

**Minutes — Bar Harbor Planning Board  
Wednesday, April 7, 2021 at 4:00 PM**

*The meeting was held via the Zoom online meeting platform, and was broadcast live on Spectrum channel 7 in Bar Harbor as well as online via Town Hall Streams (where it is also archived). The meeting was held remotely, as provided for under state law, due to the ongoing COVID-19 pandemic*

**I. CALL TO ORDER**

Chairman Tom St. Germain called the meeting to order at 4:04 PM. Planning Board members present were Chairman St. Germain, Vice-chair Joe Cough, Secretary Erica Brooks and Member Basil Eleftheriou Jr. Member Millard Dority was absent.

Town staff members present were Planning Director Michele Gagnon, Code Enforcement Officer Angela Chamberlain, Deputy Code Enforcement Officer Mike Gurtler and Assistant Planner Steve Fuller. Paul Weathersby was also present as an applicant.

**II. ADOPTION OF THE AGENDA**

Vice-chair Cough asked a clarifying question about agenda item VII relating to signage. Assistant Planner Fuller explained that staff was not looking for a motion on the item but wanted to update the board and get feedback.

**Vice-chair Cough moved to adopt the agenda. Secretary Brooks seconded. The motion then carried unanimously (4-0), on a roll-call vote.**

**III. EXCUSED ABSENCES**

**Vice-chair Cough moved to excuse Mr. Dority from attendance. Mr. Eleftheriou seconded. The motion carried unanimously (4-0), on a roll-call vote.**

**IV. PUBLIC COMMENT PERIOD**

At 4:07 PM, Chair St. Germain opened the meeting for public comment. He invited those people, in particular, in the (digital/online) waiting room looking to speak on the solar ordinance item (scheduled for board discussion during the workshop after the meeting).

Ken Colburn, a board member with A Climate to Thrive, was present to speak. He thanked the board for considering the proposed solar photovoltaic systems ordinance, and said the issue is a climate as well as an economic one, he said. Solar will help reduce the \$26 million Bar Harbor spends on energy, said Mr. Colburn. Solar is vital for energy resilience, he said, as it can be up and running as soon as storm clouds clear, even if the rest of the grid is still down. Mr. Colburn also noted that A Climate to Thrive recently submitted a grant for \$7 million to the Department of Energy to possibly develop a microgrid on the island.

Solar developers will only go where they're welcome, said Mr. Colburn, and where there exists certainty. This ordinance provides that, he said — certainly compared to the

uncertainty that exists in the policy vacuum on this topic. Chair St. Germain asked if Mr. Colburn would forward that information to the board and Mr. Colburn said he would.

Margaret Jeffrey, also a board member with A Climate to Thrive, was present to speak. The policy decisions adopted by the town, where she has lived for years, mean a good deal to her, said Ms. Jeffreys. She thanked the board for putting together the proposed ordinance language and said the change is essential as the town takes steps toward compliance with the Bar Harbor Emergency Declaration Resolution on climate change and the goals of the Maine Climate Council. It will also give the town the ability to generate its own energy, said Ms. Jeffrey.

**Hearing no other residents wishing to speak, Chair St. Germain closed the public comment period at 4:14 PM.**

**V. APPROVAL OF MINUTES**

- a. February 3, 2021
- b. March 3, 2021

**Secretary Brooks moved to approve minutes from February 3, 2021 and March 3, 2021 as written. Mr. Eleftheriou seconded the motion, which then carried unanimously (4-0), on a roll-call vote.**

**VI. REGULAR BUSINESS**

- a. **Request for 6-month extension to commence activities for SP-2020-04 — The Crossing at Town Hill**

**Project Location:** 1338 State Highway 102; Tax Map 227, Lot 16, totaling 2.0± acres of land in the Town Hill Business zoning district.

**Owners/Applicants:** Paul and Jane Weathersby

**Application:** To develop a single, new structure containing eight TA-2 units and to additionally convert two dwelling units in a separate, existing building on the property (“the Barn”) into two TA-2 units. The total number of TA-2 units on the property would be 10.

Paul Weathersby was present. Chair St. Germain explained the project had been approved but the applicant had asked for an extension. He asked Mr. Weathersby why he is requesting an extension. Chair St. Germain noted contractors are very busy at the moment.

Mr. Weathersby said that was exactly the reason, and said he is expecting to get the appraisal within a few weeks. There’s an outside chance there will be financing approval within a month, he said, but that’s likely not realistic so he was asking for six months to finalize the financing.

Chair St. Germain asked if the recent extension granted to the computer company (Coastal Computers) was also six months. It was, said Assistant Planner Fuller.

