

**Bar Harbor Planning Board
April 3, 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, Vice Chairman Joe Cough, Secretary Basil Eleftheriou Jr., John Fitzpatrick and Erica Brooks. There were no members absent.

All members present - Board has quorum

Town staff present were Planning Director Michele Gagnon and Code Enforcement Officer Angie Chamberlain.

II. ADOPTION OF THE AGENDA

Mr. Fitzpatrick moved to adopt the agenda. Mr. Eleftheriou seconded the motion. The motion carried unanimously (5-0).

Adoption of agenda

III. EXCUSED ABSENCES

Chair St. Germain noted everyone was present. He welcomed Ms. Brooks to the board.

No absences to be excused

IV. PUBLIC COMMENT PERIOD

Donna Karlson asked the board for the sheet of colored paper that board members have.

Ed Damm asked a question about parking design and parking requirements for properties that do not have large amounts of space for parking. Chair St. Germain said the land use ordinance addresses parking in various ways for various uses. Chair St. Germain said he anticipated the board will likely address parking requirements to help prevent parking lots from being forced into residential areas.

Ed Damm asks about parking design standards

With no one else coming forward to speak, Chair St. Germain then closed the public comment period.

V. APPROVAL OF MINUTES

a. March 20, 2019

Chair St. Germain asked if the board wanted to make any changes to the minutes of the March 20, 2019 meeting. No one requested any changes. Mr. Fitzpatrick made a motion to approve the minutes for the March 20, 2019 meeting. Mr. Eleftheriou seconded the motion. It carried 4-0. Vice-chair Cough abstained.

Board approves minutes as presented, Vice-chair Cough abstains

VI. OTHER BUSINESS

a. Vacation rentals

Chair St. Germain noted there were several people in the audience who were likely there to speak on the subject. He asked Councilor Erin Cough to summarize the action taken by the Council the night before.

Councilor Cough said it was a motion made by Councilor Steven Coston and amended by Councilor Paul Paradis. She said, as she understood that amendment it was to take the items in Councilor Coston’s motion and have the Planning Board members review them, see if they make sense, and prioritize them or push back as needed.

Councilor Cough offers summary of Council motion

Chair St. Germain offered his summary of the April 2 Town Council meeting and the discussion on vacation rentals: after taking public comment and deliberating, they chose not to enact a moratorium and chose to defer to the Planning Board on coming up with a timeline for addressing vacation rental-related matters. No one else who was at that meeting disagreed.

St. Germain offers summary of council meeting

Chair St. Germain said it was his sense, though no one said so directly, that some items will be dealt with for the November 2019 ballot while other items (such as parking, perhaps, and defining hosted vs. non-hosted rentals) will likely be addressed on a ballot at a later date. He said he believed the Council wants to see the dormitory issue addressed and, if possible, reducing the area-per-family requirements (increasing density).

Discussion on November vote priorities

The Planning Board has only a limited number of meetings left before June in which to address those issues eyed for the fall ballot. Chair St. Germain said he believes the dormitory amendment is close to complete, and that perhaps the board could also tackle the vacation rental definition in the Land Use Ordinance to get it on the November ballot. He said that alone will not solve the issue, however, and asked the board if they felt the density matter could also be addressed before June.

Vice-chair Cough expressed concern with too much work and too little time. He said he is comfortable with the dormitory amendment moving forward. Mr. Fitzpatrick summarized the three issues identified by Chair St. Germain with three Ds: dormitory amendment, definition of vacation rentals and density changes. Chair St. Germain said he was open to input from others. Discussion ensued. Vice-chair Cough suggested working on definitions (such as hosted or non-hosted). Chair St. Germain said at an earlier public form, many people spoke about the length of stay matter. He said that is where he sees the board being able to do something.

J. Cough suggests working on definition of hosted and non-hosted

St. Germain suggests working on length-of-stay

Mr. Eleftheriou said he also heard town councilors ask for advice from the Planning Board. He said the most important thing is having a housing study done. He said rentals are just one facet of the housing crisis. He said he would hesitate changing length-of-stay requirements until a study is done. To spur conversation, he asked why the minimum length-of-stay was set at 5 days for vacation rentals in contrast with requirements for transient accommodations.

Eleftheriou hesitant to change length-of-stay until housing study is done

Chair St. Germain directed the question to Code Enforcement Officer Chamberlain.

