



# Agenda

## Town of Bar Harbor Board of Appeals

Tuesday, December 10, 2024 – 4:30 PM  
Council Chambers, Municipal Building – 93 Cottage Street

**I. CALL TO ORDER**

**II. ADOPTION OF THE AGENDA**

**III. ADOPTION OF MINUTES**

- a. July 9, 2024
- b. November 26, 2024, Special Meeting

**IV. EXCUSED ABSENCES**

**V. REGULAR BUSINESS**

a. **AB-2024-04 Golden Anchor**

**Applicant/Owner:** Golden Anchor, L.C., 1000 Market Street, Suite 300, Portsmouth, NH 03801

**Applicant's Representative:** Andrew Hamilton and Timothy Woodcock, 80 Exchange Street, P.O. Box 1210, Bangor ME 04402

**Subject Property:** 55 West Street, Bar Harbor, Maine, Tax Map 104, Lot 010-000

**Zoning District:** Shoreland General Development I

**Application:** Golden Anchor, L.C. is appealing the Notice of Violation issued by the Code Enforcement Officer on August 5, 2024 and asking it be reversed.

**VI. OTHER BUSINESS**

**VII. ADJOURNMENT**



# Minutes

## Town of Bar Harbor Board of Appeals

Tuesday, July 9, 2024 – 4:30 PM  
Suite 321, Municipal Building – 93 Cottage Street

Present at the meeting were Chair Ellen Dohmen, Vice-Chair Anna Durand, and member Cara Ryan.

Town staff present was Planning Director Michele Gagnon.

### I. CALL TO ORDER

Chair Dohmen called the meeting to order at 4:33 PM.

### II. ADOPTION OF THE AGENDA

Anna Durand moved to adopt the agenda as written. Cara Ryan seconded and it passed 3-0.

### III. EXCUSED ABSENCES

Secretary Robert Webber, Heather Peterson, and Mike Siklosi were excused.

### IV. APPROVAL OF MINUTES

#### a. May 14, 2024

There were various comments and requests for updates as follows:

- Adding the quote: “we are not asking the Town to merely reverse or vacate a press release, we are asking the Appeals Board to reverse and vacate the Town’s enforcement decision which is memorialized by that press release” to page 3 of the minutes.
- Adding: Additionally, “something that does not have the force of law cannot be remanded or vacated” to page 4 of the minutes.
- Correcting a misspelling of Mr. Wagner’s name on page 5
- Changing council or counsel in multiple locations in the minutes.
- Removing the paragraph about number of ships on page 6 of the minutes.
- Adding the words essentially and say to a paragraph beginning with “Mr. Siklosi asked” on page 7 of the minutes.
- Changing stated to does not say and adding the quote: whether they have or do interpret this chapter and we are relying the resolution itself as an interpretation of the Land Use Ordinance” to page 7 of the minutes.
- Adding: “and guidance or how to interpret many aspects of their case” to page 9 of the minutes.

Anna Durand moved to approve the minutes as amended. Cara Ryan seconded and the motion passed 3-0.

**V. REGULAR BUSINESS**

There was none.

**VI. OTHER BUSINESS**

Cara Ryan pointed out that there were typos and a missing page in the Appeals Board application form.

Chair Dohmen alerted the board that this was her last meeting. She expressed that she had been Chair of this board for 15 years, and a number of boards in Bar Harbor for 25 years. After much thought, Chair Dohmen decided that it was her time to take a step back. She thanked staff members for their assistance over the years and said that she was happy to serve the town over the past 25 years.

**VII. ADJOURNMENT**

Anna Durand moved the adjourn the meeting at 5:22 PM. Cara Ryan seconded and it passed 3-0.

Signed as approved:

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Robert Webber, Secretary

Date



# Minutes

## Town of Bar Harbor Board of Appeals

Tuesday, November 26, 2024 – 3:00 PM  
Council Chambers, Municipal Building – 93 Cottage Street

### I. CALL TO ORDER

**Anna Durand called the meeting to order at 3:01 PM.**

Board members present at the meeting were Anna Durand, Cara Ryan, Claire Fox via Zoom, and Associate Member Mike Siklosi via Zoom.