**Vice-chair Cough moved to grant a six-month extension to commence activities for SP-2020-04 — The Crossing at Town Hill from April 28, 2021 to October 28, 2021 for the Planning Board decision dated October 28, 2020. Mr. Eleftheriou seconded the motion, which then carried unanimously (4-0), on a roll-call vote.**

## **VII. OTHER BUSINESS**

### **a. Update on proposed Signage LUO amendment**

Assistant Planner Fuller updated the board on the signage amendment that had gone through the Land Use Ordinance amendment process. The goal had been to update sections of the ordinance relating to signage and lighting. During the Warrant Committee review process a question was raised about neon signs and where they were allowed.

A larger issue, he said, as the issue moved to the full Warrant Committee, was that members had concerns about neon signage in general. The full Warrant Committee voted “ought not to pass” on the amendment 12 to 5, said Assistant Planner Fuller.

Assistant Planner Fuller said staff wanted to go back, with the Design Review Board, and examine the section relating to neon, factoring in feedback from the Warrant Committee, and to then bring it to the Planning Board at the regularly scheduled meeting in May.

“We’re working toward getting this back on the November ballot,” said Assistant Planner Fuller, which would require the Planning Board to call for a public hearing at its meeting in June and schedule the hearing for July 7, 2021. Vice-chair Cough asked for a review of the timeline, which Assistant Planner Fuller provided.

Vice-chair Cough said he did not like calling for a public hearing and changing the document midstream. Assistant Planner Fuller said that even if there was not a vote, staff would like feedback from the board at its meeting on May 5, 2021.

Mr. Eleftheriou asked what the specific concern was regarding the neon signs.

Assistant Planner Fuller read the existing language from §125 - 67 B. (3)(f). He explained that the amendment that was proposed spelled out the specific kind of accommodations referenced and would have removed language regarding business and corridor districts. The thinking was, said Assistant Planner Fuller, that similar establishments outside of those districts should have the same opportunity for that kind of sign.

There was concern at the Warrant Committee about neon signs being allowed in residential districts where certain transient accommodation uses are allowed, said Assistant Planner Fuller. “People have strong feelings about neon,” he said, and some wondered whether that type of sign should be allowed at all (anywhere in town).

Mr. Eleftheriou was amazed that it made it as far as it did without public input on that point. He said it was unfortunate it couldn’t have been aired in a public hearing.

Assistant Planner Fuller said yes, there had been public hearings at both Planning Board and Town Council meetings, but that this is the way the process unfolds. He said staff did not want to go forward with the amendment as written with the negative vote from the Warrant Committee.

The Design Review Board is set to discuss the issue on April 8, 2021, said Assistant Planner Fuller, in response to a question from Chair St. Germain. That is the first chance Design Review Board members will have to discuss the issue.

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

Vice-chair Cough felt it was time to move the accessory dwelling unit (ADU) discussion to regular meetings. "I hate to drag this out any further if we're ready for prime time," he said. "I'd like to see the ADU on the next agenda."

Secretary Brooks agreed. Vice-chair Cough asked if the board would be doing a workshop in two weeks. Chair St. Germain said the board could play it by ear if they didn't get through enough during the workshop following the meeting this evening.

Mr. Eleftheriou commented briefly on the proposed solar regulations. He said the board had been working on this since last fall. The Planning Department has put a lot of work into this, he said, and it doesn't require much input from the board. The hope is to have this on the official agenda next time, said Mr. Eleftheriou. "I hope that we can just kind of move forward with it."

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

- a. SD-2021-01 — Harbor Lights
- b. PUD-2021-01 — Jones Marsh

There have been self-guided site visits and virtual neighborhood meetings for both projects, said Assistant Planner Fuller. The ball is now in the applicants' respective courts, he said. Planning Director Gagnon said that Oceanside KOA is possibly looking to come back to the board for approval of nine worker campsites.

**X. ADJOURNMENT**

At 4:36 PM, Vice-chair Cough moved to adjourn. Mr. Eleftheriou seconded and the motion carried unanimously (4-0), on a roll-call vote.

Minutes approved by the Bar Harbor Planning Board on May 5, 2021:



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Erica Brooks, Secretary,  
Bar Harbor Planning Board

Date

**Workshop Notes**  
**Bar Harbor Planning Board**  
**Wednesday, April 7, 2021**  
**(immediately following end of 4 PM meeting — also held via Zoom webinar)**

**I. Vacation rentals (update on proposed Chapter 174 and discussion on Chapter 125, Land Use Ordinance possible amendments)**

Planning Director Gagnon presented the proposed amendments to Chapters 125 and 174 (the latter presently known as Chapter 190). She explained that with regard to amending Chapter 125, one of the paths is for the Town Council to propose an amendment. She said that is the case with this proposed amendment. She explained the primary proposed change to Chapter 125 is focused solely on presenting two new uses, Vacation Rental-1 (VR-1) and Vacation Rental-2 (VR-2). As written, neither of the definitions for those proposed uses mentions caps.

