

**Bar Harbor Planning Board  
Special Meeting  
Thursday, March 12, 2020 — 4:00 PM  
Council Chambers – Municipal Building  
93 Cottage Street in Bar Harbor**

**I. CALL TO ORDER**

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

Call to order  
at 4:00 PM

Members present were Chair St. Germain, Vice-chair Joe Cough, Secretary Basil Eleftheriou Jr., Member John Fitzpatrick and Member Erica Brooks.

All five board  
members present

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

Four town staff  
members present

**II. ADOPTION OF THE AGENDA**

Vice-chair Joe Cough made a motion to adopt the agenda, seconded by Member John Fitzpatrick. The motion then carried unanimously (5-0).

Agenda adopted  
unanimously (5-0)

**III. EXCUSED ABSENCES**

None.

No absences  
to excuse

**IV. APPROVAL OF MINUTES**

- a. February 28, 2020 meeting

Vice-chair Cough made a motion to approve the minutes as presented, which was seconded by Member Erica Brooks. The motion carried 3-0, with two abstentions (Mr. Eleftheriou and Mr. Fitzpatrick, both of whom were absent from the February 28 meeting).

Minutes of Feb. 28,  
2020 meeting  
approved 3-0 with  
two abstentions  
due to absence

**V. PUBLIC COMMENT PERIOD**

Chair St. Germain opened the public comment period, and as there were no members of the public in attendance, it was subsequently closed.

No members of the  
public in attendance

**VI. REGULAR BUSINESS**

- a. **Completeness Review for SD-2020-03 — Clark Acres Subdivision Revision**

**Project Location:** Tax Map 227, Lot 099-000 and Lot 099-001. The two parcels together total 5.57 acres, according to town records (3.10 acres for 099-000, 2.47 acres for 099-001). All of the subject land is zoned as Town Hill Rural.

**Applicants/Owners:** April and Robert Post, 946 Crooked Road, Bar Harbor, ME 04609

**Application:** The applicant proposes an after-the-fact revision to the Clark

Completeness  
Review for  
SD-2020-03,  
Clark Acres  
Subdivision  
Revision

Acres Subdivision (from 1989) on the Crooked Road. The applicant seeks to divide lot 227-099-000 into two lots, with the new lot (227-099-001) being 2.47 acres in size.

Mr. Eleftheriou noted that he was not at the February 28 meeting, but said since then he had reviewed the minutes. He said he wanted to make sure both the board and applicant had confidence in him that he was prepared and adequately informed to discuss the application. Mr. Fitzpatrick said he was in the same situation.

**Vice-chair Cough said he was fine with [what the two members had said], and Ms. Brooks seconded the motion. The motion then carried without opposition (Mr. Eleftheriou and Mr. Fitzpatrick abstained, while the other three members voted in favor of the motion).**

Chair St. Germain asked April and Robert Post, who were present to represent themselves, if they were OK with Mr. Eleftheriou and Mr. Fitzpatrick participating in the discussion and they both said they were.

April explained they were requesting to get after-the-fact approval from the board for the subdivision of the property in question.

Chair St. Germain noted a site visit had been held and that the board had received a memo on the application from Planning Director Michele Gagnon. Chair St. Germain noted the application was before the board for completeness review, and he asked Mr. Fitzpatrick if he had any questions.

Mr. Fitzpatrick asked about item 1E on the checklist (list of abutters within 300 feet of the property). Planning Director Gagnon noted a copy was included in the master copy of the application in the Planning Office. Mr. Fitzpatrick then asked about written authorization for town staff to enter the property. Planning Director Gagnon noted the applicants have been navigating the process essentially on their own (with help from town staff). She noted that the applicant filling out the application form serves as blanket permission for such access, which was affirmed by Code Enforcement Officer Angela Chamberlain.

Vice-chair Cough asked if abutters had been notified. Assistant Planner Steve Fuller confirmed that abutters within 300 feet of the subject property were notified both of this meeting as well as the meeting and site visit on February 28. Planning Director Gagnon explained how staff generates an abutters list for each project that is reviewed, and does not rely on any abutters list provided by any applicant. She said state law holds the town responsible to properly notify abutters.

Mr. Fitzpatrick asked about item 9R on the checklist, relating to a letter from Jon Cullen at the Maine Department of Environmental Protection relating to

**B. Eleftheriou and J. Fitzpatrick note previous absence, state readiness to review application**

**Board is OK with members above participating (3-0, 2 abstain)**

**Applicants do not object to members in question taking part in review**

**A. Post explains application**

**Recap of where this application is with regard to process**

**Discussion of abutters**

**Question about wetlands and documentation from the Maine DEP**

wetlands. Planning Director Gagnon said that letter has not yet been received by the town. She said she was making a note to follow up with Mr. Cullen on this. Mr. Fitzpatrick then asked if lot line setbacks were shown on the plan. It was noted that the setback is shown in the vicinity of the house that has been built, but not for the entirety of the lot. There was brief discussion of what the setbacks are in that particular zoning district (Town Hill Rural).