She said it was intended as a weekly rental, and not for the overnight or couple-of-days stay, to differentiate it from B&Bs, hotels and motels. In response to a concern from Mr. Eleftheriou about enforcement of rules, Chair St. Germain noted some money was budgeted for a third-party enforcement mechanism. Chair St. Germain said he believes when that is in place it will change the rental landscape.

Chair St. Germain said he believed the Council is sympathetic to and supportive of the definition being changed, perhaps to three days (which by extension means two nights, not three). He said he saw that as a good short-term fix the Planning Board could make on that subject. Mr. Eleftheriou said he understood the pressures the Council is facing, but said he worried about making a short-term fix before a housing study is done.

There were questions about when enforcement would start. CEO Chamberlain noted the money is being budgeted but that details have not been worked out yet. Ms. Brooks asked if those tasked with ensuring compliance would also be collecting data. She said that data could suffice for a housing study. She said she sees people wanting to comply with the current ordinance but that it is outdated. Ms. Brooks said board members need to redefine vacation rentals. She said they could at least get something to the Town Council for its consideration, and that that was what she heard the Council ask the board to do.

Mr. Fitzpatrick said he heard direction at the previous Town Council/Planning Board workshop and heard clear direction to reduce the number of days for vacation rentals. He said that does not address the larger issue of housing, however. He said to reduce the density requirements without some sort of moratorium or restriction to keep new units from going into the lucrative short-term rental market would be going backwards instead of going forward. He said making any changes right now could be shortsighted and harder to reverse in the future, if that proved necessary.

Chair St. Germain said at previous public forums the shorter, three-day minimum for vacation rentals was equated with affordable housing — that it is such rentals that enable many homeowners to afford living in Bar Harbor. He said people commenting at previous meetings made a well-established linkage between vacation rentals and affordability. For that reason, Chair St. Germain said he supports addressing the definition now even though he understands it is a small part of a larger issue. Ms. Brooks echoed that. She said she thinks it is clear most people want a shorter minimum stay and that the Council wants definitions for hosted and non-hosted rentals. She said the public wants to continue to be able to do short-term rentals, to be in compliance and to have the minimum stay shortened. She encouraged the board to hash out definitions.

Vice-chair Cough said people not complying with the ordinance is not a Planning Board issue. He said the issue is whether it makes sense from a

CEO explains 5 days was set to provide for weekly rentals not overnight accommodations

Brooks suggests that data from compliance company could suffice for housing study, suggests to redefine vacation rentals

Fitzpatrick explains that making any changes now would be short sighted

St. Germain offers that vacation rentals makes housing affordable

Brooks says people want less than 5 days

J. Cough offers that vacation rentals non-compliance is not a Planning Board issue

planning perspective to change requirements. On the density issue, he asked how hosted vs. non-hosted factored into that subject and how the Planning Board would look at it. He worried about not taking a methodical approach, even though doing so means going slow.

Chair St. Germain said he had not heard anyone asking for vacation rentals to be allowed in areas where greater density was permitted. He said the common theme from the Town Council and Planning Board is for controls to be put in place in areas where greater density is allowed so that they are not filled with vacation rentals. Vice-chair Cough said he thought it was inevitable that those areas would see vacation rentals if greater density was allowed. He cited the current situation (non-compliance with the existing ordinance) as evidence of that. He said if there is a way for people to get away with something, they will find a way to do so. Ms. Brooks said she disagreed, if enforcement goes into effect as planned. She said she believed appropriate regulations to prevent vacation rentals could be put into place.

Discussion on what effect reducing the density requirements could have on vacation rentals

At 4:35 p.m., Chair St. Germain invited members of the public in the audience to speak on the subjects being discussed and comment on what the Planning Board can realistically accomplish in the next month or two.

St. Germain invites public comment

Ed Damm spoke first. He encouraged people to watch previous Planning Board and Town Council meetings and listen to what was said there. He noted that The Jackson Laboratory has said its biggest problem currently is finding housing for its workers. He said he would draw on the experience of Planning Director Gagnon and the work she did in Ellsworth with housing projects there. He said the Planning Board does not necessarily need to come up with perfect answers, just something that can be put to a vote. He said having a study done would be a good idea.