There is a two-night minimum rental for VR-1 and a four-night minimum for VR-2, said Planning Director Gagnon. The amendment also updates where those uses are allowed. Staff have also moved VR out of the list of uses stated as needing a building permit by the Code Enforcement Officer (CEO). VR does not need a building permit, explained Planning Director Gagnon. A dwelling unit needs a building permit but a VR does not, as it is a use allowed in a dwelling unit, she said. As proposed, it would now need a permit from the Code Enforcement Officer as an allowed activity.

What is currently known as Chapter 190 would become Chapter 174, she continued, requiring the repeal of Chapter 190 and the enactment of a new chapter, Chapter 174 (rather than repeal and replace). This is due to the numbering system in place for municipal ordinances.

Under the proposal, Chapter 125 of the Bar Harbor Land Use Ordinance (LUO) includes the districts where VRS-1 and 2 are allowed and related definitions, while Chapter 174 Short-Term Rental, includes the maximum number of registrations allowed for each type of rental, the transition mechanics for this proposed new system and continuance of registration.

The only thing neither of these chapters addresses at this time is the transferability of VRs, said Planning Director Gagnon. The Bar Harbor Town Council had directed staff to do a poll in June at the municipal election, she continued, but that is after the date at which the Planning Board would need to call for a public hearing and therefore would not work timewise. Staff has decided to use Polco, a polling software, to put the question to the public in the near future. Once staff has an idea of what residents want to do they (staff) will report that back.

Planning Director Gagnon noted that the explanatory text boxes included in the proposed language for Chapter 174 aren't technically part of the ordinance but are intended to be used as an aid for readers.

Mr. Eleftheriou asked why the terms "vacation rental" and "short-term rental" were both still in use in the proposed amendments, rather than using just one term.

Planning Director Gagnon explained that the Town Council wanted two draft orders on Chapter 125, one addressing the present amendment and one addressing transferability, which created a situation in which, if one amendment passed and the other did not, language would be inconsistent. Staff plans to streamline language once something passes, said Planning Director Gagnon.

Vice-chair Cough said that having language regarding transferability in Chapter 174 would be a “terrible way” for a land use ordinance to operate. To prohibit transferability would be a disservice to anyone currently operating their property as a short-term rental adding that transferability should not be left up to a particular Council year-to-year.

Secretary Brooks agreed. She further explained that she was frustrated as the Council did not seem to want to hear any of the Planning Board’s feedback, specifically about transferability. She said that the results of Polco will be interesting but was unsure how that would “truly shape this how it needs” to be.

She felt that the draft order did not accomplish the original policies and objectives put out years ago, and was not sure if it was fully legal, including the removal of VR-2s from a number of zones. The transferability piece is key, she said. She said that without knowing what is going on with transferability, it is going to be very hard to move forward with the draft.

Vice-chair Cough said the logic of a dwelling unit and allowed use could be applied to a commercial building downtown; for instance, if one were to build a hotel, an occupancy permit would then be required to operate it. The LUO protects the use, he said. “I hate to bring this up, said Vice-chair Cough, “but we don’t have control over [Chapter] 174,” which is the domain of the Town Council. “We can only try to apply the LUO where we think it’s appropriate,” he said. He felt the Town Council did not want the board to comment on Chapter 174.

Chair St. Germain asked if Chapter 174 is entirely new. Planning Director Gagnon explained that it’s the new Chapter 190. When 174 comes into effect, it would replace 190, she said, with the idea being that the Town Council would adopt it prior to the November vote, contingent upon the amendments to Chapter 125 passing.

Chair St. Germain shared Secretary Brooks and Vice-chair Cough’s concerns. The board has expressed opposition to a prohibition on transferability on a recurring basis, he said, which the Town Council has repeatedly removed and placed under its control, he said, expecting the Planning Board to support the rest. Chair St. Germain said he’s interested in seeing what the results of Polco will be, but, as it stands, this is something he would have difficulty supporting without transferability.

Chair St. Germain brought up the rapid increase in housing prices. “What was a \$400,000 house a year ago is now a \$500,000 house, or more,” he said, indicating that affordability is a “moving target.” He felt that VRs and affordable housing were loosely related 13 months ago, but aren’t related at all anymore. It’s a financial limitation that people would be supporting, should they support it, said Chair St. Germain. “We didn’t support it in the first place, the market has

changed and I'm not sure this is the way to promote affordable housing by regulating something that is, in all likelihood, not related to affordable housing at this point."

