

**Meeting Minutes**  
**Bar Harbor Planning Board**  
**Wednesday, January 5, 2022 at 4:00 PM**  
Meeting conducted remotely, via Zoom

---

*Under the Board's Remote Participation Policy (adopted 9/29/2021), the January 5, 2022 Planning Board meeting was conducted fully remotely (via a Zoom webinar) due to the urgent issue of the continuing COVID-19 pandemic and the declarations of a public health emergency by both the US and Maine departments of Health & Human Services.*

*Members of the public were able to view the proceeding by visiting the Town Hall Streams website (<https://www.townhallstreams.com>) and selecting "Bar Harbor" from the dropdown menu. Instructions on how to attend the Zoom webinar and offer comment during the January 5, 2022 Planning Board meeting were posted online, in advance of the meeting on December 30, 2021, at this address: <https://www.barharbormaine.gov/282/Planning-Board>.*

**I. CALL TO ORDER**

Chairperson Tom St. Germain called the meeting to order at 4:03 PM. Planning Board members present were Chairperson St. Germain, Vice-chairperson Joe Cough, Secretary Millard Dority, and members Ruth Eveland, Elissa Chesler and Earl Brechlin.

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

Those present as applicant representatives included Steve Salsbury, David Witham, Mike Roix, Jennifer Fisk, Greg Johnston, Chris Maller, Kay Stevens-Rosa and Steve Whitman.

**II. ADOPTION OF THE AGENDA**

**Ms. Chesler moved to adopt the agenda. Ms. Eveland seconded the motion. It then carried unanimously, 6-0, on a roll-call vote.**

**III. EXCUSED ABSENCES**

As all members were present, there were no absences to excuse.

**IV. PUBLIC COMMENT PERIOD**

Chairperson St. Germain opened the public comment period. Assistant Planner Fuller read the contact numbers for the Zoom webinar aloud and also displayed them on the screen via the screen share feature. No one indicated a desire to speak, and so the comment period was closed.

## V. APPROVAL OF MINUTES

### a. December 1, 2021

Secretary Dority said he had not yet had time to review the minutes and asked whether members would consider tabling them to the next meeting. Vice-chairperson Cough also said he had not had time to review them fully and would be okay with tabling the approval. Ms. Chesler and Ms. Eveland said they had had time to read them but said they would be fine with tabling them. **Secretary Dority moved to table the December 1, 2021 Planning Board minutes until the next regularly scheduled Planning Board meeting. Ms. Chesler seconded the motion. The motion then carried unanimously, 6-0, on a roll-call vote.**

## VI. REGULAR BUSINESS

### a. **Public Hearing for Proposed Land Use Amendment: Removal of the Two-thirds Majority Vote Requirement.** This amendment provides that a simple majority vote at Town Meeting is required to adopt a proposed amendment to the Land Use Ordinance, regardless of whether or not the Planning Board votes to recommend the amendment. This is a Town Council initiated proposed amendment.

Chairperson St. Germain noted anyone wanting to speak would be provided with a single, three-minute opportunity to speak and that he would be writing down questions. He noted the Board would not be taking a vote, but said he did want to give Board members a chance to share their thoughts and opinions on the proposal as a matter of course. Vice-chairperson Cough reminded the audience that any comments or questions should be directed to the chair.

Assistant Planner Fuller invited anyone in the Zoom webinar to use the “raise hand” feature if they wished to speak about this proposal. No one did so. Chairperson St. Germain said the Board had received between six and 10 emailed comments in advance of the meeting. The Board reads all the emails that come in, he said. While waiting to see if anyone in the public wanted to speak, Chairperson St. Germain asked if Board members wanted to offer their opinion on the proposal.

Secretary Dority said he had thought a lot about this and had hoped there would be a lot of public comment so as to gauge the public’s opinion. “I’m so conflicted over this one,” he said, and said he would appreciate an in-person Board discussion. “I just wonder what the connection is between a request for a change now, when it has been an established policy for so long,” he said.

Vice-chairperson Cough asked if Secretary Dority was asking for a continuance of the public hearing to the next meeting, when the Board could be together in person. Secretary Dority said that wasn’t his suggestion, rather just that the Board have a chance to talk about it face to face.

Ms. Eveland said she appreciated that members were being thoughtful. She said she supported making the change and had researched the issue, but had found “nothing terribly useful” in the historical record including Town Council minutes and newspaper articles. She noted that most of those involved in making the decision then were not around for Board members to consult with.

