



## Town of Brewster Planning Board

2198 Main St., Brewster, MA 02631

brewplan@brewster-ma.gov

(508) 896-3701 x1133

### PLANNING BOARD MEETING AGENDA

2198 Main Street

May 24, 2023 at 6:30 PM

#### Planning Board

Madalyn Hillis-Dineen, Chair

Amanda Bebrin  
Vice Chair

Robert Michaels  
Clerk

Charlotte Degen

Antone Freitas

Elizabeth Taylor

Alexander  
Wentworth

Town Planner  
Jonathon Idman

Senior Department  
Assistant  
Lynn St. Cyr

This meeting will be conducted in person at the time and location identified above. This means that at least a quorum of the members of the public body will attend the meeting in person and members of the public are welcome to attend in person as well. As a courtesy only, access to the meeting is also being provided via remote means in accordance with applicable law. Please note that while an option for remote attendance and/or participation is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast or affect remote attendance or participation, unless otherwise required by law. Members of the public with particular interest in any specific item on this agenda, which includes an applicant and its representatives, should make plans for in-person vs. virtual attendance accordingly.

Members of the public who wish to access the meeting may do so in the following manner:

**Phone:** Call (312) 626-6799 or (301) 715-8592. Webinar ID: 841 0778 1002. Passcode: 612505. To request to speak: Press \*9 and wait to be recognized.

**Zoom Webinar:** <https://us02web.zoom.us/j/84107781002?pwd=VTVSV1ExaUNCL253NmNZV21Gdmo4dz09> Passcode: 612505. To request to speak: Tap Zoom "Raise Hand", then wait to be recognized.

When required by law or allowed by the Chair, persons wishing to provide public comment or otherwise participate in the meeting, may do so by accessing the meeting remotely, as noted above. Additionally, the meeting will be broadcast live, in real time, via **Live broadcast** (Brewster Government TV Channel 18), **Livestream** ([livestream.brewster-ma.gov](http://livestream.brewster-ma.gov)), or **Video recording** ([tv.brewster-ma.gov](http://tv.brewster-ma.gov)).

The Planning Board packet can be found on the Calendar on the Town of Brewster website ([www.brewster-ma.gov](http://www.brewster-ma.gov)).

1. Call to Order.
2. Declaration of a Quorum.
3. Meeting Participation Statement.
4. Recording Statement. As required by the Open Meeting Law we are informing you that the Town will be video and audio taping as well as broadcasting this public meeting. In addition, if anyone else intends to either video or audio tape this meeting they are required to inform the Chair.
5. Citizen's Forum. Members of the Public are invited to address the Planning Board on matters not on the agenda during this time. The Planning Board asks that a 3-minute maximum comment period be respected by the speaker. In order to avoid any possible interpretation of a violation of the Open Meeting Law, the Planning Board will not provide comment in return to the speaker, however the item may be moved to a future agenda if discussion is deemed warranted.
6. Reorganization of the Planning Board. The Planning Board will discuss and may potentially vote to appoint a new Chair, Vice Chair, and Clerk. The Planning Board will also discuss and may potentially vote to recommend the Select Board appoint a member as the new Planning Board representative to the Brewster Municipal Affordable Housing Trust.
7. Continued review and discussion on the accessory single-family dwelling unit and accessory commercial dwelling unit sections of the zoning bylaw. The Planning Board may take votes on this matter.
8. Approval of Meeting Minutes: May 10, 2023.
9. Committee Reports.
10. For Your Information.
11. Matters Not Reasonably Anticipated by the Chair.
12. Next Meetings: June 14, 2023 and June 28, 2023.
13. Adjournment.

BREWSTER TOWN CLERK  
*[Signature]*  
23 MAY 17 11:32 AM

Date Posted:  
05/17/23

Date Revised:

Received by Town Clerk:



**Brewster Planning Board**  
**2198 Main Street**  
**Brewster, MA 02631-1898**  
**(508) 896-3701 x1133**  
**brewplan@brewster-ma.gov**  
**MEETING MINUTES**  
**Wednesday, May 10, 2023 at 6:30 pm**  
**Brewster Town Office Building**

**Approved:**  
**Vote:**

Chair Madalyn Hillis-Dineen convened a meeting of the Planning Board at 6:30 pm with the following members participating: Amanda Bebrin, Charlotte Degen, Tony Freitas, Rob Michaels, Elizabeth Taylor, and Alex Wentworth. Also participating: Jon Idman, Town Planner, and Lynn St. Cyr, Senior Department Assistant. Hillis-Dineen declared that a quorum of the Planning Board was present. She read the Meeting Participation Statement and Recording Statement.

