04.20.2020

Bar Harbor Planning Board
c/o Planning Department
Bar Harbor Town Offices
93 Cottage Street
Bar Harbor ME 04609

RE: BHAPTS, LLC PUD-V Application PUD-2017-02

Members of the Board,

We are returning to review this project on remand from the Appeals Board which upheld all parts of your decision early in 2019 except for the base development density and number of allowed units derived from that determination.

Attached is a revised subdivision plat indicating a total of sixteen units and a new exhibit depicting floorplans for converting Building D from four units to two. These address findings 8 and 9 of the Board of Appeals decision signed 02.06.2019 (attached). The Applicant observes that the “dimension” noted as creating a non-conforming condition is area-per-family and the Planning Board has authority under §125.69.S. to modify Article III as to that standard. Once the Planning Board affirms that development density, the project complies, there is no non-conformity and finding 2 of the Appeals decision is moot.

The Applicant requests that the Planning Board address the remand by amending the February 6, 2019 decision with the following, and approve the project:

1. Under the list of submitted plans, change the date of the plat referenced in item 2 to 3.12.2020 and add item 22, Exhibit 20.A.2, “Building D, Proposed Floorplans”.

2. Under Findings and Conclusions of Law, amend item 4.(c) to read “The Board finds that the development meets the number of allowable units standard. The Appeals Board has determined that the base development density is eight, for a total of sixteen dwelling units, two of which are designated as affordable.”

While it may not be imperative that the matter be stated, the Applicant further requests this section include the following to address potential discussion regarding non-conformity noted in 4.(a):

“4.(g). The Board finds that its authority granted in §125.69.S. allows the Board to determine area per family within the constraints of that section.
TOWN OF BAR HARBOR
Planning Board
93 Cottage Street, Suite I
Bar Harbor, Maine 04609-1400
Tel. 207-288-3329 Fax 207-288-3032

DECISION

Date: January 16, 2019
Application: PUD-2017-02 Planned Unit Development – Village
Project location: 25 West Street Extension, Tax Map 103, Lots 048-000 and 049-000
Applicant: BH Apts., LLC
Application: The applicant is proposing to construct three new buildings with two dwelling units in one, three dwelling units in two, and reconfigure the existing dwelling layout for a total of 18 units on the site.
Zoning district: Village Residential
Permitted Use: PUD - V

To the Code Enforcement Officer:

Under the authority and requirements of the Land Use Ordinance Article V, Section 125-61. F, at the properly noticed public hearing on December 5, 2018 and January 16, 2019, by a motion duly made and seconded, it was voted to approve the noted application.

The approval is based upon the following submitted plans:

1. Exhibit 9.1.2 “Proposed Site Plan” dated 01.06.2019 and prepared by The Moore Companies.
2. “Subdivision Plat” dated 01/22/2019 and prepared by Plisga and Day, Land Surveyors.
3. “Stormwater modeling and calculations” dated 01.09.2019 and prepared by The Moore Companies.
4. Exhibit 17.0.2 “Grading, Drainage and Erosion Control” dated 01.09.2019 and prepared by The Moore Companies.
5. Exhibit 11.0b “Landscaping and Buffering” dated 01.08.2019 and prepared by The Moore Companies.
11. “Sitetwork Details D-3” dated 10/15/18 and prepared by Andrew McCullough, Engineering Consultants.
14. Exhibit 20.1.1 "Building “G” Floorplan” dated 1/17/19 and prepared by the TMS Architects.
15. Exhibit 20.1.2 “Building “E & F” Floorplan” dated 1/17/19 and prepared by the TMS Architects.
16. Exhibit 20.2.1 “Building “G” Elevations” dated 1/17/19 and prepared by the TMS Architects.
17. Exhibit 20.2.2 “Building “E & F” Elevations” dated 1/17/19 and prepared by the TMS Architects.
18. Exhibit 20.2.3 “Building “E & F” Elevations” dated 1/17/19 and prepared by the TMS Architects.
20. Exhibit 21.01.1.
21. Exhibit 21.01.2.