Town staff present were Planning Director Michele Gagnon and Staff Planner Hailey Bondy.

Attorneys present included Dan Pileggi for the Appeals Board, Andy Hamilton for the appellate, Jonathan Hunter for the Town, and Robert Papazian for Charles Sidman.

**Anna Durand declared Associate Member Mike Siklosi to be a voting member for the meeting.**

### II. ELECTION OF OFFICERS

- a. **Chair – Anna Durand**
- b. **Vice-Chair – Cara Ryan**
- c. **Secretary – Robert Webber**

**Ms. Ryan nominated Ms. Durand, Ms. Ryan, and Mr. Webber for their respective positions in a slate. Mr. Siklosi seconded and the motion passed 4-0 in a roll call vote.**

### III. ADOPTION OF THE AGENDA

Chair Durand requested to amend the agenda to include a vote on the 2025 meeting calendar.

**Vice-Chair Ryan moved to amend the agenda to include a vote on the 2025 meeting calendar. Ms. Fox seconded and the motion passed 4-0 in a roll call vote.**

**Mr. Siklosi moved to adopt the agenda as amended. Vice-Chair Ryan seconded and the motion passed 4-0 in a roll call vote.**

### IV. EXCUSED ABSENCES

Secretary Webber was excused.

## V. REGULAR BUSINESS

### a. AB-2024-04 Golden Anchor

**Applicant/Owner:** Golden Anchor, L.C., 1000 Market Street, Suite 300, Portsmouth, NH 03801

**Applicant's Representative:** Andrew Hamilton and Timothy Woodcock, 80 Exchange Street, P.O. Box 1210, Bangor ME 04402

**Subject Property:** 55 West Street, Bar Harbor, Maine, Tax Map 104, Lot 010-000

**Zoning District:** Shoreland General Development I

**Application:** Golden Anchor, L.C. is appealing the Notice of Violation issued by the Code Enforcement Officer on August 5, 2024 and asking it be reversed.

The purpose of this meeting was to determine whether the Board would consider or not consider a late submission.

Chair Durand imposed a 10-minute time limit on each party that would like to speak and allowed Attorney Hamilton to begin the discussion.

Attorney Hamilton requested the opportunity to speak for five minutes to start and retain five minutes at the end to respond to others that have spoken. Chair Durand granted the request.

Mr. Hamilton began his argument by identifying references in the Board's Rules of Procedure he believed to be incorrect. This included an unclear indication of which type of appeals the 20-day noon deadline applied to.

Mr. Hamilton also referenced a previous court case, Elizabeth Mills v. Town of Bar Harbor, which used the 2011 version of the Appeals Board Rules of Procedure. This case, decided in 2019, ordinance timing under 125-103 governed both appeals and supplements. Under this logic, the Golden Anchor submission was not late, as it was filed on the 20-day deadline, as described in the Land Use Ordinance.

After this, Mr. Hamilton reached his five-minute limit and Attorney Hunter, representing the Bar Harbor Code Enforcement Officer, was allowed to speak.

Attorney Hunter explained that he disagreed with Attorney Hamilton and believed the Board's Rules of Procedure applied to the situation. Given the Board's rules, the submission was filed after noon on the 20<sup>th</sup> day before the hearing and, therefore, late.

Mr. Hunter said the Code Enforcement Officer was not taking a position on whether to consider the late materials. If the Board decided to consider the materials, he requested that the Board allow the Code Enforcement Officer to have additional time to put together a response due to the limited time

remaining for review of the appellant's submission and formulate a response by the seven-day deadline.

After Mr. Hunter spoke, Mr. Hamilton was allowed to use his remaining five minutes of time. During this time, Mr. Hamilton re-iterated his position regarding the Land Use Ordinance timing overruled the Board's Rules of Procedure. Additionally, he agreed to allow the Code Enforcement Officer to have additional time if his submission was considered.