**6:32 PM CITIZEN'S FORUM**

No citizen comments.

**6:33 PM PUBLIC MEETING**

Review and discuss the accessory single-family dwelling unit and accessory commercial dwelling unit sections of the zoning bylaw including potential zoning amendments.

**Documents:**

- 04/27/23 Memo re: ADU provisions from Jon Idman, Town Planner
- 04/27/23 Memo re: ACDU provisions from Jon Idman, Town Planner
- Brewster's Experience: ADU, ACDU, & Accessory Apartments since 2018 Bylaw and spreadsheet
- Sections of Zoning Bylaw-179-2 (Definitions); 179-42.2 (ADUs); 179-42.3 (ACDUs); 179-25 (Extensions and Alterations); 179-26 (Residential lots of record); Table 1 (Use regulations); and Table 2 (Area regulations)

Assistant Town Manager Donna Kalinick, Building Commissioner Davis Walters, and Housing Coordinator Jill Scalise participated in the discussion. Also present was Attorney Chris Senie.

Scalise summarized her observations on the accessory dwelling unit (ADU) bylaw over the past five years. She noted the collaboration that has taken place between the Building Department, Planning Department, and Housing Office with support from Town Management. She stated that the Building Department has created helpful guidance documents to assist applicants through the process of ADU permitting. Scalise referred to a spreadsheet provided in the Planning Board's packet that provided information on the number of permits received. She stated that there is not a good mechanism to track units being leased, used, or built. Scalise stated that there have been 29 permits received in the five years the bylaw has been in existence. Most of the permits are for accessory dwelling units. Most questions that come to the Housing Office are about accessory dwelling units. There have been less frequent questions regarding accessory apartments and very limited questions on accessory commercial dwelling units. Bebrin stated that when the bylaw was originally drafted it included a cap on the number of units in response to concerns of overdevelopment. She stated that the information provided is helpful and shows that the cap was not reached. Degen stated that the information provided encompasses the pandemic years and she wondered if that impacted the number of units created. Walters responded to Degen's comment stating that the Building Department did not see a slowdown in building permits that could be attributed to the pandemic. There was an uptick in permits for home renovations. Scalise stated that after the bylaw passed there were a lot of people who were asking questions about ADUs. There was a slowdown in those questions during the pandemic. During the last 6-9 months, the ZBA has seen an uptick in ADU applications.

Taylor asked if there was a limit on the amount of time permittees had to act on their permits and whether ADUs could be tracked through certificates of occupancy. Walters responded that the building code does provide time limits but

there is discretion given to the commissioner so long as the permittee provides evidence of continued work. He also stated that certificates of occupancy are not issued for renovations and additions so they would not be an effective tool in tracking ADUs. Taylor asked how ADUs were going to be “policed” to make sure they are not being rented to tourists. Scalise responded that the bylaw requires an affidavit to be provided by the property owner stating that the ADU is being leased for 12 months. She noted that many of the ADUs created to date have been created for family members including seniors and children. Scalise noted that accessory apartments do not have a year-round rental requirement and do not have the same oversight as ADUs.

Michaels stated that it appeared that improving the ADU bylaw including cleaning up of language and simplifying of the application and tracking process would be items the Planning Board could tackle. Construction costs and septic capacity are areas the Planning Board does not control and cannot be involved in.

Wentworth stated that ADUs are a great concept, but the current bylaw does not sufficiently regulate ADUs so that they meet their intended purpose. He suggested additional requirements may include requiring property owners to provide more information on the renting of the units. Wentworth also asked about sales of homes with ADUs and how new property owners would know there was an ADU on their property. Idman responded that improvements to the bylaw could include a requirement that all ADUs receive a zoning permit. Idman likened the zoning permit to something like a shed registration. These zoning permits would be issued for the ADUs that do not require special permits. Idman stated that there is not a mechanism to track building permits for ADUs because an ADU building permit does not exist.

Kalinick stated that the intent after passing the ADU bylaw was always to come back for a status review. The current environment shows an interest for ADUs. Kalinick stated that the bylaw needs to be more user friendly and functional and open to more property owners. Idman stated that the more limitations and impediments there are in a bylaw the more potential violations.

Freitas asked for clarification on issuing certificates of occupancy (CO) and Walters stated that a CO would issue if a new dwelling unit was created but not for renovations/additions in a current residence. Walters stated that the building code was intended for the life of the structure not the life of the occupants. Idman stated that there is a CO issued when an ADU is created but there is no building code for an ADU so there is no way to track it for zoning purposes. Freitas stated that the process for creating an ADU needs to be easier and property owners should have the option of backing out if they wish. He suggested a notation on the property’s deed disclosing the ADU. Walters suggested an annual review/inspection for ADUs. Scalise noted that accessory apartments require a change to the special permit when the occupants change but the previous CO is not updated or changed. Kalinick stated that the bylaw needed to be clear that short term rentals are not allowed. Kalinick also suggested that a purpose statement on the bylaw’s intent to create year-round housing be included. There was further discussion on what constitutes a dwelling unit and ADUs being used on a short term basis.