Ms. Eveland called the two-thirds threshold “undemocratic,” and said she did not favor putting a higher threshold on one specific set of concerns. She called the two-thirds threshold an anomaly and said it is “not the way I believe we should be making our decisions.”

Vice-chairperson Cough said he believed there are some issues that require the Planning Board to look at them with much greater detail than the Town Council does. It’s the Planning Board’s job to really delve into these issues and have a much better understanding, he said, and he said he could envision a lot of instances where taking this requirement away could be a big problem.

This was an effort to influence the Planning Board, Vice-chairperson Cough continued. If the Town Council wants to get rid of the threshold it’s their right to put it on the agenda, he said, but he said it seemed like if the Council really felt it was an important issue people would expect to see a greater majority of the Council voting in favor of it (rather than the 4-3 vote that occurred).

Mr. Brechlin said he’d thought a lot about where the threshold’s origins and that it was likely “seen as a check and balance.” But he said the feature also insulates people from the government they deserve, and that if people want to approve a bad idea then the town has to live with it. He noted that removing the two-thirds requirement would not prevent the Board’s recommendation from being put on the ballot, which is another way to influence voters. As long as that ability to print the recommendation is retained, Mr. Brechlin said, then it can be left for voters to decide.

Ms. Eveland agreed with Mr. Brechlin’s point about recommendations being printed on the ballot. She said she was at the meeting when the Town Council voted to advance this proposal, and she said it seemed to her that some of the councilors who voted against it did so because they wanted to have more information from the historical record and where it came from originally.

This proposal came after the events of the fall, said Chairperson St. Germain, referring to short-term rentals. He said it came from the same councilor who Chairperson St. Germain said led efforts to change the composition and voting capabilities of both the Cruise Ship Committee and the Task Force on the Climate Emergency, as well as to change the number of members on the Planning Board. Chairperson St. Germain said the same Town Council member also suggested Planning Board members should not have the independence to vote the way they wanted to.

Chairperson St. Germain expressed a concern that the Town Council was stripping power from other boards and committees and “taking it for themselves.” He said if he had been told, when he was interviewed for appointment to the Planning Board, that he was “going to have to toe the line to those who approved me,” he would have declined an appointment. He cautioned against the idea of a Board member who would “vote the way certain councilors want you to vote.” He noted the Town Council is specifically prohibited by the Town Charter from making changes, on its own, to the Land Use Ordinance.

Chairperson St. Germain said one Town Councilor who served on the most recent Charter Commission was in favor of requiring a two-thirds supermajority in order to make minor amendments to the LUO. He referenced an earlier lawsuit against the town in which it appeared that the Town Council suggested that the town’s attorneys argue in favor of the two-thirds

supermajority requirement for citizens' petitions (he said this was his understanding from reading the judge's decision in the matter). He elaborated on this, and said something has changed since that time in relation to the Town Council's position on the two-thirds threshold.

Ms. Chesler said she had thought a lot about the two-thirds threshold. She said it is part of a system of checks and balances that was put in place for a reason. She asked for clarification if the two-thirds threshold applies to citizens' initiatives, or if it is a simple majority in those cases. Recent history aside, she said, in some of those circumstances it is useful to require a two-thirds supermajority in order to protect against particular initiatives that may go against good planning. She said there are many instances in which members are asked to set aside individual priorities for the community's priorities; in some situations, even a slim majority of individuals may have priorities that are counter to the purposes of good planning and some of the types of things that are put in place to support community interests. "I think this does need to be thought about very carefully," she said. "This is not a decision to be taken lightly."

In most instances the individual voters should be given equal vote, Ms. Chesler said, but the purpose of proper planning and the purpose and role Planning Board need to be considered carefully. She said the discussion should be focused on possible scenarios rather than recent past decisions. She said there are many ways in which the Town Council can make appointments, and revoke appointments in the event of egregious behaviors, on any board or committee. As a result, she said, she found herself completely undecided and still open-minded on the issue.

In response to Ms. Chesler's question, Chairperson St. Germain said a vote by the Board not to recommend approval of a citizen's initiative does not trigger the requirement for a supermajority to gain approval. He referenced a previous citizen's initiative involving pier lengths, which he said the Planning Board had recommended against but which only required a simple majority for approval. He said a citizen's initiative only requires a simple majority for approval, no matter how town bodies such as the Planning Board may vote on it, in contrast to other LUO proposals. Chairperson St. Germain said a discussion could be had on whether citizens' petitions are equal to the normal course of action with public hearings among many different boards. There was more discussion on the previous petition about pier length, and what was required for that.

