

**Minutes**  
**Bar Harbor Planning Board**  
**Wednesday, February 3, 2021 — 4:00 PM**

*The meeting was held via the Zoom online meeting platform,  
and was broadcast live on Spectrum channel 7 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 Erica Brooks, Member Basil Eleftheriou Jr., and Member Millard Dority.

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

Others in attendance included Kelly Doran, Sarah Nicholson and John Fitzpatrick (the three of whom were present to represent The Jackson Laboratory); Greg Johnston, Mike Rogers, Kay-Stephens Rosa and Island Housing Trust Executive Director Marla O'Byrne.

**II. ADOPTION OF THE AGENDA**

**Mr. Dority moved to adopt the agenda. Secretary Brooks seconded. The motion carried unanimously, 5-0, on a roll-call vote.**

**III. EXCUSED ABSENCES**

All five members of the Planning Board were present, so there were no absences to excuse.

**IV. PUBLIC COMMENT PERIOD**

**Chair St. Germain opened the public comment period at 4:03 PM. Assistant Planner Fuller read the contact information. Hearing no commenters, Chair St. Germain closed the public comment period at 4:09 PM.**

**V. APPROVAL OF MINUTES**

**a. January 6, 2021**

Secretary Brooks noted that Patrick Kilbride wanted a change made to his comments included in the draft minutes from the January 6 meeting (Mr. Kilbride made this request in an email to the Planning Board sent January 23, 2021). **Secretary Brooks moved to edit the minutes from Jan. 6, 2021, on page 20, with Patrick Kilbride's comments, to refer to Patrick's Jan. 23, 2021 email to edit it the way he would like it to be portrayed which is more accurate. Vice-chair Cough seconded.**

Mr. Dority said he didn't find anything wrong with the way the minutes were originally written, noting that they are not a verbatim transcript, but said that if the board was fine with changing it he would be as well. Vice-chair Cough said he felt the explanation was adequate, but said he was fine with amending the minutes as had been requested.

There was a discussion on the correct page number. Assistant Planner Fuller explained the page numbers had shifted when the draft document was completed. He said the change would be made in the correct location.

**The motion to amend the minutes carried unanimously, 5-0, on a roll-call vote.**

**Mr. Dority moved to approve the minutes of January 6, 2021 as amended. Secretary Brooks seconded. The motion then carried unanimously, 5-0, on a roll-call vote.**

## **VI. REGULAR BUSINESS**

### **a. Discussion on density**

Secretary Brooks noted that the board's packet included helpful information to guide the accessory dwelling unit discussion. Chair St. Germain noted that the item had been held over from previous meetings that had run long.

Secretary Brooks summarized why the board is discussing density. The objective, she said, is to encourage the construction of new housing or the conversion of buildings used as different uses into housing that meets the town's housing policy framework, which shall not be used as vacation rentals or transient accommodations.

Chair St. Germain said he had attempted to assemble an approach that would allow a limited number of accessory dwelling units in a limited number of districts. He said the board would have to establish how many accessory dwelling units it would prefer. He said one member had favored allowing an additional dwelling unit per lot, exempt from certain dimensional standards. He asked if members supported that or other ideas.

Vice-chair Cough said he recommended the one. He said "it's a great start," but wanted to see what kind of impact there was "without going overboard." He said this would be a way to see how it goes, and if there are setback adjustments then the board might consider adding more. He felt it would be more politically acceptable for the town to consider one more dwelling unit on a house that can't be a transient rental in any way and said he was looking for something that would pass with voters.

Mr. Eleftheriou agreed with Vice-chair Cough. He said he was in favor of this and had been since it was proposed. He said he thought there was public support, too. He said that, to a certain degree, he was in favor of adjusting setbacks and lot lines.

Chair St. Germain asked which districts had initially been entertained in the board's discussion several months ago. Were they Downtown Residential, Village Residential and Mount Desert Street Corridor? Yes, said Mr. Eleftheriou.

Chair St. Germain said neighbors "might be concerned if these structures were exempt from setbacks." Mr. Eleftheriou said he might have misspoken. He said the board must revisit the minimum area per family and other aspects, unless accessory dwelling units "trumps that."

Mr. Dority agreed with Vice-chair Cough and Mr. Eleftheriou and felt it should be limited to one to start. He said addressing issues like numbers before the board discusses lot standards and dimensions is a good way to go. "I don't think it's necessarily a killer to at least evaluate those before we move forward," he said.

Secretary Brooks agreed and said she would like to see more than just the three zones mentioned. She suggested focusing on zones with water and sewer. Limiting to one to start is acceptable, she said, and will create necessary housing supply the town desperately needs. She was unsure about adjusting setbacks. Most of the downtown districts have "pretty decent setbacks anyway for adding accessory units," she said. Adjusting the minimum area per family "is definitely a big piece," she said.

Chair St. Germain asked if she meant adjusting it or exempting accessory dwelling units? She said the latter: "I don't think that should be part of the calculation."

Mr. Eleftheriou asked if the board was discussing solely accessory dwelling units or if they could also discuss "developing a basement to have, you know, a second family there." He said that wouldn't necessarily be considered an accessory dwelling but would require adjusting the minimum area per family to allow a second family on that lot.

Chair St. Germain said he'd attempted to do that in the crafting of the memo. He said the board should seek guidance from staff regarding how to achieve some of the objectives "in the proper way." Adding a dwelling unit inside an existing structure that is considered an accessory dwelling unit might require staff input, he said. Buildings that aren't currently dwelling units could be made into accessory dwelling units, he said, and added that a height exemption is another way to increase density. He asked if there was a building that already met the maximum height in a district but an accessory dwelling unit could be added, should that be permitted?

Chair St. Germain said he felt the board should come up with some definitions as to what an accessory dwelling unit is and whether it will be limited to the three districts mentioned or be expanded to any district that has town water and sewer, as Secretary Brooks mentioned. He asked for feedback from staff.

Planning Director Gagnon said if the board wanted to pursue accessory dwelling, the first step would be to agree on a definition and then decide whether it must comply with the minimum area per family. "Those are probably the two big questions," she said, which will likely be "quite a bit of work."

