

Minutes — Bar Harbor Board of Appeals
Tuesday, February 8, 2022 — 4:30 PM — via Zoom

Under the Board's Remote Participation Policy (adopted August 30, 2021), this meeting was conducted fully remotely — via the online video meeting platform Zoom — due to the urgent issue of the continuing COVID-19 pandemic and the declarations of a public health emergency by both the US and Maine departments of Health and Human Services.

Members of the public were able to view the proceeding by watching Spectrum channel 7 (in Bar Harbor) or by visiting <https://www.townhallstreams.com> (where it is also archived for future viewing). Members of the public were also able to join the Zoom webinar and to offer comment during the public hearing portion of the meeting by following instructions that were posted online at: <https://www.barharbormaine.gov/216/Appeals-Board>.

Chairperson Ellen Dohmen, Vice-chairperson Anna Durand, Secretary Robert Webber, Member Heather Peterson and Associate Member Michael Siklosi were all present. The fifth regular member seat on the Board is presently vacant. Associate Member Siklosi served as a voting member during the meeting.

Town staff present were Planning Director Michele Gagnon, Code Enforcement Officer Angela Chamberlain, Deputy Code Enforcement Officer Michael Gurtler and Assistant Planner Steven Fuller. Daniel Farrenkopf and Misha Mytar were present as the applicants.

I. CALL TO ORDER

Chairperson Dohmen called the meeting to order at 4:31 PM.

II. ADOPTION OF THE AGENDA

Mr. Siklosi moved to adopt the agenda as presented, and Vice-chairperson Durand seconded the motion. The motion carried unanimously, 5-0, on a roll-call vote.

III. EXCUSED ABSENCES

As all appointed Board members were present, there were no absences to excuse.

IV. APPROVAL OF MINUTES

a. January 11, 2022

Mr. Siklosi moved to approve the minutes from the January 11, 2022 meeting, and Vice-chairperson Durand seconded the motion. The motion carried without opposition, 4-0, on a roll call vote (Secretary Webber did not vote as he was not at the January 11 meeting).

Before going on to the next item of business, Chairperson Dohmen invited Secretary Webber to speak. Secretary Webber explained that he was a noticed abutter for the application the Board would be considering next in the meeting, and he asked that he be allowed to recuse himself for that agenda item. He said he felt that he would have been able to make a fair and just decision, but said he felt recusal was the right thing for both him and the Board.

Secretary Webber moved that he be allowed to step down (recuse himself, by turning off his audio and video) for the review and hearing and then be allowed to return to the meeting for agenda item 6 a. Mr. Siklosi seconded the motion, which then carried without opposition, 4-0, on a roll-call vote (Secretary Webber did not vote on the motion). As a result of the vote, the voting membership of the Board was reduced from five to four members.

Chairperson Dohmen said she did not feel Secretary Webber had an actual conflict on the upcoming agenda item, but that the town's Ethics Ordinance was very specific on that issue.

V. REGULAR BUSINESS

a. Public Hearing: AB-2022-01 — Relocation of a Nonconforming Structure

Applicant: Dan Farrenkopf and Misha Mytar

Project Location: The property is located at 18 Newton Way, Bar Harbor, Tax Map 104, Lot 473, and within the Downtown Village Transitional zoning district.

Application: The applicant requests approval to relocate a non-conforming, single-family dwelling footprint on the property at 18 Newton Way, doing so in such a manner that while not eliminating all non-conformity will reduce it to the greatest practical extent and improve access on an adjacent, shared right-of-way.

Mr. Farrenkopf and Ms. Mytar were present as the applicants. Chairperson Dohmen introduced the application, and commended the applicants for their "thorough, straightforward and uncomplicated presentation." Chairperson Dohmen said it was so complete she did not think the applicants needed to make a separate presentation, particularly because the applicants were seeking to reduce the existing nonconformity — which is always the underlying goal, she said.

Chairperson Dohmen asked for questions from the Board. Ms. Peterson asked how the shed noted on the survey factored in to the application. Ms. Mytar explained that although that space is labeled as a shed, it is actually integrated into the structure itself (it shares a connection with the kitchen). Ms. Mytar said it was shown in the application because of the "if viewed from above" language in the definition of "footprint area" in the Land Use Ordinance. She said the footprint area in question here is approximately 660 square feet, and she said the new building will be built to that same footprint area. The old building will be completely removed, she said.

At 4:40 PM, Chairperson Dohmen opened a public hearing. Assistant Planner Fuller explained how people who might wish to comment on the application had been notified of the opportunity to do so, and read aloud the contact information posted in advance of the meeting on the Board of Appeals website. No one from the public was present in, or joined, the Zoom webinar, and as such **Chairperson Dohmen closed the public hearing at 4:43 PM.**

Chairperson Dohmen then led the Board through the staff report for the application, prepared and provided to the Board in advance of the meeting. She read aloud findings of fact 1-5 on the bottom of page one of the staff report, and said that because they were matters of fact already established in the town's records the Board did not need to vote on them.