Mr. Eleftheriou had reservations about having Polco guide the question. "I'm not sure it will provide an accurate snapshot of what's going on and can be skewed in a lot of ways," he said. He felt that transferability "belongs in land use and should remain there," but "this is where we're at." Town Council, he said, is looking to approve the VRs 1 and 2 and trust that Chapter 174 will get taken care of, he said. He felt it was wrong for those who have made investments in a property to not be able to transfer that property. Mr. Eleftheriou asked who would hold the registration. It would be the property owner, said CEO Chamberlain, because "it matters where you live."

Mr. Eleftheriou suggested strengthening language under Chapter 174, §174-5 E. to make clear that there will be no issuance of a registration if any property taxes and/or town water and sewer fees are in arrears. The way it is currently written, he said, presently the possibility "for someone to argue about that." Mr. Eleftheriou suggested that, under Chapter 174, §174-5 F, staff add that if there are any changes to the short-term rental in question, such as the addition of a bedroom or other modification, that staff be notified in writing. He said that "transferability is a big issue" and that he wasn't sure he could support the changes with that issue addressed solely in 174.

Deputy CEO Gurtler whether the board felt the value of a property was raised when being registered/used as a VR. Secretary Brooks said that depends on a lot of things, and that the question is a "loaded" one. Planning Director Gagnon said the ability to be a VR does increase the value of a property. Secretary Brooks said it might, but technically that depends on lots of things, such as the zone a property is in, whether a property owner is renting a room or an entire house, the location, etc.

Vice-chair Cough felt the ability to be a VR increases the value of a property. If an owner buys a house for \$500,000, he said, and is able to generate income out of it, the house could still sell for \$500,000 in a slower market because it is an income-producing property. If a property owner can't establish that that revenue stream can be continued, the value of the house could certainly go down.

Mr. Eleftheriou said the value of a property depends in part on when it was purchased, and that the continuance of operation as an income-producing property could have been factored into someone getting a loan for that property. This is a use that is allowed right now, he said, and has been allowed. "So, I consider it grandfathering. You can't take something away that's been part of the system for an indefinite period of time," he said. "That's changing the rules."

Secretary Brooks said an increase in price may not be driven solely by the ability to generate revenue. Those who rent their houses, she said, often fix them up, improve the property and create a higher assessed value. Planning Director Gagnon said she didn't want to get too far into the discussion but that staff often see properties being purchased by those who have the income and ability to fix them then being rented as short-term rentals. There is a demonstrated relationship that the more VRs you have, the value goes up, and people are evicted from their rental because it's being changed to a short-term rental, she said.

The proposed amendments are not a “fix all,” said Planning Director Gagnon, but when there are too many VR-2s, the market becomes unbalanced. If the goal of the municipality is to have a year-round economy then actions need to be taken, she said. If the goal is to have a tourism-driven economy, different actions may be necessary. But this is what is in front of the board, she said.

Planning Director Gagnon said she understood the board’s reservations about Polco but that the election results have trended the same way as poll results with the exception of one instance and seems to have some credence.

Vice-chair Cough felt that VR-2s belong in commercial zones “without restriction” as long as other standards are upheld, which he said would be an opportunity for those zones to have “long-term viability.”

Chair St. Germain asked if Planning Director Gagnon had enough information to report back to the Town Council. Planning Director Gagnon thanked board members for their work and said that this is hard and has been draining and she appreciated their work.

Mr. Eleftheriou asked how many VR applications are pending. About 60, said Code Enforcement Officer Chamberlain. Member Eleftheriou asked how many are VR-1 versus VR-2; CEO Chamberlain said she wasn’t sure because the department does not track that now (as the definitions don’t exist). There are close to 500 short-term rentals currently permitted, she said.

Deputy Code Enforcement Officer Gurtler said staff are now able to get to inspections within roughly a week of application. The pending applications have typically failed their initial inspection, he said. Roughly 99 percent of applicants fail the inspection the first time, he said.

## **II. Proposed LUO amendment (solar regulations)**

Mr. Eleftheriou gave an overview of the proposed solar ordinance. The goal of this, he said, is to address what’s missing in the LUO. Beyond installations for individual homes, staff typically don’t have inquiries into small or medium arrays. He said developers are looking to put in larger arrays on multiple acres, as smaller arrays do not hold up to a cost-benefit analysis.