Vice-chair Cough brought up a previous meeting in which the idea that an accessory dwelling would be smaller in square footage and footprint than the primary dwelling had been discussed. He remembered saying that dwellings in historic sections would come under design review, and said he was fine with the idea of having a second dwelling unit within an existing structure: "The goal is to get the extra dwelling units, however they're arrived at."

Planning Director Gagnon noted that the board had previously discussed four districts, including Downtown Residential, Village Residential, Downtown Transitional and Mount Desert Street Corridor.

Mr. Eleftheriou agreed with Secretary Brooks that if the boundaries could be pushed out to include any district on town water and sewer, he thought the public would likely be supportive. Square footages are larger outside of town anyway, he added.

Planning Director Gagnon said staff could come back with proposed definitions for board members to "just start thinking about it." Deciding on a definition and whether it should meet area per family are the "big ticket items," she reiterated.

Code Enforcement Officer Chamberlain asked if someone with one house on their property would be able to build another, or if someone had two houses could they build a third house. "What if they already exceed the minimum area per family by multiple houses, will they still be able to have one more?" she asked.

Chair St. Germain said in this memo as written, "Yes, another dwelling unit for this specific use," for year-round housing for non-transients, would be allowed.

Mr. Eleftheriou said that if a property owner already exceeds the minimum area per family he would not be necessarily in favor of constructing another accessory dwelling. If an accessory dwelling "puts you over there a little bit," however, he felt that would be okay.

CEO Chamberlain asked about size. She asked what difference it would make if one house was bigger than the other. She discouraged the board from "focusing too much on that," because setbacks and lot coverage "will continue to be in place." Vice-chair Cough said that was a good point. The idea is to allow a second year-round structure, he said. He asked if the entire lot should be limited to exclude vacation rentals. "If the goal is to create housing, then building one and then renting the other one weekly rental is not the way to do that."

Secretary Brooks felt the board should not get into the vacation rental discussion and that it should be limited to year-round housing. She said CEO Chamberlain made a good point. If the lot size allowed for two homes on a property within the setbacks and minimum area per family, "that's fine," said Secretary Brooks. She asked whether, if a property owner already has two primary structures, is one considered accessory? Secretary Brooks said that, as long as a property owner is within the confines of the setbacks and area per family for the lot she didn't "see a problem with adding an accessory dwelling unit," with these restrictions. She added that the board shouldn't stray into the definition of size.

Chair St. Germain brought up a previous discussion regarding employee living quarters (ELQ). One of the things the board did not imagine as a possibility during that discussion, he said, was if a building currently in other use wanted to convert partly to ELQ the owner would not be able to. In other words, he said, if a second or third floor is already classified as a certain use but would be "better off" housing employees, owners would be unable to do so.

Planning Director Gagnon said the intent would have been to allow something like Chair St. Germain had described.

Chair St. Germain felt the accessory dwelling unit shouldn't have to be attached or separated but could be within an existing structure. "I think we should be as liberal as possible to encourage people to build additional housing units that aren't going to be used as vacation rentals," he said. He felt Vice-chair Cough brought up a good point. "I don't want to create something that people can simply move into the accessory unit and then rent their original house out as a vacation rental. That's clearly not the intent of the work that has been done to this point."

Planning Director Gagnon said accessory dwelling "is most likely related to a dwelling that is subordinate to the principal dwelling." She said that "There are very few pieces of land where you're going to be able to maximize the number of units that may be allowed or that you could do with the state's minimum lot size" and recommended staff come up with a definition to continue the discussion.

Chair St. Germain asked if the board should consider having a workshop on this. Planning Director Gagnon said it is up to the board but yes, they could schedule a workshop.

Mr. Eleftheriou asked if minimum area per family sizes had been part of previous discussions on accessory dwelling units. Chair St. Germain recalled the discussion being centered on how to expand the number of dwelling units. Moving setbacks, reducing minimum lot sizes and area per family were discussed. "It wasn't necessarily only discussion of accessory dwelling units," he said, but a number of ways to approach the conundrum of how to get more non-transient housing units built in Bar Harbor.

Mr. Eleftheriou said accessory dwelling units “will be powerful” but minimum area per family will also be a powerful tool. Chair St. Germain said that’s “perhaps the quickest way to do it,” referring to reducing the minimum area per family. Mr. Dority pointed out that that doesn’t limit the use as vacation rentals, which is one of the objectives.

Chair St. Germain asked how board members felt about scheduling a workshop to talk about this at length. Members were in favor. Mr. Dority urged the board to have that as the sole agenda item for the workshop.

Secretary Brooks asked if this would be via Zoom. Chair St. Germain said for now, everything is still on Zoom. He asked staff to come up with an appropriate time for the board to meet.

Mr. Eleftheriou asked staff whether they felt this was the best path forward for the town at this time. Planning Director Gagnon said accessory dwelling is “a really powerful tool to create more housing options.” She suggested staff prepare an outline on aspects to consider regarding accessory dwellings for the workshop. Chair St. Germain asked if a motion was necessary; it was determined it no motion was necessary to have staff schedule a workshop and the board moved on to the next agenda item.

**b. Subdivision Plan Compliance Review/Public Hearing for SD-2020-05 — JAX  
Route 3 Housing**

**Project Location:** Tax Map 115, Lot 21 off Main Street/Route 3 and encompassing a total of ±35.76 acres, according to town tax records. The subject land is in the Scientific Research for Eleemosynary Purposes district.

**Applicant/Owner:** The Jackson Laboratory (JAX)

**Application:** The applicant proposes a residential development to be used exclusively by JAX employees. The project will be accessed via Woodlands Lane. It will consist of two, three-story buildings providing a total of 24 units (in a combination of 1-, 2-, and 3-bedroom configurations). The project will utilize town water and sewer.

Chair St. Germain welcomed representatives from JAX and asked Planning Director Gagnon to fill the board in on submissions requested at the last meeting.

