Approved Board members will need to be sworn in by the Town Clerk and take an ethics training exam. Board Mmembers cannot vote in their committee until these steps have been completed.

§ 31-125 Membership.

A. This Board has five regular members. ~~All members must be Bar Harbor residents and registered voters. All regular members are voting members. No municipal officer may serve on this Board.~~

Moved to C

B. This Board may also have up to two alternate members. The alternate members are part of the Board and shall sit with the Board and participate in all discussions (ask questions and submit input). However, an alternate member shall vote only in the case of absence, recusal, or conflict of interest of a regular appointed member of the Board. The alternate member with the most seniority shall first be called by the Chair to fill in for the regular member. When an alternate member fills in for a regular member, the alternate will preside over the matter until its completion or until a final decision.

C. All members must be Bar Harbor residents and registered voters. No municipal officer may serve on the Board.

§ 31-126 Term of office.

The term of each regular member shall be three years and of each alternate member shall be two years. There are no limits to the number of terms that can be served. All appointments run from August 1 to July 31.

§ 31-127 Vacancies.

A. Regular Member. When a vacancy occurs, the Planning Director shall immediately advise the Town Council in writing. When there is a permanent vacancy (see 31-128), the Town Council ~~shall will~~, within 60 days of its occurrence, appoint a person to service for the unexpired term. ~~When a vacancy occurs, the Planning Director shall immediately advise the Town Council in writing. The Board may recommend to the Town Council that the~~

Reversed first two sentences

Moved to Attendance 831-128

~~attendance provision be waived for cause, in which case no vacancy will then exist until the Town Council disapproves the recommendation.~~

- B. Alternate Member. When there is a vacancy, the Town Council shall actively seek to appoint a person.

§ 31-128 Attendance.

All absences (for both regular and alternate members) must be excused ~~prior to the start of the meeting~~, and all attendance shall be recorded in meeting minutes. If any member misseds more than 75% of the regular meetings within a twelve-month period, regardless of being excused, the member forfeits their membership on the Board. The Board may recommend to the Town Council that the attendance provision be waived for cause, in which case no vacancy, as in no permanent vacancy (see 31-127), will then exist until the Town Council disapproves the recommendation.

§ 31-129 Public notice.

All meetings of the Board shall be open to the public, and notice thereof shall be given that all members shall have reasonable opportunity to make plans to attend. At least three days prior to the meeting, Notices shall be posted on the bulletin Board in the Town Hall, on the Town calendar, and on social media ~~at least three days prior to the meeting.~~

§ 31-130 Meetings.

The Chair shall call a meeting at least once a month unless there are no agenda items; however, the Board must meet a minimum of four times a year, including an organizational meeting. Meeting agendas shall maintain the following order:

- A. ~~Call to order with roll call.~~
- B. ~~Review of guidelines and conduct.~~
- C. ~~Public comments: up to 15 minutes.~~
- D. ~~Approval of meeting minutes.~~
- E. ~~Adoption of agenda.~~
- F. ~~Regular business.~~
- G. ~~Other business.~~
- H. ~~Board comments and requests for future agenda items.~~
- I. ~~Adjourn.~~

- A. Call to Order
- B. Adoption of the Agenda
- C. Excused Absences
- D. Public Comment Period
- E. Approval of Minutes
- F. Regular Business
- G. Other Business
- H. Board member comments and suggestions for the next agenda
- I. Review of pending Planning Board projects
- J. Adjournment

Matches PB
Rules of
Procedure
and past
practice

§ 31-131 Quorum and voting.

No meeting of the Board shall be held without a quorum consisting of at least three members. The Board shall act by majority vote of the members present and voting.

§ 31-132 Election of officers.

A Chair, Vice Chair, and Secretary should be elected at the first meeting of the ~~Committee board~~ after August 1. The Chair is responsible for calling meetings, setting the meeting agenda, and leading meetings. The Vice Chair will take over the responsibilities for the Chair, if the Chair is unable to preside over a meeting. The Secretary shall take minutes at each meeting and send approved minutes to the Town Clerk.