The arrays would be subject to major site plan review, including licensing, financial, security, lighting, noise impacts and hazardous waste requirements, among others, explained Mr. Eleftheriou, and would require a decommissioning plan. With land being the commodity that it is in Bar Harbor, he said, “I don’t know how much of this will come to fruition,” but it is an important part of the LUO and should be incorporated moving forward.

Planning Director Gagnon thanked Mr. Eleftheriou for his summary. She noted CEO Chamberlain has permitted solar panels as an accessory use and will continue to do so, such as panels on roofs. There’s no threshold on that. Having panels on roofs is not more or less unsightly than not having them, she said. They will also continue to be allowed to be ground-mounted as an accessory use, until the total surface of the panels exceeds 20,000 square feet.



“That has enough of a visual impact that people could be concerned and you’re stepping into a community system,” said Planning Director Gagnon, defining a community system as between 1 and 5 megawatts (MW). One MW of panels, she said, requires roughly 5 to 10 acres of land.

As written, arrays with a total surface area less than 20,000 square feet would not be subject to lot coverage requirements, explained Planning Director Gagnon, while those exceeding 20,000 square feet would be considered principal use and subject to lot coverage requirements. Lot coverage is the key to making this doable, she said.

Proposed principal use arrays would require major site plan review and be subject to everything a site plan is subject to, said Planning Director Gagnon, and all the performance standards. In addition, staff are proposing a series of additional submissions under §125-69 focusing on the visual impact assessment and a decommissioning plan, to ensure there will be money to restore the land to its original resource-based use. Fencing and screening are also addressed, she said.

Planning Director Gagnon noted that the document is not yet in draft order format. Once the board feels comfortable with the language, the next step is to present it as a draft amendment.

Chair St. Germain asked if other alternative forms of power fall under lot coverage requirements. Planning Director Gagnon said staff are currently focused solely on ground-mounted solar photovoltaic systems, because technology is changing rapidly. That is the reason the proposed language focuses on surface area, rather than MW, she said. People aren’t worried about how much electricity it’s generating but instead how it will look, she said. This isn’t an industrial use, she added. It’s quite different. She noted that the panels are not “shiny mirrors” and are meant to absorb the sun, not reflect it.

Chair St. Germain asked if any other primary use could be located there if lot coverage is exceeded. Planning Director Gagnon said the only thing that would be exempt from the lot coverage are the panels themselves. Everything else — an access road, inverters, anything that creates imperviousness would be subject to lot coverage, she said, would be subject to that.

Vice-chair Cough asked if that would create an accessory use for the solar array. Planning Director Gagnon said two primary uses would be allowed on a lot, with the idea that a raised photovoltaic panel where vegetation is managed underneath doesn’t create the same impervious area that another use would. Any other impervious or other primary uses on that lot will be subject to lot coverage requirements.

In response to a question from Vice-chair Cough, Planning Director Gagnon explained that if a homeowner wanted to have an array less than 20,000 square feet, it would be considered an accessory use. An array with a surface array exceeding 20,000 square feet would be considered a primary use.

Vice-chair Cough asked whether a report generated in response to a visit by the Town Council to a property in Salsbury Cove was yet available. He said that the town paid \$2,000 for that report,

which he would like to see before moving forward. He said he is not against the proposed ordinance but would rather not go back and redo it in light of more information.

Planning Director Gagnon said the report has not yet been received but that staff research indicates that "it's all about 1 to 5 MW." The Town Council has asked for this ordinance to be done, she added.

Mr. Eleftheriou said the study the Council asked for is probably very similar to what any group does when they're going to construct a solar array. It also matters how far away a proposed array is from a substation, he said. This ordinance follows a lot of the same guidelines other municipalities throughout the country are doing, he said. There's nothing that extraordinary in it, he said. Most systems are 1 MW or greater, he said, requiring a minimum of 5 acres, which would likely be difficult to site on the island.

Another limiting factor, said Planning Director Gagnon, is the substation and what it can handle. Bar Harbor has two substations. With the price of land, she said, "I don't think it's likely that anything within half a mile of the one [substation] downtown will happen," which leaves just one other substation to connect to.

Secretary Brooks asked if that's where the 19 districts proposed in the ordinance came from. Planning Director Gagnon said staff decided to go outside the village area and noted that some lots incorporate more than one zone. If someone is interested in putting up panels, she said, staff wanted to ensure they could capture all of their land. Secretary Brooks asked if staff looked at what lots had enough acreage to hold them. No, said Planning Director Gagnon, as a prospective developer could purchase multiple lots and make a larger one.