This approval is based upon the following FINDINGS AND CONCLUSIONS OF LAW:

1. Based on the documents received, this application meets the requirements under the Land Use Ordinance Article V.
2. Based upon the documents received, and accepting the work of the professionals who have prepared the documents, this application meets the requirements of Section 125-67 as found below:

   a. The Board finds the use, Multifamily II, is allowed by Planned Use Development in the Village Residential district per section 125-20 E. of the Bar Harbor Land Use Ordinance.
   b. The Board finds that the development will meet the minimum lot standards for the Village Residential District. As allowed under section 125-69 S. (6)(d)[1], the Board moved to reduce the distances between buildings as required in section 125-67 B.(3) to the distances shown on exhibit 9.1.2 dated January 6, 2019 to allow the buildings to be clustered to create larger buffers and open space on the site.
   c. The Board finds that the development will meet the maximum height requirements for the Village Residential District as shown on exhibits 20.2.1, 20.2.2, and 20.2.3.
   d. The Board finds that the development meets the requisite parking standards as shown on exhibit “Subdivision Plat” dated 01/22/2019 and exhibit 21.01 “Lighting Plan” dated 01.07.2019.
   e. The Board finds that the development meets the minimum parking areas and driveways standards as shown on exhibit “Subdivision Plat” dated 01/22/2019.
f. The Board finds that the minimum loading requirement is not applicable to this application.

g. The Board finds that the streets, sidewalks and access standards are not applicable to this application.

h. The Board finds that the development will meet the buffering and screening requirements as shown on exhibit 11.0b dated 01.08.2019.

i. The Board finds that the public water supply standard is not applicable to this project.

j. The Board finds that the development will meet the municipal water standards as shown in exhibit 6E.

k. The Board finds that the groundwater standards are not applicable to this application.

l. The Board finds that the development will meet the stormwater management standards as shown in exhibit 17 “The stormwater modeling and calculations” and dated 01.09.2019, exhibit 17.0.2 “Grading, Drainage and Erosion Control” dated 01.09.2019, and exhibit 17.1 “Maine Erosion and Sediment Control BMP’s” dated 10/2016.

m. The Board finds that the development will meet the municipal sewer facilities standards as shown in exhibit 6C.

n. The Board finds that the private sewage waste disposal standards are not applicable to this application.

o. The Board finds that the soils information are not rated severe or very severe where this development is shown in exhibit 10.

p. The Board finds that the development meets the landscaping standards as shown in exhibit 11.0b “Landscaping and Buffering” dated 01.08.2019.

q. The Board finds that the development will not cause unreasonable soil erosion as shown on exhibit 17.1 “Maine Erosion and Sediment Control BMP’s” dated 10/2016.

r. The Board finds that the hundred-year flood standards are not applicable to this application.

s. The Board finds that the air pollution standards are not applicable to this application.

t. The Board finds that the development will meet the refuse disposal standards as shown on exhibit 9.1.2 “Proposed Site Plan” dated 01.06.2019 and in exhibit 19A. dated November 9, 2018.

u. The Board finds that the dangerous and hazardous materials and wastes standards are not applicable to this application.

v. The Board finds that the vibration standards are not applicable to this application.

w. The Board finds that there are no significant spawning grounds or wildlife habitat in this development as shown in exhibit 9T.

x. The Board finds that there are no rare and irreplaceable natural areas in this development as shown on exhibit 9U.
y. The Board finds that the radiant heat standards are not applicable to this application.

z. The Board finds that the development meets the lighting standards as shown in exhibit 21.01 “Lighting” dated 01.07.2019 and in exhibits 21.01.1 and 21.01.2.

aa. The Board finds that the Noise Ordinance is not applicable to this application.

bb. The Board finds that the sign standard is not applicable to this application.

c. The Board finds that the development does not include the outdoor storage of materials.

d. The Board finds that the development will meet the utilities standards as shown on exhibits SP-1B “Utility Plan” dated 1-3-19 and SP-1A “Utility Plan” dated 1-3-19.

e. The Board finds that the development meets the Municipal Fire Department standards as shown in exhibit 18.

ff. The Board finds that the development conforms to the Comprehensive Plan.

gg. The Board finds that development will meet the financial and technical capacity standard.

hh. The Board finds that there is no registered farmland in Bar Harbor.

ii. The Board finds that the Town is able to provide municipal services to the proposed development. SEE CONDITION #2.

jj. The Board finds that there are no known violations of the Bar Harbor Land Use Ordinance as shown in exhibit 2B.

kk. The Board finds that the development meets the legal documents standard. SEE CONDITION #4.

ll. The Board finds that there are no historic and archaeological resources on the property as shown on exhibit 9V.

mm. The Board finds that there are no natural features of interest located on the property as shown on exhibit 9U.

3. Based upon the documents received, and accepting the work of the professionals who have prepared the documents, this application meets the requirements of Section 125-69 N. as found below:

(a) The Board finds that the monuments standard is not applicable to this application.

(b) The Board finds that the blocks standard is not applicable to this application.

(c) The Board finds that the development meets the lot standards.

(d) The Board finds that the development meets the road frontage standard.

(e) The Board finds that the double frontage and reverse frontage standard is not applicable to this application.
(f) The Board finds that the lot lines standard is not applicable to this application.

(g) The Board finds that the future development standard is not applicable to this application.

