

**Minutes — Bar Harbor Planning Board  
Wednesday, September 29, 2021 at 4:00 PM  
Council Chambers — Municipal Building — 93 Cottage Street**

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**I. CALL TO ORDER**

Chairman Tom St. Germain called the meeting to order at 4:00 PM. Planning Board members present were Chairman St. Germain, Vice-chairman Joe Cough, Secretary Millard Dority, Member Ruth Eveland and Member Elissa Chesler.

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

Kelly Doran and Michael McKernan were present, representing The Jackson Laboratory.

**II. ADOPTION OF THE AGENDA**

Secretary Dority moved to adopt the agenda. Ms. Eveland seconded. The motion carried unanimously, 5-0.

**III. EXCUSED ABSENCES**

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

**IV. PUBLIC COMMENT PERIOD**

Chairman St. Germain opened the public comment period. As no one was present in the audience except the two representatives from The Jackson Laboratory who were here for a later agenda item, the public comment period was then closed.

**V. APPROVAL OF MINUTES**

- a. August 4, 2021
- b. September 1, 2021
- c. September 10, 2021

Ms. Eveland began by noting that although she had watched the meeting on video, she was not present for the September 1, 2021 meeting as she was unable to attend in person.

Ms. Chesler noted a typo at the bottom of page seven of the minutes from the August 4, 2021 meeting, where what was written as “hounded” should have been “hundred,” to read as “two hundred and forty feet”. Also, on page six of the September 1, 2021 meeting minutes, Ms. Chesler said there were two different special meetings referenced (one a special Planning Board meeting to take care of the Jones Marsh project, and the other a special town meeting, that being the vote on November 2) and she thought it should be clarified which is which. Ms. Chesler

**moved to amend both sets of minutes as described. Vice-chairman Cough seconded, with the addition that all three sets of minutes also be approved. Ms. Chesler agreed to that.**

There was then discussion about whether to approve all three sets of minutes as a group, as had just been indicated, or to take the September 1 meeting minutes separately as Ms. Eveland was not there and did not feel that it would be appropriate for her to vote on those minutes. Discussion and questions followed.

**Mr. Dority offered a friendly amendment to take the minutes of September 1, 2021 separately, which was agreeable to both Ms. Chesler and Vice-chairman Cough. The motion then became to approve the minutes of August 4, 2021 and September 10, 2021, with the change identified by Ms. Chesler (hounded/hundred in the August 4 minutes), which carried unanimously (5-0).**

**Mr. Dority then moved to approve the September 1, 2021 meeting minutes, additionally noting “as corrected” (meaning Ms. Chesler’s earlier comment seeking clarification of which meeting was which). Vice-chairman Cough seconded the motion, which then carried 4-0 (with Ms. Eveland abstaining, as she was not present for that meeting).**

## **VI. OLD BUSINESS**

### **a. Public Hearing (continued from September 1, 2021) — Remote Participation Policy**

#### **i. Public Hearing (continued)**

#### **ii. Consideration of adoption of Remote Participation Policy**

Chairman St. Germain asked if any Board members had anything to add to the discussion, which was continued from the previous meeting. He noted the discussion on September 1 was well-captured in the minutes.

Ms. Eveland noted again that she had watched the recording of the September 1 meeting. She said that, while she understood concerns about some of the mechanics and that there were procedural things to be worked out, having consistency across all the town boards was important. She said this was approval of a policy, rather than procedural specifics. She was concerned about the Planning Board making too many changes, “because I think that the inconsistency for how we’re managing it would be a problem for the town in the long run.” She said she wanted to make sure there was sound reasoning for any changes that the Planning Board might make.

Vice-chair Cough agreed but felt changes should be made if Board members came to an agreement that “if there’s language that’s bad, or that should be changed,” that should not be overlooked. “If there are concerns about it, let’s fix them,” he said. He noted that different boards and committees have different concerns and operate differently from one another.