Planning Director Gagnon outlined what was provided to the board and said the board must consider completeness, as the application had not yet been found complete. JAX submitted an MDOT driveway entrance permit, she noted, as well as a capacity letter from the school. The board’s first action should be a determination of completeness. Should the board find it complete, she said, Items D, E and F on Page 3 were no longer conditions of approval as they had been submitted.

Chair St. Germain invited representatives from JAX to bring the board up to date on the project.

Kelly Doran briefly outlined plans for the project, which include two buildings with twelve apartment rental units in each to be constructed on JAX property on the western side of Route 3 (the opposite side from the primary campus).

Sarah Nicholson presented. She noted that all of the abutters with both map and lot and book and page numbers had been provided, as per the board's request. She gave an overview of the project. In addition to the buildings, there will be a 40-lot parking lot, a storage building, some landscaping, and stormwater management features. A sidewalk extension along the access on Woodlands Lane to a crosswalk across Route 3 has been added since JAX was last in front of the board, she said, as has a crosswalk across Schooner Head Road allowing access to sidewalks into town and heading to the lab. She showed a closeup of the planned crosswalk.

Details of the crossing, including signaling, were provided to MDOT. The updated plans incorporating MDOT feedback, which were subsequently approved by MDOT, were provided to the board.

Chair St. Germain opened the meeting to questions and comments from the board.

Mr. Eleftheriou said he liked the proposed sidewalk and asked where the sidewalk on Schooner Head Road terminated. Ms. Nicholson said it turned into a large parking lot. There is a sidewalk all the way into campus from there, she said. The sidewalk on Schooner Head was built by JAX to facilitate pedestrian access into the campus and access to the Schooner Head Trail.

Mr. Eleftheriou asked if there was a crosswalk on Schooner Head. Ms. Nicholson said the sidewalk on Schooner Head is on the east side. It crosses back across at the entrance to Lot G. Member Eleftheriou said he was looking for a "very clear path for tenants to arrive at campus safely."

Mr. Fitzpatrick said there would be a paved walkway from the proposed units down the driveway across Route 3. He said there is a Schooner Head crossing that takes them to a paved walkway west of Schooner Head Road that leads them into parking Lot G all the way into the core campus area.

Mr. Eleftheriou said it would be helpful if, on Figure 9.1, if JAX could delineate a safe walking path arriving at campus to have it in the file.

Mr. Dority said he had walked the area many times. It's certainly improved, he said. He said it's so far from the project in question he doesn't see a reason for putting it on there (what Mr. Eleftheriou requested).

Chair St. Germain asked if the dumpster could be moved more to the west end of the proposed development rather than the east end, as a courtesy to residents of East Strawberry Hill Road.

Ms. Nicholson said JAX had looked at it closely and that in other places it would either interfere with parking or fire access. The proposed location is the easiest place for those picking it up to do so, she said. There is almost a mound created by the grading, she noted, partially shielding it from East Strawberry Hill Road residents: "It's not like they're going to be looking at that dumpster as they drive up and down Strawberry Hill." Ms. Doran added that JAX plans to landscape around it and provide an enclosure to hide it as much as possible.

Chair St. Germain said he still wished it could be moved, just for the smell. He asked about the decision to go with another crosswalk/walk and referenced a pedestrian bridge proposed as part of a 10-year plan in 2015: "If there are subsequent developments... is that ever a consideration?"

Ms. Doran said JAX is looking at a study for pedestrian circulation around all of the Route 3 properties. The bridge is not "completely off the table," but will be looked at as part of the study. "I don't envision we'll continue to build multiple crosswalks across Route 3," she said.

Mr. Fitzpatrick said a contractor had already made one site visit for the study, with another site visit planned for Feb. 4, 2021. The study will look at short and longer-term options up and down the Route 3 corridor, he said. The lab will investigate all three options, including improvements to the "horizontal plane" as well as going over or under the road.

If the site is further developed, said Mr. Fitzpatrick, JAX plans to create something intercampus that loops through the woods on the bottom end of Lot B. He agreed with Ms. Doran and said there won't be "four incremental sidewalks" crossing Route 3 from north to south. Chair St. Germain asked where Lot B is. Mr. Fitzpatrick replied that it is the existing parking lot on the west side of Route 3.

Mr. Dority commented on the crosswalks. He referenced a recently constructed crosswalk going from Highbrook Road to Route 3, on the other side of town from JAX, which is "almost identical" to the one JAX is proposing. "I am amazed at how effective that system is," said Mr Dority. "It functions beautifully."

Seeing no more comments from board members, Chair St. Germain asked Assistant Planner Fuller to read and display the contact information for the public hearing. Member Dority interjected and asked if the board needed to first make a motion on whether the application was complete; Chair St. Germain said yes, as the board found it incomplete in a previous meeting.

Mr. Dority said he would make the motion but was unsure how to deal with the Site Location of Development Act (SLODA) issue, as the application would be complete except for that, he noted.

Planning Director Gagnon said the proposed motion provided to the board should cover that. The applicant has met everything for stormwater, she said. Changes to stormwater



could come out of the SLODA, she said, but the information required by the ordinance to find the application complete is there. She recommended the board make the permit a condition of approval and noted that the last two sentences of the proposed motion needed to be amended to reflect what JAX had submitted.

Chair St. Germain asked if Vice-chair Cough wanted to make a motion. Vice-chair Cough said no, but he had wanted to ask a question earlier and had technical issues. He pointed to page 8 of 22 in the minutes from the Jan. 6, 2021 meeting, in which Ms. Nicholson said that JAX is prepared to deal with its own stormwater features and ensure no town structures are damaged by runoff and stormwater. According to the meeting minutes, Planning Director Gagnon said staff could add a statement noting that the Public Works Department had not shown an interest in pursuing an easement for the town to do maintenance on a stormwater system and that staff could work with the applicant and department to add a statement to that effect. Vice-chair Cough said he hadn't seen that statement.

Planning Director Gagnon apologized and said that had been dropped but that it could be made a condition of approval.