Chair St. Germain asked if there had been any thought given to setback exceptions, given that some rural lots have large setback requirements. He also asked whether the panels would be held to height standards, and if they are going to be exempt from lot coverage should that language be added in the section in the LUO to the other items exempt from lot coverage (i.e., driveways).

Planning Director Gagnon said yes, language would be added to include them with other items exempt from lot coverage. Staff have not, at this point, added language exempting arrays from setback exceptions, she said, because "we're trying to make people feel comfortable that this is not going to be any more intrusive than something else, so we thought that respecting a setback was important." She noted that staff are also requiring a fence in the current draft of the proposal.

As for height, said Planning Director Gagnon, going too high, she said, would probably have a problem with the visual impact assessment. Staff research has not found that a commercial facility would approach height problems in any of the zones she said. Vice-chair Cough asked if 8-foot fences are allowed in any zone. Yes, said CEO Chamberlain, and neighbors can also give the OK to exceed height requirements for structures such as tennis courts.

Secretary Brooks said the idea that this is not an industrial use could be argued to some degree. She asked about the 19 zones and the particular uses in them. Industrial use, said Planning Director Gagnon, takes one raw product and creates something else out of it. Often through that

process it adds a value to that raw material. That's why this use would not be considered industrial, she said, because it harvests the sun and converts it into energy. It could be seen instead as a resource-based use, she said.

Secretary Brooks said some of the permitted uses in certain districts seem to have more restrictions with commercial use and asked how staff came up with the 19 zones. Staff focused outside the downtown area, said Planning Director Gagnon, with the exclusion of two districts. Many of these lots are bisected, she said, so a piece of land may be in several zones. If someone has a large enough piece of land and wants to comply with this high bar, they could, she said, but the likelihood that will happen is low.

At Vice-chair Cough's suggestion, Planning Director Gagnon asked if this would be brought back to the board for a workshop in two weeks, as the next meeting's agenda will be heavy. The board will take that under advisement, said Chair St. Germain.

## **II. Accessory Dwelling Units (continuation of discussion from 3/3/21 meeting)**

Chair St. Germain asked for Planning Director Gagnon's thoughts on his changes to her work. Planning Director Gagnon pointed the board to a separate email and a summary of the four districts. The question is, Mount Desert Street Corridor would allow it, she said, so why has it not been taken off there? She pointed the board to an email from Rob DeSimone and referenced a document sent by Secretary Brooks. If you put too many restrictions in place, it won't happen, said Planning Director Gagnon.

Chair St. Germain agreed that the requirement to have the Accessory Dwelling Unit (ADU) be 1/3 of the principal dwelling is quite restrictive. He asked for the board's thoughts. Vice-chair Cough referenced the article sent by Secretary Brooks, which he thought was "spot on," including limiting the ADU to 2/3 of the size of the principal structure. Chair St. Germain asked Secretary Brooks to summarize the article she'd sent.

Chair St. Germain asked Vice-chair Cough if he thought that adjusting the definition of ADU to 2/3 the size of the principal structure would work. Vice-chair Cough read language from the article referenced. He felt that the board was on track, judging by Portland's ordinance.

Planning Director Gagnon thought the board had previously turned down language requiring the subordinate structure to be in keeping with and not to exceed the height of the principal dwelling. It doesn't matter whether the ADU exceeds the height of the primary structure, she said. Vice-chair Cough said was correct but that he was reading the entire article. The idea is to minimize the hurdles, said Planning Director Gagnon, keeping in mind administration of the requirements, which should not be overly cumbersome. Let's figure out something that's achievable and attainable, she said.

Vice-chair Cough said he wouldn't necessarily be opposed to a large ADU if the character was right, with the original house then deemed subordinate. Planning Director Gagnon said CEO Chamberlain had pointed out that a number of houses in town are quite small and has asked what

would happen if the house is so small you're not going to build something 2/3 the size. Planning Director Gagnon suggested limiting the ADU to 2/3 or 1,200 square feet, whatever comes first.

Character is hard to apply and administer, said Planning Director Gagnon. Vice-chair Cough felt Planning Director Gagnon was on the right track with her previous comments. Either way you're creating the relationship of subordinate and primary, he said.

CEO Chamberlain felt that there are so many limitations, why place one more on this housing you're trying to encourage? It seems like you're making it more difficult, she said. Vice-chair Cough said part of his thinking stems from where he lives. Design Review should be handling the historic side to fit the character. That's important to him, he said. On the other side of it, he agreed with CEO Chamberlain, he said: "Let's kind of let it roll."

