



Q&A about proposed Land Use Ordinance Amendments Summer 2021

INTRODUCTION

Six proposed Land Use Ordinance amendments are working their way through the review and public hearing process, tentatively headed for the municipal ballot and town-wide vote on Tuesday, November 2, 2021. They are: Signage, Short-Term Rentals, Solar Photovoltaic Systems, Bonus Dwelling Units, Nonconformity, and Accessory Dwelling Units.

Copies of the draft orders for these proposed amendments can be obtained at the Planning Department in the Municipal Building (93 Cottage Street), and also found here: <https://www.barharmoraine.gov/207/Land-Use-Information>.

The Planning Board held public hearings on these proposed amendments at its meeting on July 7. A number of citizens came and attended the meeting to speak and ask questions about the proposals. Staff compiled those questions and answers to them, to share with others in the public who may have the same questions. No questions were asked at the July 7 hearings about Nonconformity or Accessory Dwelling Units.

The questions here are generally presented as they were asked at the July 7 public hearings, though some have been lightly edited for clarity or combined with other similar questions to avoid repetition. With regard to Short-Term Rentals, the numbered questions are presented in the order they were asked. If you have additional questions after reading this document, please contact the Planning Department at 288-3329 or by email at officeassistant@barharmoraine.gov.

SIGNAGE

Question: *What is the history of neon lighting in Bar Harbor? Is more being added or taken away?*

Answer: The Land Use Ordinance (LUO) currently allows for the use of neon lighting under specific, and limited, circumstances. Businesses with neon signs that predate the LUO (the Criterion Marquee, for example) are grandfathered. In terms of new neon signage, the Land Use Ordinance presently allows small (up to 2 square feet) neon signs indicating vacancy/no vacancy at lodging businesses in certain districts, and whether a business is open or closed or what type of general merchandise it sells ("ice cream," yes; "Gifford's," no). This proposed amendment does not expand or reduce these existing allowances; it does, however, add a definition for neon signs (the term is currently undefined) that includes signs designed to look like neon.

SHORT-TERM RENTALS

Question 1: *How many people are allowed to occupy a Short-Term Rental unit?*

Answer: The proposed amendment does not regulate the number of people allowed per Vacation Rental 1 (VR-1) and/or Vacation Rental 2 (VR-2).

Question 2: *How many cars are allowed per Short-Term Rental unit; where do they park?*

Answer: The proposed amendment does not regulate parking for VR-1 and/or VR-2. Parking must comply with requirements for a dwelling unit in a subject district.

Question 3: *How is the 4-night minimum per VR-2 registration enforced?*

Answer: The Code Enforcement staff will monitor and manage Short-Term Rental compliance.

Question 4: *How are septic system and well capacities for Vacation Rentals (VR) monitored?*

Answer: Well and septic system installations are regulated by the State. The State has not established capacity requirements for wells. Septic systems are inspected by the Local Plumbing Inspector at the time of installation. Septic systems are designed to accommodate the number of bedrooms in the dwelling unit (a VR is an activity that operates in a dwelling unit); this is confirmed at the time of rental inspection.

Question 5: *What is a transfer of ownership? Is a gift or inheritance (family) allowed to maintain VR-2 registration? Is non-transferability restricted to sale?*

Answer: Transfer of ownership is considered the sale or conveyance of property from one property owner(s) to another. This includes a gift, inheritance, or any other legal process of transferring property. As proposed, no VR-2 registration would be transferable to a new owner beyond its specific expiration date.

Question 6: *Why are there no restrictions of seasonal worker housing units?*

Answer: The town began regulating employee housing (employee living quarters and shared accommodations) in the summer of 2020. The Land Use Ordinance (LUO) also allows employees to be housed in a standard dwelling unit as long as there are not more than five unrelated people living together.

Question 7: *What % of seasonal worker housing units are in residential districts?*

Answer: The town does not presently collect this data.

Question 8: *Why is the transfer of a VR-2 not considered a “legally existing nonconformity” as outlined in LUO 125-53 D?*

Answer: While the activity may become a nonconforming use in some districts if the amendment is approved, it is the rental registration that cannot be transferred. In other words, while a nonconforming activity (in this case, VR-2) may be transferred to another owner pursuant to the nonconformity protections under 125-53 D., the registration itself will not be transferrable under 125-69 Y.(1)(c). The new owner would only be able to continue using that existing registration until the following May 31, per 125-69 Y.(1)(a)[2]. It’s similar to a restaurant use. A nonconforming restaurant may be sold to another owner and that use may be transferred but the liquor license cannot be transferred to the new owner.

