

**Workshop**  
**Bar Harbor Planning Board**  
**Wednesday, April 21, 2021 — 4 PM**  
**Proposed regulations for accessory dwelling units and solar photovoltaic systems**

*Held via Zoom webinar, as allowed under state law, due to COVID-19 pandemic,  
and broadcast live on Bar Harbor Planning & Code Enforcement Facebook page*

**Attending:**

**Planning Board:** Chair Tom St. Germain, Vice-chair Joe Cough, Secretary Erica Brooks, and members Basil Eleftheriou and Millard Dority.

**Staff:** Planning Director Michele Gagnon, Code Enforcement Officer Angie Chamberlain, Deputy Code Enforcement Officer Mike Gurtler and Assistant Planner Steve Fuller.

Mr. Eleftheriou asked if there had been a change regarding contacting Planning Board members via email, as it used to be that members could be contacted by the public individually. He asked why emails for individual Planning Board members were not provided on the website.

Planning Director Gagnon explained it is to avoid *ex parte* communication, as the board's role is a judicial one. She explained that, if a member of the public wants to ask an individual member a general question it should be through a non-Planning Board address. She said the public should not be asking Planning Board-related questions to individual members.

Assistant Planner Fuller noted staff had taken the same approach with both the Board of Appeals and Design Review Board, both of which had previously had individual email addresses for individual members posted. Vice-chair Cough said this was a concern he'd also brought up in the past. He said it is not indicated on the website who (board members, staff, etc.) receives messages sent to the email address listed there ([planningboard@barharbormaine.gov](mailto:planningboard@barharbormaine.gov)). Vice-chair Cough felt it should be explained, in the interest of transparency.

Mr. Eleftheriou agreed with Vice-chair Cough. He said he understood the *ex parte* communication aspect but said that at some point "you have to trust your board members, they've been through some training, they understand what *ex parte* is." He felt it would be worse if someone communicated via a private email, which would not be part of the public record.

Code Enforcement Officer Chamberlain said she'd attended a training years ago where it was recommended that board members not use individual emails, in part because it's easier to provide all emails when the town receives a Freedom of Access Act request. Assistant Planner Fuller said emails go to the four staff members present in the meeting, Administrative Assistant Tammy Desjardin and the five Planning Board members. He acknowledged board members'

concern and said the language on the website could be altered to more clearly reflect who receives emails sent to the group email address listed.

Planning Director Gagnon noted she includes a disclosure at the bottom of all her emails regarding Freedom of Access Act. She said board members should not have any individual discussion on anything they are going to legally act on. If board members are unsatisfied with the arrangement, she said, it should be taken up with the town manager or Town Council. Mr. Eleftheriou said it would be helpful to have information about Freedom of Access Act requests and the public record included on the website.

Assistant Planner Fuller shared his screen with the website page in question pulled up. The language already broadly indicated who emails go to, he said, and also had a note about *ex parte* communication. Vice-chair Cough said he hadn't seen that several weeks ago. Assistant Planner Fuller said he wasn't sure when it was added. Assistant Planner Fuller noted that language wasn't on the Board of Appeals or Design Review Board webpages but said staff would add it.

Chair St. Germain experienced technical difficulties with his internet connection. He signed off and Vice-chair Joe Cough took over running the workshop. Discussion turned to accessory dwelling units. Planning Director Gagnon explained some changes that had been made to the document. The document is far from ready for the board to take action on, she said. It will be on the agenda every meeting, she said, following a request from Vice-chair Cough, but she said this was an occasion to be able to discuss it.

Mr. Dority liked Planning Director Gagnon's suggestion that board members go through the document individually, then come back together as a group and go over things. Vice-chair Cough worried how that might affect the timing and potentially getting this on the ballot in November.

Mr. Eleftheriou asked if CEO Chamberlain ever got questions about accessory dwelling units (ADUs). She replied that staff get requests about ADUs, but they currently aren't treated differently than a regular dwelling unit (because the same standards must be met). The definition was put in the ordinance years ago along with language about vacation rentals, she said, as another type of vacation rental. Somebody forgot to remove the definition of ADUs when the vacation rental language was removed, she said.

Mr. Eleftheriou had hesitations about including ADUs in districts that aren't on town water and sewer, but added that if they are already being utilized to some degree and are on the books, "maybe it's not an elephant in the room to consider some outlying areas" as places for ADUs. CEO Chamberlain recommended the board look at all of the districts presented by staff. She said the Schooner Head district, for instance, has a minimum lot size and minimum area per family of 5 acres. She suggested that might be a good place to allow ADUs. Mr. Eleftheriou agreed.

CEO Chamberlain said she felt the ADU definition needed some work. She said it would not work for many districts if it were to be read as being an option only for a single-family dwelling. She presented a hypothetical scenario that the board then discussed.

Planning Director Gagnon noted a mistake in the document on page three. She said it should read that an ADU *could not* be registered as a vacation rental.

Secretary Brooks asked a question about triggering subdivision review. Subdivision would not be triggered because the language is focused on single-family, said Planning Director Gagnon. CEO Chamberlain said it would be worth comparing minimum area per family and minimum lot size in each district. Many will already be able to do two, she said. She wondered whether the intention is to do one above what's normally allowed or just one for every single family. Mr. Dority had the same question. CEO Chamberlain said the intent would be to have one extra.

