

**Bar Harbor Planning Board
March 20, 2019
Council Chambers – Municipal Building
93 Cottage Street in Bar Harbor
4:00 PM**

I. CALL TO ORDER

Chair St. Germain called the meeting to order at 4:00 PM.

Meeting called to order at 4:00 PM

Members present were Chairperson Tom St. Germain, Secretary Basil Eleftheriou Jr. and John Fitzpatrick. Vice Chair Joe Cough and Erica Brooks were absent.

Quorum present; Cough and Brooks absent

Town staff present were Planning Director Michele Gagnon and Administrative Assistant Tammy Desjardin.

II. ADOPTION OF THE AGENDA

Mr. Fitzpatrick moved to adopt the agenda. Mr. Eleftheriou seconded the motion. The motion carried unanimously (3-0).

Board adopts agenda as prepared

III. EXCUSED ABSENCES

Chair St. Germain informed the board that Mr. Cough and the board's incoming member, Ms. Brooks, were both excused absences. Mr. Eleftheriou moved to excuse the absences, and Mr. Fitzpatrick seconded the motion. The motion carried unanimously (3-0).

Excused absences Cough and Brooks

IV. PUBLIC COMMENT PERIOD

No one came to the microphone at this time, and Chair St. Germain closed the public comment period.

No public comment

V. APPROVAL OF MINUTES

a. March 6, 2019

Chair St. Germain asked if the board wanted to make any changes to the minutes of the March 6, 2019 meeting. Mr. Eleftheriou referenced his comments on page 7 of the minutes about the Hamilton Hill Subdivision by Kebo Properties, LLC. He asked that his comments on 40,000 SF vs. 10,000 SF minimum lot size in regard to town sewer be qualified so that it is clear which was which. Mr. Eleftheriou made a motion to approve the minutes with that adjustment being made.

Correction to minutes regarding minimum lot size with regard to town and to spelling of Mr. Fitzpatrick's last name

Mr. Fitzpatrick was not present at the March 6 meeting, and Chair St. Germain asked if he could second the motion even though he was absent for the Hamilton Hill Subdivision portion of the meeting because he had recused himself. Planner Gagnon said he could if he had brought himself up to date, and Chair St. Germain said he had read the minutes in their entirety. Gagnon noted Mr. Fitzpatrick's last name was also spelled incorrectly in the minutes, as Fitzgerald, and that should be corrected.

Mr. Eleftheriou amended his motion to include that correction as well. Chair St. Germain seconded the amended motion. It carried unanimously (3-0).

Board adopts minutes as corrected

VI. REGULAR BUSINESS

a. Completeness Review & Public Hearing: SP-2018-09 Kampgrounds of America

Project Location: 1452 and 143 State Highway 102; Tax Map 219, Lots 038-000 and 043-000

Applicant: Kampgrounds of America

Application: The applicant proposes to replace RV, tent and cabin sites with 64 erected canvas tents on wood platforms, relocate a pavilion and bathhouse, renovate the pool area and relocate employee RV pads, construct a new clubhouse, remove interior roads and driveways, and relocate the existing entrance to the site.

Present was Chip Haskell from CES, Inc. Chair St. Germain asked that he bring the board up to speed on the project and inform the board where the project is with regard to completeness. Mr. Haskell noted Sam Coplon, who was present at the last meeting, was unable to attend this meeting.

Mr. Haskell said he believed all the issues relating to incompleteness at the last meeting have since been addressed.

There was a discussion regarding necessary permits. Mr. Haskell noted the town requires that any necessary state and federal permits be approved by the issuing agencies before the town approves the project. He said some of those permits have been approved for this project but others have been delayed. Mr. Haskell asked that the Planning Board approve this project, conditional upon approval of the outstanding permits by the respective agencies. He noted he received the Maine Department of Transportation (DOT) highway entrance permit that afternoon. He said the only other permit the applicant had received approval for is a Maine Department of Environmental Protection (DEP) stormwater permit by rule.

Chair St. Germain asked Mr. Haskell to summarize the project for the benefit of anyone watching the meeting or wishing to comment. Mr. Haskell said the plan is to replace the existing 126 sites with a total of 63 luxury tent sites, most of which will be on the footprint of existing camp sites. He also outlined plans for new and renovated facilities, a new entrance, new utilities and a boardwalk to connect the two sections of the campground.