E. Damm suggests to look at Ellsworth to see what they did for housing, supports a housing study

Eben Salvatore spoke next. He offered some thoughts, including that using the third-party for enforcement to collect data is a good idea. He said he would not be opposed to a one-year pause on vacation rental permits at the end of this year, after the season is over. He said the rental fee structure could be revisited. Mr. Salvatore said the important thing is not to rush into making a decision. He said the town is lucky to have a five-night minimum, and said a shorter stay would make for more turnover and things would feel more transient. He said the board could consider a cap on the total number of vacation rentals. He said addressing the vacation rental issue ties directly into the need for housing, and spoke about the area-per-family requirements. He urged the board to get rid of affordable housing requirements and instead focus on density.

Salvatore offers thoughts on enforcement, data collection, and fee

Anne Damm said she and her husband own several year-round rentals and they use their home on Ledgelawn Avenue as a weekly rental. She said she wanted to know how she and others can find out the rules about parking. She said property and homeowners need to know what will be enforced and when. Ms. Damm said she did not see how distinguishing hosted vs. non-hosted rentals will make a difference in either employee housing or year-round, affordable housing. She said she would support a three-day, two-night minimum for the whole season; if there was not support for that, she said she would like to see it in the spring and fall shoulder

A. Damm talks about new parking rules, supports shorter stay in general

seasons. Ms. Damm asked about third-party enforcement, if one company or multiple companies were being considered and what specific enforcement powers they would have. She suggested giving those renting out their homes or properties be given amnesty for this year while the rules are being worked out. Chair St. Germain said such a policy would be a Council decision.

Jennifer Booher said she had no problem with the five-night minimum in June, July and August. She said like others, she moves to a different home when her residence is being rented in July, August and September. That other home is rented out during the rest of the year, long-term when possible but short-term when it is not. She said no one comes for a five-day stay in the winter. She spoke about the different transient accommodation definitions as well.

Erin Cough spoke next and said she was speaking for herself strictly as a resident and was not representing the Town Council at all at that moment. She said she owned rental cottages in Salisbury Cove for 10 years. She said the cottages had been rented out since they were built in 1932 and were always rented out from Memorial Day to Columbus Day. She described her experience living next door and how it prompted her to put a fence up the first summer she and her family lived there because renters would often wander onto the property or park in their driveway. She said having different people there every night was a nightmare while weekly rentals were not too bad. She said the vacation rentals worked out but that the nightly rentals changed the way her family lived on the property. She said the problem with having transient accommodations in neighborhoods where homes are close to one another is that residents do not know who the visiting renters are. She said that is what led them to put a fence up in their situation, even on a larger (four-acre) property. She gave the example of knowing her neighbor's dog and whether it is friendly/safe or not, but not knowing that about a dog belonging to a vacationing renter. She asked the board to please preserve the idea of neighborhoods. She also asked the board to keep in mind that anything that makes it to the November 2019 ballot and gets approved by voters will be in effect for the 2020 rental season. She said whoever is hired for third-party enforcement will not have the power to take away permits.

Erin Cough continued and said the transient accommodation and bed & breakfast definitions in the Land Use Ordinance are applied to almost every zone (28 out of 40 zoning districts). She asked the board to make those definitions, along with those for hotels and motels, consistent across all zoning districts (as well as for bed & breakfasts). She said that is too much to tackle immediately. She said a way to tackle the vacation rental situation is to take the definition out of every zone, effectively creating a moratorium. That would force people to apply for some other category and make them comply with those respective regulations.

Steven Coston spoke next and offered the same disclaimer as Erin Cough, that he was speaking for himself and not representing the Town Council. He said previous speakers had made some good points. He explained the reasoning behind his motion from the night before: a collection of ideas from different sources that came up in the conversation at the Town Council meeting. On the subject of enforcement, he said he did not think allowing greater density would mean more vacation rental

Booher speaks about length of stay for vacation rental

E. Cough speaks about the effect of transient accommodation on residential neighborhoods

E. Cough talks about definitions, asks for consideration that the vacation rentals use not be allowed in any zones

Coston explains his motion from council meeting, does not think greater density will increase vacation rental, would rather have 5 night stay but could support 3 nights

violations because of the increased enforcement that has been budgeted. In terms of minimum stay (nights), he said he would personally prefer five-night stays. He said he could live with three. He would oppose two or one, except in limited situations where it was more of a houseguest situation. He sees a big difference between people staying for two nights versus three or more. He said he saw one-night stays as the biggest risk in residential neighborhoods. He disagreed that no one comes for a five-night stay in February, based on his own experience as a provider of lodging.

