

**Minutes — Bar Harbor Board of Appeals
Tuesday, August 9, 2022 — 4:00 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 regular, voting member during the meeting. Daniel Pileggi, attorney for the Board, was also present.

Town staff present were Code Enforcement Officer Angela Chamberlain, Deputy Code Enforcement Officer Michael Gurtler and Assistant Planner Steven Fuller. Jennifer Wales was present as the applicant, along with her husband, Adam Wales.

I. CALL TO ORDER

Chairperson Dohmen called the meeting to order at 4:04 PM (the slight delay was due to technical difficulties in bringing all members of the Board into the Zoom meeting).

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. ELECTION OF OFFICERS

- a. Chairperson
- b. Vice-chairperson
- c. Secretary

Chairperson Dohmen turned the meeting over to Assistant Planner Fuller, who said he would entertain nominations for chairperson. **Mr. Siklosi nominated a slate of officers, as follows: Ellen Dohmen as chairperson, Anna Durand as vice-chairperson and Robert Webber as**

secretary. Ms. Peterson seconded the motion, which then carried unanimously (5-0) on a roll-call vote. With that action done, Chairperson Dohmen resumed control of the meeting.

V. APPROVAL OF MINUTES

a. February 8, 2022

Mr. Siklosi moved to approve the minutes from the February 8, 2022 meeting, and Secretary Webber seconded the motion. The motion carried unanimously, 5-0, on a roll call vote, after Chairperson Dohmen asked if there were any changes that needed to be made to the minutes as prepared (Board members did not offer or request any changes).

VI. REGULAR BUSINESS

a. **Public Hearing: AB-2022-02 — Administrative Appeal**

Applicant – Jennifer Paigen Wales

Project Location – 47 Greeley Avenue

Application – The applicant requests that the Board of Appeals hold a public hearing for an administrative appeal of the Code Enforcement Officer’s denial on June 8, 2022 of a vacation rental (short-term rental) registration application, pursuant to §125-103 of the Bar Harbor Land Use Ordinance.

Ms. Wales and her husband, Adam Wales, were both in attendance. Ms. Wales thanked the Board in advance for its patience, as she explained how having had COVID-19 has affected her and how she continues to experience aphasia as a result. She noted this was a public meeting and that minutes were being taken, and said she was uncomfortable with openly and fully discussing her medical condition in an open, public meeting. She asked that if the Board wanted further information about her medical condition, beyond what was presented in her application, that it do so in a closed-door session (executive session) for reasons of medical confidentiality.

Chairperson Dohmen said her feeling was that, having read the application, that the specificity of a medical request would be unnecessary in this matter and that the Board need not go into it. She asked for Attorney Pileggi to weigh-in. He noted that this was an evidentiary hearing under the provisions of the Land Use Ordinance, and that because Ms. Wales had the burden of proof that she would be entitled to present any evidence that she felt necessary to support her position. He said the Board should not seek to limit any evidence that Ms. Wales wished to present.

Attorney Pileggi referred to Maine state law regarding “the limited areas” (his words) in which municipal boards may enter into executive sessions. He said his position was that the Board could not enter into an executive session in this case, and Chairperson Dohmen said she agreed. Attorney Pileggi said he could not advise the Board of any mechanism by which it could take evidence from Ms. Wales privately, rather than publicly. Chairperson Dohmen asked a follow-up question about information included in Ms. Wales’s application, and whether it was automatically part of the record for any future action even if the Board did not discuss it specifically. Attorney Pileggi confirmed that it would automatically be part of the record.

Chairperson Dohmen asked Ms. Wales if she was comfortable with that explanation. Ms. Wales said she was comfortable with what she had submitted, but said she was uncomfortable with answering questions or providing more detailed information if the Board should ask for it. Attorney Pileggi suggested Ms. Wales could raise any particular issues that might come up as she made her presentation, if she was asked about it by the Board, and that the Board could discuss and decide at that time how it was relevant to her presentation and if it was necessary.

