

Bar Harbor Planning Board
Wednesday, August 5, 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 4:02 PM.

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

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

II. ADOPTION OF THE AGENDA

Chair St. Germain noted there had been changes made to the agenda after it was initially published. Assistant Planner Steve Fuller explained that both of the items under Regular Business had been removed, at the request of the respective applicants, prior to the meeting.

Mr. Eleftheriou moved to adopt the agenda, with the removal of agenda items 7A and 7B, both as requested by the applicants to table those items. Vice-chair Cough seconded, asking that an agenda item be added to discuss the board's next steps with regard to density. Mr. Eleftheriou said he was okay with that addition. The motion then carried, 5-0, on a roll-call vote.

Chair St. Germain recognized Mr. Dority as a new member of the Planning Board, noting that he served on the board previously. Mr. Dority recounted his past service, noting that his first meeting was in front of 200 people on a hot-button topic. He said he served for between eight and ten years total. "Whenever they were, they were fun," said Mr. Dority.

III. EXCUSED ABSENCES

There were no absences.

IV. PUBLIC COMMENT PERIOD

Chair St. Germain opened the public comment period at 4:06 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 at 4:07 PM.

**Call to order
at 4:02 PM**

**All five board
members present**

**Four town staff
members present**

**Changes to agenda
explained**

**Agenda, minus
items 7A and 7B, w/
addition of density
discussion:
APPROVED, 5-0**

**M. Dority welcomed
as new (returning)
member of board**

No absences

**No comments from
the public**

V. APPROVAL OF MINUTES

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

Mr. Eleftheriou moved to approve all three sets of minutes, from June 3, 2020; June 10, 2020; and July 8, 2020. The motion was seconded by Vice-chair Cough. The motion then carried, 4-0, on a roll-call vote. Mr. Dority abstained as he was not on the board at the time.

Minutes of June 3, 2020; June 10, 2020; and July 8, 2020: APPROVED, 4-0 (M. Dority abstains)

VI. ELECTION OF OFFICERS

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

Chair St. Germain noted the elections were occurring later than normal this year, but noted that this year was not a normal year.

T. St. Germain elected chair, 5-0

Vice-chair Cough nominated Chair St. Germain as chair and Mr. Eleftheriou seconded the motion. The motion carried, 5-0, on a roll-call vote.

Mr. Eleftheriou nominated Vice-chair Cough as vice-chair and Ms. Brooks seconded the motion. The motion then carried, 5-0, on a roll-call vote.

J. Cough elected vice-chair, 5-0

Mr. Eleftheriou nominated Ms. Brooks as secretary; Chair St. Germain seconded the motion. The motion carried, 4-1, with Ms. Brooks opposed.

E. Brooks elected secretary, 4-1 with E. Brooks opposed

Ms. Brooks was informed by Planning Director Gagnon that she did not have to accept the nomination. Ms. Brooks said she felt as though Mr. Eleftheriou was passing the torch and said she would step up to the task.

Staff notes E. Brooks does not have to accept, she is OK with it

VII. REGULAR BUSINESS

- ~~a. **Completeness Review for 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 structure to contain eight TA-2 units and two year round dwelling units. This new building would be the third residential building on the subject parcel.~~

Completeness Review for SD-2019-05, Crossing at Townhill (Removed from agenda)

Note: Removed from the agenda at the request of the applicant and confirmed by a vote of the board.

~~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.~~

Note: Removed from the agenda at the request of the applicant and confirmed by a vote of the board.

Mr. Eleftheriou asked why the Jackson Laboratory application had been tabled; Planning Director Gagnon replied that, “They’re thinking about certain things; they’re looking at present and future and they just pulled it.”

VIII. OTHER BUSINESS

a. Chapter 31 (Boards, Committees and Commissions)

Planning Director Gagnon gave the board an overview of the documents they were provided. She noted that the board had discussed, in the past, having seven members — five full members and two alternates.