Chair St. Germain asked board members if they were satisfied with the submissions in terms of completeness. Mr. Fitzpatrick said with the exception of the permits mentioned by Mr. Haskell, he was satisfied with the submission materials. Mr. Eleftheriou agreed, and noted staff had flagged a couple of additional waivers that would be needed for the project.

Mr. Eleftheriou motioned to consider the additional waivers for submission, under Section 125-63, and move that a waiver be granted for item 5A (Army Corps of Engineers permit) as it will not unduly restrict the review process and also move that a waiver be granted for item 7H (Stormwater disposal system details) as it is reducing the amount of impervious area and the applicant has secured an MDEP stormwater permit-by-rule.

Completeness review
for SP-2018-09
(Kampgrounds of
America)

Discussion regarding
permits and waivers

Mr. Fitzpatrick asked why waivers were necessary when the board has copies of the applications in question. Gagnon said the board needs the actual permits.

Mr. Haskell said the applicant would also like the DEP Tier-1 wetland permit waived, for the same reason as the others (application has been submitted, but permit has not been received).

Discussion ensued on the necessary permits and the status thereof. Mr. Haskell summarized: the applicant submitted for four permits: DOT highway entrance permit, two DEP permits — one for stormwater (permit-by-rule), the other for wetlands (Tier-1) — and then the Army Corps wetlands permit. He said approval has been received for the DOT permit and the DEP stormwater permit-by-rule, with the two wetlands permits outstanding (both applied for, but neither received).

Discussion on permits and waivers continued. In response to a question from Mr. Fitzpatrick, Planner Gagnon said the stormwater waiver would be appropriate because no stormwater management plan is being provided. Instead, the applicant has detailed a plan to reduce the amount of impervious surface and also that it has secured a DEP permit-by-rule for stormwater. She said the board would be waiving the fact the applicant is not submitting a design plan and also accepting the reasoning for not doing so.

Mr. Eleftheriou removed his motion on waivers, which had not been seconded. He then made a new motion, to add a waiver for the requirements of 7H (stormwater disposal details) because the applicant is reducing the amount of impervious area and that the applicant has secured an MDEP permit-by-rule. Mr. Fitzpatrick seconded the motion. There was no further discussion, and the motion then carried unanimously (3-0).

Chair St. Germain said the review would move on to completeness.

Mr. Fitzpatrick motioned that SP-2018-09 — Kampgrounds of America is complete. Chair St. Germain seconded the motion, and asked if there was any discussion. Mr. Eleftheriou had a question about the correct permit number. Planner Gagnon answered, and Mr. Fitzpatrick amended his motion SP-2018-01 — Kampgrounds of America, as complete. Discussion ensued and it was found that Fitzpatrick's original motion was correct. Fitzpatrick retracted both of his motions and made a new one, that application SP-2018-09 — Kampgrounds of America is complete as submitted. Mr. Eleftheriou seconded, and the motion then passed unanimously (3-0).

Chair St. Germain then opened a public hearing. No one came forward to speak on the application, and Chair St. Germain subsequently closed the public hearing.

Chair St. Germain said the board could then begin deliberations on the application. Mr. Fitzpatrick said he looked over the plans and found that all his previous concerns were addressed. He said he had no additional questions. Mr. Eleftheriou said his only question was how the layout of some of the sites was different from the previous plan. Chris Cannon, landscape architect with Coplon Associates, said

Summary on status of permits

Discussion on stormwater

Board votes to grant waiver for stormwater plan

Board finds application complete

Public Hearing

several sites had been moved (two of them out of the 75-foot wetland setback). There were no further questions from the board.

Mr. Fitzpatrick moved to approve application SP-2018-09 for the applicant KOA Kampgrounds of America, Tax Map 219, Lots 038-000 and 043-000 (reads tax map and lots numbers) based on the plans as submitted and the draft decision, based on the findings and conclusions of law, as outlined in the draft decision, with the following condition:

Condition #1: That the Army Corps of Engineers Category 1 Wetlands and Maine DEP Wetlands Tier 1 Disturbance approved permits shall be submitted to the Code Enforcement Officer prior to the issuance of any construction permits, as outlined in the draft decision dated March 19.

Mr. Fitzpatrick said that based on what was heard during completeness review, the condition of approval relating to the Maine DOT entrance permit as outlined in the draft decision is stricken.

Mr. Eleftheriou seconded the motion. The motion carried unanimously (3-0).

b. Completeness Review: SP-2018-08 — TA-1

Project Location: 357 Norway Drive, Tax Map 228, Lot 055-000

Applicant: Cara Romano & David LaValle

Application: The applicant is proposing to operate a TA-1 (Bed & Breakfast accommodations in the private, year-round residence of the host family who live on the premises. Breakfast is the only meal provided).