Question 9: *Why has the town singled out Vacation Rentals? Why hasn’t the growth of hotels, seasonal housing and other commercial or non-profit growth been restricted?*

Answer: The regulation and monitoring of vacation rentals has been identified as a priority in the 2007 Comprehensive Plan, the 2019, 2020, and 2021 Council Visions (annual goals), the 2018 Housing Needs Analysis and Assessment (Island Housing Trust) and the town’s 2019 Housing Policy Framework.

Question 10: *How many currently registered Vacation Rentals come from non-residential buildings?*

Answer: A vacation rental, as defined in the LUO, is an activity within a dwelling unit and therefore all vacation rentals are located in dwelling units.

Question 11: *What’s the difference between “Use” and “Activity”? Are Vacation Rentals considered a “Use” or “Activity”?*

Answer: The LUO defines the word “use” as “The purpose or activity for which land or any building or structure thereon is designed, arranged, intended, occupied or maintained.” In Chapter 125, Article III Land Use Activities and Standards, “allowed uses” require a building permit to commence, while the “allowed activities” do not require a building permit to commence. VR is listed under “allowed activities” in Article III. For a VR, the dwelling unit is the use permitted and the one that requires a building permit. A VR is an activity that does not require a building permit but does require a registration to operate.

Question 12: *What legal right does the Town have to tell people what they can and cannot do in their house?*

Answer: The Home Rule Enabling Act of 1970 and the Town Charter provides Bar Harbor the ability to regulate activities and uses.

Question 13: *What are the rules and regulations for Vacation Rentals as far as number of occupants, cars, septic or safety?*

Answer: Please see previous answers pertaining to the number of occupants, cars, and septic. As for the part of the question pertaining to safety, staff provides for the safety of the occupants and the dwelling through the enforcement of the current version of NFPA 101 Life Safety Code.

Question 14: *What does the regulation do to address pets in Vacation Rentals and the control of noise?*

Answer: This proposed LUO amendment does not regulate house pets. However, the Police Department enforces Chapter 139 Noise Ordinance which prohibits certain noises and states that “It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the Town.”

Question 15: *Where did the issue of transferability begin?*

Answer: Transferability is not allowed in the current LUO. The topic has been discussed throughout the development process of the current LUO amendment proposal.

Question 16: *Is a Vacation Rental a commercial use?*

Answer: A vacation rental, as defined in the LUO, is an activity in a dwelling unit and therefore all vacation rentals are located in dwelling units. The LUO defines commercial use as: “The use of lands, buildings, or structures, other than a home occupation as defined below, the intent and result of which activity is the production of income from the buying and selling of goods or services, exclusive of rental of residential buildings and/or dwelling units.”

Question 17: *What is the transition plan for currently registered Vacation Rentals to Short Term Rentals; VR-1 and VR-2?*

Answer: On or before May 31, 2022, any existing VR registration will have to be renewed if the owner intends to continue the activity. Code Enforcement staff will use the ordinance to determine, at the time of application, whether a dwelling unit will be classified as VR-1 or VR-2 for the new registration.

Question 18: *How would this amendment address/achieve affordable housing?*

Answer: Among the goals of this proposed amendment is to address the conversion of year-round housing to vacation rentals which contributes to the loss of

available year-round housing options. These proposed regulations alone will not solve the town's housing problems — this amendment is only part of a larger effort to address the community's need for affordable year-round housing. That effort is intended to not only look at affordable housing, but the affordability of housing in general. Efforts such as the proposed Bonus Dwelling Unit amendment and other continued work, consistent with the 2007 Comprehensive Plan, the 2019, 2020, and 2021 Council Visions (annual goals), and the town's 2019 Housing Policy Framework, are part of the overall effort to provide more affordable year-round housing options.

The number of registered vacation rentals more than doubled in the 14-year period between 2006 to 2020 (from 185 to 518, an increase of 333 registrations or 180%). Presently, about one in every five dwelling units in Bar Harbor is registered as a vacation rental.

While some vacation rentals are the product of new construction, many are located in existing dwelling units that are converted from year-round to short-term housing. The impacts of this shift include people being evicted from their apartments. As for the cost of a house, the prices are inflated making the homes less attainable especially to households that earn from two-thirds to double the median household income.

Studies have shown a negative correlation between an increase of short-term rental units and the effects of that increase on long-term rental units. A 2018 study found that a 10% increase in Airbnb listings in a ZIP code led to a 0.42% increase in rental prices and 0.76% increase in house prices within that same ZIP code. That same study, and another done in 2016, found that short-term rental listings correlated with a rise in landlords shifting away from long-term rentals and toward short-term rental operations.