Alternate members would have to meet the same expectations as regular members, she continued. They would be expected to attend meetings and would be able to participate, discuss and question. They would not, however, be allowed to vote unless a regular member was missing, in which case an alternate member would sit in for that regular member.

The benefit of this, said Planning Director Gagnon, is that it would give a chance for someone to gain experience on the board. “It takes a while,” she said, “to really understand what’s going on.” In the event a full member elected not to do another term, it would allow the board to bring an alternate up to fill that position (if necessary), as opposed to potentially bringing in someone totally new.

The Town Council would be encouraged to find such alternate members but would not be mandated to fill the positions, she added, if suitable candidates could not be found. There would also be an emphasis, Planning Director Gagnon continued, on having a judicial mind, rather than limiting the positions to those in development-related fields, such as engineering, architecture and construction. This would allow suitable candidates to gain the relevant experience and familiarity with the Land Use Ordinance necessary to sit on the board, she said.

~~Completeness Review for PUD-2020-02, Schooner Head Housing (Removed from agenda)~~

Question about lab’s application, M. Gagnon answers

Review of Planning Board section of Chapter 31 (Boards, Committees and Commissions)

M. Gagnon explains proposal for alternate members

Chair St. Germain said that his understanding was the Town Council could make this decision on their own and asked if the documents were being presented to the board as a courtesy. Planning Director Gagnon said yes, she was coming to the board for its endorsement. The Rules of Procedure, she continued, are a “sister document,” which must also be adopted by the Town Council, but the board is “driving” those as well. “I think that your comments and input would go a long way for the Council when they look at that,” she added.

Planning Board’s role in process at this point in time

Vice-chair Cough asked for clarification as to who had made what changes and who approves what. Planning Director Gagnon referred to the end of Chapter 31, Article IX, Planning Board, §31-133 “Bylaws (Rules of Procedures)”, where it stated “bylaws may be adopted and amended only by the Town Council.” Both documents are adopted and amended by the Town Council, she said. Assistant Planner Fuller said he understood Vice-chair Cough’s question to be who had made the changes in front of the board for its review, and Planning Director Gagnon said she had. But she noted the Council adopts the documents.

J. Cough asks who made what changes and when

Chair St. Germain asked if the board was expected to vote on the matter that day; Planning Director Gagnon said while not necessarily required a vote “would be nice” in terms of lending support. She said it would be up to the board as to how to proceed.

Mr. Dority recalled that board membership was seven full members when he was there and asked how five members had been working more recently. Vice-chair Cough said there could be a quorum issue, and that the board could have difficulty getting to four if the positions can’t be filled. He said he did have an issue with discussion and input from two alternate members, which he worried could send the wrong message to applicants and the audience. He said he’d feel more comfortable with alternates being involved in the conversation as members of the audience, rather than as members of the board.

J. Cough expresses concerns about possible problem with alternate members on board

Chair St. Germain said he thought Vice-chair Cough’s concerns were valid. Chair St. Germain said he remembered that in the past, alternate members of the Board of Appeals often weren’t even present at meetings. Vice-chair Cough said he thought that if applicants were interested in serving on the Planning Board they should attend meetings and get on the agenda mailing list.

Board discussion ensues

Mr. Dority said he didn’t recall it being a planned decision to decrease membership from seven to five and that it had just happened because no one wanted to serve on the Planning Board. Mr. Eleftheriou asked whether the idea of having alternate members had already been discussed; Assistant Planner Fuller said he believed it had been, perhaps last fall, but that he would have to check the minutes. Mr. Fuller recalled the board voting favorably on the idea.

B. Eleftheriou recalls Planning Board previously endorsing concept of alternate members

Mr. Eleftheriou said he didn’t feel it would be a bad idea to have an alternate, but proposed that the alternate be required to stick with an application from start to

finish and be well-versed in the ethics and rules and procedures in case they were called up to serve as a voting member. He said he thought that would help address Vice-chair Cough's concerns.