(h) The Board finds that the development meets the lands not suitable for development standard.

4. Based upon the documents received, and accepting the work of the professionals who have prepared the documents, this application meets the requirements of Section 125-69 S. as found below:

(a) The Board finds that the development meets the parcel size and eligibility standards. The Board found that this is a legally nonconforming lot and the applicant is legally grandfathered for 16 dwelling units and the number of dwelling units may be increased as allowed under the provisions of 125-69 S.

(b) The Board finds that the development meets the permitted uses allowance.

(c) The Board finds that the development meets the number of allowable units standard. The Board found that the base development density was nine, for a total of eighteen dwelling units, two of which would be affordable.

(d) The Board finds that the development meets the affordable units and lots standards.

(e) The Board finds that the development meets the open space standard.

(f) The Board finds that the development meets the setback and lot coverage standards as required in section 125-20 B. As allowed under section 125-69 S. (6)(d) [1], the Board moved to reduce the distances between buildings as required in section 125-67 B.(3) to the distances shown on exhibit 9.1.2 dated January 06, 2019 to allow the buildings to be clustered to create larger buffers and open space on the site.

5. Based upon the documents received, and accepting the work of the professionals who have prepared the documents, this application meets the requirements of Section 125-69 R. as found below:

(a) The Board finds that the applicant has demonstrated that the units shall be rented to qualified moderate-income buyers as defined.

(b) The Board finds that the applicant has submitted to the Planning Board an agreement to preserve the long term affordability of the units to moderate-income households.

(c) The Board finds that the applicant has demonstrated that the mandatory affordable housing provisions will run with the land.
(d) The Board finds that the affordable housing units will be constructed and completed at least concurrently with the remainder of the multifamily project. **SEE CONDITION #7.**

(e) The Board finds that when calculating the proportionality, the applicant rounded any fractional sum down to the nearest whole building unit.

(f) The Board finds that the condominium documents standards is not applicable to this development.

(g) The Board finds that the applicant has demonstrated that the affordable rents, including utilities, shall be limited to 30% of the annual income of a household whose income is the median income for Hancock County.

(h) The Board finds that the buyers of affordable units standards are not applicable to this development.

(i) The Board finds that the applicant has demonstrated that the renters of the affordable units will have a moderate income as defined.

(j) The Board finds that the applicants submitted an affirmative marketing plan.

(k) The Board finds that the affordable housing lots standard is not applicable to this development.

**The applicant is advised of the following:**

1. No modifications shall be made to this approval including changes to the plans, accompanying documents, and conditions without a review for a modification under the requirements in Section 125-88 of the Land Use Ordinance.

2. This permit does not relieve the applicant from any other local, state or federal permits that may be required for this proposed development.

3. Please refer to Article VIII for standards conditions that will be applied to the construction of this project. No performance bonds are required.

4. Building permits are required for this project.

5. There is an appeal period for any interested party of 30 days to appeal this decision of the Planning Board. It is the risk of the applicant to commence construction during this period.

6. Violations of any conditions placed upon this approval are subject to enforcement per Article IX, Section 125-100 B of the Land Use Ordinance.

**Conditions of Approval:**

1. The subdivision plan prepared by Plisga and Day Surveyors must be stamped by a Maine State Licensed Surveyor.

2. A capacity statement from the Public Works Director which indicates that the project will not cause an unreasonable burden on the Public Works Department and indicating approval of the design plans for construction and for connections to the public services.
3. Written approval from the Public Works Director that a 12' wide easement, instead of the required 30’ wide easement as required by 125-67 L.(12), is adequate for the town to maintain and improve the utilities within that easement.

4. Prior to the issuance of a building permit, final sewer easement language approved by the town’s legal counsel.

5. A final copy of the of the Affirmative Marketing Plan as modified by the Board at the January 16, 2019 meeting.

6. A final copy of the Declaration of Covenants, Conditions, and Restrictions approved by the town’s legal counsel and as modified by the Board at the January 16, 2019 meeting.

7. Written acknowledgement from the applicant that the affordable units will be concurrently rented with the other units.

Modification of Standards:

1. The Board approves the modification of standard request for section 125-67 B. (3) which requires that in any subdivision in which lots are not created, the distance from the side of one principal building to the side of another principal building shall be no less than twice the distance of the side yard setback in the district; the distance from the side of one principal building to the front of another principal building shall be no less than twice the distance of the front yard setback in the district; the distance from the side of one principal building to the back of another principal building shall be no less than twice the distance of the rear yard setback in the district; the distance from the front of one principal building to the front or back of another principal building shall be no less than twice the distance of the front yard setback in the district; and the distance from the back of one principal building to the back of another principal building shall be no less than twice the distance of the rear yard setback in the district. The Board finds that this modification is necessary to protect the public health, safety or welfare or to address particular site characteristics to allow the buildings to be clustered to create larger buffers and open space on the site and approves the distances as shown on plan 9.1.2 dated January 06, 2019.