Donna Karlson spoke about the town's many zoning districts and said that within those districts there are also different kinds of neighborhoods. She said she hoped there continued to be year-round family residents in the town. She suggested holding neighborhood meetings in certain areas that might be identified as being more likely to see an increased presence of vacation rentals. She said she appreciated the perspective of the many people who spoke at the Town Council meeting but said there are many more who do not come to public meetings to speak.

Karlson speaks about different types of neighborhoods, suggests holding neighborhood meetings

Planning Director Gagnon spoke, noting that a person's home and income are emotional topics because they are so important to people. She spoke about Airbnb and other examples of the sharing economy (i.e., Uber). She said she thinks sharing part of one's home is truly a residential use, but that things become controversial when it goes from a residential use (sharing a home) to lodging as an economic endeavor (people purchasing a home with no intent of living there and solely as a source of income from rentals). She said people have observed rentals are something of a Maine tradition but that tradition tends to fall more into the residential category rather than lodging as an income source. She said there is a land use difference between those two uses.

Planner talks about the sharing economy, vacation rentals as a residential use vs. an economic endeavor

Planning Director Gagnon said Host Compliance, which has not been hired by the town, collected publicly available data from major rental websites about rentals in Bar Harbor. She said one of the ways the data was broken down was by partial home rentals (9%) and entire home rentals (91%). Applying the statistics to Bar Harbor, she said those renting partial homes are likely to be doing so to bridge gaps in income. She said one of the things she has heard in this process is that that smaller category does not have the same flavor or impact. She said those are people who are completely out of compliance right now. She said those people could be helped by making some very simple changes. She said the rentals that have a different impact and character is part of a different, longer discussion. She said the flood of such rentals is not the only factor affecting affordable housing but that it is "absolutely part of the equation."

Chair St. Germain asked board members for comments. Mr. Fitzpatrick spoke and said just addressing the minimum stay question right off the bat without setting goals and strategies first would not be a good idea. He encouraged taking a steadier, more in-depth approach rather than diving right in with a shotgun approach to make change just for the sake of making change. He said people can still come to Bar Harbor for one, two or three nights by using bed & breakfasts or hotels. Regarding weekly rentals, he said there are plenty of opportunities for people who are registered and comply with the ordinance. He noted the ordinance has been on the books for 10 years. He said the board should take its time, gather information, set

Fitzpatrick talks about taking in-depth housing approach after setting specific goals and gathering relevant information; short-term rentals hurt more people than they help and have negative impacts on neighborhoods

goals and objectives and then develop actions. He said when standards were set a decade ago, it was not contemplated that so many houses in Bar Harbor could be operated like a hotel with multiple short-term stays each week per room. He said short-term rentals change a neighborhood and not for the good. He said more people are hurt by such rentals than benefit from them.

Mr. Eleftheriou spoke. He said a study would be great to get more than just anecdotal evidence. He said he was reluctant to reduce the minimum stay or change land use regulations. He said he agreed with Mr. Fitzpatrick that he did not want to rush things. He said he would leave the five-day requirement as it is and perhaps adding language about hosted rentals to the November ballot. He said he wanted to see a study, and have information gathered, and emphasize that over enforcement for now. He said he felt short-term rentals have sidelined the larger conversation.

Eleftheriou supports leaving five-day stay in place, housing study, and would consider adding language for hosted

Vice-chair Cough spoke and talked about the terms hosted and non-hosted as they appeared in the moratorium. He said he was glad to see it voted down because of issues with those terms in relation to the land use ordinance. He asked questions about other terms that appeared in the ordinance with relation to host, owner, representative and combinations thereof.

J. Cough speaks about definitions of various terms

Chair St. Germain asked CEO Chamberlain about numbers of vacation rentals and the “tidal wave of applications” the Planning Office had received. She said from when the moratorium proposal went public on Friday, approximately 170 applications were received on Monday and Tuesday alone. Between 2006 and 2018, and those applications received so far that week, the total number was just over 900. She and Planning Director Gagnon offered a couple of qualifications, i.e. that some of the new applications may be placeholders. Mr. Fitzpatrick asked what number of rentals the Host Compliance figures Planning Director Gagnon cited earlier were based on, and she said about 520 rentals. Ms. Brooks asked when the data was collected and staff said late 2018. Ms. Brooks wondered if the percentages would be different now, and CEO Chamberlain said she did not think the numbers would be dramatically different.