Chair St. Germain asked CEO Chamberlain to repeat what she felt the restriction was the board should back off from. She said she wouldn't put a limit based on the size of the other unit. "Maybe you have two houses that are the same size — do we really care?" she asked. The town is starved for housing, and if we keep putting restrictions, you'll get a few, but not a lot, she said. There are some small houses, and if you limit it to a 2/3, that's not feasible. Chair St. Germain agreed. That's a great point, he said. He asked if there is any appetite to prohibit VRs from being part of this and whether that is built into the language.

Vice-chair Cough was okay with not allowing VRs in the new units. Secretary Brooks agreed. She asked what would happen if a homeowner was operating a VR in their main home and wanted to add an ADU that wouldn't be a VR. Shouldn't that be allowed, he asked? Vice-chair Cough said a property owner can do that under current rules and that would become relevant if the dimensional standards would allow them to exceed area per family. Secretary Brooks asked if that would cause a property owner to lose the income from a VR.

Planning Director Gagnon said only a handful of people rent a part of their house. Vice-chair Cough felt that property owners who are allowed to operate a VR and want to build an ADU, "then that's great." We want to encourage people to add more housing supply regardless of their current situation, said Secretary Brooks.

Planning Director Gagnon said the way it is right now the ADU can't be a VR. Chair St. Germain said he may have accidentally suggested that, but that Secretary Brooks's point is valid, that an allowance for one is a good idea.

Planning Director Gagnon said the department must write things staff can administer and enforce, and that serve a purpose and that aren't convoluted. People have to look at it with reasonable confidence that they will be able to do what they want, she said.

Secretary Brooks asked if some of the other restrictions should also be done away with, not just area per family. Planning Director Gagnon felt it needed to be thought out more. The idea is to encourage creation of housing that is for year-round people that isn't VRs, said Chair St. Germain. He asked if there are other things, as Secretary Brooks suggested, the board can modify to further encourage that creation.

Planning Director Gagnon felt it would become difficult to keep track of modifying numerous dimensional standards at once. Vice-chair Cough felt that adding anything new “is likely going to torpedo this.” and that the board should give it time. Member Eleftheriou agreed. We want the public to embrace this, he said. Simplicity is key, he said, and minimum area per family will give us the most bang for the buck, he said. Chair St. Germain asked Planning Director Gagnon’s opinion on adding a deed restriction. Planning Director Gagnon was concerned with deed restrictions, as things change and that is a high bar. Vice-chair Cough felt a deed restriction would be too cumbersome and would add to the cost of it.

Chair St. Germain asked if there is a clear path forward to changing the definition of ADU. Vice-chair Cough asked about expanding the districts. Secretary Brooks said she’d prefer that all water and sewer districts have the option but said that hadn’t gone over well last time. Chair St. Germain supported the idea of water sewer districts. Chair St. Germain asked if the board could move forward with a coherent proposal.

We’re not there with all of the ordinance language, said Vice-chair Cough, but we’re on the same page. Planning Director Gagnon asked why the preference would be for including all water and sewer districts and said that area per family is the hurdle. Zoning right now is basically geared toward the wealthy, she said. If you want workers to live here and have a year-round community you have to look at that, she said.

Mr. Eleftheriou said that some might question whether septic might be overburdened outside of water and sewer districts and that there must be provisions to guard against that. He felt there would be pushback about wells running dry and septic systems being overloaded.

Vice-chair Cough felt it should be left as is. Planning Director Gagnon asked whether concerns about water and sewer are real or perceived. Mr. Eleftheriou said that it only takes a few residents to “torpedo something.” Mr. Eleftheriou apologized and said he had to leave early. He left the workshop at 6:38 PM.

### **III. Discussion on rooftop parking (request of Planning Board chairman)**

Chair St. Germain said his proposal would be to make parking one of the items exempt from height restrictions on a building and asked whether there is any support for that. Vice-chair Cough was fine with rooftop parking but wondered if there could be a requirement for lattice work or barrier to shade it from view.

CEO Chamberlain asked whether the board intended to have the car itself or the structure exempt from height requirements. It would be akin to mechanical space being exempt from height, said Chair St. Germain. This would be some form of parking structure that would be permitted and exempt from the height that vehicles could go into it.

Deputy CEO Gurtler asked if Chair St. Germain was talking about an open parking area on a building. Chair St. Germain replied that if an applicant could make it appropriate for the Design

Review Board he would be open to it. This is an attempt, he said, to allow people who are building new to have an option to keep the cars on the site and put them up higher.