Planning Director Gagnon said she understood what Vice-chair Cough was saying, and laid out the "two trains of thought" on having alternate members. There are boards in which alternates don't get to sit with the board unless a member is recused, absent or sick and they are asked to. The way the rules are written, she said, alternate members chosen to sit for a member would continue participating in the review of a project until it's approved or closed.

M. Gagnon responds to concerns voiced by J. Cough

Planning Director Gagnon continued that if the board wanted the alternates to be ready they should be given a chance to participate. She said it could be made very clear when alternates were acting as alternates or as full board members, including through the use of nametags that identify their specific role at a particular time. She said if the board wanted alternates to be prepared to serve, the alternates need to have opportunities in order to get experience.

M. Gagnon advocates for having alternates who can participate and discuss projects

Chair St. Germain wondered who would want to be the "second in line" alternate. He said he felt Vice-chair Cough's concept of encouraging attendance at meetings would be "more likely." Planning Director Gagnon said the Town Council would not be required to appoint alternates, and said again that she did hear the concerns mentioned by Vice-chair Cough.

Assistant Planner Fuller, in reply to Vice-chair Cough, said he believed all the changes in the document before the board were initiated by Planning Department staff and were being brought to the Planning Board for a first look before being brought to Town Council for consideration and possible approval. Planning Director Gagnon confirmed that was correct. There was a discussion as to whether changes on the document were tracked historically and to what extent.

More discussion of who made what changes and when; M. Gagnon made these changes

Vice-chair Cough said he didn't feel there was a rush to bring the document to the Council and that the Planning Board should review it further. Mr. Dority said he felt Vice-chair Cough was giving "too much credit" to the applicant for a possible ability to manipulate the board's schedule, given the process, and possibly determine what members reviewed which applications. He said an applicant would have to be "pretty savvy" to try and do such a thing.

More discussion of J. Cough's concerns

Vice-chair Cough said he realized his idea might sound conspiratorial, but said he felt it would be inappropriate for the board — which is a quasi-judicial board — to have input from alternate members who aren't voting. They might have valuable input, he said, but he felt it would be potentially problematic.

Planning Director Gagnon asked if the board would like to have a joint workshop with the Town Council. Vice-chair Cough said no, he felt the Planning Board should decide what it wants to do, though not necessarily at this meeting. Chair

Question about joint workshop with Town Council

St. Germain said he agreed that the Planning Board should consider this for the next meeting and not make a final decision at this meeting.

Mr. Dority asked whether the board should give Planning Director Gagnon direction about what members wanted for additional information in order to make a decision. He said he was not sure what the delay was, or what more the board needed for information.

Ms. Brooks asked whether there was interest in non-voting positions. Planning Director Gagnon said no, “nobody’s knocking at the door to be a Planning Board member,” but in the current situation with five members, if one is absent or recused, an applicant must have three out of four votes in order to get approved. Having two alternates, said Planning Director Gagnon, would be preferable for applicants, who would always have a chance to have five voting members. It would also build knowledge and understanding among alternates.

Planning Director Gagnon said she could write two sections that would fall under Chapter 31, Article IX, Planning Board, §31-125 B. The first option would stay as is, with the alternate members participating in all discussions, but a second option could be written in which the alternate members would not participate.

The idea, she said, is to build knowledge in junior members. Without having the alternates participate, she said, they would not build knowledge, in which case it would perhaps be best not to have alternates at all. She said one of the alternates could be designated as the senior alternate, to avoid any concern about games being played by an applicant as referred to earlier by Vice-chair Cough.

Answering a previous question from Mr. Eleftheriou, Assistant Planner Fuller said that the minutes from the August 7, 2019 showed that the board voted, 3-0, in favor of directing staff to establish two alternate Planning Board member positions. He said he saw what Planning Director Gagnon was proposing as following-up on that vote.