Chairperson St. Germain said part of the purpose of the traditional approach of making a Land Use Ordinance amendment is getting feedback, including positive or constructive feedback. He said he saw a long-term concern in going with a simple majority approach, in that people who want to change the Land Use Ordinance could go the citizen's initiative route particularly if they were worried about having to go before the Planning Board and not getting a favorable recommendation. "Oftentimes a proposal can be strengthened by going through the traditional route, and getting the feedback, working with the staff, working with each of the boards, and getting the approach done properly," said Chairperson St. Germain, who gave a personal example about seeking a zoning change in the Gateway district before he joined the Board.

Secretary Dority noted that the citizens' initiatives are an allowed path. "I wouldn't want to give the perception that a citizen's initiative, on its basis, is wrong," he said. "It's an option."

Chairperson St. Germain said it was a good observation, and that he agreed. He said there was great value, though, in having both the staff and the Board work with an party looking to make a change to the Land Use Ordinance. "It's very difficult to make a change and have each aspect of the Land Use Ordinance be properly changed," he said. "There are so many moving parts."

Vice-chairperson Cough said Ms. Chesler was right, in needing to look beyond the current environment. He recapped the current process, and said a single comment at a public hearing before the Town Council could result in a changed proposal that then comes back to the Planning Board for a recommendation. If that change is "untenable," he said, there's no recourse other than to still send the proposal to the ballot. He said one small change can ruin an ordinance.

Chairperson St. Germain said this may have arisen because the Planning Board and Town Council did not see eye-to-eye on short-term rentals. "I think that this is a reaction to that," he said, adding, "We should be cautious about doing things based on high emotions."

Ms. Eveland noted the town is about to tackle the Comprehensive Plan process. She said that should give the Board greater confidence that it has an understanding of what the community expects from it going forward. She said it should also help address and smooth out current concerns. She asked a question about the schedule for a vote on this proposal and when it might appear on a future town ballot.

Planning Director Gagnon noted the proposal came from the Town Council and was not a staff-initiated effort, and said she was not advocating for any particular course of action by the Planning Board. She went over the schedule for a proposal to get on the June 2022 Town Warrant, and said that if the public hearing were tabled or continued until the Planning Board's next meeting in February, the earliest it could be on the ballot would be November of 2022.

Vice-chairperson Cough said he did not like to be rushed into anything. He said he wasn't sure this was the right time to be dealing with this, with the Comprehensive Plan coming up and the recently filed lawsuit on the table that was filed after the short-term rentals vote. Vice-chairperson Cough also said he did not know Land Use Ordinance amendments needed to be dealt with this far in advance of the warrant and that he was "shocked" by that timeframe.

Secretary Dority said he had "no idea this was seen as such an urgent issue" and said he was not prepared to take action on the item that night. He said he would prefer to talk about it in person because it is such a personal subject. He spoke about the "tension between the Planning Board and the Council," and referenced the "therapy session" between the two held earlier which he said very little came out of in the way of reducing that tension between the two bodies. He said he appreciated the points that were made about recent Town Council actions, but said, "We may want to turn that magnifying glass around and take a look at ourselves, as well, and see what actions we may have taken or attitudes we've had that may have caused tension," he said. He said he did not think responsibility for the tension lay fully with either party.

Planning Director Gagnon reiterated her comments about process, and said the Planning Board was not required to take any action at that time (per 125-9 A. (4), and subsequent subsections).

Vice-chairperson Cough said the Board had to either close the public hearing, moving it on to the Town Council, or table it until the next meeting. Chairperson St. Germain said there was “no consequence” in continuing the hearing, thereby effectively moving the proposal to at least the November 2022 ballot. Assistant Planner Fuller noted there was someone wishing to comment.

Peter Miano, owner of 139 Bay View Drive, said he just bought property in Bar Harbor a year ago but was concerned by the proposal and its timing. He said it seemed to be a “bit too much of a coincidence” that it was coming on the heels of the recent short-term rentals vote, and argued that there are good reasons for keeping a supermajority rule like this in place and that to consider removing it required time. He said from what he had heard it seemed as if the Town Council was trying to “short-circuit the process,” and he urged the Planning Board not to let that happen.