The applicants were present and introduced themselves. Ms. Romano said they are seeking TA-1 status for their property (primary residence) at 357 Norway Drive. She said they have a small lodging business and have a third bedroom that is not attached to the main house but connected by a walking pathway. She said they want to list this space on short-term rental websites and rent it on a nightly basis.

Chair St. Germain explained how the site plan review process works. He said the board would go through the waiver requests. Planner Gagnon noted the purchase and sale agreement was not missing. Mr. Fitzpatrick asked if she had reviewed the requests closely. Planner Gagnon said she met with the applicant that afternoon and had done the best she could. She said she felt the applicant was not missing anything and had submitted a complete list of waivers.

Mr. Fitzpatrick asked if the requests matched what was on the checklist for recommended waivers. Planner Gagnon said it seems complete at this point. Board members clarified with the applicant that no new construction is proposed and that this application is simply a change of use. A question about tax map and lot numbers was answered.

Board approves application SP-2018-09 (Kampgrounds of America) with conditions: applicant to submit Army Corps of Engineers Cat. 1 and MDEP Wetlands Disturbance Tier permits

Completeness review for SP-2018-08, TA-1 at 357 Norway Drive

Mr. Fitzpatrick motioned to find application SP-2018-08 complete as submitted. Chair St. Germain asked if Mr. Fitzpatrick wanted to do waivers first.

Motion to find application complete, no 2nd

Mr. Eleftheriou motioned to accept the waivers submitted for application SP-2018-08, dated March 20, 2019. Mr. Fitzpatrick seconded the motion and it carried unanimously (3-0).

Board accepts waivers for SP-2018-08

Mr. Fitzpatrick then restated his earlier motion, to find application SP-2018-08 complete as submitted. Mr. Eleftheriou seconded the motion, and it carried unanimously (3-0).

Board finds application complete for SP-2018-08

Chair St. Germain said he believed the earliest a public hearing could be held for this application would be April 17, 2019. Ms. Romano requested a date in May, and after conferring with Mr. LaValle they agreed on May 1.

Planner Gagnon raised a question about TA-1. She said determining whether a particular application is an allowed use is extremely important to continuing the process. She said it would be helpful to decide that now. She referred to the definition of TA-1 and said she wondered whether what is being proposed meets the definition. She said it is also important, as there may be more applications like this in the future, given the overall discussion about vacation rentals in town.

Mr. Fitzpatrick said he did not think the definition of TA-1 is applicable, as the project is proposed. Mr. Eleftheriou mentioned the section of TA-1 that refers to host family that lives on the premises. He then read the definition of premises, which refers to one or more parcels of land under the same ownership and which are contiguous, with all of the buildings and structures thereon.

Discussion on whether this application meets definition of TA-1

Mr. LaValle said the structures are attached underground, in that they share water and sewer lines. Ms. Romano said they were advised to take this approach by town staff earlier (she acknowledged they had previously been in violation). She shared general thoughts with the board on the application process.

Mr. LaValle said he would be willing to put a boardwalk between the two structures if it came to that. Mr. Eleftheriou said he was of the same mind as Mr. Fitzpatrick on the matter of TA-1 until he read the definition of premises.

Planner Gagnon said other applicants are waiting to see how this review process goes before applying themselves. She focused on the language relating to such a use being "in" the private, year-round residence of the host family that lives on the premises. Planner Gagnon reiterated it is important to make a determination of how such applications will be reviewed. She said she could get an opinion from the town attorney if the board wanted. Chair St. Germain said he was OK with the definition of TA-1 in this case.

Mr. Fitzpatrick said he agreed with Planner Gagnon that the definition is clear, about being "in" the private year-round residence of the host family. He said the third bedroom is an outbuilding and not "in" the private, year-round residence of the host family. Chair St. Germain said he respectfully disagreed, based on Mr. Eleftheriou's

note about the definition of premises. Mr. Eleftheriou asked about getting a legal opinion from Town Attorney Ed Bearor. Planner Gagnon said it could be prudent. She said as the town progresses with its review of vacation rentals, this is something that needs to be addressed.

Ms. Romano asked if what they had been told earlier by the town — that the outbuilding is a third bedroom — is no longer the case. Chair St. Germain said the board was not addressing that tonight. Mr. Eleftheriou said he did not think “third bedroom” was the big question, but rather “dwelling” and living in the dwelling.

