

Meeting Minutes — Bar Harbor Planning Board
Wednesday, August 3, 2022 — 4:00 PM
Council Chambers — Municipal Building — 93 Cottage Street

I. CALL TO ORDER

Vice-Chairperson Joseph Cough called the meeting to order at 4:00 PM. Planning Board members present were Vice-chairperson Cough, Secretary Millard Dority, and members Elissa Chesler, Ruth Eveland and Zachary Soares. Planning Board member Earl Brechlin was absent, and the seventh seat on the seven-member Board is presently vacant.

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

II. ADOPTION OF THE AGENDA

Secretary Dority moved to adopt the agenda. Ms. Eveland seconded the motion, which then carried unanimously (5-0).

III. EXCUSED ABSENCES

Secretary Dority noted that Mr. Brechlin had notified the Board by writing in advance of the meeting that he would not be attending due to a death in the family. Mr. Brechlin's absence was understood to be excused, without the need of a vote on the matter.

IV. PUBLIC COMMENT PERIOD

The Planning Board allows up to 15 minutes of public comment on any subject not on the agenda nor on a pending application before the board, with a maximum of 3 minutes per person.

Vice-Chairperson Cough opened the public comment period at 4:01 PM. As no one present indicated a desire to speak, the public comment period was subsequently closed at 4:01 PM.

V. APPROVAL OF MINUTES

- a. July 6, 2022

Secretary Dority moved to approve the minutes of July 6, 2022. Ms. Eveland seconded the motion. Ms. Chesler said she had watched the video of the meeting and read the draft minutes but as she was not present at the July 6, 2022 meeting she did not intend to vote. The motion then carried without opposition (4-0), with Ms. Chesler abstaining.

V. ELECTION OF OFFICERS

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

Vice-Chairperson Cough turned the meeting over to Assistant Planner Fuller to begin this agenda item. Assistant Planner Fuller looked to see if there were any nominations for chairperson.

Mr. Cough nominated Mr. Dority as chairperson. Ms. Chesler seconded the nomination. Mr. Cough moved to cease nominations. The motion for Mr. Dority as chairperson then carried unanimously (5-0), on a roll-call vote.

Chairperson Dority asked for nominations for vice-chairperson. **Ms. Chesler nominated Ms. Eveland. Mr. Soares seconded the nomination.**

Mr. Cough nominated Mr. Brechlin, *in absentia*, for vice-chairperson. There was no second to that nomination. Hearing no other nominations, Chairperson Dority closed nominations and proceeded to a vote on the nomination of Ms. Eveland as vice-chairperson. The motion then carried, 4-1, on a roll-call vote, with Mr. Cough opposed.

Vice-chairperson Eveland nominated Ms. Chesler as secretary. **Mr. Soares seconded the nomination. Hearing no other nominations, Chairperson Dority closed nominations and proceeded to a vote. The motion for Ms. Chesler as secretary carried unanimously, 5-0, on a roll-call vote.**

VI. REGULAR BUSINESS

a. Public Hearing and Compliance Review for Site Plan SP-2022-02 — Bar Harbor Community Solar

Applicant/Owner: Bar Harbor Community Solar, 6 Balsam Circle, New Harbor, Maine 04554

Application: To develop a large-scale (10.5 acres) ground-mounted solar energy system providing approximately 1.99 megawatts of power to the electrical grid.

Location: Off of Knox Road (Tax Map 220, Lot 67), encompassing a total of ± 57.5 acres, according to town tax records

District: Town Hill Rural District, Shoreland Limited Residential and Resource Protection Code Enforcement Officer Chamberlain left the staff table as this agenda item came up, as she is a noticed abutter for the project.

Mr. Cough asked if the Board might entertain an amendment to the agenda regarding visual aids, although he said he recognized that the agenda had already been adopted. Chairperson Dority asked whether that could be discussed in Item VII, Other Business. Mr. Cough said yes, it could.

Chairperson Dority noted that the solar project was at the public hearing part of the Planning Board process and explained the order of operations for those in attendance. Chris Byers and Rebecca Stanley of the Biodiversity Research Institute were present to represent the applicant.

Mr. Byers gave an overview of the project and went through a slideshow. He said he wanted to start from the beginning for the benefit of anyone in the public who had not been following the project through the whole review process. Solar projects are “fairly low-impact,” said Mr. Byers, and the Maine Department of Environmental Protection does not view such projects as having a major issue in terms of impervious surfaces. He explained some of the ways solar projects can be installed, including posts, conduit placing, equipment pads, site prep, fencing and vegetation.