Mr. Siklosi said he believed he already had all the information he needed, via the application Ms. Wales had submitted. He said he did not know that there was anything else he needed to know or would ask about. All other Board members said that they concurred with Mr. Siklosi. Ms. Wales and Chairperson Dohmen discussed this, and Ms. Wales was agreeable to the Board's position.

Ms. Wales said she was not asking for just any medical exemption, but rather one for COVID-19 specifically. Ms. Wales referred to documentation she had submitted in her application about how the disease has affected her. She said June 5, 2022 was the first day that she did not have any head pain from COVID and that she sent in her short-term rental registration application to the town on June 7, 2022. Ms. Wales asked the Board to consider the medical impact of COVID to herself, and she noted both state and federal governments have made exceptions to certain deadlines and timing requirements during the course of the pandemic. She said her goal was to have her short-term rental registration reinstated, even though she was late in applying for it because of the impact of COVID upon her health.

Mr. Siklosi asked Ms. Wales if she was familiar with the concept of power of attorney, and asked if she had considered having a family member exercise such power during the course of her illness. He explained how it could have been helpful to her in this situation. Ms. Wales said she had not considered it, but said she was not really in the position to consider it either. She said it was an excellent point, however. She said the issue of discovering she was late in applying for the short-term rental registration made it clear to her that she needed additional help, however, and that since that time she has taken steps to have other people help her with such tasks. She said she always tries her best to follow the rules.

Chairperson Dohmen asked Code Enforcement Officer Angela Chamberlain to present. Code Enforcement Officer Chamberlain said she did not have much to add beyond what had been presented in her memo to the Board. She gave a recap of the changes that were enacted in late 2021, and how it was relevant to this application from Ms. Wales. Code Enforcement Officer Chamberlain said there are no exceptions to the deadline, including for medical reasons. "I didn't have many options," she said, other than to deny the permit.

Vice-chairperson Durand asked if there had ever been any other cases in town appealed for having missed a deadline (even for non-medical reasons). Chairperson Dohmen and Mr. Siklosi, both veteran Board members, said there had not been any in their years of service on the Board.

Chairperson Dohmen said she had questions for Code Enforcement Officer Chamberlain. She said she understood that an application could have been submitted anytime after December 2, 2021 up through May 31, 2022. Code Enforcement Officer Chamberlain said that was correct. Chairperson Dohmen asked if someone else could have submitted the application form and accompanying payment other than the owner, either in-person or by mail, and Code Enforcement Chamberlain said that either would have been acceptable (as long as the owner signed where required). Chairperson Dohmen noted the Code Enforcement Office had mailed out registration renewal reminders to short-term rental registration holders (including Ms. Wales) as a courtesy.

Chairperson Dohmen opened the public hearing at 4:30 PM. Assistant Planner Fuller read aloud the contact information for anyone watching, then went to the public in the meeting. Resident Carol Chappell spoke and described herself as a neighbor and acquaintance of the applicant. She said she supported the idea of Ms. Wales being given an extension due to her particular circumstances. She spoke about being in a Zoom-based grief support group with Ms. Wales, and how at a certain point Ms. Wales was unable to attend the meetings due to her medical condition. “From my perception, this is real,” said Ms. Chappell. She asked the Board to “make a decision based on human kindness.” No one else from the public was present to speak. **Chairperson Dohmen closed the public hearing at 4:35 PM.**

Chairperson Dohmen asked Attorney Pileggi if the Board had any authority under the Land Use Ordinance (or elsewhere) to extend deadlines or make exceptions to deadlines. Attorney Pileggi described the Board’s jurisdiction as “limited.” He said in a situation such as this the Board is governed exclusively by the Land Use Ordinance, and that Ms. Wales as the applicant had the burden of proof to demonstrate to the Board by a preponderance of evidence that she was entitled to the relief requested. Attorney Pileggi said in order to meet that burden, Ms. Wales or the Board would have to discover a provision that allowed for a deadline extension. He referred to Section 125-69 Y. (2) of the Land Use Ordinance, and said he did not see any leeway in a case such as this. “It’s written as a hard and fast deadline,” said Attorney Pileggi.