**Chair St. Germain moved to find application PUD-2020-05 [note: should be SD-2020-05, error due to typo in staff report] - JAX Route 3 Housing complete per the Bar Harbor Land Use Ordinance Section 125-66 as the following were submitted: statements of capacity from the Sewer Department, Police Department, and the Public Works Department; plan with the book and page number of abutters; landscaping plan; photometric plan, a comprehensive walking plan diagram for residents; and the fire hydrants are shown. The MDEP Site Location of Development permit application was submitted and a copy provided to the Planning Department, the MDOT Driveway Entrance permit application was submitted and a request for confirmation of capacity for school and busing was submitted.**

In discussion between Chair St. Germain and Planning Director Gagnon, it was noted that the final two items (MDOT Driveway Entrance permit and school/busing capacity statement) had been received since the preparation of the staff report and were no longer outstanding.

**Mr. Dority seconded the motion. Mr. Eleftheriou noted that staff will provide a statement from the Public Works Department regarding the stormwater drainage. Planning Director Gagnon asked if the board wanted to have that as a condition of approval. Member Eleftheriou said yes. The motion then carried unanimously, 5-0, on a roll-call vote.**

**At 5:11 PM, Chair St. Germain opened the public hearing.** Assistant Planner Fuller displayed the contact information graphic on the screen.

Ellen Dohmen was on the line. She identified herself as chairperson of the Bar Harbor Board of Appeals and said that, as she is an abutter of the project and could not participate

in any appeal should it come before the board, but she could speak as an individual. She said it was “delightful” to see Mr. Dority back on the board.

Ms. Dohmen said that, from the beginning, JAX had taken abutters as stakeholders. “From the very beginning,” she said, “they included us in meetings, in plans, listened to us, took many, many of our concerns into consideration.” She said abutters had really “been treated very nicely.” The final decision to put the new development on Route 3 rather than on Schooner Head Road is “very wise,” as when Acadia National Park had closed entrances in a trial run there was “tremendous traffic” on Schooner Head Road.

Route 3 is already a major road, said Ms. Dohmen, and putting the development there “makes so much more sense.” She said JAX had worked hard to take into consideration the impact on the area and the town. She asked whether JAX had considered having a red light to stop traffic at a crosswalk, rather than a flashing light. She said she supported the application.

Chair St. Germain thanked Ms. Dohmen. He realized he had not submitted the ground rules for the public hearing, which include that speakers are limited to one three-minute period each.

Nicholas Schoeder was on the line. He identified himself as an abutter on East Strawberry Hill Road. He reminded those listening that East Strawberry Hill Road is a private road owned by the residents, meaning that all residents are technically 200-foot abutters to the project. As someone who was raised on the end of Schooner Head Road and been on East Strawberry Hill Road for 20 years he said he was unsure how the proposed plan could be approved by MDOT.

What is currently in place doesn’t work, said Mr. Schoeder, and the lab has “been lagging” on addressing the issue for a long time. He felt due diligence had not been done. The vast majority of tenants living in residential buildings owned by the lab on Schooner Head Road don’t utilize the crosswalk in place on Schooner Head Road, said Mr. Schoeder, and are “constantly” seen riding bicycles or walking early in the morning or late at night down the side of Route 3. To assume new residents will walk from the projected area to access this sidewalk when current staff do not “is not going to happen,” he said.

John Kelly, management assistant at Acadia National Park, was on the line. He offered comments on behalf of the park. The park supports the proposed housing, he said, and echoed Ms. Dohmen’s comments on JAX’s efforts to reach out and work with the park to consider possible impacts. “We don’t anticipate any impacts to the park and its visitors,” he said. This location is preferable to any development on the opposite side of Schooner Head Road, he said. He thanked Mr. Fitzpatrick and others for their work.

Nanette Schoeder, who identified herself as a resident of 37 East Strawberry Hill Road, was on the line. She said she was just “very sad that you had to put your lovely property so close to us. I’m very afraid of light trespass,” she said, and “you just kind of blew me off about blasting.” She asked how long it is expected to take and how much blasting the lab

will be doing. Will a more specific landscape plan be offered? she asked. She asked if it has been determined that town water and sewer can handle up to 100 units and if that permission had been granted.

Chair St. Germain thanked Ms. Schoeder and said her questions would be conveyed to lab representatives during response time. He kept the public hearing open and summarized the questions raised. **Seeing no one else on the line, Chair St. Germain closed the public hearing at 5:26 PM and asked the applicant to address the questions raised.**

Mr. Fitzpatrick asked Chair St. Germain to go "one-by-one." Chair St. Germain asked what assurance there is that a new sidewalk plan will be adhered to.

Mr. Fitzpatrick replied that, to a certain extent Mr. Schoeder's point is valid. "We can lead a horse to water but we can't necessarily make him drink," he said. "We're trying to make it a safer way," he said, and it will be shoveled and plowed. This is why the lab is bringing in consultants who only do traffic studies he said, and have done so for their entire careers, in an effort to help funnel people where they want them to go. The lab is looking at a variety of ways to slow traffic down. "We hope to bring improvements to Planning Board in the future that are better than what we're showing right now," he said.

Chair St. Germain asked about the landscaping plan. Ms. Nicholson replied that what JAX had provided to the board "illustrates intent" and makes it clear that all landscaping will be native plantings "appropriate for the surroundings." She noted that a landscaping plan is not required for the application and that JAX would be held to anything it provided. "We didn't want to put a plan in front of you that was very detailed that we would then be held to essentially prematurely," she said, but the lab is committed to the intent of what's illustrated and "it's sufficient."

Ms. Doran said the lab intends to follow as many of the guiding principles of The Sustainable SITES Initiative, which include native species, low or no irrigation, really providing a landscape quite similar to that which already exists. Mr. Fitzpatrick said the lab would be happy to share that plan with abutters once it is done.

Chair St. Germain asked for a follow up on blasting. Ms. Doran said the applicant found less ledge at the surface than anticipated in the areas where the two buildings were located, thus, the amount of blasting would be significantly less than it could have been for the site. She said the applicant will be putting a blasting plan together and that any abutters in the required distance will be met with and properties will be surveyed before blasting begins. She said the lab could share information about blasting with neighbors.