Chairperson St. Germain explained the Board’s choices as he saw them: that he could close the public hearing, or someone could make a motion to table it and continue it to the February meeting. **Vice-chairperson Cough moved to table the public hearing until the Board’s next meeting in February. Secretary Dority second the motion. It then carried, 4-2, on a roll-call vote, with Ms. Eveland and Ms. Chesler opposed.**

**b. Public Hearing and Completeness/Compliance Review for Major Site Plan Application SP-2021-04 — Atlantic Oceanside Employee Housing (ELQ)**

**Project Location:** The property is located at 119 Eden Street, Tax Map/lots 101-001-000 and 101-002-000. The parcels encompass ±10.59 acres of land, according to town tax records. The subject land is in the Bar Harbor Gateway and the Shoreland General Development III zoning districts. The ELQ project is entirely located within the Bar Harbor Gateway zoning district.

**Owner/Applicant:** Witham Family, LLC, 215 High Street, Ellsworth, Maine 04605

**Application:** The construction of an Employee Living Quarter (ELQ) to house 16 employees on site at the Atlantic Oceanside Hotel & Conference Center. The building will be two stories with a separate living quarter on each floor, each with eight single bedrooms, one kitchen and two bathrooms.

Chairperson St. Germain said he owns property across the street from the project location and that he was recused at the last meeting. He turned his video and audio off for the remainder of this agenda item. **With Chairperson St. Germain’s departure, the voting membership of the board was reduced to five members and Vice-chairperson Cough took over as chairperson.**

Secretary Dority noted that the application first needed to be found complete as it was found incomplete at the previous meeting. Planning Director Gagnon took a moment to note which items were still missing and what their status was. She said the Highway Capacity letter had been received after the staff report and proposed motions were prepared. Secretary Dority ran the meeting while Vice-chairperson Cough went to retrieve some materials.

Steve Salsbury was present to represent the applicant. Also in the Zoom meeting were David Witham and Mike Roix of the Witham group. Mr. Salsbury gave a short presentation on the

project, including the site plan, landscaping and building. He thanked staff and said he was excited to bring forth the first employee living quarters project since the 2020 LUO change.

Mr. Brechlin asked a question about the drawings and an overhead door indicted on the east side of the building. The foundation will be walkout-style with a paved way to get to the door in question, said Mr. Salsbury, which will be used to access storage for the facility. Ms. Chesler said she was concerned about the visual impact from Route 3. "It's become sort of a pay-per-view situation at Frenchman's Bay," she said, adding that there is nothing in the LUO to protect that viewshed. She added that is a deficiency in the ordinance, and not in the proposed project.

**Mr. Brechlin moved to find the application SP-2021-04 Atlantic Oceanside Employee Housing (ELQ) complete, per the Bar Harbor Land Use Ordinance section 125-66, as the foundation plan, lot coverage by district, light fixtures and shielding, and building height detail have been submitted as requested by the Planning Board on December 1, 2021, and as the Fire Marshal approval will be considered by the Planning Board as conditions of approval. Ms. Eveland seconded the motion. The motion then carried unanimously, 5-0, on a roll-call vote (with Chairperson St. Germain neither voting nor present for this item).**

**Secretary Dority opened the public hearing at 5:12 PM.** Assistant Planner Fuller explained how the public could make comment on the proposal. As no one present in the Zoom meeting indicated they wished to comment, **Secretary Dority closed the public hearing at 5:13 PM.**

Secretary Dority said he was sick of seeing deer killed on Route 3; any plantings that would discourage deer from eating them and then running across the road would be good.

**Ms. Eveland moved to approve the application SP-2021-04 Atlantic Oceanside Employee Housing (ELQ) per the draft decision dated January 5, 2022, as it meets the standards of the Bar Harbor Land Use Ordinance sections 125-67 and 125-69 W. with the following conditions of approval: State Fire Marshal approval, and the construction of the pedestrian walkway no later than 18 months after this approval per Exhibit 1-i, page 1-6, in the application, and with the modification of standard for landscaping 125-67 H. (1)(f) and Table 1 for the reason stated in Exhibit 11 of the application. Ms. Chesler seconded the motion. It then carried unanimously, 5-0, on a roll-call vote (with Chairperson St. Germain neither voting nor present for this item).**

**c. Pre-Application Sketch Plan Review for SD-2021-05 Clark Acres Subdivision Modification Fisk Lot Line**

**Project Location:** 54 Gretas Lane (Tax Map 227, Lot 100), encompassing a total of ±12.08, acres according to town tax records, in the Town Hill Rural District

**Owner/Applicant:** Jennifer Fisk, 54 Gretas Lane, Bar Harbor, Maine 04605

**Application:** The applicant proposes a modification to the 1989 Clark Acres Subdivision, modified in 2020. The applicant proposes to split Tax Map 227, Lot 100, that encompasses ±12.08 acres, according to the town tax records, into two lots.