Question on status of third bedroom

Mr. Fitzpatrick said he did not think TA-1 was created for this type of situation, with a two-bedroom house and one-bedroom camps around it. Discussion continued.

Mr. Fitzpatrick asked why the applicant was pursuing TA-1 rather than weekly rental. Ms. Romano said they were instructed by a former town employee to go this route. Ms. Romano said weekly vacation rentals are for either 5 or 7 days, and that they are looking to do nightly or other short rentals. She said the bottom line for them is being able to live here and make a living. She said individuals should be able to do what larger businesses are able to do, when the individual does it on a much smaller scale. Ms. Romano agreed the town will see many more such applications. She said they enjoy living here but that it is hard to make a living.

Discussion on TA-1 versus weekly rentals

The possibility of putting the rental room in the larger building was discussed, as the whole property would be covered by the TA-1 designation. Planner Gagnon said she was unsure what her opinion on that idea was at the moment.

Ms. Romano spoke about the history of their property over the past decade and said they were before the Planning Board now trying to make things right. She said part of their push is also to get the town to make a final decision on this issue.

Chair St. Germain asked Mr. Eleftheriou for his opinion on the application’s compliance with land use regulations. Mr. Eleftheriou said he was not sure it was clear and that there was room for interpretation. Mr. Eleftheriou said he would welcome a legal opinion on the various aspects of the matter at hand.

Chair St. Germain summarized for the applicant that it seemed two board members (himself and Mr. Eleftheriou) agreed with their approach to the land use ordinance, while Mr. Fitzpatrick disagreed. Chair St. Germain noted two board members were absent, however. Planner Gagnon summarized what the town would be looking for from Attorney Bearor regarding a legal opinion.

Discussion continued, including the possibility of connecting the two structures above the surface. Board members said if the applicants rented out a bedroom in their residence (rather than the third, freestanding bedroom), it would likely be acceptable and the path of least resistance, though it would leave the larger question about the status of the building with the third bedroom in it unanswered.

The applicants both said they would like to see the town answer the larger question. Ms. Romano said she did not like to be the guinea pig. Discussion continued, and

Ms. Romano said renting the house is not an option for them at this time and the season is about to start. She explained why it is not a viable option.

Chair St. Germain said the applicant has about six weeks until the public hearing, and that a legal opinion should be in hand before that time. He said the applicant could request an extension if it is not.

Mr. Fitzpatrick motioned to schedule a public hearing for Wednesday, May 1, 2019. Chair St. Germain seconded it. Mr. Eleftheriou asked what the deadline was for the hearing to be moved to May 15, should that prove necessary. Discussion followed. Board members said if the submission deadline was not met for May 1, the hearing could be continued to the following meeting (May 15). The deadline for the May 1, 2019 meeting is April 15, 2019.

The motion for the May 1 public hearing then passed unanimously (3-0).

VII.) DORMITORY AMENDMENT

Chair St. Germain said he believed the dormitory issue was progressing. He said he anticipated having a solid proposal to consider very soon.

Mr. Fitzpatrick asked if rooming houses would be made part of the dormitory definition. Chair St. Germain explained the definition of rooming house references a single-family house, even though the latter is defined separately elsewhere. Chair St. Germain said aside from the numbers used, rooming house and employee dormitory definitions are the same. Mr. Fitzpatrick said the distinction was made to be compliant with the Fire Marshal's office and the International Building Code. Chair St. Germain explained why they are looking at something different now.

Mr. Fitzpatrick recapped his recollection of why it was done the way it was originally. Discussion continued between the two of them. Chair St. Germain clarified that the rooming house definition would be eliminated and that two definitions would remain instead: employee dormitory and workforce dormitory. Workforce would still be 16 people or more and would be a standalone primary structure, while employee dormitory would be an on-site application of a dormitory with the low number lowered to 6 or more. Chair St. Germain said he was confident there would be a working amendment proposal very soon.

VIII.) BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

Mr. Eleftheriou asked about the Charter Commission. Planner Gagnon identified two other issues: solar and homestead exemption in relationship to vacation rentals.

Regarding the charter commission, Planner Gagnon said Charter Commission Member Anna Durand had asked the Planning Board for its input. Planner Gagnon said the idea would be to have discussion and share any ideas that came out of it.