Mr. Byers then moved on to a description of the project site, including the road, wetland areas and area of disturbance. “We’ve balanced the site to be able to avoid impact as much as possible within vernal pool areas,” he explained. There is a wetland of special significance off the property to the north, said Mr. Byers; no trees will be cleared past a certain northern limit. There will be a gate where first responders can get into the property if necessary. Overhead lines connect to the powerlines on Knox Road from the pad along a road to the project. The exact number of poles will be determined later, he said, but estimated it will likely be around 10 poles.

There is no need for a large substation, said Mr. Byers. “If nobody knew there was a solar project back here they would never know there was a solar project off this access road,” he said. “It will look like power lines that just simply went to somebody’s house or business down that road.”

Mr. Byers noted some changes since the initial plans, including a southwestern project limit changed along the property lines of abutters on Lupin Way and Fern Meadow Drive. The array and tree clearing limit have been shifted to now leave 85 feet of existing, uncut tree buffer. The applicant held another neighborhood meeting last week, and Mr. Byers spoke about that meeting.

Sarah Stanley’s property will have the most visual impact, said Mr. Byers. She would see the panels themselves, not just a clearing. “We were pleased with the result of what existing vegetation remains,” said Mr. Byers, noting that Ms. Stanley was present and could speak to her sense of the changes. The applicant will still do a vegetative buffer, Mr. Byers said, and per the third-party review by Sebago Technics will include more trees than originally planned.

Mr. Byers went through some of the due diligence the company had gone through. A full wetland delineation and vernal pool survey had been performed, he said. Agencies consulted included the Maine Department of Inland Fisheries and Wildlife, the Maine Natural Areas Program and the Maine Historic Preservation Commission.

A visual impact assessment looking at the project from a 3- and 5-mile radius, as well as from on top of Cadillac Mountain, had also been performed. “We just know this is a sensitive neighborhood and region because of Acadia National Park especially,” said Mr. Byers. Someone with a large telescope or binoculars could see poles from on top of Cadillac, he said, but

otherwise there would be no visual impact. There may be visual impact at certain times of year to a nearby Maine Coast Heritage Trust property, Mr. Byers said.

The project is required to meet the Department of Environmental Protection's Chapter 500 stormwater standards, said Mr. Byers. No stormwater will leave the project area, he explained: "The DEP would not let us have water running off into the marsh or into the vernal pools. The idea is the site treats itself."

The project also includes a "wildlife enhancement plan" with bird and bat boxes and a pollinator-friendly seed mix. The fence will be elevated six inches to allow small mammals to pass below.

Mr. Byers noted some minor site plan updates (of which staff was informed prior to the meeting). Chairperson Dority asked whether the public had a chance to look at the additional information that came in after the deadline. The answer was no, they had not.

Vice-chairperson Eveland asked whether it was minor corrections or changes. She said she was not comfortable with accepting anything deemed substantive. There's a difference between minor changes and corrections, said Secretary Chesler. Chairperson Dority asked whether the Board was okay with proceeding. "I think it's a slippery slope," said Secretary Chesler.

Mr. Byers said they're mostly changes to the legend, other than the addition of silt fence to the plan around the project perimeter, which was requested. The others were discrepancies of what the legend shows and what was shown on the plan. Chairperson Dority asked if any Board members objected. Hearing no objections, the Board then proceeded with its review of the plan.

Typically, said Mr. Byers, silt fence is depicted during the construction drawings, but as it was suggested by a third-party reviewer and the applicant decided to submit it. It is required by the Land Use Ordinance to be part of the package, said Chairperson Dority. Mr. Byers went through the legend changes for the benefit of the Board and any members of the public following along.

Chairperson Dority opened the meeting to questions from the Board. None were raised. Mr. Byers continued with his presentation. Some at the neighborhood meeting asked whether this project could be more "connected" to the island community. Mr. Byers said community members (and anyone else in Versant territory) could subscribe to the project. Mr. Byers said the owner of the project has also committed to making a \$20,000 donation to the Island Housing Trust (to be issued prior to the start of construction). Mr. Byers said he had come to understand, during his six months of working in Bar Harbor, how important affordable workforce housing is.

Chairperson Dority opened the meeting to any further questions from the Board. Mr. Cough said he appreciated the donation to Island Housing Trust on a personal level but that as a Planning

Board member he hated to see it become part of the discussion. "I resent the inclusion of this," he said. "And I worry for the future, because of that kind of disclosure that somehow that should be entered into our record." He said he was saying this more for the benefit of future applicants. "I don't want to see this again," he said, as far as presentations go. Chairperson Dority noted that the Board could not prevent a person from saying anything, but said he heard Mr. Cough's point.