Presently there is a house and the Acadia Wood Kennel (a full-service pet care facility) on the parcel. The split will create a front lot of about 5 acres to include the

Acadia Wood Kennel and a back lot of about 7 acres to include the house. A 30-foot right-of-way, off the Crooked Road, will serve both lots.

**Chairperson St. Germain rejoined the meeting by turning on his audio and video. As such, the voting membership of the Board went back to six, and he resumed running the meeting.**

Jennifer Fisk was present and gave an overview of her application. She said she plans to retire and would like to split the lot into two parcels in order to be able to sell them separately. Secretary Dority asked about a sentence in the application that said no new lots were being formed and asked whether there were already two lots. Code Enforcement Officer Chamberlain answered it is one lot, being split to create one additional lot for a total of two. The sentence Secretary Dority asked about meant there were no new lots being created beyond the second one.

Vice-chairperson Cough asked under what conditions a lot in an existing subdivision can be divided, when Planning Board review of such a division is required and what needs to be supplied for documents when such a division is being reviewed. Unless there is a deed restriction that the lots cannot be divided, said Planning Director Gagnon, if an owner owns land and has enough to create multiple lots (with regard to minimum lot size) there is nothing prohibiting them from doing so. Staff also track this, she said. In this case, the property is part of the subdivision but does not use the subdivision road. It is accessed via a private road. If an owner is creating a new lot or lots which meet(s) the dimensional requirements and there is no deed restriction, there is nothing that prohibits them from doing so, said Planning Director Gagnon.

A discussion on subdivision law and municipal subdivision review requirements ensued, primarily between Vice-chairperson Cough and Planning Director Gagnon. It was noted that certain splits can be done without subdivision review under state law if it has been five years or more since the last split, but under the town's Land Use Ordinance splits such as this must come to the Planning Board for full subdivision review because a new lot is being created within the existing subdivision (see Bar Harbor Land Use Ordinance, 125-76 A.).

Vice-chairperson Cough asked about zoning for the property, with regard to the existing Acadia Woods Kennel. Chairperson St. Germain said it is an allowed use in the district.

Ms. Chesler asked why the specific division was being proposed, in regard to the size of the lots, and whether the applicant had considered making a smaller lot around the kennel to allow for multiple divisions. With the configuration of the property, said Ms. Fisk, you would never get the setbacks needed to further divide it. Ms. Chesler asked a question about subsurface waste systems. The house and kennel each have their own septic system and well, said Ms. Fisk.

Mr. Brechlin asked a question about a waiver regarding registered farmland. He asked if there was no registered farmland in Bar Harbor? Chairperson St. Germain said that was correct, that there was not, and Planning Director Gagnon elaborated on that and explained why that was.

Chairperson St. Germain opened the public comment period. Assistant Planner Fuller read the contact information and displayed it on the screen. No one from the public expressed a desire to make a comment on the application, and the Board moved on in its review of the application.



Chairperson St. Germain asked about any deed restrictions preventing a division such as this, and asked if the Board was basically looking for the absence of any such restrictions as demonstrated by the submission of the existing deed for the property. There was discussion on whether the deed had been submitted for this application, and it was determined that it had been.

Ms. Chesler wondered whether there needed to be a road maintenance agreement in place on the right-of-way for subsequent owners of the two lots. There would have to be, said Ms. Fisk, as the house has a deeded right-of-way on the current driveway. The Board then provided guidance to the applicant on submission of waiver requests.

**Secretary Dority moved not to 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, the Board would have to act again on the submission of waiver request at the completeness review meeting creating confusion, and as the Board has provided guidance to the applicant on the waiver requests. Vice-chairperson Cough seconded the motion, which then carried unanimously (6-0), on a roll-call vote.**

**Secretary Dority moved to have staff schedule a site visit. Vice-chairperson Cough seconded the motion, which then carried unanimously (6-0), on a roll-call vote.**

Deputy Code Enforcement Officer Mike Gurtler raised a point of order regarding the motion to table the public hearing in Item VI. a. and whether it complied with Robert's Rules of Order. He said he was not sure the motion to table the public hearing was in order. He said a motion to table is considered a subsidiary motion, and said there had not been a main motion on which to act. He said if it had been a motion to postpone to a date certain, that would also be subsidiary. He said he was also unsure any of this was an option in this case because opening and closing a public hearing is typically not done with motions, but rather with actions of the chairperson. He said if the Board did want to have a motion to act on it could move to close the public hearing (and then a subsidiary motion to postpone could be made, and then acted on).

