

**Minutes**  
**Bar Harbor Planning Board**  
**Wednesday, May 5, 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 (at [https://townhallstreams.com/towns/bar\\_harbor\\_me](https://townhallstreams.com/towns/bar_harbor_me), where it is also archived).*

**I. CALL TO ORDER**

Chair Tom St. Germain was having technical issues; Vice-chair Joe Cough took over running the meeting and called the meeting to order at 4:06 PM.

Planning Board members present were Chair St. Germain, Vice-chair Cough, Secretary Erica Brooks, Member Basil Eleftheriou Jr., and Member Millard Dority.

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.

**II. ADOPTION OF THE AGENDA**

Vice-chair Cough noted that item VI. b. had been removed from the agenda at the request of the applicant. **Mr. Dority moved to adopt the agenda, with the removal of item VI. b. Mr. Eleftheriou seconded the motion, which then carried 4-0 on a roll-call vote (Chair St. Germain did not vote as he was still having technical issues).**

**III. EXCUSED ABSENCES**

Vice-chair Cough noted that, as Chair St. Germain had logged in and was attempting to rejoin the meeting, he did not consider that an absence. There was no objection to this approach.

**IV. PUBLIC COMMENT PERIOD**

Vice-chair Cough opened the public comment period at 4:08 PM. Assistant Planner Fuller explained the procedure for commenting. Seeing no one there expressing an interest to speak, the public comment period was closed at 4:11 PM. Chair St. Germain rejoined the meeting.

**V. APPROVAL OF MINUTES**

**a. April 7, 2021**

**Mr. Eleftheriou moved to approve the minutes of April 7, 2021. Secretary Brooks seconded the motion, which then carried (4-0), on a roll-call vote. Mr. Dority abstained from voting, as he was not present at the April 7, 2021 meeting.**

## **VI. REGULAR BUSINESS**

### **a. Completeness Review for SP-2021-02 Oceanside KOA**

**Project Location:** Tax Map 211, Lot 1 off of the County Road and encompassing 2.63 acres of land, according to town tax records. The subject land is in the Town Hill Residential Corridor, Town Hill Residential and Stream Protection zoning districts.

**Owners/Applicants:** The owner of the property is Kampgrounds of America, Inc. (550 N. 31st Street, Suite 400, Billings, MT 59101) and the applicant is Bar Harbor Oceanside KOA (136 County Road, Bar Harbor, ME 04609).

**Application:** The construction of nine worker campsites. This will improve campground operations and worker privacy. Worker sites will be relocated from the existing campground area (Tax Map 211, Lot 3, 104 County Road, in Bar Harbor) to this property.

Jim Kiser was present on behalf of the applicant and presented the project and a review of the project up until this point. Planning Director Gagnon clarified that the only letter missing was that from the Bar Harbor Public Works Department. Vice-chair Cough asked Planning Director Gagnon to run through the Planning Board process. The board is reviewing the project for completeness, she said, meaning it is not a judgement on the quality of information provided but on the quantity of information provided. Public comment is taken on the completeness at this point, she explained. Once the application has been found complete, she said, the applicant will once again appear before the board, at which point the application will be judged on its merits and a public hearing will be held. Vice-chair Cough thanked Planning Director Gagnon and said it's helpful to understand the process; Planning Director Gagnon agreed.

Vice-chair Cough opened a period for limited public comment at 4:20 PM; seeing no one express an interest to speak, the public comment period was closed at 4:21 PM.

There was a discussion of waivers; Mr. Eleftheriou said "everything looks pretty good." He asked a question about Item No. 5.B and whether staff wanted a copy of the Maine Department of Environmental Permit by Rule submitted with the application. CEO Chamberlain said it wasn't necessary; Mr. Kiser said it is old and good for two years but if the board would like it he could provide it. Mr. Eleftheriou asked about Item 7.1.C on the application checklist. Mr. Kiser said it's not something that is permitted up front, but something that is inspected after changes are done. Planning Director Gagnon asked Mr. Eleftheriou if that would be OK as an exhibit, as Mr. Kiser had addressed it. Mr. Eleftheriou said yes. There was a discussion on nomenclature.