**Setback question**

Planning Director Gagnon noted capacity statements were received since the last meeting from Public Works and the Police Department, as well as a letter of compliance from CEO Chamberlain. She said the only capacity statement still not received was from the Fire Department.

**Capacity statements**

Mr. Eleftheriou noted that at the last meeting, Vice-chair Cough had raised the issue that checklist items 9K and 9L were marked as waivers even though the applicant had supplied them. The board asked if the checklist had been updated to reflect that (Vice-chair Cough noted it was in the February 28 minutes). Planning Director Gagnon said the checklist is not always changed, and that staff goes by what is in the minutes and in the board's eventual decision.

**9K and 9L on checklist no longer waivers**

Chair St. Germain said one option would be for the board to find the application incomplete but schedule it for a public hearing pending the receipt of anything that's missing, including the memo from Jon Cullen and the Fire Department's capacity statement. He asked Planning Director Gagnon for feedback. She noted that staff provided the applicant and the board a map showing the location of wetlands on the property. She noted that the disturbed area where the house was later built can be seen on that map, in relation to wetlands.

**Discussion of next steps for application**

**More talk of wetlands**

Planning Director Gagnon asked if the board could accept that for map wetland delineation, noting that during completeness review the board is not judging the quality of a submission but simply determining if something had been submitted. She asked if the board might consider the map that was provided appropriate for purposes of completeness review. A discussion on the map ensued. Chair St. Germain verified what Planning Director Gagnon was asking for from the board.

**Discussion of wetland map provided by staff**

Planning Director Gagnon said there was no question that the applicant had impacted wetlands, but noted that such a disturbance is allowed (up to a certain amount of square feet). She said Jon Cullen was involved to make that determination of just how much impact the construction of the applicant's house had caused. Mr. Eleftheriou said he was fine with what had been submitted.

**Impact on wetlands**

Vice-chair Cough asked how the newly created lot had sufficient road frontage (it is landlocked). CEO Chamberlain noted there is an exception in the ordinance that allows someone to have a back lot as long as there is a 30-foot-wide right-of-way from the street to the lot.

**Road frontage question**

Chair St. Germain asked if Mr. Eleftheriou would craft a motion finding the

**More discussion of next steps**

application incomplete, but scheduling it for a public hearing pending receipt of the missing materials (in this case, the Fire Department's capacity letter and the letter from Jon Cullen at Maine DEP). Planning Director Gagnon noted that if Mr. Cullen found that the applicant disturbed more wetlands than allowed they would need to obtain an after-the-fact permit for approval of that disturbance. Mr. Eleftheriou asked if that letter should be in hand by the public hearing date, and Planning Director Gagnon said it should be.

**Discussion of wetlands and info from Jon Cullen**

Planning Director Gagnon said she spoke to Mr. Cullen on March 2 after he did a site visit with the applicant and that he would send something. She said staff would be in touch with him to obtain that document.

Vice-chair Cough said he had some other questions. He made note of a comment from Perry Moore, who attended the February 28 site visit and called the board's attention to a particular standard in the ordinance, §125-67 K. (8), Nitrate analysis, which empowers the board to require a lot size larger than the minimum provided elsewhere in the ordinance "... where soil conditions warrant the additional dilution potential to meet groundwater quality standards...". Vice-chair Cough asked how, or if, that matter had been resolved.

**Question and discussion on §125-67 K. (8), nitrate analysis**

Planning Director Gagnon recounted how Mr. Moore raised the issue, and she said she was surprised to learn of the standard because it had not come up during the review of any other land subdivisions in her 12 months working in the town. Vice-chair Cough said his understanding was that a soil scientist is supposed to do the calculations in advance to determine what the appropriate lot size should be in a particular location. Planning Director Gagnon said her position was that the applicant has a lot that is 2.47 acres in size, which is 2.7 times larger than the minimum lot size of 40,000 square feet in that particular zoning district (Town Hill Rural) and 5.4 times larger in size than the state-mandated minimum lot size of 20,000 square feet for a lot to be served by a septic system.

**Planning Director: lot in question far exceeds both town and state minimum lot size requirements**

Planning Director Gagnon said she was not stating that was not a valid standard in certain areas, such as a subdivision where small lot sizes are proposed and there is a known issue with bacteria in well water due to inadequate soils. She said staff was not aware of any such issues in the area being looked at in this application, however. She asked the board to consider waiving that particular standard (§125-67 K. (8)) for this application.

**Planning Director asks board to consider waiver**

Vice-chair Cough said he understood Planning Director Gagnon's position, but asked if that was the stance she would take for applications going forward as well. She said it would be up to the board to consider accepting such requests, and asked CEO Chamberlain to speak to the larger issue of the standard itself. CEO Chamberlain said she did not know when the standard was added to the ordinance, but said the septic system in place on the property now should last for 30 years and that there shouldn't be any issues with needing a replacement before then. She said she had understood that issue (replacement) to be part of

**Further discussion on waiver request between board and town staff members**

Mr. Moore's concern. She said she agreed with Planning Director Gagnon in that she was not sure she had seen this standard applied before in other applications. CEO Chamberlain said she would hate to see the first time the standard was applied be in this case, where it involves the creation of one new lot that is as large as was previously noted by Planning Director Gagnon and where there are no known problems.