Mr. Fitzpatrick said the lab did not have more information on the timing of blasting and had not yet hired a construction manager. He said once the builder is on board more information could be made available but that JAX did not want to speculate. Chair St. Germain asked about utilities, which he noted is addressed in capacity statements, but gave the applicant a chance to respond.

Mr. Fitzpatrick said the capacity statement is for the 24 units that are before the board for its consideration. The lab is sizing all of the utilities with the assumption that the project will eventually be 100 units, but that the capacity statement is for the current project.

Chair St. Germain asked if he had covered everything asked by callers. Mr. Eleftheriou noted that Ms. Dohmen had brought up a red light rather than flashing yellow light for a crosswalk.

Ms. Doran said JAX is consulting with a group for traffic studies. Right now, where JAX is located, they would have to review anything that would stop traffic, she said. A number of options are under consideration, including a tunnel under the road and a bridge over, a push-button stop light, a traffic light or possible reconfiguration of the area. "There are a whole myriad of options we can pursue," said Ms. Doran.

As it stands right now, said Mr. Fitzpatrick, MDOT doesn't allow a traffic light or short-term indicator based on the speed limit based and the traffic count. That is why the lab is bringing in a traffic consultant who does this professionally, said Mr. Fitzpatrick.

Chair St. Germain asked if MDOT allows grooved pavement as a way to get people to slow down? Neither Ms. Doran or Mr. Fitzpatrick was sure if that was allowed.

**At 5:41 PM Chair St. Germain closed the public hearing and opened the meeting to board deliberations.**

Chair St. Germain asked for guidance from staff as to the offer from applicants to share the landscaping plan. He asked if that should be confined to a discussion between abutters and the applicant or if it should be for the board's consideration.

Planning Director Gagnon said it might be overreaching to have it as consideration of approval, as the applicant is only obligated to put one tree in the parking lot and is going above and beyond that. She cautioned the board to be careful what considering it could mean for the future as well.

Chair St. Germain asked staff's opinion as to whether the board should be involved in review of subsequent modifications to the pedestrian safety plan.

Planning Director Gagnon said it could be done "in the office," but noted that the board has discussed this quite a bit in previous meetings and that the community has indicated it is concerned about the issue. She noted this had been done with a previous application on a different subject (requiring it to come back to the board for modification). Chair St. Germain said that was good guidance. Planning Director Gagnon said she wouldn't recommend this as a matter-of-fact all the time but that, in this particular case, the board had spent hours discussing it. She reminded the board to include a statement from the Public Works Department clarifying that they don't have interest in perpetual easements.

Vice-chair Cough felt the “application is wonderful” but said he has a problem with safety and the pedestrian solution. He felt the project will be good for the lab and for the town, he said, but said he does not want to be “party to another incident because of something we approved without setting some real parameters down on it that have teeth.”

Mr. Dority said he agreed that the project would be a good one for the town, but said he did not have as much concern regarding safety. He said the “terrible” placement of the curb cut for East Strawberry Hill Road’s residents it not the fault of the lab and that the applicant had done everything they needed to.

Secretary Brooks agreed with Vice-chair Cough and Mr. Dority but said the intersection is very busy, and worried that people won’t utilize this crosswalk because it isn’t going in the right direction. The flashing light piece is great in theory but it doesn’t always slow people down, she said. Considering a stop or red light of some sort is a much better idea, she said, as people go much faster on this stretch than they are coming into and going out of town. The stop sign on Schooner Head Road is “more of a yield,” and while that isn’t the fault of the lab, it’s something to consider. She asked what tweaks were made to make this the best option.

Ms. Nicholson said the lab gave MDOT some draft signalization options. The plan originally showed lights coming down along Woodland Lane, she said, but MDOT said they’d prefer not to have wiring and light posts in the right-of-way. The lab then settled on a solar-paneled version of that. She pointed out that traffic is a very esoteric field and said that there’s a lot of psychology in traffic control. Ms. Nicholson said that MDOT reviewed the plans and had no concerns about them. The traffic engineer, said Ms. Nicholson, was aware of the recent accident on Route 3. There are paid professionals who do this work, MDOT among them, she said, and they care a lot about how traffic flows on their roads. In certain circumstances, she added, stop signs can create more danger. There’s comfort in the fact that professionals have stated that this is a legitimate approach, she said, and a safe way of doing a crossing on a 45-mph on a stretch of state highway.

Secretary Brooks said that while she trusts the professionals are doing their job, there’s a difference in looking at numbers on paper and what happens in real life, including what pedestrians are currently doing. She said perhaps that was considered or is part of the larger traffic study. She said that sounds “quite promising.” She then asked about the capacity statement regarding school and busing and whether the dwelling units would be considered taxable units, feeding money into the town budget and school system. Mr. Fitzpatrick said JAX plans to have that conversation with Town Manager Cornell Knight.

Mr. Dority agreed with Secretary Brooks’ concerns, but reminded the board of the Route 3 project at the intersection of West Street Extension and Route 3. He said he has been “astounded” that pedestrians largely follow the crosswalk, even though it takes them “in a different direction than they want to go.”

Mr. Eleftheriou said he might prefer something more “streamlined” than continuous road crossing. He said that as more units are developed, the lab will probably develop a path on

the east side of Route 3. Until then, he said, this is a good safe method for those 24 units to arrive at campus.

Chair St. Germain said it's a good application regarding housing. He said he remained greatly concerned about the health and safety of those crossing the road. He wondered why going over or under Route 3 hadn't been addressed already. "I have real misgivings as to whether it meets the intent of the purpose of the Land Use Ordinance §125-3," he said.

Planning Director Gagnon said that, with no disrespect, none of the board or staff members are traffic engineers. She said if the board was inclined to deny the application based solely on traffic perhaps it should consider tabling the application and have a peer review done for the proposal using an independent engineer representing the town. She cautioned against denying the application without having done such due diligence.

Chair St. Germain asked if an outside consultant would be limited to the scope of the 24-unit project. Planning Director Gagnon said yes. She said that if the crosswalk is a good location it doesn't matter how many people use it, if it meets MDOT standards it will be safe.