**Mr. Eleftheriou moved to grant the waivers requested by the applicant as listed in the checklist and change #9CC from waiver to exhibit; as such waivers will not unduly restrict the review process, as they are inapplicable, unnecessary or inappropriate for a complete review. Mr. Dority seconded the motion which then carried 4-0, on a roll-call vote. Chair St. Germain did not vote.**

Mr. Eleftheriou moved to find the application SP-2021-02 Oceanside KOA complete, per the Bar Harbor Land Use Ordinance section 125-66, with the exception of the DHHS well permit and the capacity letter from Public Works, and to schedule a public hearing on June 2, 2021. Mr. Dority then seconded the motion which carried unanimously, 5-0, on a roll-call vote.

~~**b. Completeness Review for PUD 2021-01 — Jones Marsh Affordable Housing Development [REMOVED FROM AGENDA AT APPLICANT'S REQUEST]**~~

~~**Project Location:** Tax Map 212, Lot 43-1 off of State Route 3 and encompassing a total of 30 acres according to town tax records. The subject land is the Town Hill Residential and Town Hill Rural districts.~~

~~**Applicant/Owner:** Island Housing Trust~~

~~**Application:** The applicant proposes to subdivide a 30-acre property into nine lots (eight lots buildable for residential use and one lot reserved for open space). Six of the buildable lots would have single family homes and two of the buildable lots would have two family homes, for a total of ten dwelling units.~~

## **VII. OTHER BUSINESS**

### **a. Discussion on proposed Solar Photovoltaic (PV) system LUO amendment**

Planning Director Gagnon introduced the documents before the board. A text box was added to explain the rationale for exemption from lot coverage, said Planning Director Gagnon. She noted there was also a comment received from Margaret Jeffrey, asking that there be no minimum square-footage number for a standalone PV system. Planning Director Gagnon felt it was unlikely someone would build a standalone array of less than 20,000 square feet, because of decommissioning requirements and other required expenses.

Vice-chair Cough noted that there was no public hearing scheduled but opened the meeting for brief public comment. Ken Colburn was on the line. He thanked the board and staff for their work; he said it's unusual a town would have a draft of this quality this early in the process. He reinforced the point raised by Margaret Jeffrey in her email and said he had been astounded by how rapidly technology had changed; the way technology is evolving, he said, a 20,000 square foot space could end up being 1/4 to 1/2 megawatt within a few years, which is 1 to 2 percent of the island's electricity load. "I think that we should not have that high a limit," he said, "subject to accessory use. We ought to be able to have stand-alone go smaller than that." He urged the board to continue to move forward rapidly on this.

The PV system principal use and the 20,000 square feet threshold is only for stand-alone, said Planning Director Gagnon. There's also something proposed called PV accessory use. Accessory use would continue to be allowed for roof-mounted (without any square-footage limits) and for a

ground-mounted array up to 20,000 square feet. The difference, she said, is that accessory use is subject to lot coverage, while the principal use (panels) would not be subject to lot coverage.

Mr. Colburn clarified that 140 feet by 140 feet (20,000 square feet) would not qualify as a principal use. That's quite a large array, said Mr. Colburn. He felt it would not be wise to limit principal uses to larger than that. That will become more of an issue as the efficiency of the panels improves, so they yield more and more in a smaller space, he said.

Chair St. Germain asked whether the accessory use would be exempt from height standards. If they're not exempt from lot coverage as an accessory use, how is lot coverage measured? He asked. CEO Chamberlain said any roof mounted panels would still have to meet height requirements and that lot coverage is examined as a bird's eye view, from above.

Mr. Dority clarified whether chimneys are exempt but solar panels are not. CEO Chamberlain said chimneys and cupolas are called out as not being included in the measurement of height, but said she could not think of an example where a resident did not meet height requirements with their PV panels. Chair St. Germain wondered if PV panels should also be exempt.