§ 31-133 Bylaws (Rules of Procedures).

~~Bylaws may be adopted and amended only by the Town Council. Consistent with statutes and ordinances, the Board may suggest bylaws governing its deliberation to the Town Council for its consideration. Only the Town Council may adopt and amend bylaws.~~

Sentences reversed

§ 31-134 Procedures.

The Board shall follow Robert's Rules of Order for all other procedures.

§ 31-135 Social media policy.

All Board members, voting and nonvoting, are subject to the Town-Council-approved social media policy found at barharbormaine.gov and in the Committee Handbook.

Town of Bar Harbor

Planning Board Rules of Procedure



Legislative History

8/15/01 Rules of Procedure adopted by Planning Board
03/28/02 Amended
10/06/04 Amended
11/17/04 Amended
09/21/05 Amended
10/21/09 Amended
04/20/11 Planning Board Review
05/04/11 Amended
12/07/11 Amended
12/20/17 Amended
02/06/19 Amended

Planning Board Rules of Procedure

Page 1 | 10

Discussed at August 5, 2020 PB meeting

DRAFT

Planning Board Rules of Procedure

Page 2 | 10

Discussed at August 5, 2020 PB meeting

1. **Terms.** Officers shall serve in one-year terms. Any member can decline an appointment.

2. **Liaison to Council.** The Vice-Chair, or other member as assigned by the Board, shall have the added responsibility of liaison with the Town Council and represent the Planning Board at all meetings of the Town Council where Planning Board business is on the agenda.

~~3. The member who is not currently an officer and has the most seniority on the Board may be appointed to Secretary without serving or having since served as an officer.~~

~~4. Any member or officer can decline any appointment.~~

Moved to #1

5. **Meetings.** Regular meetings will generally be held twice monthly on the first and third Wednesday of the month as necessary, beginning at 4:00 p.m. and are to last no longer than four hours. ~~The Board shall vote on the schedule for the next year's meetings in December of each year, and may, at that time, exclude any regular meeting dates deemed necessary by the Board.~~ The Board reserves the right to evaluate its progress after 2 hours in order to consider and/or make any further adjustments in order to adjourn within four hours. No more than one hour will be spent on any one application except with Board approval.

Moved to #6

A. In the event the Planning Board determines at any point during the meeting and/or at 6:00 p.m. that it will not be able complete the business on hand, the Board will table forward to the next regular meeting, or at its discretion, to a special meeting called for the purpose of continuing the meeting for those applications that the Board believes it will not be able to begin reviewing that night. All efforts will be made by the Planning ~~Department~~ Director or designee staff to make applicants aware of this possibility prior to the meeting.

Mirrors language in B

B. In the event the Planning Board determines at the end of the hour-long review and/or public hearing period that it will be unable to complete the review of and/or public hearing for the application, the Board will continue the review or hearing to the next regular meeting or at its discretion, to a special meeting called for the purpose of continuing the review and/or public hearing.

6. **Meeting schedule.** In December of each year, the Board shall vote on an 18-month meeting schedule to include Planning Board meeting dates, deadlines to submit application materials/exhibits and follow-up documents for review by the Planning Board at their next meeting, deadlines for Minor Subdivision applications, Technical Review Team (TRT) meeting dates (where the staff from, but not limited to, Planning, Code Enforcement, Water, Wastewater, Police, Fire, and Highway departments meet with applicants to review applications and improve project readiness for review by Planning

Board), and for post-TRT deadlines for the applicant to submit revised and/or additional material.

7. 6. Order of Agenda.

A. The Planning Board agenda shall be organized as follows:

- Call to Order
- Adoption of the Agenda
- Excused Absences
- Public Comment Period
- Approval of Minutes
- Regular Business
- Other Business
- Board member comments and suggestions for the next agenda
- Review of pending Planning Board projects
- Adjournment

Matches what we currently do

B. Applications shall be listed in the order received by the Planning Department under “Regular Business.”

C. Public requests, such as for land use ordinance amendments or guidance, shall be discussed under “Other Business.”

D. Public Comment Period – The Planning Board allows at this time up to fifteen minutes of public comment on any subject not on the agenda and not a pending application before the Board, with a maximum of three minutes per person.