After the five-minute period, the Board was able to ask questions of either party.

Mr. Siklosi asked Mr. Hamilton what the reason for the missed deadline was. Mr. Hamilton said he simply missed it. He noted he had never had an evidentiary appeal in Bar Harbor before and didn't realize there was a noon deadline. The moment he learned of the deadline, he submitted materials as quickly as possible.

Chair Durand opened the floor for Public Comment. Attorney Papazian, who was representing Charles Sidman spoke. Mr. Papazian expressed his position against consideration of the materials due to the missed deadline. He further expressed his agreement to allow for additional days to submit materials for the seven-day deadline and intended to be included in that extension.

There were no other public comments.

Chair Durand opened the meeting up to Board discussion.

Mr. Siklosi began by noting if Mr. Hamilton's submission is not considered, he is likely to read or explain the bulk of the submission during the upcoming meeting, which would result in a very long meeting. Mr. Siklosi appreciated Mr. Hamilton's honesty in missing the deadline and didn't see a reason to not accept the late submission, as it would give the Board ample time to review ahead of the meeting.

Vice-Chair Ryan countered by asking about the impacts of suspending the deadline requirements. She compared the missed deadline to past missed-deadline appeals relevant to short-term rental registration. Ms. Ryan noted that if a long meeting is going to happen as a result of not considering the late submission, that is okay, but she did not feel comfortable making exceptions to the clear deadline.

Additional discussion occurred.

**Vice-Chair Ryan moved to reject the supplemental materials for consideration for the December 10, 2024 meeting. Claire Fox seconded and the motion passed 4-0 in a roll call vote.**

**VI. OTHER BUSINESS**

There was none.

**VII. ADJOURNMENT**

**Vice-Chair Ryan moved to adjourn the meeting at 4:07 PM.**

Signed as approved:

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Robert Webber, Secretary

Date



# Bar Harbor Planning Department

## Appeals Board – Procedure for De Novo Hearings

### Staff Report for AB-2024-04 Golden Anchor Appeal

This document is intended to provide the Appeals Board with a summary of recommended procedural steps to assist in an evidentiary (de novo) hearing. Attached to this procedure is a memo prepared by the Appeals Board Attorney, Dan Pileggi. The memo is a supplement to this document and contains additional considerations specific to this appeal.

#### **What is a de novo proceeding?**

A de novo is a Latin term that means “anew” or “from the beginning.” This means the Board will be reviewing information that has not been presented to the decision-maker previously. In the Bar Harbor Land Use Ordinance (hereinafter, LUO) this refers to Evidentiary hearings, per Section 125-103D(2)(a).

#### **Requirement for an Evidentiary or De Novo proceeding**

According to LUO Section 125-103(D)(2), evidentiary appeals include “notice of violation, the granting of a permit by the CEO and all other decision or actions taken at which the appellant did not have a fair opportunity to present evidence to the decision-maker.”

#### **Recommended Procedure**

- A. The Chair shall call the meeting to order and state the time.**
- B. A member of the Board should move to adopt the written meeting agenda. The motion should be seconded and voted upon.**
- C. Excused Absences.**
- D. Regular business – read all information on agenda related to appeal.**
- E. Appeals Board Conflicts of Interest:**

LUO section 78-12 addresses conflicts of interest of municipal board members. This section prohibits a member from voting, participating or deliberating in a proceeding in which the member or an immediate family member has a financial or special interest in the matter being addressed.

Any member who believes that he or she has a financial or special interest shall disclose its nature and extent at the first meeting the agenda item is addressed. The other board members should review the facts disclosed and vote whether the disclosing member has a financial or special interest, or the appearance of a conflict of interest.

The other Board members should vote whether or not a conflict exists. If a majority of the Board determines the existence of a conflict, the impacted member will be

disqualified from participating in the meeting, except as a member of the public. Standard practice in Bar Harbor recommends the member either join the public audience or leave the room.