Idman suggested the Planning Board focus on the primary limitations they want to see in the bylaw that will also fulfill the intent the community has for ADUs. Bebrin stated that the bylaw needs to be functional both for applicants and staff. Bebrin stated that the Planning Board needs to look at the intent of the bylaw which is to create year-round housing opportunities and move forward from there considering what restrictions should be in place. Bebrin agreed with Idman that the more restrictions put in place the harder it becomes to enforce. She stated that 6-month leases may be something the Planning Board wishes to consider. She also mentioned that given the number of second homeowners in town, the Planning Board may want to consider allowing those not here year-round to have ADUs on their properties.

Michaels suggested the Planning Board may want to create a guidance type document to provide more information on ADUs to applicants and to help walk them through the process. Scalise responded that the observation memorandum provided lists next steps including revisions to the bylaw and improving information on the ADU process. She stated that the Council on Aging will be holding a forum on ADUs. Resources have become available in the last 1-1.5 years to

help residents through the ADU process. The Community Development Partnership and Homeless Prevention Council have an ADU Resource Center which has been helpful for residents. Scalise agreed that more education and outreach to the community was needed. Bebrin stated that appearing before a board for an ADU permit is a barrier for some people. With construction and safety standards in place, it may not be necessary for an applicant to also appear before a board for a permit. She stated that the Planning Board should consider simplifying the permitting process.

Taylor stated that construction costs may cause a property owner not to move forward with an ADU. Freitas stated that he believes the cost of design professionals coupled with the possibility of not being approved for an ADU is causing people not to pursue ADUs. Freitas suggested a staff review to point applicants in the right direction and provide feedback prior to application for an ADU. Idman responded that it would be easier to provide information on zoning compliance than building code compliance to potential ADU applicants. Staff discussions could not be used to determine building code compliance.

Taylor stated that she would like to see less restrictions on accessory commercial dwelling units (ACDUs) and that they should be allowed in all zoning districts.

Kalinick stated that the requirement that an ADU be 40% of the habitable area of the principal dwelling unit has been a barrier to those with smaller homes. Freitas asked what an acceptable size would be for an ADU. Scalise stated that the bylaw allows a maximum size of 900 SF and noted that other towns use 1000 SF. Hillis-Dineen stated that she would agree to drop the percentage of habitable area calculation used to determine the size of ADUs and use simple square footage for maximum size. Walters has observed that the calculation of habitable area needed to create an ADU is a challenge for some people and the cost of design professionals is a concern. Bebrin stated that she believes ADUs are an important piece to providing housing but the process is difficult and there are several barriers so they are not being pursued.

Taylor stated that the town needs to review its multifamily housing restrictions as well and suggested that duplexes could provide more housing opportunities. Wentworth stated that he is in favor of streamlining the ADU process and making it easier for property owners, but he does not want ADUs to be used as short term rentals. The Planning Board agreed. Bebrin stated that making a change to ADU sizing so that it is a simple 800-1000 SF maximum would create more access to prefabricated plans which would mean applicants do not need to spend money on design professionals.

The Planning Board discussed their meeting schedule and continued review of ADUs and ACDUs. Kalinick encouraged everyone to participate in the housing survey being conducted by the Cape Cod Commission.

Idman summarized the memorandum on ADUs he provided to the Planning Board. He noted that it included policy considerations, administrative considerations, and mechanical drafting issues. Policy considerations include whether to consolidate ADUs and accessory apartments. Idman stated he did not see a legal or regulatory reason not to consolidate these two uses. Idman stated that currently owner occupancy for 12 months is required for an ADU. This could be considered a barrier. The Planning Board may want to consider whether part-time residents/not principal residents should be allowed to have an ADU or a ZBA special permit to rent both units. Idman stated that there is not a purpose statement in the bylaw today and one should be added. The statement could underscore providing year-round housing opportunities. The bylaw should be clarified further stating that ADUs are not commercial uses, not for short term rentals, and that properties with ADUs remain single family residential properties. Another policy discussion should focus on whether it is necessary to have a 12-month lease. Idman stated that there are year-round residents that need shorter leases than 12 months. He noted that other communities have allowed 6-month leases. Another consideration is the building permit cap currently in the bylaw and whether that should remain. Idman stated that both a policy and administrative consideration is the percentage size approach to ADUs. It gives larger homes an unfair advantage. Idman stated another policy consideration is whether it is necessary for one dwelling to be subordinate to the other or to match the character of the other. Idman suggested the focus should be on the construction and use of a site being

consistent with single-family residences. A new policy consideration should be not severing ownership between principal dwelling and ADU.