8. 7. Request for Continuance

A. From time to time, an applicant may require a project hearing to be continued. In order to substantiate a request for continuance, the applicant is encouraged to submit a brief explanation outlining the purpose/need for the continuance. Whenever possible, such requests for continuance should be made to the Planning Department Director or designee at least ~~five (5)~~ seven (7)-business days in advance of the meeting the project is scheduled to be reviewed. Requests for continuance that are submitted following after the ~~five (5)~~ seven (7)-business day deadline shall be considered under greater scrutiny. Applicants are strongly urged to contact the Planning Department Director or designee as soon as the need for a continuance is known. Upon receipt of a request for continuance, the Planning Department Director or designee shall contact all known interested parties to alert them of the pending request. Applicants shall submit requests for continuance in

Five days does not provide sufficient time for us to “contact all known interested parties,” as we would need to do a mailing.

writing directly to the Planning Director or designee ~~Department staff~~. Such requests may be made by dropping the statement off at the Planning & Code Department or by emailing the request to a the Planning Department staff member ~~Director or designee~~. The Board shall make a decision regarding such request at the next regularly scheduled meeting.

9. ~~8.~~ Request for Recusal

- A. Requests for recusal are governed by Section 78-12 of the Town Code. While the Planning Board encourages such requests be made in advance of a meeting, the Town Code permits an applicant to raise the issue at the same meeting the agenda item is to be taken up, provided the member in question is present. The Planning Board reserves the right to table a request for recusal to a subsequent Planning Board meeting, thus allowing the Board Member sufficient time to develop a response to the applicant's request. For further details regarding Requests for Recusal, please refer to Section 78-12 of the Town Code.

9. ~~Form of Submittals~~

- ~~a. Each application for Site Plan Review or Subdivision approval shall be submitted in a binder so that loose papers are not mislaid.~~
- ~~b. Numerical tabs in the binder shall mark and separate each exhibit to simplify reference during the meeting. The number of the tab shall be the same as the number for the exhibit listed on the checklist.~~
- ~~c. The applicant shall submit ten 24"x36" copies of all engineering, architectural, and/or survey related exhibits, unless another size is deemed acceptable by Planning Staff. One plan set shall be used for display during meetings and for use by the public, and one shall be kept as a secure file copy. The Public Works Director, Code Enforcement Officer, and Town Attorney shall each receive a copy, and the remaining five copies shall be distributed to each member of the Planning Board for their review. Any waivers requested shall be numbered as for the corresponding exhibit, tabbed and inserted in the corresponding tab in the application binder.~~
- ~~d. To clarify the nature and location of existing features, site plans shall include both "before" and "after" drawings.~~
- ~~e. All submittals and contact with the Planning Board must be made through the Planning Department. Such submittals will subsequently be distributed by the Planning Department to Board Members. No Board Member shall receive plans, phone calls, electronic mail, or any other form of communication that is related to a project directly from an applicant under any circumstance.~~
- ~~f. The Planning Board, may at its discretion, and with consultation with Town staff, allow applicants to submit digital files of application materials on media suitable for use on personal computers in lieu of copies required under subpart 9.e., above.~~

As the order was reorganized, it was easier to strikeout the entire section and rewrite - see section #10 Submittals below.