Chris Byers was on the line. Many of the solar projects that will be proposed, he said, will all probably look very similar. He asked how the board is measuring square footage, whether it is from a bird's eye view or as impervious surface. Vice-chair Cough said the board would likely take that up during discussion but wanted to hear from all those with questions. The ordinance that has been put together is fairly typical, said Mr. Byers. Roughly 10 percent of towns are putting together an ordinance, he said. He offered contact information for other towns who are also crafting ordinances should board members desire it.

Margaret Jeffrey spoke next. She thanked the board and staff for their work. She suggested removing the 20,000 square feet threshold. It wouldn't affect the definition of accessory use, she said. A system under 20,000 square feet could be either the accessory or the principal use of a particular lot. A system over 20,000 square feet, she said, because of the limitation in the definition of accessory use — that system would only be allowed to be a principal use.

Beth Woolfolk was on the line. She thanked the board and staff for their work. There is a gap, she said, that leaves out arrays under 20,000 square feet as a principal use. This limitation could leave out a third financing option for smaller projects, she said, which could unintentionally leave out possible equity growth for low- and middle-income households. Mr. Dority asked if she could send that information to the board. Ms. Woolfolk said yes, she would do that.

Seeing no more commenters, the board moved on to a discussion. Mr. Eleftheriou asked for Planning Director Gagnon's opinion on the comments. Planning Director Gagnon felt that, at

first glance, she didn't see a problem with eliminating the size limit, but wanted to sit down and examine the issue further. Answering a question regarding how lot coverage is calculated, a principal use PV system (panels) would be exempt from lot coverage. To be exempt from lot coverage, panel arrays must be constructed in a way that allows for growth underneath, she said.

Mr. Eleftheriou felt it might make sense to allow smaller arrays to be built as a principal use. It's a lot of work and soft costs, said Planning Director Gagnon, to do a visual impact assessment, have a decommissioning plan and meet other board requirements.

We want to make it as easy as possible but still be able to control what's happening, said Mr. Dority. He asked what would happen if someone had their lot covered but wanted to put up PV panels. How would that affect lot coverage? CEO Chamberlain said it would not change the lot coverage; for instance, a property owner could put a solar array in a parking lot and that would not change the lot coverage.

Chair St. Germain asked what would stop someone from saying if they had a house and a solar array that they weren't both primary uses. If that's the use they want to choose and they meet that, that's fine, but they will have to go through site plan approval and meet other standards as well, said CEO Chamberlain.

Vice-chair Cough said he was grateful for the comments. He wondered about the potentially larger problem of making sure the substations that might be necessary with increased generation are allowed/present in the zones in which PVs would be allowed. An ordinance that allows PVs but doesn't take into account how the power they produce is fed into the system is concerning, he said. There have been issues surrounding the existing substations, he noted. Vice-chair Cough was not in favor of discounting lot coverage for a primary use. That standard is not a good one to go around, despite the good that would come out of this, he said.

Secretary Brooks said she'd asked a similar question at one point. The substations that exist are located in multiple zones, she said, or are on a property that covers multiple zones. Technology is changing quickly enough, she added, that maybe it would be not too far down the line that those requirements would change. Mr. Dority agreed that technology is changing very rapidly.

Secretary Brooks asked a question about measuring lot coverage. Planning Director Gagnon explained some panels can be adjusted; if they can be adjusted to be flat, parallel to the ground, that would be the maximum. Lot coverage is associated with impervious surface. Highest lot coverage in the proposed zones is 75 percent, which is an outlier, she said. The norm would be 25 percent. If you don't exempt from lot coverage you'd need quite a sizable lot, she said.

Mr. Eleftheriou said this ordinance will likely be “useless” without exempting lot coverage. He wanted to hear from those with concerns about lot coverage. Secretary Brooks understood that the draft ordinance language is fairly common, but the island is unique. We have very little developable land, she said. This is a specific use we’re considering changing the rules for, said Secretary Brooks. Mr. Eleftheriou said he didn’t want to put anybody on the spot but felt the board should be on the same page with the ordinance to “bring something to fruition.”