Mr. Eleftheriou said that if the board needed more time to digest this proposal he had no problem with that. “If you can find two people,” he said, “more power to you.” He said he would welcome more input. He asked which alternate would have seniority and how that would work. Planning Director Gagnon said that if two alternate members were appointed simultaneously, the Town Council would have to decide which would have seniority; otherwise, it would be the person with the most seniority (whoever had served the longest).

Chair St. Germain clarified a rule mentioned by Mr. Eleftheriou regarding meeting attendance. The rule, he said, is that a member cannot miss more than 75 percent of the meetings. Planning Director Gagnon said she did not write the language but believed that the intent of the wording is that members attend 75

M. Dority asks what else board needs to weigh-in on this

M. Gagnon again advocates for having alternates with ability to participate

M. Gagnon says she could write in two different options: alternates who can participate, or ones who cannot

S. Fuller confirms board endorsed alternate members in August of 2019

B. Eleftheriou OK with taking longer to decide on this

Question about seniority

Discussion about attendance rule

percent of meetings. She said she should rewrite that current language; “25 percent is kind of ludicrous,” she said.

Chair St. Germain proposed waiting for a subsequent meeting to make a determination on the proposed changes. Mr. Eleftheriou and Ms. Brooks agreed; Mr. Dority said “reluctantly” it was fine to wait because others wished to.

b. Planning Board Rules of Procedure

Planning Director Gagnon discussed some of the proposed changes in the document. Number 5 reflects that the board now meets once per month. Number 6, Meeting Schedule, proposes that the board set the schedule for 18 months ahead of time, which would be helpful for developers. The changes also include the role of the Technical Review Team, including number of copies. In the section regarding “Request for Continuance,” she said seven business days is more realistic to send out the appropriate notifications. Five days, she said, is just not sufficient. She spoke about replacing the “Form of Submittals” section with another section simply called “Submittals.”

Planning Director Gagnon said the schedule that staff ask the board to adopt each December is not just the calendar with meeting dates but also submittal and revision deadlines, along with others (TRT meeting dates, for example), so everyone is informed about what is going on. Some of the changes reflect the request of staff that applicants not submit last-minute changes; but if materials are submitted, a certain number of copies must be provided and the board has the right to not consider the information at that meeting, particularly if it’s a large volume of information. She said the number of copies reflected the proposed seven-member board and that those figures would have to be changed if the board opted to not have any alternate members (five regular members only).

Vice-chair Cough asked about the number of copies needed as outlined in Section 10, Submittals. He asked if the number of copies mentioned there, along with other pieces, aligned with the Land Use Ordinance. Planning Director Gagnon consulted with Code Enforcement Officer Angela Chamberlain, who said that yes, the numbers aligned/complied with the Land Use Ordinance.

Chair St. Germain said many applications seemed to be held up by capacity statements and asked if they could be required on a “more timely” basis. Planning Director Gagnon said that capacity statements are submittal requirements and that sometimes the necessary information comes in sometime between completeness and compliance. When a cursory review is done for completeness, she explained, the quality of information is not judged, as that is a decision for the board. She said staff are aware of the importance of it, but if a department head feels he or she does not have enough information, she can’t force them to issue a capacity statement.

M. Gagnon suggests changing current attendance rule

Board will tackle this topic later

Review of Planning Board Rules of Procedure (bylaws)

M. Gagnon reviews and explains the proposed changes

Question about number of copies needed for submittal

Discussion about capacity statements

Chair St. Germain asked if this document, like the one before it, could be considered at a future meeting. Planning Director Gagnon said that could be hard to do if it comes at the end of a long meeting, and that she worried members might not be interested in diving into it at the end of a three-hour meeting. In that case, she said, a workshop might be more appropriate.