Chairperson Dority opened a public hearing at 4:37 PM. Eben Salvatore, a resident, stood up to speak. "I've never shown up to the Planning Board with a check," he said. "That really felt uncomfortable. I don't know if that becomes a factor now, how you decide if [the application] meets the ordinance, but to wave the money around, I think, is a little off note." Mr. Salvatore said the phrase "community solar project" suggests community support, "and I haven't seen that yet." He said he thought the project was a "mistake" and "should never have happened."

Matt Bartlett, a resident of Lupin Way, said he was there as a resident and that he agreed with Mr. Salvatore. Mr. Bartlett said the project "does not belong in neighborhoods," and that he hoped "we start looking at this ordinance going forward so this does not happen again." Mr. Bartlett said he hoped this does not happen at another location in Bar Harbor, because there is a need for housing and this project and others like it take away from potential housing projects.

Chairperson Dority asked Mr. Bartlett whether there was anything the applicants could have done that would have made him feel better about the project, other than reducing the project size further or not doing it entirely. Mr. Bartlett said he appreciated the outreach Biodiversity Research Institute had done and also knew that they are working for a client. He cited his displeasures with the ownership of the project, and said, "As far as what they could have done better for the neighborhood? I'm going to be honest: Don't put it in."

Perry Moore, a resident of the Crooked Road, spoke about stormwater. DEP does not treat the panels as impervious surfaces. "That's a political decision, not a site-planning issue," said Mr. Moore. "§125-67 L. [of the Land Use Ordinance] makes no exemption for solar panels as an impervious surface. Their model does not include it. In my estimate, the DEP and other regulatory agencies have passed the buck to you guys to deal with the stormwater." It's one thing to put panels in a field with established sod, said Mr. Moore, and another to try and establish sod in the shade of solar panels on a north-facing slope. "I don't think it's going to work," he predicted. Mr. Moore felt the project should be submitted with panels as impervious surfaces. "Just because DEP doesn't want to look at it doesn't mean it's not a real thing," he said. "Just because it's a policy matter for DEP that does not mean this Board has to just roll over and accept it." He reiterated that the applicant needed to meet the standards of §125-67 L.

Lawrene Donnelly of the Crooked Road said she agreed with Mr. Moore. "I'm very concerned about clearing all that forest, especially on a slope... I don't think we're going to have a great lawn there. It's just not going to work out. Also, the \$20,000 sounds like a bribe to me."

Seeing no other commenters, Chairperson Dority closed the public hearing at 4:43 PM. Mr. Soares asked the Board and staff where public comments fit into this process. He referred to Chapter 31, Boards, Committees and Commissions, Section 122-B in particular, which states, "The Board shall consider staff reports, capacity statements, consultant reports, and citizen comments when making decisions." Mr. Soares said he was "trying to figure out how we use this information from the community," as well as "how the Comprehensive Plan factors into this."

Chairperson Dority asked whether Mr. Soares had heard anything from the public that made him question whether the application meets the standards. Yes, said Mr. Soares, about stormwater.

Chairperson Dority reminded Mr. Soares there was a third-party expert who came and gave the Board information on stormwater. Mr. Soares said he understood but asked what Board members should be looking for in public comments. "There are opinions," he said, "and I'm just looking for clarification from the staff and from the Board on that."

Mr. Cough said the Comprehensive Plan, in his mind, can be used in a couple of ways: to guide future growth, directing the Board in its deliberations and its desires to allow or not allow things in certain zones. "It's my experience that the Comprehensive Plan can say anything you want it to say," said Mr. Cough, adding that it's "about the most ambiguous document I've ever seen." But, he said, it is supposed to help the Planning Board guide future ordinance amendments.

The Comprehensive Plan, Mr. Cough continued, is not, "a guiding principle, in my mind, to our deliberations." Those who come up to present may or may not give the Board information related to the project, said Mr. Cough. The hope is that any application should be judged on the rules at that time, not the potential rules in the future, said Mr. Cough.

"My biggest problem with the project, really, is the restoration plan," said Secretary Chesler. "Once you cut down all those trees you're not going to get those trees back." But the Board must look at whether this conforms to the standards in the Land Use Ordinance, she acknowledged. There is some ambiguity around "plant species suitable to the area," she said, referring to language in the Land Use Ordinance. She asked what that specifically meant, and how precise was the term "area" meant to be. She said cutting that clearing to create the space for the solar system is an allowed use, so that can be done. "But can you then undo it? Can you decommission it and get back what you lost?" she asked. "The answer is no. That's not practical to do, it's not possible to put those trees back, and so it's really a question of how you interpret this revegetation aspect of the decommissioning plan."