#### **F. Considerations:**

1. The Board must identify whether it has the jurisdiction to hear the appeal.
  - Per the LUO Section 125-103, appeals are limited to “any decision or enforcement action by a **municipal body or official who or which interprets this chapter**...For purposes of this section, the term “decision” is limited to **an order, decision, ruling or enforcement action made in writing.**” The Board has no power to address any matter outside of this authority.
  - Please review Attorney Pileggi’s memo for references related to jurisdiction, section II.B.
2. If the Board finds it has jurisdiction over the subject matter of the appeal, it must then determine the applicant’s standing to appeal. LUO section 125-103 requires that, to have standing, an appellant must be an “aggrieved party” affected by a decision or enforcement action by a municipal body or official which interprets chapter 125. The law requires that, to have standing, a person must be affected by a particular decision or enforcement action to a degree greater than the general public.
3. If the Board determines the appeal has both jurisdiction and standing, then the Board may move forward with hearing new evidence.

If the Board determines a lack of jurisdiction or standing, it should be clearly identified in the motion and final decision.

#### **G. Hearing and Board Questions:**

Per the Appeals Board Rules of Procedure:

- The Chair may determine the length of time each party may present their case and ensure each party is given uninterrupted time to speak.
- The appellant’s case shall be heard first.
- All questions should be directed to the Chair.
- The Chair may open time for public comment, which includes time for interested parties to comment.
- Members of the Board should have time to ask any questions related to the appeal.

#### **H. Decision, Findings of Fact, and Motion:**

In order to make a decision, the findings of fact should be clearly announced for the record before a decision is made.

Please refer to Attorney Pileggi’s memo for information regarding substantive issues for consideration, section IV.

The Appeals Board has 30 days following the public appeal hearing and the presentation of evidence to determine if the appellate has proven a preponderance (meaning, more likely than not) of evidence.

Per LUO Section 125-103D.(2)(c):

- If the Board determines the appellate is entitled to relief, it may reverse the decision **or** vacate and remand it to the decision-making body.
- If the Board determines the appellate is **not** entitled to relief, the appeal is denied (or, the decision decision-making body is upheld).

When a decision is made, a possible motion could be:

**Based on [list findings of fact], the Bar Harbor Appeals Board [upholds or reverses] the Code Enforcement Officer's decision to the issue a [name decision type being appealed] for [name reason for the original decision being appealed] on [name date of decision].**

Potential Motion for AB-2024-04

**Based on [list findings of fact], the Bar Harbor Appeals Board [upholds or reverses] the Code Enforcement Officer's decision to the issue a Notice of Violation for allowing or facilitating cruise ship disembarkation without a permit on August 5, 2024.**

**I. Once complete, the Board may adjourn the meeting with a second.**

**J. Reconsideration:**

According to LUO Section 125-106, The appellate has 10 days following a hearing at which a decision was made to submit a written request and payment for a reconsideration. The written request shall include detailed reasons the request should be granted. Per the Appeals Board Rules of procedure, the reasons must be either new evidence that could not have been discovered with due diligence before the evidentiary hearing or recent changes in the law. At its next regularly scheduled meeting, the Board will decide whether it shall grant the request for reconsideration.

In addition, according to the Appeals Board Rules of Procedure, any Board member who voted in the majority on the final decision may ask for a reconsideration of the decision within two days of the original decision. Such a request will be granted automatically.

**Memorandum to Appeals Board**  
**Prepared by Daniel Pileggi, Esq.**

Re: AB-2024-04, Golden Anchor, L.C.-55 West Street, Tax Map 104, Lot 010-000  
December 4, 2024

This memorandum is offered to supplement the Planning Department's procedural guidelines for evidentiary appeals, in order to focus the Board's analysis and process in the above-noted appeal.

*I. Board of Appeals Conflicts*

Municipal Code Section 78-12 addresses conflicts of interest of municipal board or agency members. In sum, that section prohibits a member from voting, participating or deliberating in a proceeding in which the member or an immediate family member has a *financial or special interest* in the matter being addressed.