10. Submittals

- A. Applications shall be submitted in binders so that loose papers are not mislaid.
- (1) Numerical tabs in the binder shall mark and separate each exhibit to simplify reference during the meeting.
 - (2) The number of the tab shall be the same as the corresponding number for the exhibit listed on the checklist.
 - (3) Any waivers requested shall be numbered as for the corresponding exhibit, tabbed and inserted in the corresponding tab in the application binder.
 - (4) Follow up documents (revision and/or addition) shall be on three hole-punched paper, dated, with the number of the corresponding exhibit per the checklist.
- B. An electronic copy and ten paper copies in binders of the application and of all documents to be reviewed by the Planning Board shall be submitted to the Planning Director or designee. Copies will be distributed as follows:
- (1) Public copy for public use;
 - (2) Master copy for the official record;
 - (3) Staff;
 - (4) The remaining seven copies for the Planning Board.
- C. The applicant shall submit a minimum of four large-format (24" x 36") copies of all engineering, architectural, and/or survey related exhibits. The Planning Director or designee may request an additional six copies if deemed necessary. Large-format plan sets shall be used as follows:
- (1) Public copy;
 - (2) Master copy;
 - (3) Staff (and used for display during the meeting, if necessary); and
- D. To clarify the nature and location of existing features, site plans shall include both "before" and "after" drawings.
- E. The Planning Director or designee will date stamp the first page of all applications and new exhibits when submitted.
- F. The Planning Director or designee shall provide the applicant a written receipt.
- G. The Planning Director or designee shall schedule the application for Planning Board review as required by LUO §125-61 if they find the application to be substantially complete.

- H. All applicant submittals and contact with the Planning Board must be made through the Planning Director or designee. The Planning Director or designee will subsequently distribute such submittals to Board Members. No Board Member shall receive plans, phone calls, electronic mail, or any other form of communication that is related to a project directly from an applicant under any circumstance.

11. 10. Substantial Completeness

- A. "Substantially Complete" means that, in the professional judgment of the Planning Department Director or designee, all of the exhibits required by the LUO Land Use Ordinance are included in the application; and that they it provides the information (including waiver requests) reasonably needed by the Planning Board and Department to make its decision regarding completeness and for the TRT to submit capacity statements, and if a submittal waiver is requested, that the subject of the waiver is not applicable to this particular application.
- (1) If upon submittal an application is found to be incomplete, the Planning Department Director or designee shall inform the applicant of the missing information and shall not place the application on the agenda.
 - (2) Once an application is found to be substantially complete, ~~the Planning Staff shall place the application on the agenda.:~~
 - ~~(a) Return the application to the applicant for use in making the required copies for submittal as outlined below.~~
 - ~~(b) The applicant will prepare and provide to the Planning Staff ten copies of the full application in binders with tabs, together with ten copies of all large-format exhibits.~~
 - ~~(c) Staff will date stamp the first page of an application when it is first submitted and each new exhibit submitted after the initial submittal. This will enable Staff to determine the last submitted version of an exhibit under review.~~
 - ~~(d) The Planning Department shall provide the applicant written receipt by electronic mail and schedule the application for Planning Board review as required by LUO §125-61~~
 - (3) Should an applicant disagree with the Planning Director's or designee's decision that ~~his/her~~ their application is incomplete the applicant may be heard by the Planning Board to determine the appropriate course of action. If an applicant disagrees with a decision made by the Planning Board, the applicant can appeal the decision to the Board of Appeals as provided by LUO §125-103.

Included in section #10 Submittals.

12. 11. Public Review of the Record

The following procedure is established:

- A. Public copy - A full copy of ~~one of the~~ each application ~~binders~~, along with any large format exhibits, will be available to the general public for review in the planning office-Planning & Code Department.
- B. Master copy - ~~Another~~ A full copy of each application ~~binder~~, along with ~~and one~~ copy of any large format exhibits, will be maintained in a secure file to which only staff has access.
 - (1) Members of the public wishing to review the ~~secure copy~~ Master copy must file a citizen's "Right to Know"Law request with the Town Manager as provided by state law and will be supervised by staff as they review the file.
 - (2) A record of public access requests granted will be maintained in the file.