Vice-chairperson Eveland said her struggle was to try and attend to as much as possible, given that this is the first time through this kind of project (solar). The first time after the town passes an ordinance there are always things that could be done better, she said. Regarding revegetation, she said she recalled reading somewhere that originally the subject space was field, several generations ago, and not wooded. She said it could return to being wooded in the future, even if it took time. "It doesn't solve the immediate problem for the neighbors who have grown to appreciate the wooded space," she acknowledged. She recounted her own experience of having neighbors cut down a number of really old trees next door. "We had no control over it, we really missed the trees," she said. "It was their property, they got to make that decision." She said there are limitations to what the Planning Board can "override," and again turned an eye to the future.

Vice-chairperson Eveland said it was frustrating, after the Board has dealt with a project for months, to have concerns brought up at the last minute (which she said happens often). She said if the concerns had been brought up earlier there would have had more time to do research into the concern. For this particular application, at this stage, however, she said "I don't feel I have enough information to feel that I can override the professional opinion that's been given to us."

Vice-chairperson Eveland moved to approve the application SP-2022-02 Bar Harbor Community Solar per the decision dated August 3, 2022, as it meets the standards of the Bar Harbor Land Use Ordinance sections 125-67, 125-68, and 125-69 Z. with the following conditions of approval:

- 1. The following information shall be provided and satisfactory to the Code Enforcement Officer prior to the issuance of any building permits:**
 - a. Approval of the performance guarantee by the Town Manager to include the decommissioning plan, updated on 7/13/22, dated stamped received 7/14/2022 by the Town of Bar Harbor in the amount of \$187,952 for the decommissioning of the project pursuant to §125-69 Z., subsections 6, 7, and 8; and Article IX, Performance Guarantees, and per §125-69 Z., subsection 8V, and as stated in the decommissioning plan the final assurance for decommissioning must be transferred with the development if it is sold.**
 - b. Per Article IX, Performance Guarantees and §125-98 Plant Maintenance Guarantee, the applicant will provide a performance guarantee approved by the Town Manager in the amount of \$5,000, 10% of the value of all living plantings along Lupin Way and Fern Meadow Drive, as required under §125-69 H., to be retained for three years.**
- 2. The CEO shall prohibit any tree clearing activities during the months of June and July to decrease the risk of impact to wildlife such as bats, and with the following modification of standards:**
 - 1. §125-67 D., Utilities: Utilities will be placed overhead; and**

2. **§125-67 E., Parking areas and driveways: To minimize the impact to wetlands, the access will be 16-foot wide instead of 18-foot. This is supported by §125-68 B. (8) and by the Deputy Fire Chief.**

Mr. Cough seconded the motion. Discussion followed. Mr. Cough referred to Secretary Chesler's point on the decommissioning and subsequent growth; he said it could be taken to the extreme "of saying that would kill any project... That will doom every solar project that comes before us," said Mr. Cough. He said that is not what the intent was.

Mr. Soares said he was new and that while he appreciated Mr. Cough's comments, he was still having trouble understanding how all these issues factored in (public comment, the comprehensive plan, etc.). "Our job is to make sure this application meets the standards of the Bar Harbor Land Use Ordinance," said Chairperson Dority. "It doesn't matter whether we like it or whether we don't like it." The solar ordinance passed through the Board and the public, he said, and "our job is to make sure this [application] fits that."

"No ordinance is perfect the first time around," said Chairperson Dority, and there may be changes necessary in the future. He said he struggled with the judgment call between trees sequestering carbon and solar panels that allow us to stop using fossil fuels. Then on top of that, he said, is the question of affordable housing, which he said he saw as a crisis.

Chairperson Dority said he thought the applicant had made a mistake for mentioning the planned \$20,000 donation during the Planning Board meeting and said he wished they had not done it.