Chairman St. Germain asked whether the Board would continue to use Zoom, exclusively; he said there had been some challenges for members of the public on occasion and that perhaps there would be a more appropriate platform in the future. He also felt there should be a deadline for members who planned to participate remotely in terms of notifying the chairman, rather than

notifying the chairman "as soon as possible." There was a discussion about how such notification was supposed to work, and what it would mean as far as public remote participation, as well.

Secretary Dority said he believed the question of which remote platform to use would fall under logistics, which would be managed by staff. Chairman St. Germain asked staff whether the policy would lock the Board into Zoom; Assistant Planner Fuller said no, it would not. In order for a member to be able to participate remotely, under this policy, the town would simply have to provide the public a way to interact with the Board (not tied to a specific platform). Assistant Planner Fuller noted staff had also, throughout COVID, also provided a phone number as a way for the public to comment and participate (if a computer connection was not possible for them).

Vice-chairman Cough said he felt the town should be consistent in the platform(s) it uses. He felt that, if the platform were to change, the public should be given at least two weeks' notice of the change. Assistant Planner Fuller said the point was well taken and that if there were to be a switch, there would be a discussion ahead of time with town staff to manage such a change.

Chairman St. Germain wondered whether the Board should leave the question of what platform is used up to the Town Council and reiterated his suggestion regarding a deadline. There was some discussion around a deadline. Chairman St. Germain said not having a specific deadline was too vague. He and Vice-chairman Cough felt having a deadline would take some pressure off the chairman in making that decision. Vice-chairman Cough said that, by utilizing the policy and making remote participation methods potentially available on short notice, it would "disenfranchise people that have made the effort to get to the meeting."

Ms. Eveland said she was fine with having a deadline. "Any discussion about the platform or anything like that is irrelevant to us because we never make the decision," she said. She recounted having used a lot of Zoom in the past 18 months through her work at the Jesup Library and said she was surprised at how smoothly it had worked and how quickly people caught on.

Ms. Chesler noted that the concerns raised would go away if the meetings were always available to remote public participation. Having to have video conferencing equipment available for every meeting "puts a burden on the town," she said, "but it standardizes how the Planning Board operates with respect to remote meetings." Ms. Eveland asked staff if they knew why the Maine Municipal Association had not opted to create a policy that would allow remote participation at all meetings, all the time. Staff said they did not know why.

The whole issue of remote participation, said Planning Director Gagnon, had come up because of COVID. She described a hypothetical situation where a board member might be diagnosed with COVID only a few hours before the meeting. If a deadline of several days was in place, she said, that could take away the ability of a competent member to participate in the meeting. On the flip side, she said, a member being allowed to participate remotely then dictating whether the public could participate remotely also would create an issue. Making all meetings open to remote public participation at any time might be an issue, said Planning Director Gagnon, who said she was thinking out loud. She said it was food for thought.

Chairman St. Germain asked if members would have to have both audio and video connectivity when voting. He said he thought Robert's Rules of Order were being updated to articulate that. There was some discussion between staff and the Board around that point; it was determined that, under this policy, as proposed, members would be allowed to vote via phone (audio only). Chairman St. Germain asked for clarification on whether video was required in order to vote.

Chairman St. Germain then asked what would happen if a member of Board was present and voting remotely but then dropped off (either due to technology issues or because they simply wanted to leave the meeting). Secretary Dority said the chairman should not allow that member to participate if they did not plan on being present for the entire meeting. It was noted that poor internet connections had, not infrequently, affected member participation over the past year. Ms. Eveland felt the discussion around the issue raised by Chairman St. Germain was "a rabbit hole." She said that, even in person, any member could leave the room at any time.