Vice-chairperson Cough cautioned against closing the public hearing. Deputy CEO Gurtler said he was not advocating for closing the public hearing, but rather suggesting that the Board could not table or postpone something when there had not been an original motion made. He said there needed to be a principle motion in order for there to be a subsidiary motion to table or postpone.

Secretary Dority said he could make a motion to continue the public hearing. Chairperson St. Germain said what he heard was that if he, as chair, suggested continuing the public hearing, then a Board member could make a subsidiary motion to affirm that and continue the public hearing to the next meeting on February 2, 2022. Deputy CEO said he had not said that, but said he understood what the Board wanted to do: to keep the public hearing open and push it forward to the February meeting. He said someone could make a motion to close the public hearing, but that the Board would not need to vote on that if someone then made a subsidiary motion to postpone (which would be the motion to get voted on). Chairperson St. Germain asked how that could be done if the chairperson is the one who takes action to open and close a hearing. Deputy

CEO Gurtler suggested Chairperson St. Germain could take that action (continue the public hearing to another time) without any motion at all. Planning Director Gagnon said it would be important to specify a specific time and date, however.

Chairperson St. Germain said, "In case there's any confusion, tonight we have kept the public hearing open on the two-thirds majority rule discussion, and that public hearing shall be continued at our next meeting, the first Wednesday in February, which I believe is February 2nd, at 4 PM." He said that was the record that should be reflected in the action taken that night, rather than the method that was pursued earlier.

**d. Completeness Review for A Subdivision Plan SD-2021-03 Harbor Lights Retirement Community**

**Project Location:** 18 Hamor Lane (Tax Map 216, Lot 50), encompassing a total of 58.97 acres according to town tax records, in the Shoreland Limited Residential, Hulls Cove Residential Corridor, Hulls Cove Rural, Resource Protection and Ireson Hill Residential districts.

**Owner/Applicant:** Harbor Lights, LLC, 80 Exchange Street, Bangor, ME 04402

**Application:** The applicant proposes to construct a retirement community on a 58.97-acre parcel of land, according to tax record. The area of the parcel that will be developed is an 18.7-acre portion wholly contained within the Hulls Cove Rural District. The application consists of 42 dwelling units, offices for qualified assisted living and care practitioner along with a community space building. The development will be served by public sewer and public water. The shore front portion, as well as the easterly portion of the parcel, are not part of the retirement community application. The easterly portion of the parcel will be 1-acre, single-family dwelling lot to be retained by the owner.

Greg Johnston was present as the applicant representative. Chris Maller, property owner and applicant, and Kay Stevens-Rosa, also working for the applicant, were both present in the Zoom meeting as well. Secretary Dority disclosed that he, in his capacity with College of the Atlantic, is working together with Mr. Johnston on a project in Mount Desert (Mr. Johnston is a consultant on a project in which Secretary Dority is project manager). **Vice-chairperson Cough moved that Secretary Dority did not have an ethical problem with regard to this applicant's representative. Mr. Brechlin seconded the motion, which then carried without opposition (5-0) on a roll-call vote (Secretary Dority did not vote on the motion).**

Mr. Johnston gave an overview of the plans, explaining that the project is a retirement community. Using the screen share feature in Zoom, he walked Board members through the site plan and explained that there are several zoning districts that cross the property. The project, as proposed, would be within the Hulls Cove Rural district, with retained open space to the west/northwest behind the project. He said the owner's quarters would be retained as a single-family lot on the northern side of the property. Mr. Johnston said there were no plans to use Hamor Lane at all as part of this project, nor were there any plans to use the shorefront portion of the parcel. He also showed some photos of the site and planned entrances and improvements.

There will be a workshop, garden, greenhouse, fitness facility and covered parking as well as a community building, Mr. Johnston continued. He said there is a robust landscaping plan in place and the existing pond will be enlarged as part of the stormwater management plan. The application contains two requests for modifications of standards, including a non-standard cul-de-sac (the whole road is essentially a cul-de-sac in the way it is laid out, Mr. Johnston said), and the mandatory second entrance for a project with more than 15 units. He explained that Route 3 is deemed a mobility corridor, and the Maine Department of Transportation will only allow one entrance per property in such an area.

There was a question about what had been discussed so far with the fire chief. Mr. Johnston said the applicant is committed to having hydrants on the site and buildings that will be sprinkled. Chairperson St. Germain asked if the applicant would get something in writing from the fire chief. Mr. Johnston said the fire chief seemed “comfortable” with what was being proposed but did not want to speak for him. Planning Director Gagnon said during Technical Review Team (TRT) review, neither the fire chief nor public works director had an issue with the request for modification of standards, and said she expected the capacity letters to come back with no issues. Planning Director Gagnon added that statement applied to the two-entrance modification, too.