Discussion about tackling this at a future date

c. Discussion on density — Planning Board’s next steps

The board moved on to a discussion of density, as requested by Vice-chair Cough. He said it was an issue that had been brought up repeatedly. Vice-chair Cough said in his view, density is the crux of the housing issue. He said in his opinion it should have been done before the discussion on vacation rentals, as it may have answered a lot of questions, but the board didn’t get to it.

Discussion on density, next steps

J. Cough explains why he feels this is an important issue

Chair St. Germain asked if Vice-chair Cough wanted to discuss area per family and minimum lot size at the same time or separately. Vice-chair Cough said he was fine with that but did not specify which choice he meant. He said there had also been a discussion about setbacks and whether it mattered in some zones if you have a percentage of lot coverage. If the goal is to create more housing, he said, then if the setbacks are met maybe the board could increase the percentage that could be covered. Chair St. Germain summarized it as an all-of-the-above approach, which Vice-chair Cough agreed with.

Chair St. Germain said he welcomed scheduling a workshop to “really dig our teeth into it.” Ms. Brooks said she agreed. “I think it’s time for that,” she said. Vice-chair Cough said he liked the idea of a workshop as an easier way to have a more open discussion, one that was not necessarily agenda-driven.

Board expresses support for workshop on density

J. Cough motions for staff to schedule a workshop

Vice-chair Cough moved to ask staff to put a date on the calendar for a workshop as soon as convenient.

Planning Director Gagnon asked if the board wanted to continue with the Zoning Advisory Group (ZAG) model. Vice-chair Cough said he was dismayed at the presentation that he said relied on the ZAG results over the Planning Board results. He said he would prefer that the Planning Board take a shot at it first and make a decision on the ZAG later. Vice-chair Cough he said he was not pleased that the Planning Board’s recommendations were “tossed aside and not followed-up and not supported.”

M. Gagnon asks about using a ZAG

J. Cough expresses frustration w/ ZAG

Planning Director Gagnon said vacation rentals are an “extremely hot button” issue in every community, and said she didn’t believe using vacation rentals as an example of how the ZAG model works was the right choice. She noted the Town Council had met the day before and directed staff to work on solar, and said staff hoped to do this through a ZAG. The Town Manager also has asked staff to start on addressing hurdles to development (per the Housing Policy Framework) pertaining to dimensional requirements in the Land Use Ordinance,

M. Gagnon expresses concerns about balancing competing interests

she said, and start with a roundtable discussion with developers. Planning Director Gagnon said she was confused and conflicted about how to proceed.

Vice-chair Cough said he understood her comments and the chain of command. He said the Planning Board is simply charged with trying to enact ordinances that are consistent with the town's comprehensive plan.

Planning Director Gagnon said she feared that not working in unison with the Town Council and others would be counterproductive. Vice-chair Cough said he agreed but said he felt as though working in unison was critical to the recent presentation to the Town Council but that he didn't see that. He said he saw elements came from both the ZAG and the Planning Board, and that whatever happened to work was chosen and that he didn't appreciate the approach.

Ms. Brooks seconded Vice-chair Cough's motion.

Chair St. Germain said he felt it was worthwhile to put opinions out on the table for consideration and discussion. The dimensional requirements, he said, are particularly appropriate for the Planning Board to take up, given that the board has seen how those play out in applications in relation to density.

Chair St. Germain said he was not convinced the Planning Board was acting in unison with the Town Council and that the Council did not appear to take what the Planning Board said "in the spirit that it is given."

Mr. Eleftheriou said he felt there was value in hearing the public on the front end, at the beginning of the discussions. He said he would prefer to listen to staff and the board on the back end, rather than the ZAG "as gospel." There is value in hearing the public's ideas and thoughts, he said, but many don't have the institutional knowledge of staff and the Planning Board, and it might be more valuable to hear them (staff and board members) at the back end.

Chair St. Germain noted that Vice-chair Cough's motion had been moved and seconded. **The board voted and the motion carried unanimously, 5-0, on a roll-call vote.**

Chair St. Germain said he was facing a severe shortage of employees at his business currently and asked if it would be possible to have a workshop during daytime hours. All other members said that would be okay.