The bottom line, said Chairperson Dority, is that the town has a Land Use Ordinance that allows this project to happen. Secretary Chesler agreed with Chairperson Dority that the applicant had done a "great job" working with neighbors, and said that as it stands, the project meets most of the ordinance standards, if not all of them. If this were presently a field it would be easy to restore to a field, she said, but it's largely conforming to the ordinance, which has some deficiencies that were noted during discussions on it. **The motion to approve the project as made by Vice-chairperson Eveland and seconded by Mr. Cough then carried, 5-0, on a roll-call vote.** Mr. Cough thanked the applicants for working with the neighbors.

b. Sketch Plan Review for SD-2022-05 — Salvatore Subdivision

Applicant: Eben Salvatore, 123 Eden Street, Bar Harbor, Maine 04609

Owner: Heirs of Judith Strout, P.O. Box 36, Hulls Cove, Maine 04644

Application: Split Tax Map 228 Lot 34 encompassing ±17.7 acres into two lots — one lot will be 13.3 acres and the other lot will be 4.4 acres. Also, part of the subdivision is Tax Map 228 Lot 34-2 (now 2.31 acres) which was originally part of Tax Map 228 Lot 34 (the parent lot).

Project Location: 21 Russell Farm Road (Tax Map 228, Lot 34), encompassing a total of ±17.7 acres.

Districts: McFarland Hill Residential, McFarland Hill Rural, Shoreland Limited Residential and Resource Protection

There was discussion at the beginning about why this project needed to come for subdivision review in the first place. Mr. Moore, representing the applicant, said that the project area is 20 acres, not 17 acres. Mr. Moore gave an overview of the project and explained why the acreage had changed; he said he would encourage his client to hold a neighborhood meeting.

Mr. Moore asked, “because this [application] is so simple,” if the process could be streamlined, and whether, if the applicant could get in all materials, that a public hearing and completeness review be scheduled for the same meeting. There was discussion about whether that had been done before. Chairperson Dority asked whether the Board had any questions about the application itself. None were raised. “It was pretty straightforward,” said Secretary Chesler.

Chairperson Dority asked whether the Board would be comfortable holding completeness review and public hearing in the same meeting, likely in October. Secretary Chesler asked a procedural question. The Board had scheduled completeness and public hearing once a completeness review had been held (i.e., continuing and finishing a completeness review if there were any items initially missing), said Code Enforcement Officer Chamberlain, but she didn’t know whether this precise configuration had been done — of doing both, for the first time, in the same meeting. There was a discussion about deadlines and noticing of the public.

Mr. Cough noted he employs Mr. Moore on some of his projects. That has been noted in the past, he said. He asked if the Board could make a motion on this. The Board found for a different project that Mr. Cough did not need to recuse himself.

Secretary Chesler moved that Mr. Cough did not have a conflict of interest and could remain. Mr. Soares second the motion. The motion then carried unanimously, 4-0, on a roll-call vote (Mr. Cough did not vote on the motion).

Chairperson Dority said he would confer with staff regarding scheduling. More discussion on scheduling followed. Mr. Cough and Secretary Chesler both had concerns about scheduling the two components simultaneously (completeness review and public hearing) but were willing to hold a special meeting, if needed, to expedite the schedule for the applicant.

Mr. Cough moved to schedule a special meeting for October 26, 2022. Mr. Cough withdrew his motion after Chairperson Dority noted a separate motion on waiver requests was necessary first.

Chairperson Dority moved to act on submission of waiver requests for SD-2022-05 Salvatore Subdivision at the completeness plan review meeting as this is pre-application, the applicant has no vested rights, and as the Board has provided guidance to the applicant on the waiver requests. Vice-chairperson Eveland seconded the motion, which then carried unanimously 5-0, on a roll-call vote.

Chairperson Dority moved to have staff schedule a site visit. Vice-chairperson Eveland seconded the motion. The motion passed unanimously 5-0, on a roll-call vote.

Assistant Planner Fuller asked whether the Board had held the public comment period required under sketch plan review.

Chairperson Dority opened the meeting to public comment. As no one present indicated a desire to speak, the public comment period was closed.

Mr. Cough moved to schedule a special meeting for October 26, 2022. Following a comment from Code Enforcement Officer Chamberlain, Mr. Cough amended his motion to have staff work out a workable schedule with the applicant to hold a special meeting on October 26, 2022 or thereabouts. Chairperson Dority seconded the motion. Vice-chairperson Eveland was reluctant to nail down a specific time without going through staff processes. The motion then carried, 5-0, on a roll-call vote.

c. Completeness Review for Site Plan SP-2022-08 — JAX Childcare

Applicant/Owner: The Jackson Laboratory (JAX), 600 Main Street, Bar Harbor, ME 04609

Application: The proposed project is to construct a new childcare center to serve JAX employees. The wood-framed, single-story building is designed to be approximately 6,800 square feet and will serve approximately 53 children and 20 staff. The proposed facility will be constructed adjacent to Parking Lot A at the southerly end of campus in a currently undeveloped area. The project includes a fenced outdoor play space and a drop-off loop with ten parking spaces.