Vice-chair Cough resented the "admonishment" that board members are not traffic engineers, and said members have a responsibility for making sure it is safe for residents. Mr. Dority said he's not a traffic expert and isn't offended by the comments. He asked whether, by hiring an outside consultant, the board is saying that members don't trust the information they have.

Planning Director Gagnon said her comments weren't meant to insult but that if staff and/or board members don't have the specific technical knowledge they can avail themselves of people who have that particular technical knowledge. The board can trust the applicant's engineers, she said, but they look at the interests of JAX and at meeting the ordinance.

Secretary Brooks said it's in the town's interest to have an outside perspective, even though the lab has the best interests of its people in mind. She said she would hate to delay the whole process but did have concerns.

Chair St. Germain asked the lab's representatives their opinion on having a third-party independent consultant weigh in. Mr. Fitzpatrick said he has no problem with the board requesting an opinion from an outside consultant, paid for by JAX, as the ordinance states. He asked whether, if MDOT and state standards are reaffirmed, that will be good enough to move the project forward.

Mr. Fitzpatrick said there are few people on the JAX campus who feel worse about the accident than he does, but that the plans have been approved by people who do this every single day.

Chair St. Germain said that if a third party said everything was safe he would feel comfortable voting in favor of this. Secretary Brooks agreed. She asked why pedestrians wouldn't be moved from their current location to go through the existing parking lot and use the existing crosswalk.

Ms. Doran said that is an option being considered by the traffic consultant but that the schedule for that study is a few months out. At this point in time the recommendation is a crosswalk for this housing project in this location.

Chair St. Germain asked for a motion. Member Dority began to make a motion. He asked Planning Director Gagnon for guidance; she said it had been sent earlier. He then said he wanted to wait.

**Vice-chair Cough moved that the board engage an engineer to look at the proposed project, including pedestrian and vehicular traffic as it relates to pedestrian traffic and that the application be tabled pending conclusion of that report.**

Member Eleftheriou asked if the board will force the lab to go with an alternate plan if one is proposed. He said members do not have the technical knowledge and rely on the experts, which in this case is the state (MDOT). It's fine if the board wants more technical knowledge, he said, but members must be careful in how they move forward.

Chair St. Germain said he would support the proposal if it is affirmed by a third-party. He asked for a refinement of the motion.

Vice-chair Cough said he will be fine with the plan if it is affirmed by a third-party. He said if the board were to approve the application at this meeting it might open the door to an appeal because it did not review the parking lot or do findings of fact for any of those items. He said that by taking into account the parking lot that exists the board is hopefully eliminating an appeal and that it would be a much stronger approval.

Chair St. Germain asked staff if the request for this technical assistance could review anything beyond what's been submitted.

Planning Director Gagnon replied that the purpose of a peer review is not to create any new information, but to measure that application against the ordinance and give the board a report as to whether the applicant has met the standards of the ordinance. In her experience, the only thing subject to the review is the aspect pertaining to the housing project. There is nothing being changed regarding use at the other end, she said, noting that the parking is not dependent on this proposed use. They're simply on the same lot and must meet impervious coverage requirements for the lot.

Code Enforcement Officer Chamberlain said that other than making sure the additional units and parking and driveway don't increase lot coverage she wasn't sure what else the board would be reviewing. Mr. Dority agreed.

Chair St. Germain summarized the feeling that the board is concerned specifically with technical assistance on the submitted application that has to do with the road crossing and asked if there would be a motion to that effect. **Vice-chair Cough amended his motion to reflect what Chair St. Germain just said.**

**Chair St. Germain noted that the attempt to get the additional technical assistance falls under §125-65 of the Bar Harbor Land Use Ordinance.**

**Mr. Eleftheriou asked that the motion include the words “For the health, safety and welfare of the public.” There was no objection. Mr. Eleftheriou seconded the motion, made by Vice-chair Cough and as modified.**

**Chair St. Germain called the roll. The motion carried, 4-1, on a roll-call vote, with Mr. Dority opposed.**

Chair St. Germain asked whether the motion effectively tabled the application. Vice-chair Cough said yes.

**Vice-chair Cough moved that the application SD-2020-05 — JAX Route 3 Housing be moved to the next meeting the information is available. He added that if the report is within the time frame of seven days he would be more than happy to put in a special meeting provided the information is submitted in time for advertising and submittals. Mr. Eleftheriou seconded. The motion carried unanimously, 5-0, on a roll-call vote.**

**c. Sketch Plan Review for PUD-2021-01 — Jones Marsh Affordable Housing Development**

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

**Applicant/Owner:** Island Housing Trust

**Application:** The applicant proposes to subdivide a 30-acre property into nine lots (8 buildable for residential use, 1 remainder). Six of the buildable lots would have single-family homes and two of the buildable lots would have two-family homes, for a total of 10 dwelling units.

Secretary Brooks stated for the record that she is on the board of Island Housing Trust and asked if she needed to recuse herself even though she did not have a financial interest.

**Vice-chair Cough moved that Secretary Brooks be recused from this application.**

Member Dority asked to recuse himself because of his professional relationship with Greg Johnston, which has “shifted a bit” since the last time the matter had come up. He also recused himself from the next application.

Chair St. Germain asked for a refresher on recusal criteria. Vice-chair Cough outlined what is considered a pecuniary interest, but said it’s critical that board members avoid even the appearance of conflict. He asked for a second on his motion for Secretary Brooks.



**Mr. Eleftheriou seconded Vice-chair Cough's motion to recuse Secretary Brooks. The motion carried 4-0, with Secretary Brooks not voting. This reduced the board's voting membership to four members.**

Mr. Dority said he cannot disclose the specifics of his professional relationship with Mr. Johnston as it is sensitive but said, "I just feel I have to do it."

Vice-chair Cough said it's fine for Mr. Dority not to disclose his relationship with Mr. Johnston, which may put him or someone else in an uncomfortable or legal situation. **Vice-chair Cough moved that Mr. Dority be allowed to recuse himself for this application** (adding the board could address the second situation when the next application came up). **Mr. Eleftheriou seconded the motion, which then carried 3-0 on a roll-call vote (with Secretary Brooks and Mr. Dority not voting).** This reduced the board's voting membership to three members.