**Secretary Dority moved to approve the remote participation policy as is. Ms. Eveland seconded.** Secretary Dority said he trusted the chairman to make wise decisions about whether parameters of the policy could be met in a timely way. Chairman St. Germain asked whether there should be a deadline for someone to notify him that they could not make it to a meeting in person. Secretary Dority said no; he felt "the more detailed it gets, the more convoluted it becomes." Chairman St. Germain asked about whether members should be allowed to vote by phone. Secretary Dority felt that was fine. Ms. Eveland said, in her experience, while it is awkward to participate via phone, it is possible. This is designed for an unusual circumstance, she said. There was a discussion around examples of when this had occurred in the past. Assistant Planner Fuller mentioned an example from another board where a member who has some internet connectivity issues is able to call in by phone, while also being on video — thereby allowing him to still communicate effectively even if his video were to freeze up.

Vice-chairman Cough said he felt there should be a three-business day minimum deadline. He noted there is a three-day requirement for posting a meeting notice, under Chapter 31 (Board and Committees Ordinance). Regarding participation solely by phone, he wondered what a member would do if "fresh data" were presented by an applicant or other party at the meeting. He said he also wondered about Robert's Rules of Order, as was raised by Chairman St. Germain earlier.

Secretary Dority agreed with Vice-chairman Cough and said the chairman could decide, in that case, not to allow a member's remote participation. Chairman St. Germain summarized what he felt was the consensus of the discussion thus far. Ms. Chesler said it would be "difficult" for a member to participate without video, but that it could be allowed at the chair's discretion. The easiest thing to implement for consistency's sake, she said, would be to always have remote participation available for every meeting, every time. That way there would never be a question.

Ms. Eveland said she was in favor of making meetings "as available as possible" but said what Ms. Chesler had suggested might not be something the Board could decide at this point. She suggested sending a note to the Town Manager and Town Council to consider a town-wide change that would allow for remote participation in all meetings. She was not in favor of "only letting people participate if they had a video opportunity." If something was coming up with a

heavy video component, she said she thought “people would move heaven and earth” to ensure they could participate. Secretary Dority wondered if it would be discriminatory to require video.

Assistant Planner Fuller noted that meetings are available for viewing on Town Hall Streams as well as cable TV. That happened previously, he said, with someone participating by phone and watching on Town Hall Streams. While it was somewhat awkward (due to lag time and echoes, said Assistant Planner Fuller), it was possible for people to see the meeting while on the phone.

There would still be the opportunity for an excused absence, said Ms. Chesler, if one was unable to attend via remote methods. Secretary Dority asked why Vice-chairman Cough had suggested three days. That’s the window of time in which the board can ask for a meeting, said Vice-chairman Cough — there must be three days’ advance notice. He said he felt the deadline for submissions is too far out, but that three days would give time staff to prepare the logistics.

Planning Director Gagnon said public notices have to be posted two weeks (10 days) in advance of a meeting and that, if the three-days requirement were to pass, staff would provide a standard disclaimer on agendas, public notices and the like to that effect (that remote participation could possibly be allowed, and where information on how to do so would be posted if so).

Ms. Eveland said she was okay with the existing language and felt that it didn’t have to be articulated in the policy, as it could be handled by staff (who would ensure adequate notice). She noted there was a motion on the table. Vice-chairman Cough and Chairman St. Germain reiterated their concerns with the policy as proposed having no specific deadline. Ms. Chesler said she was supportive of leaving it open-ended and said it “adds a benefit in making certain means of participation easier.” She said it “never takes away the fact that they could participate in person” and that certain other details discussed did “not need to be part of the policy.”

Secretary Dority said he had come full circle and was uncomfortable that the chairman was uncomfortable with the policy as proposed. Planning Director Gagnon said adding a deadline would make things less flexible but also less chaotic for staff. She said a deadline would bring stability but offer less flexibility. There were questions about calling the question and rescinding the motion as discussion continued. Planning Director Gagnon asked if the intent was three business days or three (calendar) days. Secretary Dority asked if Board members anticipated any other questions aside from the deadline issue, and Chairman St. Germain said he was still interested in resolving whether voting by phone (without video) would be allowed.