The rise in vacation rental units in Bar Harbor is compounding the housing problem, as it is taking long-term housing options off the market and affecting cost and availability. The proposed Short-Term Rental regulations balance the need for year-round housing and the economic benefits from vacation rentals, especially for residents. VR-1 would provide additional income to residents to afford to live in Bar Harbor. VR-2, meanwhile, would allow seasonal and second-home owners to do rentals within the confines of the proposed cap — which would work to slow down the tide of conversion of potential year-round housing (whether rented or owned) into properties used for short-term rentals.

Further regulating vacation rentals is one action that is part of a larger set of actions that could be taken, as referenced above and as described in the Town's 2019 Housing Policy Framework. The town has worked on, and continue to work on, other actions. Furthermore, it is important to understand that Affordable Housing is defined in the 2019 Housing Policy Framework as "Quality housing in reasonable proximity to the workplace that has a sale price or rental amount that is within the means of the household that earns from about two-thirds to double the median household income."

Question 19: *Why can VR-1 be in residential districts and not VR-2?*

Answer: VR-1 focuses on the wellbeing and economic prosperity of the full-time residents of Bar Harbor. There is a difference between homeowners renting out their homes to supplement their income and owning vacation rentals as investment properties. VR-1s are proposed to be allowed in 34 of the 40 districts (the same 34 districts where vacation rentals are presently allowed). All 34 of those districts allow dwelling units in one or more forms (single-family, two-family, multi-family, etc.).

VR-2 are either a second home or an investment property and are not a primary residence. VR-2s are proposed to be allowed only in districts that allow accommodations (hotels, motels, B&Bs, cabins, transient accommodations and campgrounds) and certain commercial activities, as the impacts are somewhat similar.

SOLAR PHOTOVOLTAIC SYSTEMS

Questions

- *What is the maximum size a primary use photovoltaic (PV) might be limited to?*
- *How many acres are required for a 5 megawatt (MW) PV system?*
- *If electric utility substations are allowed in Town, why aren't PV principal uses allowed?*

Answer: The purpose of this Land Use amendment proposal is to allow ground-based PV systems as a principal use. These systems typically produce 1-5MW of electric power through a project such as a solar farm. This power would be transferred to the main power grid through a substation. There are currently two substations located in Bar Harbor. These substations could most likely accommodate up to 12.5MW from solar projects, according to Versant Power.

Lot size requirements may vary based on the project; however, systems typically require 3-5 acres per MW. Technology is becoming more efficient at a rapid pace, meaning that eventually less land may be required to generate the same amount of electricity. The actual PV panels are proposed to be exempt from lot coverage limits, while all other dimensional requirements would remain in effect.

There is no maximum project size included in the proposed LUO amendment. The size of a primary PV principal use system would be controlled by the lot size, the ability of the local power grid substations, the cost efficiency of the project and the visual impact assessment required in the proposed amendment. Current State regulations are favorable to systems in the 1-5MW range, which would require approximately 5-25 acres each.

BONUS DWELLING UNITS

Questions

- *How will this amendment effect parking, traffic, septic and water supply capacities for a property?*
- *Are both the primary and bonus dwelling exempt from area per family requirements?*
- *What are the size parameters for a bonus dwelling unit, can it be bigger than the primary unit?*
- *Can the primary unit, on a bonus dwelling property, be registered as a Vacation Rental?*
- *Why would bonus dwellings be allowed in districts without access to public water and sewer?*
- *How were the districts allowed for bonus dwellings selected?*

Answer: A bonus dwelling unit will be required to comply with the parking, wastewater disposal, lot coverage, setbacks, and all other dimensional requirements for the district in which it is located. The only provision that a bonus dwelling unit will not have to comply with is the minimum area per family. The single-family dwelling that the bonus dwelling is accessory to is not exempt from the minimum area per family, only the bonus dwelling.

A bonus dwelling unit may be larger than the single-family dwelling as long as it meets all the other dimensional requirements.

A bonus dwelling unit may not be registered as a vacation rental but the single-family dwelling it is accessory to may be registered as a vacation rental.

The districts proposed to allow bonus dwellings were chosen based on the existing minimum lot size and area per family standards. If the minimum lot size standard and the minimum area per family standard were both the same, bonus dwelling unit was added as a proposed allowed use in that district.

Additional questions?

*Please contact the Planning Department at 288-3329
or by email at officeassistant@barharbormaine.gov.*