Discussion of the “tidal wave” of applications for vacation rentals

Chair St. Germain said he wanted to summarize the meeting with three bullet points: vacation rentals, dormitories and density. He said he believed the board could accomplish this work in the next several months. He said he asked about the number of vacation rentals was because of the urging that he had heard from some to suggest they should be covered by a transient accommodation arrangement. He said the avalanche the Planning Office had faced would in turn be faced by the Planning Board in the next 18 months if nothing were done to address the situation. He said the board would be buried in applications. He said he believes people will take what steps are necessary to preserve an income stream if they feel that is possibly going to be jeopardized. He said taking advantage of whatever transient accommodation option they could find in the Land Use Ordinance would be one way for people to do that. He said he supported taking what Planning Director Gagnon identified as the Band-Aid approach and address the number of days. He said he heard that feedback loud and clear and Council meetings he attended. He said he agreed with Gagnon's comments about the sharing economy but that one's home is much more consequential than just about any other item that can be shared.

St. Germain summarizes the main issues: vacation rentals, definitions, dormitories

St. Germain supports Band-Aid approach

Chair St. Germain said he would organize his thoughts and what he sees as the board's options going forward in advance of its next meeting on April 17. He said if the board is going to accomplish anything for the November ballot it will need to do so in the next six to eight weeks.

b. Dormitory amendment

Vice-chair Cough asked what was left to do on the dormitory issue. Chair St. Germain said suggestions made in margin notes need to be incorporated into the text of the document. He said the amendments represent several years' worth of work. He said it is the closest item to being done. He said he did not see as much appetite for tackling the vacation rental issue at this time, and that on the subject of density he agreed with Ms. Brooks (on the point of deeded restrictions prohibiting vacation rentals).

Planning Director Gagnon said she would work on the dormitory issue and try to get it ready for next meeting. She said her goal was to have something for the board to consider at its April 17 meeting. She said she wanted to pursue what Mr. Fitzpatrick had suggested about having a game plan, noting Councilor Paradis expressed a similar sentiment at the Town Council meeting the night before. She said she wanted to give board members something to look at and discuss. Chair St. Germain said he thought that would be helpful. He said even if the board does not address the vacation rental issue for the November ballot it does not mean the board will not be working on the topic. He outlined possible alternative ideas and said the board will continue working on longer-term issues even as it addresses immediate issues, too. He and Planning Director Gagnon agreed some solutions would not be immediate.

Returning to Vice-chair Cough's question, Chair St. Germain said the biggest change involves dropping Appendix C and redoing definitions to refer to Article 3 in most cases. Vice-chair Cough said he wants to see the board get it off its table.

c. Solar amendment update

Mr. Eleftheriou said he had not had a chance to work on the solar amendment as fully as he had intended, though he did have some conversations with several folks in the solar energy field. He said he would work to send something out to the board members and invite their comments on the document.

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

Mr. Eleftheriou spoke about comments stating owners of rental properties need to educate themselves of the rules and regulations, and agreed with Vice-chair Cough who said it is not the board's fault that someone may not be abiding by the rules. He said he thought the Planning Department might be able to take steps to better educate people and making information accessible to the public via mass mailings. He said that perhaps a flow chart or similar display could be prepared. Ms. Brooks said the new rental permits are much more informative than the previous ones. Mr. Eleftheriou said a small amount of money could have the effect of better informing the public.

Discussion on dormitories

St. Germain explains what key changes are in the dormitory amendment

Update on solar amendment from Eleftheriou

Discussion of ways town staff can get more information out to the public

Ms. Brooks referred to the motion approved by the Town Council the night before and said the board should dig into it because it is what the Council has asked of the Planning Board. She said she wants to get things done. She said hashing out definitions and keeping things simple is a good goal.

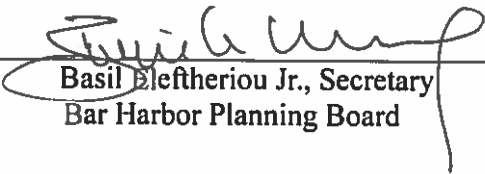
Brooks encourages board to heed the request of Council

VII.) ADJOURNMENT

Mr. Fitzpatrick motioned to adjourn at 5:46 p.m., and Mr. Eleftheriou seconded. The motion then carried unanimously (5-0).

Board adjourns at 5:46 PM

Minutes approved by the Bar Harbor Planning Board on April 17, 2019:

Date 4.17.19 
Basil Eleftheriou Jr., Secretary
Bar Harbor Planning Board