Location: The property is located 600 Main Street/Route 3 and known as Tax Map 253, Lot 7. The parcel encompasses a total of ±21.16 acres, according to town tax records.

District: Scientific Research for Eleemosynary Purposes

Secretary Chesler recused herself, as she has done in the past, as she is employed by The Jackson Laboratory. With her departure, the voting membership of the Board was reduced to four (4) members.

John Fitzpatrick, senior director of facilities for the lab, and Sarah Nicholson of Woodard & Curran were present to represent the applicant. Mr. Fitzpatrick thanked staff and the Board for

their time and gave an overview of the project. The second most-pressing issue behind housing for many staff members, said Mr. Fitzpatrick, is daycare for children: “We see childcare as really an essential part of our retention and recruitment strategy.”

Mr. Fitzpatrick said the lab has more than 125 jobs open in Bar Harbor it is trying to fill, and on-site daycare is an attraction to new employees. Many jobs have been open for quite some time. As proposed, the lab will not operate the proposed facility but will subcontract operations to Downeast YMCA, which manages the Beechland Road childcare facility in Ellsworth on behalf of the lab. Lab families would have priority, but if there is excess capacity it will be opened to the public. Ms. Nicholson gave an overview of the project with regard to site development.

Vice-chairperson Eveland asked whether employees working off-site would be able to access the childcare. Yes, said Mr. Fitzpatrick. Vice-chairperson Eveland asked whether the playground space would be open to the public; no, replied Mr. Fitzpatrick. Vice-chairperson Eveland asked how long it would take to reach capacity. Mr. Fitzpatrick said based on information available to the lab, there’s likely demand of between 40-50 children, he said, which is why the facility is sized to 53. Changes in Maine law that may drive mandatory pre-school could reduce demand, he noted. Mr. Cough asked whether, in opening spaces to locals, would they be able to stay, even if future demand from lab employees grew? “Once they’re in, they’re in,” said Mr. Fitzpatrick.

Chairperson Dority noted that no public comment period was required, but he asked whether anyone would like to speak on this. Eben Salvatore came up to speak. At the last Town Council meeting it was suggested the Town Council should ask for a traffic study given the traffic generated by the lab already; Mr. Salvatore said “it would be nice if the applicant would offer that.” He also said it was “too bad” that the facility was not being sited at the YMCA in Bar Harbor, as originally/previously planned. The applicant said it had already provided traffic data.

Vice-chairperson Eveland moved to grant the waivers requested for application SP-2022-08 JAX Childcare, as such waivers will not unduly restrict the review process, are inapplicable, unnecessary, or inappropriate for a complete review. Mr. Soares seconded the motion, which then carried unanimously, 4-0, on a roll-call vote.

Vice-chairperson Eveland moved to find the application SP-2022-08 — JAX Childcare incomplete per the Bar Harbor Land Use Ordinance §125-66 because of the following missing information: capacity letters from Fire, Wastewater and Public Works Departments; Maine DEP Site Location of Development permit amendment, Maine Department of Transportation driveway permit amendment and Fire Marshal approval, and to schedule a public hearing on September 7, 2022. Mr. Cough seconded the motion. Ms. Nicholson noted that the required applications had been submitted to both the Department of Environmental Protection and Department of Transportation. She asked for clarification that

those items could be included as conditions for final approval, and Board members said they could and would be. **The motion then carried unanimously, 4-0, on a roll-call vote.**

Chairperson Dority thanked the applicant and said it was a “good application” and noted that childcare is “so needed” in the community.

Secretary Chesler rejoined the meeting at this time. With her return, the voting membership of the Board returned to five (5) members.

[Note: the correct number for the application below, Red House Farm subdivision, is SD-2022-01. Although the agenda item and the motions made for the following agenda item referred to SP, as in site plan, application 2022-01, that was a mistake and they were in fact supposed to be for SD, as in subdivision, application 2022-01.]

d. Completeness Review for SP-2022-01 Red House Farm Subdivision

Applicant/Owner: Finback on Cottage, LLC, C/O Michael Boland, P.O. Box 10, Bar Harbor, Maine 04609

Application: To subdivide a 27-acre lot into three (3), two-acre, single-family lots with a fourth, 21-acre lot to be retained by the owners.

Project Location: 16 Hadley Point Road (Tax Map 202, Lot 58), encompassing a total of ±27 acres.

Districts: Salisbury Cove Corridor and Salisbury Cove Residential

Greg Johnston was present to represent the applicant. He gave a brief overview of the project. Chairperson Dority asked whether the Board had any questions. No questions were raised.