Vice-chair Cough felt that exempting certain PV systems from lot coverage would mean stormwater runoff wouldn’t necessarily have a chance to absorb into the earth. Without the ability to absorb underneath the panel, what will that do to surrounding areas as the water runs off, he asked. Does that change the dynamic of the environment around it? It’s not just the coverage, it’s what happens to the stuff that washes off, he said. Mr. Eleftheriou said there are plenty of systems the board could examine to alleviate concerns, particularly around vegetation.

An applicant would still need to do stormwater management, said Planning Director Gagnon. “I really don’t think we’re looking at hundreds of these,” said Mr. Dority. Planning Director Gagnon agreed. Any arrays that do pop up may pop up on underutilized pieces of land. That is a good use for that type of land, she said. It’s unlikely there will be many large systems, she said, because land is expensive on the island. Mr. Dority added that there is a lot of expense involved and the board should encourage and support large arrays.

Chair St. Germain wished there was an “elegant way” that lot coverage exemptions could be extended to affordable housing, so as to demonstrate priorities. “I realize they are two separate issues,” he said, but added the board has been told that both are emergencies. “We’re all wrestling with the idea of seeing whether affordable housing will ever be part of our community again,” he said, “and this might be an opportunity for that if we exempt it from lot coverage at the same time.” Vice-chair Cough said he would also like to see that but felt it was unlikely.

Planning Director Gagnon asked for guidance on the 20,000 square feet issue. The threshold was initially much higher, she said, and had been lowered after discussions. Vice-chair Cough suggested staff take a further look, as Planning Director Gagnon proposed earlier, and come back to the board with a recommendation. Planning Director Gagnon was comfortable with that plan.

Secretary Brooks asked if there had been consideration of increasing lot coverage for this particular use (or others, such as affordable housing) rather than exempting a use from lot coverage.

There are lots, said Planning Director Gagnon, that straddle multiple zones. It could be cumbersome if there were different requirements in each zone. Industry recommendation is that lot coverage not apply, she said. If you’re storing boats, for instance, that is already exempt from

lot coverage in Bar Harbor's Land Use Ordinance; this would be similar. If it becomes too complicated, no one will take advantage of it, said Planning Director Gagnon. Chair St. Germain made a good point regarding affordable housing, she said. Many of the town's zoning and dimensional requirements are above and beyond health safety and welfare. But we can't compare one with the other at this point, because that's not what's on the table, she said.

Vice-chair Cough reiterated his concerns about grid connections and wondered who an appropriate party might be to answer questions. Mr. Eleftheriou felt it wasn't the board's concern and that developers and utility companies would work that out. "I don't think we have to be concerned with if it's feasible or not," he said.

Mr. Eleftheriou noted that there had been comments coming in via the Zoom platform. Vice-chair Cough couldn't see them but was willing to entertain them. Chair St. Germain made a comment about essential services and asked CEO Chamberlain whether electricity generation was considered an essential service. Such services are exempt from lot coverage in the setbacks, he noted. There has been some dispute whether things of this nature fall under that definition, said CEO Chamberlain. In the past, she said, there has been opposition to the idea that generating electricity is considered an essential service and exempt from lot coverage in the setbacks.

Assistant Planner Fuller noted that several meeting participants had made comments during the meeting; he encouraged those in the public with information or comments to send them to the board by email. He asked whether that would be appropriate. Vice-chair Cough said yes. Vice-chair Cough appreciated everyone's comments and felt emailing the comments and including them at a subsequent meeting would allow all board members and members of the public to hear them. Assistant Planner Fuller encouraged those with a comment or more information to send it to [planningboard@barharbormaine.gov](mailto:planningboard@barharbormaine.gov).

#### **b. Discussion on proposed Accessory Dwelling Units LUO amendment**

Planning Director Gagnon updated the board on changes staff made to the draft amendment at the board's direction, including altering language to refer to a "bonus" dwelling unit, rather than accessory dwelling unit, which is by definition subordinate. She noted that CEO Chamberlain provided a list of districts and minimum lot size and area per family standards for each district.