2. The Board approves the modification of standard request for section 125-67 L. (12) which requires an easement of at least 30' in width granted to the Town allowing maintenance and improvement of a stormwater drainage system. The Board finds that this modification is necessary to protect the public health, safety or welfare, or to address particular site characteristics to allow for the buildings to be located in an area as shown on plan 9.1.2 dated January 06, 2019 to accommodate the requests of the abutting property owner and as a result, there is no clear space for a 30’ wide easement.
Appeals of this decision may be made to the Board of Appeals pursuant to section 125-103 of the Bar Harbor Land Use Ordinance within 30 days of this date of this decision.
The findings and decisions above remove non-conformity attached to the property as relates to area per family.”

Respectfully, on behalf of the Applicant,

Perry N. Moore, ASLA
Maine Licensed Landscape Architect 2699
Pennsylvania Professional Landscape Architect 3255
Principal
The Moore Companies
Decision

Public Hearing: AB-2019-01 - Administrative Appeal

Applicant: Elizabeth Mills, Trustee of the Collier Family Trust

Project Location: The property is located at 25 West Street Extension, Bar Harbor, Tax Map 103, Lots 048-000 and 049-000, within the Bar Harbor Village Residential zoning district.

Application: The applicant requests that the Board of Appeals hold a public hearing for an administrative appeal of the Planning Board’s February 6, 2019 written decision, pertaining to a Subdivision and Site Plan for a Planned Unit Development application known as PUD-2017-02 pursuant to section 125-103 of the Bar Harbor Land Use Ordinance.

Under authority of section 125-103 of the Bar Harbor Land Use Ordinance (LUO), the Board of Appeals, at its February 11, 2020 meeting, by a motion duly made and seconded, vacated a portion of the Planning Board decision, and remanded the application to the Planning Board, based upon the below noted findings:

Findings

1. The record supports the Planning Board’s finding that the project is a lawful nonconforming lot, pursuant to LUO section 125-56.

2. The proposed project contains at least one nonconforming structure, as the structures do not meet the dimensional standards set forth in LUO section 125-20(B)(10), and the Planning Board’s contrary finding is clearly contrary to that section.

3. The record supports the Planning Board’s finding, per LUO section 125-69(S)(1)(a), that the project is residential, does not include transient accommodations, and is a permitted use per LUO section 125-69(S)(2)(a).

4. The record supports the Planning Board’s finding, per LUO section 125-109, that the project residents meet the section’s definition of “family”.

5. The record supports the Planning Board’s finding that the project meets applicable PUD-V standards for open space and buffering, in accord with LUO sections 125-69(S)(1)(a)(1) and 125-69(S)(5).
6. Based upon evidence before the Planning Board that the project will mitigate adverse conditions affecting historic gardens on an adjacent property, the record supports its finding that LVO section 125-67(X) standards have been met.

7. Based upon the project’s 85,523+/- square-foot lot size, the Planning Board record does not support its finding that the base development density provisions of LVO section 125-69(S)(6)(a)(1) allow 9 units, and that finding is clearly contrary to that section.

8. Based upon the Planning Board’s incorrect calculation of base development density, the Planning Board’s determination of maximum allowable units is clearly contrary to LVO section 125-69(S)(6)(a)(3).

9. Based upon the Planning Board’s incorrect calculation of base development density, the Planning Board’s determination of the number of required affordable housing units is clearly contrary to LVO section 125-69(S)(6)(b).

10. The record supports the Planning Board’s determination of appropriate rear setback, and distance between buildings, and its decision is not clearly contrary to LVO sections 125-64 and 125-67(B)(3).

11. The record supports the Planning Board’s determination that the affordable housing proposal, aside from the number of required affordable housing units, meets the requirements of LVO section 125-69(R)(3)(a).

Decision

Based upon the findings and conclusions above, the Board of Appeals voted to vacate the Planning Board decision, and remand the matter to the Planning Board in accord with LVO section 125-103(D)(1)(l), limited to consideration of base development density, maximum allowable units, and required affordable housing units only, consistent with the Board’s findings above. The Board of Appeals denied the appeal as to all other issues raised.

Any interested party is entitled to request a reconsideration of this decision by the Board of Appeals within 10 days from the hearing date when the decision was made, and/or appeal to the Maine Superior Court within 45 days of the same hearing date.

Signed as witness to the proceedings:

Ellen L. Dohmen, Chair

Date: February 13, 2020