Those findings 1-5 are as follows:

1. The owners of the subject property are Dan Farrenkopf and Misha Mytar.
2. The subject property is located at 18 Newton Way, Bar Harbor Tax Map 104, Lot 473.
3. The subject property is located in the Downtown Village Transitional district.
4. Currently on the subject property is a single-family dwelling.
5. Portions of the existing single-family dwelling are within the 5' setbacks on three of the four sides of the subject property.

Chairperson Dohmen then moved on to page two of the staff report and findings of fact 6-13, as required by §125-55 C. of the Land Use Ordinance. She read them aloud, as presented below (findings 11 and 13 are the only ones that differ in wording from how they were originally presented in the staff report, with finding 11 changed to not applicable vs. more appropriate, and with the removal of language relating to septic systems from finding 13 as originally proposed):

6. The proposed new location and design are more appropriate with regard to location.
7. The proposed new location and design are more appropriate with regard to character and natural features.
8. The proposed new location and design are more appropriate with regard to fencing and screening.
(Note: Chairperson Dohmen said that although the applicants indicated they believed this specific criteria was not applicable, she saw it as applicable and explained why.)
9. The proposed new location and design are more appropriate with regard to landscaping and topography.
10. The proposed new location and design are more appropriate with regard to traffic and access.
11. The proposed new location and design, with regard to signs and lighting, are not applicable.
12. The proposed new location and design are more appropriate with regard to potential nuisance.
13. The relocation does meet the setbacks to the greatest practical extent after considering the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, and the type and amount of vegetation to be removed to accomplish the relocation.

Mr. Siklosi moved to approve findings 6-13, as presented by Chairperson Dohmen. Vice-chairperson Durand seconded the motion, which carried 4-0 on a roll-call vote.

Mr. Siklosi moved to approve the request to relocate a nonconforming structure to a more appropriate location within the boundaries of the lot as shown in application AB-2022-01 and as permitted under section 125-55 C. of the Bar Harbor Land Use Ordinance, noting that the relocated structure will reduce the existing nonconformities with respect to the setbacks to the greatest extent possible, as depicted in application AB-2022-01. Vice-chairperson Durand seconded the motion, which then carried 4-0 on a roll-call vote.

Ms. Mytar thanked the Board and staff for their work on guiding and moving them through the process. She said she and Mr. Farrenkopf were excited about moving ahead with the project.

At this point in the meeting, Secretary Webber returned (by turning his audio and video back on). With his return, the voting membership of the Board went from four back to five members.

VI. OTHER BUSINESS

a. Discussion of level of review for nonconformity matters (Board vs. staff)

Chairperson Dohmen explained that she had raised this issue and asked for it to be included on the agenda. She said the last two applications the Board had reviewed were straightforward and non-controversial with “nothing at all questionable” about them. She said the process of having the Board meet to review the applications cost both the town and the applicants money, and she wondered if it might be simplified by having town staff handle such applications in the future.

She referred to a memo prepared by Planning Director Gagnon and shared with the Board in advance of the meeting, in which Planning Director Gagnon recommended the authority on such applications remain with the Board of Appeals. Chairperson Dohmen said the Land Use Ordinance could be amended to accomplish the change (shift to staff) that she was suggesting.

Mr. Siklosi said he had initially had the same concern as Planning Director Gagnon, but was also persuaded by Chairperson Dohmen’s position. Code Enforcement Officer Chamberlain shared some concerns about Chairperson Dohmen’s suggestion and how the change might play out. Code Enforcement Officer Chamberlain said questions of what is appropriate are best handled by the Board: “I don’t feel personally comfortable saying something’s more appropriate or not.”

Vice-chairperson Durand said she was initially intrigued by Chairperson Dohmen’s suggestion, but then had heard points raised by others. Chairperson Dohmen said she would withdraw her idea, in light of one particular point made by Code Enforcement Officer Chamberlain: “If she says she’s not comfortable with it, that overrides anything I think about efficiency,” said Chairperson Dohmen. She said she would not want to make anyone uncomfortable in their job.

Going back to an earlier subject, Mr. Siklosi told Secretary Webber he believed he would have been unbiased in his review of the application but said the Ethics Ordinance was inflexible. “In a sense, there wasn’t really a choice,” Mr. Siklosi said, adding it was not a question of integrity.

VII. ADJOURNMENT

At 5:07 PM, Mr. Siklosi moved to adjourn the meeting. Secretary Webber seconded the motion, which then carried unanimously (5-0) on a roll-call vote.

Signed as approved:



Ellen L. Dohmen, Chairperson
Bar Harbor Board of Appeals

8/9/2022

Date