Any member who believes that he or she has a financial or special interest shall disclose its nature and extent, at the first meeting at which the agenda item is addressed. The other board members should review the facts disclosed and vote upon whether the disclosing member has a financial or special interest, or the appearance of a conflict of interest.

Code Section 78-2 defines "*financial interest*" as a direct or indirect interest having a pecuniary value of \$100 or more. "*Special interest*" is a direct or indirect interest peculiar to a member, which may be altered as a result of the board's action, that is not shared by the general public. Special interests can include an abutting property interest, a family relationship, or non-profit board member status for an entity appearing before the board, among other considerations.

**With respect to any member who discloses a possible conflict, the other Board members should vote upon whether or not a conflict exists. If a majority of the Board determines the existence of a conflict meeting the above definition, the conflicted member shall be disqualified from participating in the meeting, except as a member of the public.**

*II. Board of Appeals Jurisdiction*

*A. Jurisdiction Scope.* In 30-A Maine Revised Statutes Section 2691, the Legislature has authorized municipalities to establish a board of appeals. A municipal board of appeals may be given the power to hear any appeal by a person who has been affected by a decision, order or failure to act of a municipal officer, board or agency.

However, the board may exert jurisdiction only over matters that is expressly conveyed to it by town charter or ordinance.

The subject matter of the board's appellate authority must be precisely specified, along with the identity of the officials or official whose action or nonaction may be appealed. *30-A M.R.S. §2691(4)*. This statutory section does not provide a municipal board of appeals with any jurisdiction independent of that granted by local ordinance.

Bar Harbor has specified the scope of appeals board appellate jurisdiction in Municipal Code Section 125-103, its Land Use Zoning Ordinance, as being limited to *appeals from "any decision or enforcement action by a municipal body or official who or which interprets this chapter.... For purposes of this section, the term "decision" is limited to an order, decision, ruling or enforcement action made in writing."* *LUO, §125-103*. The Board has no power to address any matter outside of its specific grant of authority.

As a preliminary matter, the Board must determine:

(1) whether the appeal is from "a decision or enforcement action" under authority of the Bar Harbor Land Use; and if so, (2) whether that action is "by a municipal body or official who or which interprets" the LUO; and (3) whether the order, decision or enforcement action has been made in writing.

**If the answer to all three questions is *yes*, the Board may proceed to determine the applicant's standing and to the substantive hearing. If the answer to any of the questions is *no*, the appeal must be denied.**

#### *B. References.*

-Municipal Code Chapter 31, Article II, establishes the Board of Appeals. Code Section 31-17 generally summarizes Board powers and duties described by 30-A M.R.S. Section 2691, and reiterated in Section 31-16. The Chapter 31 Code sections refer to specific grants of precise subject matter jurisdiction that are authorized by ordinance. They convey *no additional powers* beyond those authorized by LUO Section 125-103.

-LUO Article X defines the scope of enforcement authority under Chapter 125. Specific reference may be made to Sections 125-100 and 101, which address the municipal Code Enforcement Officer's powers to enforce the LUO's provisions, and define the scope of enforcement proceedings.

-LUO Section 125-77(H) addresses limits upon the number of persons who may disembark from cruise ships on, over or across any property located in Bar Harbor during a calendar day. The section imposes upon the Harbor Master obligations to establish regulations, count and limit disembarking persons. *LUO Section 125-77(H)(2) & (3)*. Authority to enforce the limits is vested in the Code Enforcement Officer. *LUO Section 125-77(H)(4)*.

-Harbor Master authority is described in Municipal Code Sections 153-4 and 153-11, and includes a duty to enforce the provisions of all rules, regulations, ordinances and other laws that are within his or her jurisdiction. *Code Sections 153-4(B), 153-11*.

Chapter 153 vests the Harbor Committee with exclusive appellate jurisdiction over Harbor Master actions. *Code Section 153-29.*

### *III. Substantive Appeal Procedure*

LUO Section 125-103(D)(1) and (2) describe the two types of hearings which the Board may conduct. Appellate review hearings are limited to those from the Planning Board, Design Review Board, “and all other decisions in which the applicant had a fair opportunity to present evidence.” *LUO, Section 125-103(D)(1)(a).* Those hearings are limited to review of the record, and may not include the acceptance of new evidence.