Vice-chair Cough asked board members' feelings regarding a third dwelling unit. Chair St. Germain said it could be that people don't typically think about adding another dwelling unit and that calling it out and letting residents know they are able to do this might be effective. Chair St. Germain asked whether, if somebody already took advantage of increased density under the PUD process, would they then be able to take advantage of additional density?

Secretary Brooks liked the idea of calling it a “bonus” dwelling unit, rather than accessory. Getting rid of area per family is key, she said. The intent behind this is to create more dwelling units. Vice-chair Cough asked for Secretary Brooks’s thoughts on PUD. That will be tricky, she said, as PUDs are already taking advantage of increased density. To allow them additional bonuses “seems like overkill.”

Mr. Eleftheriou was “on the fence” and wanted more time to think about that particular issue. As for whether it would be appropriate to allow a third dwelling unit, Mr. Eleftheriou said he was in favor, but wondered whether adding that would be confusing or result in pushback. “Let’s get the one and amend something later on,” he said. Mr. Dority wanted more time to think about the PUD issue and wondered what unintended consequences might arise. He supported allowing a third dwelling unit.

Vice-chair Cough supported allowing a third dwelling unit as well. It wouldn’t have to be in the language, he said, but an additional dwelling unit over and above what is currently allowed. Those who have been through the PUD process have already gotten the benefit, he said. “I’m not inclined to think that that’s the best way forward,” he said.

Vice-chair Cough asked if Planning Director Gagnon had any other comments. She outlined possible next steps, including drawing up a table where two and three units would be allowed. There was a discussion about timing. To get an item on the November ballot, a public hearing would need to be called on June 2 and held July 7, she said. Planning Director Gagnon suggested holding a workshop on May 19.

At Planning Director Gagnon’s suggestion, Vice-chair Cough asked whether there was anyone in the public who wished to make a public comment. There were no commenters.

**Mr. Dority moved that Items VII. a and b be moved to a workshop on May 19, 2021 at 4:00 PM, with the board’s efforts concentrated on accessory dwelling units in districts on the chart drafted May 5, 2021 that do not currently allow accessory dwelling units. Secretary Brooks seconded the motion, which then carried unanimously (5-0), on a roll-call vote.**

**c. Update on proposed Signage LUO amendment**

Assistant Planner Fuller updated the board on the proposed amendment. An issue regarding neon vacancy/no vacancy signs was brought back to the Design Review Board for discussion. The Design Review Board consensus, said Assistant Planner Fuller, was to not pursue language that staff had looked at relating to expanding an existing provision in the Land Use Ordinance allowing neon vacancy/no vacancy signs. Assistant Planner Fuller also updated the board on multi-tenant properties with multi-tenant signage plans. There is seemingly conflicting language



regarding multi-tenant signage plans, specifically contained in §125-67 BB. (6)(f) versus §125-67 BB. (6)(O). Design Review Board was in favor of the provision in §125-67 BB. (6)(O).

**d. Discussion on rooftop parking (possible LUO amendment)**

Chair St. Germain wondered if the board was willing to push this ahead. Vice-chair Cough felt it should wait until the other amendments under consideration were taken care of but was happy to discuss it further down the road. Chair St. Germain said that was fine.

Secretary Brooks said she, too, thought it was something the board should continue to explore after the other items were wrapped up. She wondered whether the parking task force had ever discussed this. "It's definitely worth pursuing," she said.

Mr. Dority agreed and said he would be happy to contact the parking task force. Mr. Eleftheriou was also in favor of making progress on the other amendments before delving into the issue.

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

None.

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

Mr. Dority asked if there was a particular reason why the Jones Marsh project was pulled from the agenda. Planning Director Gagnon said there was no specific reason given by the applicant.

Vice-chair Cough heard that state law prohibits the board from waiving stormwater runoff and wondered if that was true and whether anything else might fall under that waiving exemption.

**X. ADJOURNMENT**

At 6:29 PM, Secretary Brooks moved to adjourn. Mr. Dority seconded. The motion carried unanimously, 5-0, on a roll-call vote.

**Minutes approved by the Bar Harbor Planning Board on June 2, 2021:**



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**Erica Brooks, Secretary,  
Bar Harbor Planning Board**

**Date**