Chairman St. Germain wondered again whether voting by phone only would be consistent with Robert’s Rules of Order; Vice-chairman Cough said the Board could overrule Robert’s Rules. Ms. Eveland said it would be strange if the Maine Municipal Association had distributed a policy inconsistent with Robert’s Rules of Order. She said she did not share Chairman St. Germain’s concern. Secretary Dority said he now favored adding a deadline, but said he believed voting by phone without a video connection should be allowed.

Ms. Chesler read from part of Chapter 31, Section 122 A. of the municipal code (Planning Board section of Boards and Committees ordinance), which states: “In the absence of any other

applicable rules, relates; ordinances or statutes, proceedings of the Board shall be governed by the latest edition of Robert's Rules of Order." She said she read that to mean that the Remote Participation Policy, if adopted, could supersede whatever requirement might be in Robert's Rules of Order regarding video participation. Regarding the deadline discussion, Planning Director Gagnon said it would be more practical for the policy to state three business days.

**Secretary Dority rescinded his motion from earlier and Ms. Eveland rescinded her second.**

**Secretary Dority then moved to change the language in paragraph two [of the Remote Participation Policy] to say that a member who is unable to attend a meeting in person will notify the chair or presiding officer no later than three business days before the date of the meeting. Vice-chair Cough seconded the motion.**

Ms. Eveland asked if Secretary Dority was moving to make that change or to adopt the entire policy with that change included. Vice-chair Cough rescinded his second so that Secretary Dority might amend his motion. Secretary Dority then amended his motion to state that the Bar Harbor Planning Board adopt the Remote Participation Policy with the following exception [amendment]: that in paragraph two, the language be changed to read, "A member who is unable to attend a meeting in person will notify the chair or presiding officer of the body no later than three business days of the next meeting." Vice-chairman Cough seconded the motion. Planning Director Gagnon said that addressed her concern.

Assistant Planner Fuller asked a question about whether the three-day clause was best placed where Secretary Dority had placed it, or perhaps instead in the previous sentence, which actually spoke about the chairman or presiding officer making a determination that remote participation methods would be allowed. He said it seemed like that was the key, operative part of the policy. Secretary Dority clarified his intent, and affirmed that the language was where he wanted it.

There was some discussion around voting by phone. A majority of the Board seemed okay with voting by phone, said Chairman St. Germain. Vice-chairman Cough was still uncomfortable with it, personally, but said he was OK with it as long as the chairman had discretion. Vice-chairman Cough also said the Board could amend the policy down the road if it found/felt it was needed.

**Discussion came to an end, and the motion then carried unanimously, 5-0.**

## **VII. REGULAR BUSINESS**

### **a. Discussion with The Jackson Laboratory (JAX) about the feasibility of locating a child-care facility within the existing JAX property located in the Scientific Research for Eleemosynary Purposes district (*agenda noted that no formal action would be taken*)**

Ms. Chesler said she needed to recuse herself as she is an employee of The Jackson Laboratory. Vice-chairman Cough moved to recuse Ms. Chesler. Secretary Dority seconded. The motion carried without opposition, 4-0, with Ms. Chesler not voting. She then left the room for the remainder of the agenda item.

Michael McKernan, Director of Government and Community Relations for JAX in Maine, and Kelly Doran, Director of Engineering and Capital Projects for JAX, were present representing the lab. Mr. McKernan noted that childcare is a major issue, not just locally, but nationally, and said a lack of availability has made existing options even more expensive. Mr. McKernan said the difficulty in finding childcare is a common experience shared by all members of the community, including JAX employees.

“Childcare is a critical component to the JAX recruitment and retention strategy, said Mr. McKernan, “and a lack of childcare is a decision point by people who are considering accepting job offers at JAX, and is a significant concern for current employees as they decide whether or not to have children.”

Mr. McKernan noted the lab had previously considered collaborating with the MDI YMCA on a childcare facility at the Y’s property, but said “that project was deemed by both organizations to be infeasible.” Now, he said, JAX is instead actively considering an on-site childcare facility with “the capacity to substantially meet current unmet demand.”