Mike Rogers presented the project, which he said has been slightly redesigned compared to what came before the board several years ago. The plans call for an 8-lot subdivision with six single-family homes and two, 2-family homes, he said, and there have been minor refinements and changes to the architecture as well.

Chair St. Germain asked if there were any questions from the board. There were none. He noted that waivers are not "vested" yet during the sketch plan and can't be addressed in the same way as they would during the completeness review of the application.

Planning Director Gagnon reminded Chair St. Germain that a public comment period is mandatory.

**At 6:47 PM, Chair St. Germain asked if there were any members of the public who wanted to make a comment. Assistant Planner Fuller read the contact information aloud. Hearing no one, Chair St. Germain closed the comment period at 6:49 PM.**

Chair St. Germain asked if board members had any suggestions for the applicant. He said he'd noticed that there will be an exhibit for the stormwater but that it isn't in the package; he asked if that will be addressed during completeness. Mike Rogers said yes, there would be.

Mr. Eleftheriou said he'd gone over the waivers and thought they were "all good."

Chair St. Germain made note of some of the staff's comments. All units will be affordable, he said. He noted that the issue of whether the town will own the road has been part of the difficulty in the past.

Mr. Rogers agreed that had been an issue in the past. There was discussion of whether a cul-de-sac should be considered. Mr. Rogers said a cul-de-sac is a "pretty big lift...if we don't have to do that, that's better."

Vice-chair Cough said that a cul-de-sac is an emergency vehicle issue to be able to get a fire truck around, and that he was not sure if the board could deviate from that. There was a discussion of homes being sprinklered.

Mr. Johnston asked if a different configuration would be considered for emergency vehicle access. Vice-chair Cough said he was fine with whatever the fire chief was fine with. Mr. Rogers said the fire chief was okay with the turnaround. He said fire ponds had also been mentioned as acceptable.

Code Enforcement Officer Chamberlain said that if this was to be a public road, a hammerhead configuration might not be acceptable. Whether the road is public or private will make a big difference in how the road is modified, she said. Mr. Rogers said the applicant had not yet decided.

Chair St. Germain suggested the board schedule a self-guided site visit and laid out how that has been done in the past. There are certain dates that must be adhered to in the Land Use Ordinance, he said, after which the board could schedule a neighborhood meeting.

**Mr. Eleftheriou moved that the board not act on the submission of waiver requests 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 submission of waiver requests at the completeness review meeting, creating confusion; and as the board has provided direction to the applicant on the submission of waiver requests. Vice-chair Cough seconded the motion, which then carried 3-0 on a roll-call vote.**

**Mr. Eleftheriou moved that staff schedule a self-guided site visit and neighborhood meeting at the convenience and availability of all concerned. Vice-chair Cough seconded the motion, which then carried 3-0 on a roll-call vote.**

**d. Sketch Plan Review for SD-2021-01 — Harbor Lights**

**Project Location:** 18 Hamor Lane (Tax Map 216, Lot 50), encompassing a total of 58.97 acres according to town tax records. The subject land is in the following districts: Shoreland Limited Residential, Hulls Cove Residential Corridor, Hulls Cove Rural, Resource Protection and Ireson Hill Residential. The proposed development would be located on a portion of the lot in the Shoreland Limited Residential, Hulls Cove Residential Corridor and Hulls Cove Rural districts.

**Applicant/Owner:** Christopher Maller Revocable Trust, Christopher Maller trustee

**Application:** The applicant proposes to construct a total of 40 dwelling units (two single-family homes, 15 two-family homes and two, four-unit buildings) on public sewer and public water.

Secretary Brooks and Mr. Dority re-joined the meeting. **Mr. Dority requested recusal, due to the aforementioned professional relationship with Mr. Johnston (who was also representing this applicant). Vice-chair Cough moved to accept Mr. Dority's recusal.**

**Secretary Brooks seconded the motion, which carried 4-0 on a roll-call vote (with Mr. Dority not voting).**

Mr. Johnston gave an overview of the project. He said the goal of the project is to have a community where people can be active at an older age. He noted that there are several different zoning districts within a short distance and forested wetlands meandering through the site, which have been mapped by a company in Bangor.

Kay Stevens-Rosa, working for the applicant, presented the board with an overview of the structures. She said they intended to draw on the history of what was in the area and create visual continuity along the corridor. Plans call for duplexes with two completely fire-separated units, two stories each, forming little groupings of houses that have a nice scale and feel to them, providing comfort with some variation in the way they're laid out. She said that larger units might resemble large farmhouses and units resembling barns would serve as multi-unit garages. She said there would be a possible community space as well.

Chair St. Germain asked if board members had questions or comments. Vice-chair Cough asked whether plans were to have this be a year-round community; Mr. Johnston said that is the intention, to have an aging-in-place community.

Secretary Brooks asked if there would be covenants controlling the neighborhood. Mr. Johnston said there would be staff taking care of the grounds to ensure everything is maintained. Secretary Brooks said the application looks "really good," and that she did not see any negative aspects. "It's a huge need right now in this town," she said.

Chair St. Germain asked whether about different types of homes including single-family and two-family homes, what is allowed in each district, and how it would be looked at if this were a subdivision where each homeowner bought a lot? He wondered if this would actually be considered a multi-family development on a single lot.

Mr. Johnston said the applicant had looked at this possibly as a retirement community, which is an allowed use in the district but comes with requirements regarding healthcare and setup. He said the applicant didn't want to lock themselves in to the healthcare aspects and associated requirements of it, though, when two-family dwellings are allowed.

There was a discussion regarding definitions of multi-family dwelling I and two-family dwellings (duplexes). Mr. Johnston said the applicant felt the project met the definition of two-family. The multi-family definition requires that the three or four families be doing cooking in the building, he argued, while the proposal is for two units attached, with the families (resident) living independently of the other unit, he said.