Mr. Eleftheriou said he did not mind giving input as an individual, but was not sure it was the board's role to do that. He said he personally did not believe the Warrant Committee should be reviewing land use articles. He said their traditional role is

Board approves May 1 date for public hearing

Update on dormitory amendment

Discussion on charter commission

fiscal matters. He said there is plenty of other opportunity for public input on land use matters. He said information gets lost when it is relayed second hand, from the Planning Board to the Warrant Committee. Both Chair St. Germain and Mr. Fitzpatrick expressed agreement with Eleftheriou.

Chair St. Germain asked Mr. Eleftheriou if he had any information about solar. Mr. Eleftheriou shared handouts with the board and town staff and explained what he had done. He said much of his information came from the American Planning Association. He talked about some of the definitions and what the town could opt to do. He said some solar projects could be done as minor site plans through the Code Office rather than adding to land use.

Update on solar research done by Mr. Eleftheriou

Mr. Eleftheriou said he modeled what he wrote after the town's land use ordinance with the goal of trying to protect landowners. He gave further explanation of his handout. He said he did not know if all of what he presented would be necessary in Bar Harbor, but he wanted the board to see what is out there. He said he could send what he had put together to the board in electronic format for them to review and comment on as they wished. Mr. Eleftheriou said he had used a lot of language from existing sections of the land use ordinance on cell towers and wind turbines.

Planner Gagnon asked several questions. She said she was impressed with the document overall. Mr. Eleftheriou said the board could discuss what the threshold should be for Planning Board review of solar projects, if any, but he said he did not think private residences should have to come before the board for solar projects. Mr. Fitzpatrick said he thought that was the big question: What would get a building permit and what would get a planning permit? He agreed with Mr. Eleftheriou that small, residential projects should only need a building permit, but wondered where the dividing line should fall exactly. Both of them said large-scale solar projects in the town were unlikely given economic factors. A general discussion of solar energy and projects ensued. Chair St. Germain and Mr. Fitzpatrick thanked Mr. Eleftheriou for his work.

What solar projects would need building permits and which would need planning permits? Agreement that single-family homes would just need building permit

Chair St. Germain referenced the town council meeting of the night before and said councilors "inched closer" to a policy on short-term rentals. He said he had hoped councilors would take a straw poll on seven separate issues but that they ended up not doing so. Those issues included: minimum stay (perhaps reducing it), defining vacation rentals (changing the existing definition or adding others), limiting future vacation rentals, reducing density requirements (and prohibiting short-term rentals in areas where the density requirements were reduced), parking requirements, inspections, and the subject of applications like the TA one the Planning Board had seen that night. He broke down what issues might be addressed now and what might be addressed in the future.

Discussion on town council's discussion of short-term rental policy

Chair St. Germain said the TA-1 application before the Planning Board that night reminded him the board might very well see many more such applications in the future as an attempt to avoid the regulatory framework being established. Board members discussed gathering quantitative information on the subject, something Chair St. Germain said is a necessity. He referenced some data that had already been

gathered on that subject regarding the number of dwelling units and different types of dwelling units.

Planner Gagnon said it would be good to do a housing study, particularly as the town works on a comprehensive plan when such a study would be needed anyway.

Chair St. Germain said he saw two main issues at the council level: promoting creation of entry level housing by subsidizing or otherwise supporting it; and, if it is determined that the vacation rentals are hurting the creation of that entry-level housing, then the rentals should be regulated in such a way that helps promote housing. He said it would be up to the Town Council.

Chair St. Germain noted the board has a fifth member, Erica Brooks, who will be joining the board in April.

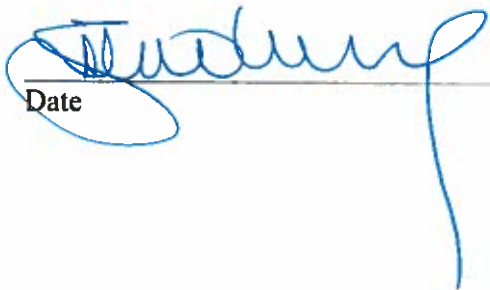
New member Erica Brooks will be at the board's next meeting

IX.) ADJOURNMENT

Mr. Fitzpatrick motioned to adjourn at 5:55 PM, and Mr. Eleftheriou seconded. The motion then carried unanimously (3-0).

Board adjourns meeting at 5:55 PM

Minutes approved by the Bar Harbor Planning Board on April 3, 2019:



4.03.19

Date

Basil Eleftheriou Jr., Secretary
Bar Harbor Planning Board