Ms. Doran recapped work JAX had done on the matter in recent months, which included looking around the town of Bar Harbor for a property that might meet its needs to construct a new childcare facility. Given the current real estate market, however, she said the lab was “not able to find anything in an area that would allow a childcare center for us to purchase and build.”

Ms. Doran said the lab then began an inward look at its own property, which is zoned as Scientific Research for Eleemosynary Purposes (§125-42 of the Land Use Ordinance). That section of the Ordinance, specifically §125-42 D. (2), does allow for accessory use or structure subject to site plan review. “We believe that childcare is an accessory use,” said Ms. Doran, “in the same way that our food service is, our fitness center, our credit union, and our health center, that we all have on campus. Those are all accessory uses that help to support the employees of The Jackson Laboratory and allow us to operate effectively. We really need all of those facilities to allow us recruit and retain the employees that we want.”

Turning to the scope of the potential childcare project, Ms. Doran said the lab is using information it gathered when looking at the earlier proposed partnership with the MDI YMCA. She said the lab is looking at constructing a facility somewhere in the range of 6,000-7,000 square feet with associated parking and an outdoor play area. Inside the building, she said, there would be childcare rooms for three different age groups (infants, toddlers, and young children), a multipurpose room, office space, food prep space, and associated storage/mechanical rooms/support spaces.

The lab’s goal, said Ms. Doran, is “of course to have low-to-no impact on the neighborhood around us.” The childcare facility would be managed “in the same way we manage our food service,” she said, working with an outside organization such as the Downeast Family YMCA.

The lab is conducting a feasibility study, said Ms. Doran, and is considering a location on its own existing campus that would allow for proper separation of the childcare facility from JAX's core operations. She said the lab wants to have something with easy access from either Schooner Head Road or Route 3. Ms. Doran said the lab would want greenspace around the facility, and would also want something that could be connected to necessary utilities.

Ms. Doran said she and Mr. McKernan were before the Board to talk about the potential project, to seek guidance on how to best work with the Board to position the project for approval, as well as to seek input on any design considerations.

Secretary Dority applauded JAX for considering this project and noted the difficulty of finding childcare in the area. He noted he was formerly the president of the board of directors for Kid's Corner, and noted that facility is now scheduling child placements two years out. "I certainly agree with you that it's an accessory use," he said to Ms. Doran and Mr. McKernan.

Planning Director Gagnon felt that, on the surface, the proposed childcare facility would meet the accessory use definition. She asked whether slots would be reserved solely for children of JAX employees or would it also be open to the children of non-JAX employees. If it was the latter case, she said, that would have to be clearly treated as an exception to the rule, or else it's not an accessory use. "We think it's a great project," she said, and agreed with the lab's position that it is comparable to the fitness center and food service as referenced earlier.

Ms. Doran said the intent would be to provide spaces for children of JAX employees first but then would open any remaining spaces up to other families and children in the community once the JAX need was met. She said that would be done in recognition of the fact that the need for childcare exists beyond just those parents who work for JAX.

Ms. Eveland noted that a number of people whose children are at Kid's Corner would likely be able to move to this future facility, thereby creating more space at Kid's Corner. "I think the additional capacity in the community is the critical component," said Ms. Eveland, while noting that the proposed new facility would also create conveniences for JAX employees with children. She wondered whether any American Recovery and Reinvestment Act (ARPA) funds would be available for the lab's proposed project. Mr. McKernan said JAX was aware of those funds but that, because of the lab's timeline, it likely would not be considering applying for those funds.

Chair St. Germain asked how many children would be in a facility in the 6,000-7,000 square foot size. Somewhere in the range of 50-60 children, said Ms. Doran. Chair St. Germain asked why JAX was considering parking if accessory uses do not require it; Ms. Doran said it was a good question. Code Enforcement Officer Chamberlain said typically an accessory use is deemed not to need parking because of its accessory nature. Planning Director Gagnon suggested that parking was desirable even if not required, however.