Ms. Brooks said she thought Mr. Moore's point was that if the lot size needed to be changed, now was the time to do it. Planning Director Gagnon reiterated her point about how large the lot is in relation to town and state minimum lot sizes. Vice-chair Cough said he understood that argument, but wasn't sure that it was supported by the ordinance. He said he did not initially realize that the home and septic system were already in place, and that there was little that could be done. Planning Director Gagnon said she would likely be taking the same approach on any future subdivision in which the lot sizes exceed the minimum by so much and where no one is saying there is a history of existing issues/problems, but said the decision is ultimately the board's to make.

Mr. Eleftheriou asked what soil type(s) was/were present at the site. He said he was not a soil scientist, but that he had looked at the material in the application and the formula in the ordinance and done some rough calculations (using middle-of-the-road numbers in the ordinance formula for soil type) and said it appeared that the applicant was likely OK with regard to the nitrate standard. "It would seem in my layman terms that you're fine," he concluded. Vice-chair Cough noted again that the house and septic system are already in place.

Chair St. Germain said the question was whether there was an inclination by the board to waive the particular standard going into the public hearing. Planning Director Gagnon said if the board was not inclined to waive it, it would be fair to the applicant to let them know that now rather than later. Mr. Fitzpatrick said he was inclined to waive the standard, Chair St. Germain and Mr. Eleftheriou agreed, and Vice-chair Cough noted again that the home was already built.

Planning Director Gagnon said the board should consider that, under permits, the applicant had asked for a waiver and that that should now be an exhibit (something that shows whether they need a permit or not) because wetlands have been impacted. She said the letter from Jon Cullen, or a permit, would suffice.

Mr. Eleftheriou moved to accept the waivers listed on the checklist with the exception of a [capacity] letter from fire; to amend 5B as an exhibit as it, a letter from Jon Cullen, will need to be provided; and also to amend items 9K and 9L as exhibits now, reinforcing what Vice-chair Cough had noted at the last meeting, as the waivers would not unduly restrict the review process as they are inapplicable, unnecessary, or inappropriate for a complete review; and to further waive standard (§125-67 K. (8), nitrate analysis, as the board does not find it will unduly restrict the review process and also

**Continued discussion on §125-67 K. (8)**

**Board members indicate general willingness to consider waiver of §125-67 K. (8)**

**Grant waivers requested on checklist with exception of letter from fire dept.; items 5B, 9K & 9L; and to waive nitrate analysis standard: ACCEPTED (5-0)**

**that it is inapplicable, unnecessary, or inappropriate for a complete review. Mr. Fitzpatrick seconded the motion and it carried unanimously (5-0).**

Vice-chair Cough then asked if the board would see a full subdivision plan showing the change made in this application, or just the plan that had been provided which shows the two lots in question (the one original lot and the new lot created by the division). There was a discussion among staff about this and what is required by ordinance. Planning Director Gagnon said her understanding from reading the ordinance was that it was only the affected portion of the subdivision.

Vice-chair Cough suggested that it would behoove the applicant to consult the original plan to see if there were any specific conditions or restrictions that everyone in the subdivision had to sign on to or agree with. Planning Director Gagnon noted that deeds had been submitted, and that such conditions or restrictions are also typically found in such deeds.

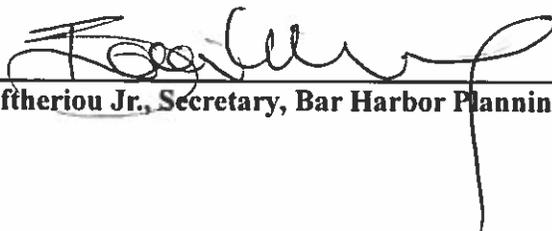
Chair St. Germain asked if everything was on track for this application to be heard and reviewed for compliance at the board's April 1 meeting. Staff said it was.

**Mr. Eleftheriou moved, per the Bar Harbor Land Use Ordinance §125-61, that the application SD-2020-03 is incomplete, and that pending receipt of a capacity letter from the Fire Department and a letter from the Maine DEP (Jon Cullen) regarding wetlands, that it be scheduled for a public hearing on Wednesday, April 1, 2020. Mr. Fitzpatrick seconded the motion and it was then approved unanimously (5-0)**

**IX. ADJOURNMENT**

At 4:33 PM, Ms. Brooks moved to adjourn the meeting and Mr. Fitzpatrick seconded the motion. It then carried unanimously (5-0).

Minutes approved by the Bar Harbor Planning Board on May 6, 2020:

5.07.20   
Date Basil Eleftheriou Jr., Secretary, Bar Harbor Planning Board

**Question of what scope of plan board will see for this subdivision**

**Find application incomplete, pending receipt of specified materials, and schedule application for public hearing on April 1, 2020: APPROVED, 5-0**

**Meeting adjourned at 4:33 PM, 5-0**