Chairperson Dority opened a public comment period. No one from the public was present to comment, and the public comment period was subsequently closed.

Vice-chairperson Eveland moved to grant the waivers requested and to add 6 C, sewer, to the list of waivers for application SP 2022-01 — Red House Farm Subdivision, as such waivers will not unduly restrict the review process, are inapplicable, unnecessary, or inappropriate for a complete review. Secretary Chesler seconded the motion, which then carried unanimously (5-0) on a roll-call vote.

Vice-chairperson Eveland moved to find the application SP 2022-01 Red House Farm Subdivision incomplete, per the Bar Harbor Land Use Ordinance §125-66, because it is missing capacity letters from the Fire and Public Works departments and to schedule a public hearing on September 7, 2022. Secretary Chesler seconded the motion, which then carried unanimously (5-0) on a roll-call vote.

e. Completeness Review for SP-2022-07 Bluenose Inn

Applicant: Bluenose Inn, 90 Eden Street, Bar Harbor, Maine 04609

Owner: Lafayette Bluenose LLC, 155 Littlefield Ave, Bangor Maine 04401

Application: The construction of a new four-story hotel building (±9725 square feet footprint) in the approximate location of the former Bluenose Inn structure that burned in February 2022. The new hotel will have 21 suites.

Project Location: 90 Eden Street (Tax Map 101, Lot 21), encompassing a total of ±4.65 acres, according to town tax records

District: Bar Harbor Gateway

John Kenney of DuBois & King, Charlie Early from Lewis + Malm Architecture, and Logan Lafayette and Fred Lindsey of the Bluenose Inn were present representing the applicant. Mr. Kenney gave an overview of the project, which is intended to replace a 45-room occupancy hotel that burned down earlier this year. The applicant would like to replace that with roughly the same footprint in the same location with a 21-suite facility. Mr. Kenney walked the Board through the plans, including stormwater and parking.

Chairperson Dority opened the meeting to questions. Vice-chairperson Eveland asked about occupancy for suites. They're designed for couples, said Mr. Kenney. Is this only short-term, or are there extended stays? asked Vice-chairperson Eveland. Mr. Lindsey, general manager of the Bluenose Inn, said that if guests want to stay for a month at a time the inn would accommodate that.

Vice-chairperson Eveland asked about a section on the plans labeled winter storage. That's just for things that need to be taken out of the rooms for winter storage, said Mr. Lindsey.

Chairperson Dority asked whether Cleftstone was a private road. It is, said Mr. Kenney. Chairperson Dority asked whether there was a site plan showing the entire property; the boundary survey shows the entire property. Lot coverage will be submitted with future materials, said Mr. Kenney.

Secretary Chesler asked whether the parking figure was based on the total property or just the new structure being built and whether the distinction was clear on plans. "We were looking at just the new area," said Mr. Kenney, keeping all parking that was there before. Since it's considered a single lot the Board needs the information for the other side of the road as well, said Chairperson Dority.

Secretary Chesler moved to grant the waivers as requested for application SP-2022-07 Bluenose Inn, as such waivers will not unduly restrict the review process because they are inapplicable, unnecessary or inappropriate for a complete review. Mr. Cough seconded the motion. The motion then carried unanimously, 5-0, on a roll-call vote.

Secretary Chesler moved to find the application SP-2022-08 Bluenose Inn incomplete, per the Bar Harbor Land Use Ordinance §125-66, because it is missing capacity letters from the Fire and Public Works departments and Fire Marshal approval, and to schedule a public hearing on September 7, 2022. Vice-chairperson Eveland seconded the motion. Assistant Planner Fuller noted that there was a typo in the motion and that it should read SP-2022-07. Secretary Chesler amended her motion. Vice-chairperson Eveland amended her second.

Mr. Early came up to speak. He said the Lafayette Group would like to make it possible, with the Board's approval, to begin construction this fall. They can't do that without the Fire Marshal's approval. As soon as the room type is nailed down, said Mr. Early, "then I'll know how to finish my drawings."

Vice-chairperson Eveland asked what was meant by the staff comments on energy codes. Deputy Code Enforcement Officer Mike Gurtler explained that the state made significant updates to its energy codes. There are residential and commercial sections of those codes; each offer different paths for compliance. Knowing which path the applicant will want to take will make it easier to evaluate the plans, said Mr. Gurtler.

The motion to find the application incomplete and to schedule it for a public hearing then carried unanimously, 5-0, on a roll-call vote.