Mr. Brechlin asked about the waiver related to school use, and asked what happen if the use changed from a retirement community in the future. Mr. Johnston said if the whole configuration of the site changed the applicant would have to come back, but said he thought what was proposed currently did not specifically exclude a family from living there. There was discussion about what information is requested from the school system and for what type of projects.

Ms. Eveland said she thought the facilities sounded “spiffy” and asked whether they would be open to the public. They will not be, said Mr. Johnston, although residents may have guests.

Secretary Dority asked about Mr. Johnston’s discussions with the fire chief. “Based on the level of safety of hydrants and sprinkling,” said Mr. Johnston, the chief “had no reservations for the layout nor the ability to fight a fire based on how we’ve designed facilities.” Accessibility and navigability for fire trucks was discussed, as well as a question about the cul-de-sac requirement. CEO Chamberlain said a modification would be appropriate if the fire chief was in support of it.

Chairperson St. Germain then opened a public comment period. Assistant Planner Fuller read and displayed numbers and information on how to join the Zoom meeting and make comment. He noted there were people remaining in the Zoom meeting, but he did not see any hands raised.

Chairperson St. Germain asked if Board members had any questions on the waiver checklist. He asked two questions, one regarding condominiums and another regarding why a waiver was being requested for significant trees, when they were shown on the plan. Planning Director Gagnon explained that state law requires that the declaration of a condominium be provided in the case of a subdivision. Mr. Johnston said the condominium declaration was in the application. On significant trees, he explained what was shown and said he did not feel a waiver was needed.

Vice-chairperson Cough asked about the applicant's request for one entrance and the discussion they had had with the DOT. He asked whether the applicant had a letter. An entrance permit is in hand, Mr. Johnston said, and he reiterated that Route 3 is a mobility corridor where only one entrance is allowed per property. "Our request of that modification of standards is in line with the fact that more entrances to a property in a mobility corridor produces conflicting traffic patterns," said Mr. Johnston. He explained why he thought the two-entrance requirement was in the Land Use Ordinance in the first place. He said in this case he believed a second entrance would be contrary to the spirit of the ordinance with regard to safe access. "In this case, with so much traffic on Route 3," said Mr. Johnston, "less entrances is more safe." There was follow-up discussion on how the entrance will be configured under the rules laid out by the DOT.

**Secretary Dority moved to grant the waivers requested by the applicant, as well as waive the capacity letter from the school as this is a retirement community, as such waivers will not unduly restrict the review process, as they are inapplicable, unnecessary or inappropriate for a complete review, with the exception of 11 F, which will be an exhibit rather than a waiver. Mr. Brechlin seconded the motion, which then carried unanimously (6-0) on a roll-call vote.**

**Secretary Dority moved to find the application SD-2021-03 Harbor Lights Retirement Community incomplete, per the Bar Harbor Land Use Ordinance Section 125-66, as the following information is missing: capacity letters from the Water, Sewer, Public Works, Fire, and Police departments; ACOE and NRPA permits for wetland impact; DEP Stormwater; and to schedule a public hearing on February 2, 2022. Ms. Eveland seconded the motion.**

Vice-chairperson Cough asked if the applicant would be prepared and have the missing items in time for the February 2, 2022 Planning Board meeting. Mr. Johnston said the Department of Environmental Protection and Army Corps of Engineers materials might not be prepared by that time, as is standard, but the rest likely would be. Chairperson St. Germain noted that any missing materials must be received by the Planning Office by a certain deadline, and he asked if that should be included in the motion. Planning Director Gagnon said the motion seemed fine as is.

Ms. Chesler noted she had the same concerns regarding the Fire Department letter and asked that it reflect the issues with the cul-de-sac. Planning Director Gagnon said that would be done; unless department heads outline a specific issue they see as problematic, they are considered to be OK with a project, she explained. Mr. Johnston said he would contact the fire chief to see if he would be OK memorializing responses to Board members' concerns in his capacity letter. Vice-chairperson Cough reiterated his earlier points about state rules versus town ordinance.

**The roll was called, and the motion then carried unanimously (6-0) on a roll-call vote.**

## **VII. OTHER BUSINESS**

- a. Comprehensive Plan Project Overview and Planning Board Engagement, Steve Whitman from Resilience Planning**

Planning Director Gagnon noted that the Board had discussed the Comprehensive Plan at its last meeting and Board members rightly expressed an interest in their role in the process. She noted that Steve Whitman, founder and principal of Resilience Planning & Design, was present to answer Board members' questions about the Board's role in the Comprehensive Plan process.