Deputy CEO Gurtler asked where the measurement would be taken from if it were open air. He noted that if cover is required, sprinklers would be required as well. Chair St. Germain said sprinklers would likely be required, but since it's exempt from height it doesn't particularly matter where the height is measured from. There would be an inherent challenge in doing this, he said, but perhaps it would allow consolidation when a large entity is developing something they wouldn't also have to develop a 100-car parking area at the same time. Secretary Brooks felt requiring a roof over the cars would make a structure look taller.

Chair St. Germain gave an example of Mount Desert Island Hospital, which was renting from the town directly to have some parking spaces for employees. He noted that there is rooftop parking at the hospital in Bangor, and that the hospital here might be a prime user as they embark on plans to expand on a recent property they've acquired. The idea of it is great, said Vice-chair Cough, noting that the town does have a parking problem.

#### **IV. Discussion on definition of "structure" (request of Planning Board chairman)**

Chair St. Germain presented the item. He asked whether it would be appropriate to remove "below the ground" from the definition of structure, which includes structures above and below ground. It's virtually impossible for anyone preparing a site to be expected to count pipes coming into the building or know what's underground, he said. If somebody had a relatively good size yard and put something underground, and developed a garden on it, does it need to be considered a structure, he asked?

Vice-chair Cough asked if that would be considered utilities and aren't they exempt? They are considered structures in the definition, said Chair St. Germain, and are not exempt. He asked whether that can and should be enforced.

Below grade is taxed differently, Secretary Brooks pointed out, such as in the case of a large walk-out basement. Chair St. Germain posed another hypothetical of a property owner wanting to put parking underground and cover it with grass above. "Is that a bad thing to maintain what's on the surface and have a use such as parking or storage?" he asked. Is it in the board's interest to eliminate that as being considered lot coverage?

CEO Chamberlain said lot coverage is the percentage of the lot area, not the roof. A green roof would not be counted, she said. "Are you concerned that changing the definition of structure will allow you to be able to increase lot coverage?" she asked. "I would be very hesitant to exclude things below the earth or below the ground from the definition of structure," she said, "because then you've said a basement isn't a structure, and I think we'd all probably agree a basement is clearly a structure." If a parking garage were to be constructed below the earth that was grassed above, she would not count that as lot coverage because of the way lot coverage is calculated.

Chair St. Germain asked if it would be better to approach the issue by declaring that below ground structures don't count toward lot coverage. "Is a structure that's underground not

considered lot coverage?" CEO Chamberlain couldn't think of an example of when she'd dealt with that, but said if she saw a lot that was completely covered in grass, "in what world would you ever call that lot coverage if you couldn't see something below?"

Chair St. Germain said the aim is, that if you have a limitation in a district of lot coverage can you maintain the green space and not be considered to be exceeding the allowable lot coverage. "Is it already understood that if it's green on top it's not considered lot coverage?" he asked. That's logical to me, said CEO Chamberlain, but said if she had an application in front of her she would get an opinion from legal counsel.

Deputy CEO Gurtler suggested it might be easier to deal with the lot coverage definition because there are so many different structures. It might be easier to figure out what would be exempted from lot coverage rather than saying anything underground, he said. Chair St. Germain summarized the staff's feeling that "to exempt things from underground from being a structure is not the way to go about this." Secretary Brooks asked about piers. "A pier does not count toward lot coverage, correct?" Correct, said Code Enforcement Officer Chamberlain. Only the part on the land is considered lot coverage.

Planning Director Gagnon asked what prompted this. If staff understands that they can find a way to address it, she said. Changing the definition of structure, which is a linchpin definition in the Land Use Ordinance, could have a large amount of unintended consequences, she's said.

Chair St. Germain said this was prompted by a subdivision application a few years ago in which an abutter said things underground, such as septic systems, must count toward lot coverage. The abutter was opposed to the expansion of a project. "I don't see how anybody can know what the amount of square footage that their septic system can take, nor do I think that we should be considering that," he said. Planning Director Gagnon said, in her mind, lot coverage is equal to impervious areas, anything that doesn't allow water to seep through. She said there are other ways to address this than changing the definition of structure. Chair St. Germain said he simply wanted to talk about it.

Vice-chair Cough asked whether adding to a definition might address this. Chair St. Germain said that, under his restaurant, he has been told there is a septic system — a strict reading could count that toward lot coverage, for instance. Vice-chair Cough asked if the board addressed this when they discussed building a parking section into a hill where you could park underneath and on top. Chair St. Germain said yes, in that application, you have parking over parking, allowing somebody with that land configuration to double up on parking.

Planning Director Gagnon felt if Chair St. Germain wanted clarification on lot coverage, it should be addressed in lot coverage. Chair St. Germain asked for the board to give that thought and to return to it in the future and he said he would "take the warning" that modifying the definition of structure is not advisable.