VII. OTHER BUSINESS

a. Comprehensive Plan update - Elissa Chesler

The Committee is mostly focused on outreach at this point, said Secretary Chesler. There will be two in-person community forums at different locations on separate evenings to gather community inputs. Those are planned for the fall. Draft material will go to the full committee within the next few months. Chairperson Dority thanked Secretary Chesler for the update.

b. Removal of two-thirds majority requirement update

Assistant Planner Fuller gave some background on this issue. This originated with the Town Council last fall; the Planning Board first took it up on December 1, 2021 and voted unanimously to schedule a public hearing January 5, 2022. That public hearing was held on January 5, 2022; at that time the Board voted to table/continue the public hearing until the February 2, 2022 meeting. No action was taken at the February meeting other than closing the public hearing. On February 15, 2022, the Town Council tentatively scheduled a public hearing for August 16, 2022. It will be before the Planning Board in September for a recommendation, explained Assistant Planner Fuller, and will be on the November ballot for residents to vote on.

Assistant Planner Fuller noted that two separate citizens' petition Land Use Ordinance amendments, one regarding cruise ships and the other regarding retail marijuana stores, will also be before the Planning Board for recommendations (whether to approve or not) in September.

Secretary Chesler asked if the petition on retail marijuana stores is new/different from the one voted on by the town in June. It's been reworked, explained Assistant Planner Fuller, who also noted that in addition to the Land Use Ordinance amendment there is also a separate licensing ordinance that is proposed (intended to work in concert with the Land Use Ordinance petition).

c. Visual aids (added at the request of Mr. Cough)

Mr. Cough said he was told that he needs to be an advocate for his vision problems. Although he was reluctant to share this publicly, Mr. Cough said at present it is very difficult for him to look at anything on a white piece of paper. "It is important for me to speak out for others, and to provide the mechanisms so that they might read things a little easier," he said.

Some people have color rods that don't work, he said. Software allows for people to view things on different backgrounds and colors. He asked the Board to consider, perhaps on the next agenda, that anything submitted to the Planning Board be submitted electronically in PDF format (the most easily manipulated type of file format he was aware of). If someone can take the time to send it to a printer, he said he was told, they can send it electronically.

Presentations can easily be distributed electronically, and should also be sent to the Board, Mr. Cough continued. Presentations should be sent for everybody to look at ahead of time, he said, given that they're public: "There should be very little that we're surprised by." Mr. Cough hoped the Board would look at this as a reasonable accommodation for future members of the Board and the public. Beyond Planning Board, he said he believed this should be raised as an issue and implemented for every board and committee: "It's a very simple step to help some folks out."

Assistant Planner Fuller said he appreciated what Mr. Cough said and said staff have been asking applicants for everything that is submitted to be submitted electronically. He said applicants have been very responsive to that request, as they are generally creating printed materials from a PDF (as Mr. Cough had noted earlier), and said staff would continue to look for ways to expand this.

Staff has been excellent at fulfilling my requests as I make them known, said Mr. Cough, especially as my needs have changed. He requested putting it on the agenda for next meeting.

Secretary Chesler said while this may be necessary for Mr. Cough at the present time, she said she thought it would make it a lot easier for a lot of people in the community to review materials.

VIII. BOARD MEMBER COMMENTS/SUGGESTIONS FOR THE NEXT AGENDA

Vice-chairperson Eveland followed-up on an item in the minutes from July about whether there was any registered farmland in Bar Harbor. "It's been fruitless so far," said Assistant Planner Fuller; no one he'd reached out to as of yet had a record of any land registered under that specific program. Advice was given to him that the Registry of Deeds would need to be given the name of a specific property owner to find out whether a given piece of land was registered farmland.

Vice-chairperson Eveland asked that the Board not lose sight of looking at, and talking about, how the solar requirements in the Land Use Ordinance might be tweaked or improved before another application is submitted — a debriefing around this issue. Assistant Planner Fuller said a discussion might be slated for the October agenda, as the September one was already rather full.

Secretary Chesler asked for an update on the town's housing efforts, ordinance changes related to that and also new developments on that front in state law (i.e., LD 2003). She asked for an update on the status of the Board's work plan and what might still be able to be worked on.

IX. REVIEW OF PENDING PLANNING BOARD PROJECTS

Staff was not aware of any other new projects in the pipeline, although Planning Director Gagnon was not present to confirm that.

X. ADJOURNMENT

Secretary Chesler moved to adjourn at 6:34 PM. Vice-chairperson Eveland seconded the motion. The motion carried unanimously, 5-0.

Minutes approved by the Bar Harbor Planning Board on September 7, 2022:

9/14/22
Date


Elissa Chesler, Secretary, Bar Harbor Planning Board