All other appeals over which the Board has jurisdiction, including CEO notices of ordinance violations, require an evidentiary hearing, including evidentiary evidence in the form of documents and testimony. *LUO, Section 125-103(D)(2)(a) & (b).* **Please note that, in addition to the procedures set forth in the Board’s Rules, in 30-A M.R.S. Section 2691(3)(D), the Board may exclude irrelevant, immaterial or unduly repetitious evidence. In addition to the opportunity to present his/its or their case, the statute also gives “every party” a right to submit rebuttal evidence and conduct any cross examination that is required for a full and true disclosure of the facts. The statute does NOT offer those rights to participating members of the public.**

Within 30 days after the public appeal hearing and the presentation of evidence and/or argument, the Board must determine whether or not the applicant has proven by a preponderance of evidence that it is entitled to relief. “Preponderance of evidence” is a standard meaning “more likely than not”.

**If the applicant fails to meet that burden, the appeal must be denied. If the applicant meets the burden, the Board may “reverse the decision, subject to such terms and conditions it considers advisable to protect the public’s health, safety and general welfare, or it may vacate the decision and may remand it to the Planning Board, Design Review Board or the Code Enforcement Officer for further proceedings consistent with the Board of Appeals’ decision.” *LUO, Section 125-103(D)(2)(c)(1) & (2).***

### *IV. Substantive Issues for Board Consideration*

The applicant has appealed an August 5, 2024 Notice of Violation issued by the municipal Code Enforcement Officer, asserting that the applicant’s property is or was a “cruise ship disembarkation facility”, and that on July 25, 2024, it violated LUO Section 125-77H by failing to obtain a required permit, and allowing persons to disembark from a cruise ship.

Questions that the Board should consider may include the following:

1. On July 25, 2024, was the applicant's property a cruise ship disembarkation facility, within the definition of Code Section 52-5?

2. On July 25, 2024, did the applicant hold a valid municipal permit for the disembarkation of "Persons" from a cruise ship? Note that Code Section 52-5 defines "Persons" in a manner that is *different* from the general LUO definition of "person" contained in Code Section 125-108:

*For purposes of this Chapter and the enforcement of § 125-77H, "Persons" means passengers of cruise ships and not those persons covered by 33 C.F.R. § 105.200 and 33 C.F.R. § 105.237 (titled "System for seafarers' access"), namely, "vessel personnel," "vessel crew," "seafarers assigned to a vessel," "pilots," and "representatives of seafarers' welfare and labor organizations" (collectively, "Crew"). The word "person" (i.e. not capitalized) shall have the meaning provided by § 125-108 of the Town Code.*

3. If the applicant held no disembarkation permit, has it proven that is it entitled to the unregulated disembarkation of Persons from cruise ships as a "lawful nonconforming use"? *See LUO Sections 125-52 through 54.*

3. On July 25, 2024, did the applicant allow the disembarkation of "Persons" from a cruise ship?

4. Based upon the findings in response to the preceding questions, did the applicant's conduct violate LUO Section 125-77H and applicable rules? *Please note that the Board may not and should not consider any conduct occurring after July 25, 2024, or otherwise not enumerated in the Notice of Violation, in making this determination. This appeal is limited to the conduct alleged in the Notice.*

5. If the answer to question 4 is affirmative, did the Code Enforcement Officer notify the applicant in writing of the violation and state the corrective action necessary to abate the violation/prevent additional violations?

6. Based upon your findings in response to the preceding questions, has the applicant proven by a preponderance of evidence that it is entitled to relief from the Code Enforcement Officer's enforcement action?

If the answer to Question 6 is "yes", then the Board should consider a motion to sustain the appeal and vacate the notice of violation. If the answer to Question 6 is "no", then the Board should consider a motion to deny the appeal.