Mr. Eleftheriou suggested that at the workshop the board offer input on the ZAG model and how the board would like to proceed with it going forward.

Vice-chair Cough said he would be happy to have that discussion, although he said he was not sure who has authority on the ZAG, one way or another. He

M. Gagnon expresses concern about not acting in unison w/ Town Council, board members respond

E. Brooks seconds J. Cough's motion

T. St. Germain offers his thoughts, expresses frustration with Town Council

B. Eleftheriou offers his thoughts, how best to get input from public and others

Motion to schedule density workshop: CARRIES, 5-0

Call for workshop during daytime hours

Board OK with having future discussion on ZAG

remembered Planning Board members being asked for their opinion on it but wasn't sure if it was under the board's umbrella.

Planning Director Gagnon asked if it would be more constructive to have a workshop with the Town Council to iron out some of the issues raised during this discussion. "This puts me in a really, really difficult position," she said, and added that there seems to be conflict and misunderstanding between the Town Council and the Planning Board. That must be resolved, she said, and avoiding it won't solve anything.

M. Gagnon suggests joint workshop w/ Town Council

Chair St. Germain said there was already a workshop scheduled (Planning Board-only). He asked for the board's opinion. Ms. Brooks said she did not feel such a workshop would be productive at present. Vice-chair Cough said it might be a good idea, after the Planning Board nails some things down first.

Board members respond to M. Gagnon's suggestion

Chair St. Germain said that in order to comply with the schedule set by the ordinance, the board must have a procedural vote on the proposed vacation rental Land Use Ordinance amendment. He asked if that would be at the board's first meeting in September. Planning Director Gagnon said yes, and laid out the procedure. She said that, according to the town's attorney, the Town Council can modify the proposed amendment at its public hearing and then make a decision as to whether it moves forward. The next step would be for the Planning Board to make a recommendation, "ought to pass" or "ought not to pass."

Discussion of possible upcoming votes on Land Use Ordinance amendment regarding vacation rentals

Chair St. Germain summarized the dates, and suggested that the Planning Board get together with the Town Council after that vote.

Ms. Brooks and Vice-chair Cough said that sounded good to them. Vice-chair Cough suggested that it would be best if it happened after the Planning Board's vote and before the town-wide vote on November 3.

Motion to have joint workshop with Town Council to discuss planning issues, after Sept. 3: CARRIES, 5-0

Vice-chair Cough moved to ask staff to try to work out a date for a joint workshop with the Town Council to discuss planning issues, no earlier than Sept. 3. Ms. Brooks seconded the motion, which then carried unanimously (5-0) on a roll-call vote.

VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

None.

None

IX. REVIEW OF PENDING PLANNING BOARD PROJECTS

Planning Director Gagnon mentioned The Crossing at Town Hill and said the applicant (Paul Weathersby) is struggling to determine what type of units to propose (dwelling units, transient accommodations or a combination thereof). She said the board would likely see the application next month. She mentioned

M. Gagnon reviews status of pending projects

the Maller/MacQuinn subdivision application and said she wasn't sure what was going on with The Jackson Laboratory's proposal.

Mr. Eleftheriou asked if the Town Council discussed a timeline for solar issues in the ordinance; Planning Director Gagnon said they were eyeing getting something on the ballot in June of 2021.

X. ADJOURNMENT

At 5:23 PM, Vice-chair Cough moved to adjourn the meeting. Mr. Eleftheriou seconded, and the motion carried unanimously (5-0) on a roll-call vote.

Minutes approved by the Bar Harbor Planning Board on September 2, 2020:

9/10/2020



Date

Erica Brooks, Secretary, Bar Harbor Planning Board

B. Eleftheriou asks about timeline for solar, M. Gagnon says June 2021

Meeting adjourned at 5:23 PM, 5-0