Mr. Whitman gave a slideshow presentation using the screen share feature in Zoom. The Comprehensive Plan is an opportunity for Bar Harbor on "a wide ranging number of community issues," he said. He said it is an opportunity to promote discussion among stakeholders and to determine the vision for Bar Harbor over the next 10-15 years. It becomes the foundation for regulatory changes, infrastructure investments and other non-regulatory initiatives, he noted.

The plan is broken into three phases, explained Mr. Whitman. Phase One has just begun and will include an existing conditions analysis and data collection. The Planning Department has given a "tremendous amount of data," said Mr. Whitman. Phase Two will involve broad public outreach. Once priorities have been identified, the group will start Phase Three and begin crafting the actual Comprehensive Plan. That is slated to happen in the fall, he said. The Board will be receiving the Comprehensive Planning Committee packets, said Mr. Whitman. He indicated that he would be willing to attend the Board's meetings periodically to update members.

"We will be asking you to help us as we start doing outreach initiatives," said Mr. Whitman, including using the Board's network to help get the word out to the broader public.

Secretary Dority said he appreciated the idea of hearing from a consultant representative periodically. "I'm looking forward to looking at the materials that have been provided," said Ms. Eveland, and asked for Ms. Chesler's thoughts (Ms. Chesler being the Planning Board member selected to serve on the 15-member Comprehensive Planning Committee, or CPC). Ms. Chesler said the CPC had heard a similar presentation and that "everyone is eager to get rolling on it."

Chairperson St. Germain asked if the group typically uses previous comprehensive plans. "We're starting fresh for this," said Mr. Whitman. He said Bar Harbor's 2007 Comprehensive Plan will be looked at and referred to, but that its data will not be relied on as it is dated at this point. There are a number of resources that can be utilized for newer, more accurate data, Mr. Whitman said. Ms. Eveland later noted that made sense, as conditions had changed considerably since 2007.

Chairperson St. Germain asked if the team of consultants had a completed plan for another Maine community that the Board could examine. None that have recently been completed, said Mr. Whitman, although FBC Environmental is in the midst of working on one in Wells.

Planning Director Gagnon suggested the Planning Board could have a standing monthly agenda item on its future agendas, even just five minutes, to discuss the Comprehensive Plan. She noted

that there is a link to an online form to submit comments, in the material the Board was sent. There will also be a section of the town website dedicated to a strong engagement component of the project. She noted that meetings of the Comprehensive Planning Committee are open to the public. They are not being broadcast on TV, but will be advertised as broadly as possible.

Secretary Dority liked the idea of having a spot where Ms. Chesler could bring the Board up to date on what the CPC is up to. Ms. Chesler said she was willing to do that. She said the idea was to have boards and committees represented on the CPC but it wasn't clear whether there is a way to carry information between committees. "That should be made more explicit," she said.

**b. Discussion - PUD draft work plan**

Planning Director Gagnon asked whether the proposed dates looked appropriate to the Board. She also noted that with virtual meetings, the Board could bring speakers from other states to discuss the issue and said she would be working on lining up possible speakers in the coming week. There was a discussion regarding scheduling.

**VIII. BOARD MEMBER COMMENTS/SUGGESTIONS FOR THE NEXT AGENDA**

Mr. Brechlin thanked Board members and said he looked forward to working with the group.

**Vice-chairperson Cough moved to adjourn. Secretary Dority asked if there were any Planning Board projects pending. Vice-chairperson Cough then withdrew his motion.**

**IX. REVIEW OF PENDING PLANNING BOARD PROJECTS**

Chairperson St. Germain asked about plans for expansion for the MDI Hospital and whether they would have to come before the Planning Board. They will, said Planning Director Gagnon, but nothing has been prepared yet. College of the Atlantic has a project that will be coming before the Board, she continued, involving student housing. There is possibly a project in Hulls Cove, and another one in the downtown area. Planning Director Gagnon said conversations on those projects have been very general at this point in the process.

**X. ADJOURNMENT**

**At 6:52 PM, Vice-chairperson Cough moved to adjourn. Ms. Chesler seconded the motion, which then carried unanimously (6-0) on a roll-call vote.**

Minutes approved by the Bar Harbor Planning Board on February 2, 2022:

**ORIGINAL COPY**

02.24.22

Date

Millard Dority

Secretary, Bar Harbor Planning Board