Secretary Brooks felt the original intent was to allow residents to create more ADUs. Some rural zones have large area per family requirements, she said, but are prevented from developing an ADU under current rules. If people in districts that aren't on town water and sewer decide to develop another ADU through proper channels, with soil testing, water access, and the like, said Secretary Brooks, "I don't have a problem with that."

Vice-chair Cough said putting one in the outlying districts wouldn't be too complicated. He said he felt that restricting size to 2/3 of the primary dwelling unit was too small in some cases. He felt putting a number restriction on it could be problematic.

Planning Director Gagnon asked if there was no number on it, was it no longer secondary to the principal? Vice-chair Cough said the board had discussed that it would be okay to flip them, and having whichever is the larger dwelling be considered primary. As long as one of those was not a weekly rental the board was okay with that, he said.

Secretary Brooks asked if the board should remove the size restriction. If it was within setbacks, does it matter? she asked. Planning Director Gagnon said it would be possible to remove the size restriction but wondered again about whether it would be considered accessory. Vice-chair Cough felt it wasn't necessary to change the language and said it might be better to weigh the question out in public.

Mr. Eleftheriou said he felt lot coverage would likely be a limiting factor with a lot of this. Mr. Dority said the other standards would control the size of a dwelling unit.

Mr. Eleftheriou felt the minimum area per family should be the only restriction eliminated. He said it would almost have to be done to make it worthwhile sometimes for someone to utilize some of this.

Planning Director Gagnon said if someone can match or exceed the size maybe it's a secondary dwelling unit, but not an accessory dwelling unit. The use of the word "accessory" in the planning context, she said, is when you're talking about something that's subordinate to something else. Every word is looked at closely and every sentence taken apart, she said. She cautioned the board that it could be considered misleading. The purpose is still valid, she said.

Vice-chair Cough summarized the tentative plan discussed, which included a quick turnaround on board member recommendations for Item 4. He asked a question about timing and public comment. Planning Director Gagnon said if board members did it quickly and sent it back to her, she could tabulate it and put the feedback together and offer an analysis.

Planning Director Gagnon asked what Vice-chair Cough wanted to get out of the public hearing and suggested that a public information session might be a good start. Mr. Dority said it's a good idea to get public comment before starting the official public hearing process.

Planning Director Gagnon suggested putting together a separate document that is more succinct. Draft orders are more difficult to read and digest, she said. Vice-chair Cough agreed. He asked if the board would be running afoul of notification rules by sending Planning Director Gagnon individual comments. Planning Director Gagnon said she did not feel it would violate anything. Vice-chair Cough was fine with that as long as other board members did not see the information until they received the packet. Assistant Planner Fuller specified which email address it should be sent to. It should go to [mgagnon@barharbormaine.gov](mailto:mgagnon@barharbormaine.gov) (or [planner@barharbormaine.gov](mailto:planner@barharbormaine.gov)). It would then be public once it's in the packet, said Assistant Planner Fuller.

Mr. Dority had a public safety issue and stepped away briefly. Vice-chair Cough asked if staff could come up with alternative verbiage. Planning Director Gagnon said she would look into it.

The board moved on to a discussion about the draft of the proposed solar photovoltaic systems ordinance. Planning Director Gagnon summarized the changes made to the document between the previous board meeting and the workshop. There was nothing big, she said. She noted that wind turbines are allowed in 19 districts and that those are largely the same districts where staff is looking at allowing solar photovoltaic systems. Wind turbines are permitted by CEO Chamberlain, she noted, and are not subject to site plan review by Planning Board. Planning Director Gagnon cited that as a seeming inconsistency (as solar, as proposed, would be subject to site plan review by the Planning Board).

Vice-chair Cough said he felt the board was “glossing over” the lot coverage issue. Wind turbines are a different kind of lot coverage issue than photovoltaic panels, he said. Mr. Dority said he was on the board when the wind turbine language was added and that it was geared toward small installations. Planning Director Gagnon noted that the language doesn’t reflect that.

Mr. Eleftheriou said he was satisfied with the solar photovoltaic proposal as presented and felt it should be put on the agenda. Then the board could start holding public hearings, he said.

Secretary Brooks said she agreed that this differs from wind turbines with respect to lot coverage, as Vice-chair Cough said. Chair St. Germain, who had been able to rejoin the meeting, asked if lot coverage was prioritized for solar panels, should it not also be prioritized for affordable housing? Secretary Brooks was not comfortable decreasing lot coverage for this particular use (solar) and felt it could be done later in the process.

Planning Director Gagnon asked if the board would consider the area beneath the panels to be impervious if the panels are elevated and there is green cover underneath. If that is not exempt from lot coverage requirements, she said, it becomes really hard to do the use (especially in districts with low lot coverage allowances). Vice-chair Cough felt that if it’s a large area being impacted, the growth would be different than what would be there without the panels.

Planning Director Gagnon felt the question raised about dimensional requirements was valid and should be dealt with at another time. Dimensional requirements, she said, are far and above what is needed for health safety and welfare. Some of the dimensional requirements are prohibitive and not conducive to creating middle-income housing, she said.

Vice-chair Cough raised a question about principal structures and uses. Residents can have more than one principal structure, said CEO Chamberlain, and one doesn’t necessarily become accessory to another. Anything other than solar panels (i.e., associated infrastructure that is impervious or creates impervious conditions) would be subject to lot coverage the way the draft ordinance is written, said Planning Director Gagnon.

Vice-chair Cough asked for any other comments. There were none. The workshop ended around 5:37 PM.