Chair St. Germain asked about criteria for location and noted some of the concerns previously raised by neighbors regarding the employee housing it built near East Strawberry Hill Road. "I



can hear Kid's Corner from my home," said Chair St. Germain (which is on Eagle Lake Road), and noted there might be people who would not want to hear that from their homes.

Ms. Doran reiterated the lab's interest in having a facility that could be accessed from either Schooner Head Road or Route 3. She said JAX wanted something physically separate from its core facilities, if possible, through the use of landscaping. She said getting utilities to the facility would be important, and noted there are portions of the lab's property where that would be more challenging to do than others.

Chairman St. Germain asked whether the lab was considering a property it owned on the east side of Schooner Head Road, where it had initially considered building employee housing (that later went up on a different site, off of Route 3). Ms. Doran noted that that property on the east side of Schooner Head Road is actually in a different zone (Village Residential) and said it has been eliminated from consideration for this project.

Chairman St. Germain said upon initial review, he agreed that the proposed project would seem to be an accessory use. Secretary Dority agreed. Vice-chairman Cough, meanwhile, said he "didn't have an opinion on it" but said he was intrigued by the proposal. He said he could see how it would help lab employees, but wondered if it should be looked at an accessory use the same way the fitness center and restaurant were. He asked if those projects had come before the Planning Board or if they had been approved by the Code Enforcement Officer (in which case, he asked, why was this project even coming before the Planning Board?).

Chairman St. Germain noted that under the ordinance, in this district, accessory uses require site plan approval. CEO Chamberlain said she could not recall whether those other earlier projects came before the Planning Board, but noted that generally alterations within an existing building do not come back to the Planning Board for review (such as for relocation of lab facilities, which she said JAX does often). Building a separate facility like this, she said, is another set of circumstances. Chairman Germain noted a typo in that section of the ordinance.

Chairman St. Germain asked about the scale of the project, and whether 50-60 kids was considered a lot. Mr. McKernan it equates to about 1.3 Kid's Corners operating at full capacity. Vice-chairman Cough asked about ages of kids who would be there. Ms. Doran said it would be infants (0-18 months), toddlers (18 months to 3 years old) and young children (3 to 5 years old).

Secretary Dority reaffirmed his view of this as a true accessory use, and noted many big companies are now including childcare and housing as employee attraction and retention strategies. He also encouraged the lab to not completely hide this facility from public view, saying it's fun to drive by and see children playing. "Don't completely wall them off," he said.

Chairman St. Germain thanked the lab's representatives for coming in and making their presentation, and said again it seemed like an accessory use. Vice-chairman Cough said it would certainly help address an existing need in the community.

*Note: Ms. Chesler returned to the Council Chambers and re-joined the Board following the conclusion of the Board's discussion with the representatives from JAX.*

**VII. OTHER BUSINESS**

None.

**IX. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA**

None.

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


Planning Director Gagnon said staff had thought an application for completeness review might be submitted in connection with the retirement community proposed in Hulls Cove by Chris Maller (it previously came for sketch plan review). That application was not submitted, however.

Planning Director Gagnon noted that an application for an employee living quarters (ELQ) would be submitted in the near future, based on what staff had heard from the applicant. She said another one was more in the conceptual stage. Code Enforcement Officer Chamberlain noted that a shared accommodations (SA) would soon be going before the Town Council for its license.

**XI. ADJOURNMENT**

At approximately 5:33 PM, Ms. Chesler made a motion to adjourn the meeting. This was seconded by Secretary Dority, and without discussion the motion then carried unanimously (5-0).

**Minutes approved by the Bar Harbor Planning Board on October 27, 2021:**

  
Date \_\_\_\_\_ 11-02-21  
Millard Dority  
Secretary, Bar Harbor Planning Board