13. 12. Documentation of the approved plans

- A. The day after Planning Board approval of ~~a site plan or subdivision an~~ application:
 - (1) Planning Staff will stamp the first page of the ~~secure file~~ Master copy with a date stamp, reading "Approved."
 - (2) ~~All~~ The large format copies of the plans will be placed in the Master copy will be: a file in the planning office.
 - (a) ~~They will be~~ Date-stamped "Approved" as outlined above.
 - (b) ~~They will be numbered consecutively and indexed for rapid retrieval.~~
 - (c) ~~They will be~~ Treated as secure.
 - A. ~~Members of the public wishing to review the secure copy will have to file a citizen's "Right to Know" law request as provided by state law.~~
 - B. ~~They will be supervised by staff as they review the documents.~~
 - C. ~~A record of public access requests granted will be maintained in the file.~~

Unnecessary - repeat from #12.B

14. 13. Late submittals

- A. The Planning Director or designee shall not accept submittals past the established deadlines in the meeting schedule.
- B. The submittal of exhibits during a Planning Board meeting, is strongly discouraged, since it ~~may~~ does not allow sufficient time for review by the Board, the Planning Director, the TRT, and interested parties and ~~staff review~~ and confuses the meeting record.

- C. The Planning Board may hear and discuss the ~~plan~~ new information submitted at a meeting; however, they are not obliged to act on any matter pertaining to the newly submitted ~~document~~ information at that ~~evening's~~ meeting. This is done in order to allow the Board, the Planning Director, TRT, Staff, and interested parties ample time to review a project.
- D. Any exhibits submitted after the established deadlines in the meeting schedule ~~the initial substantial completeness determination by the Planning Staff~~ shall:
- (1) Be dated and ~~C~~ontain a statement that they void any previous submittal in conflict therewith;
 - (2) Be complete as required by the Land Use Ordinance and Board rules;
 - (3) Clearly show how they differ from the original submittal;
- E. When new exhibits are accepted by the Board during a meeting, ~~time will be taken to:~~
- (1) A copy shall be provided to all members of the board (seven) and three copies for staff, one of which shall be stamped the exhibit "Received and Date Stamped" and be inserted in the Master copy so that the record is clear as to which version was received last and/or ultimately approved.
 - (2) Time will be taken to Rreview the submittal to make sure that it is complete as required by LUO Land Use Ordinance and Board rules.
- F. If it is determined that a late submittal does not meet requirements of the LUO Land Use Ordinance or Board rules, the Board will shall pass a motion to that effect which clearly states the reason for the finding.

15. 14. Planning Staff Report

- A. The Planning Staff Director or designee is required to review each ~~and every~~ development application to assure its substantial compliance with the Land Use Ordinance, Municipal Code, Planning Board rules, Comprehensive Plan and other adopted Town plans.
- B. The Planning Staff Director or designee is to write the Board a report for each development application stating that the application is substantially complete, whether the application meets the requirements of the Land Use Ordinance, Municipal Code, Planning Board rules, Comprehensive Plan and other adopted Town plans and outlining areas where, in the Director's or designee's professional opinion, additional information should be requested, waivers could be granted or better planning techniques would be beneficial.
- C. ~~In addition,~~ The Planning Staff Director or designee and members of the TRT, are is encouraged to offer his/her their professional opinions and make recommendations for ways in which the development application can better

comply with the Land Use Ordinance, Municipal Code, Comprehensive Plan and other adopted Town plans.

D. It is not the intent of these rules to dilute the role of the Planning Board in any way since:

- (1) The ~~Planning Staff's report is only advisory~~ to the Board is advisory;
- (2) The Land Use Ordinance is very specific in some areas - these are the areas in which ~~the Planning Staff~~ can make preliminary determinations;
- (3) Other Land Use Ordinance areas are discretionary – these are the areas where staff should clearly defer to the Planning Board;
- (4) In all instances, the Board is free to override or reverse a staff recommendation ~~of the Planning Staff~~ since the Board is charged by law with making the final decision.

16. 15. Effective date

A. All applications considered by the Planning Board shall meet the requirements of these rules.

B. Public notice of changes shall be given by:

- (1) Advertising the availability of these rules in a newspaper of general circulation, and
- (2) Posting a copy of these rules for thirty days:
 - (a) In the Planning Department office;
 - (b) On the bulletin board of the Municipal Building;
 - (c) On the Town of Bar Harbor web site; and
 - (d) ~~and B~~by making copies of these rules available for distribution in the office of the Planning & Code Department. ~~office.~~