Idman summarized administrative considerations including the difficulty/fairness in administering ADU size as a percentage of the principal dwelling. He explained the difference between habitable area and net floor area and suggested that net floor area be used in discussion of ADUs. Idman stated that special permits are required for ADUs located in Zone II and the Pleasant Bay Watershed. There are already flows and nitrogen loading controls on development in this area so the Planning Board should consider if special permits are also necessary. He further stated that Herring River is one of the areas that requires a special permit but there is no map for Herring River in the bylaw. The Planning Board may also want to consider whether special permits are necessary for lot sizes of 30000 SF or less. 30000 SF has never been a required minimum lot size in Brewster. Idman also noted that you can have detached accessory building with bedrooms. He wondered if those should be permitted as ADUs. The Planning Board may want to consider a zoning permit/registration program. Clarification is also needed as to whether ADUs are allowed on a dirt road.

Idman summarized mechanical drafting issues including the definition of ADU. The definition includes substantive provisions which should be moved to the main body of the bylaw. He again referenced habitable area versus main floor area. Idman suggested clarifying language stating that ADUs shall comply with all applicable dimensional requirements.

#### **8:20 PM PLANNING DISCUSSION**

Continued review and discussion on Planning Board Special Permit and Site Plan application forms.

##### **Documents:**

- Attachment to Chapter 179 (Zoning) Planning Board Application Required Submission Materials Checklist (red lined and final draft versions)
- Chapter 179 Application Cover Sheet

The Planning Board reviewed a final draft of the required submission materials check list and application cover sheet.

**Motion by Bebrin to Approve “Attachment to Chapter 179 (Zoning) Planning Board Application Required Submission Materials Checklist” and ‘Chapter 179 Application Cover Sheet’’. Second by Michaels. Vote: 7-0-0.**

#### **8:24 PM APPROVAL OF MEETING MINUTES**

Approval of Meeting Minutes: April 12, 2023.

The Board reviewed the April 12, 2023 meeting minutes. **Motion by Degen to Approve April 12, 2023 Meeting Minutes, as amended. Second by Bebrin. Vote: 7-0-0.**

#### **8:25 PM COMMITTEE REPORTS**

Wentworth stated that the Vision Planning Committee is working on revisions to the Local Comprehensive Plan (LCP). It is anticipated that the LCP will be on the warrant for Fall Town Meeting. Bebrin announced that a public forum will take place on May 20<sup>th</sup> at the dining hall on the bay property site. Residents are asked to pre-register. Information can be found on the town website. Degen gave a partial report on the May 8<sup>th</sup> Select Board meeting including that child care will be available at the May 20<sup>th</sup> forum, First Light Beach will be opening on Memorial Day Weekend, the Cape Cod YMCA has made a proposal for a partnership at the bay property, a second forum on low-lying roads has been scheduled by the Cape Cod Commission, the repaving of Foster and Breakwater Roads has been completed and Underpass Road is underway, Brewster in Bloom was successful, a Memorial Day Program is scheduled for May 29<sup>th</sup> at 12:00 pm at the Council on Aging, the Garden Club was thanked for their work throughout the town, a proposal for a part-time energy manager position was approved by the Select Board, a junior lifeguard position was put forward as a new seasonal position, and Guapo’s applied for a seasonal liquor license. Taylor stated that she participated in the low-lying roads forum.

**8:36 PM FOR YOUR INFORMATION**

The Planning Board received information on a housing survey being conducted by the Cape Cod Commission.

**8:37 PM MATTERS NOT REASONABLY ANTICIPATED BY THE CHAIR**

The Planning Board discussed their upcoming meeting agendas. They will continue their discussion on ADUs and ACDUs and reorganize at their May 24<sup>th</sup> meeting. The Planning Board requested ADU bylaws and data from other communities. There are applications scheduled on the June 14<sup>th</sup> agenda and Griffin Ryder, DPW Director, will be attending the meeting to discuss stormwater management including information provided in HydroCAD reports.

**Motion by Taylor to Adjourn. Second by Bebrin. Vote: 7-0-0. The meeting adjourned at 8:43 PM.**

**Next Planning Board Meeting Date: May 24, 2023.**

Respectfully submitted,

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Lynn St. Cyr, Senior Department Assistant, Planning

DRAFT