Part of the vision was for the homes to be considered two-family dwellings, said Mr. Johnston, who said there did not appear to be anything in the two-family definition that excluded the applicant from going that route. The multi-family I definition requires three or four families doing cooking in the building, he said, which is not the case.

There was some discussion between board members regarding definitions. In response to a comment from Vice-chair Cough, Mr. Johnston said the availability of public sewer and water had weighed on the applicant's decision, and noted that PUD-O is not allowed in this district on town water and sewer. Staff indicated it was ambiguous, said Mr. Johnston.

Chair St. Germain moved on to a discussion regarding street connections. Regarding road entrances onto Route 3, said Mr. Johnston, the applicant has worked with Bruce Mattson and the Maine Department of Transportation, who did not want additional entrances. If the board were to require it, Mr. Johnston said, the applicant would want to make sure it's in the public's best interest.

Chair St. Germain asked the third question staff had come up with, regarding the intention of keeping the road private or public. The intention is to have a private drive and public sewer and water, said Mr. Johnston, which would be constructed to the appropriate standards.

Secretary Brooks asked how many total units there would be; Mr. Johnston said the plan is to have 40 total. Mr. Eleftheriou asked if Hamor Lane would be used at all. Mr. Johnston said no.

Mr. Eleftheriou said he needed time to think about how to look at the units being proposed and how to classify them under the definitions of the Land Use Ordinance. He said that if the fire chief is okay with the entrances, he would be okay with a single connection. Vice-chair Cough echoed Mr. Eleftheriou's points on connections and classifications.

Chair St. Germain said he was intrigued by the rationale presented by Mr. Johnston on two-family dwellings vs. multi-family dwelling I under the Land Use Ordinance.

**At about 7:45 PM, Chair St. Germain opened the public comment period.** Assistant Planner Fuller displayed the contact information. Chair St. Germain noted there were questions in the Zoom chat and read them aloud. The questions pertained to whether Christopher Maller's home and barn would remain in place and whether the new entrance from Route 3 would be more than 1,000 feet from the existing Hamor Lane.

Mr. Johnston said the barn may be worked in as the maker's space but the home would likely not remain in place. As for the new entrance from Route 3, the answer is it would be less than 1,000 feet away because the lot itself is not 1,000 feet wide, he said.

Dave Montgomery, an abutter at 36 Neighborhood Road, asked if setbacks would be adhered to and asked a question about drainage, saying there had been issues with drainage running down toward Hulls Cove in the past. He asked about the impact of lighting and said that right now residents can enjoy the night sky.

Chair St. Germain reminded callers that questions should be asked to the chair and relayed to the applicant and apologized for not pointing that out before. Chair St. Germain asked Mr. Johnston to answer the question.

Mr. Johnston said setbacks will be followed. The applicant wants to be a good neighbor, he said. As for drainage, he said, the applicant will be required to detain, collect and treat 95 percent of the stormwater on site in addition to town standards for peak discharge. They will also be subject to a state quality-based guideline requiring a filtration system. There will be a “double level of drainage review” by the town and state, he said.

As for lights, said Mr. Johnston, the project intends to use pedestrian lighting rather than area lighting.

Chair St. Germain asked if there were any more questions. **Seeing no other comments, he closed the public comment period at 7:53 PM.**

Chair St. Germain asked if board members had any further suggestions. None were raised.

**Mr. Eleftheriou moved not to act on the submission of waiver requests 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; because the board would have to act again on submission of waiver requests at the completeness review meeting, creating confusion; and as the board has provided direction to the applicant on the submission of waiver requests. Secretary Brooks seconded the motion, which then carried unanimously (4-0) on a roll-call vote.**

**Mr. Eleftheriou moved to have staff schedule a self-guided site visit and schedule a neighborhood meeting that’s convenient for all the parties concerned. Secretary Brooks seconded the motion, which then carried unanimously (4-0) on a roll-call vote.**

Vice-chair Cough suggested the board move quickly as the hour was late.

## **VII. OTHER BUSINESS**

### **a. Update on Town Council action on vacation rentals**

Planning Director Gagnon updated the board on the Town Council’s action two weeks earlier on January 19, 2021. The Council voted to have a straw poll on transferability on the June 2021 ballot.

Chair St. Germain thanked Planning Director Gagnon. He said that even though he was not part of the Town Council decision, he stumbled on something in the Land Use Ordinance that he said didn’t jibe with his thoughts on transferability, under 125-92 A. in the Land Use Ordinance.

Code Enforcement Officer Chamberlain weighed in. She said she had thought that applied as well. Staff discussed that with Town Attorney Ed Bearor, who felt it did not apply to vacation rentals. For instance, she said, if one gets a registration — such as for a car — it is not transferable to other people. It doesn’t roll with the car. Attorney Bearor did not feel as though that applied to vacation rentals, said Code Enforcement Officer Chamberlain.

Chair St. Germain asked if the board should wait for the results of the straw poll or forge ahead.

Planning Director Gagnon suggested the board propose to the Town Council that the protection clause be removed and that there be a shift to two-nights for VR-1 instead of one night. As discussed at the Council meeting, she said, staff are looking to have language pertaining to transition and continuation of registration be included in Chapter 190, and to have additional language as had been discussed and that is part of the vacation rental report. Staff wanted more guidance from the Town Council before they continued, she said, but it is up to the board what it wants to do.

Chair St. Germain said he felt the board had exhausted its abilities to be productive for the night.

Vice-chair Cough felt it was best that in order to provide the communication from the Planning Board and have a better working environment with the Town Council that the board make a recommendation and the board's thoughts known directly. He said he wanted to improve the relationship with the Town Council and he thought that would be a step the board could take to do so.

#### **VIII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA**

None.

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

None.

#### **X. ADJOURNMENT**

At 8:04 PM, Vice-chair Cough moved to adjourn. Secretary Brooks seconded. The motion then carried unanimously, 4-0, on a roll-call vote (Mr. Dority did not vote).

Minutes approved by the Bar Harbor Planning Board on March 3, 2021:

4/9/21

Eric Brooks

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Date

Erica Brooks, Secretary, Bar Harbor Planning Board