Chairperson Dohmen said she did not wish to appear hard or unsympathetic to the applicant, having dealt with multiple medical conditions herself. She said the Board did not have the jurisdiction to give waivers, however. She said if it were allowed to, almost anybody could come to the Board and say something significant had happened to them in a six-month period causing them to be late in submitting a particular application. Chairperson Dohmen said when the town approves an ordinance amendment, “it’s the law — whether we like it, or we don’t like it.” She said for the Board to go against Code Enforcement Officer Chamberlain’s decision, the Board would have to find she was not following one or more requirements of the Land Use Ordinance. “Our job is to see if she, in any way, did not conform to her job,” said Chairperson Dohmen. “I would submit that she absolutely conformed to her job.”

Attorney Pileggi said he had reviewed the variance provisions of the town’s Land Use Ordinance prior to the meeting. He said Bar Harbor limits the circumstances in which a variance can be granted, and he said this situation would not meet the narrow criteria provided for.

As Chairperson Dohmen prepared to move on to dealing with findings, Ms. Wales sought to speak again. She said she understood what was being said and said she was glad the town “was not going to open the Pandora’s Box” of different reasons for exceptions to deadlines. She acknowledged that could get “horribly messy.” Regarding the six-month time period, Ms. Wales said she was not asking for an exception based on health or external family issues, but rather for an exception based on COVID, specifically. She noted again that state and federal governments had made certain, one-time exceptions or extensions to deadlines due to the pandemic.

Mr. Siklosi spoke and described himself as “extraordinarily sympathetic” to Ms. Wales’s situation. He noted the effect COVID has had on everyone, including his own family. He shared a story about his grandchildren, and said that although they were expected to have a good outcome it had wreaked havoc on his family’s travel and visitation plans. Mr. Siklosi said the central issue in this appeal was whether an exception could be made, rather than on what grounds it might be made if allowed. He said he did not want Code Enforcement Officer Chamberlain to be put in situations of having to decide how serious or legitimate someone’s reason for being late in submitting an application might be. Mr. Siklosi reiterated his sympathy for Ms. Wales’s situation but said that reluctantly, he could not support what she was asking the Board to do.

Chairperson Dohmen noted she had served on the Board for many years and said because of the significantly personal nature of this appeal she could not remember having dreaded a meeting so much.. She described the impact COVID has had on her. She said the Land Use Ordinance did not allow the Board to overrule Code Enforcement Officer Chamberlain’s enforcement of rules. She said there was no legal way around the issue other than to uphold Code Enforcement Officer Chamberlain’s decision. She elaborated on this.

Mr. Siklosi moved to uphold Code Enforcement Officer Chamberlain’s denial of the [short-term rental registration application] for this case. Secretary Webber seconded the motion. No vote was ultimately taken on this motion, as the Board moved on.

Chairperson Dohmen read aloud from the prepared findings of fact. She said they could be taken as a group after she finished reading them aloud. She asked, at one point, if a finding should be added stating that applications could have been submitted either by mail or by a third-party. Attorney Pileggi said while the Board could do that, it was not required. Mr. Siklosi said he did not think it mattered in this case. Chairperson Dohmen resumed reading aloud from the findings, which in their entirety read as follows:

Based on the evidence in the administrative record, and after conducting its review, the Board of Appeals finds:

- 1. The subject property is located at 47 Greeley Avenue, Bar Harbor Tax Map 104, Lot 273-000.*
- 2. The subject property is owned by the appellant, Jennifer Paigen Wales.*

3. *The appellant has standing to appeal the denial of the application for a vacation rental (short-term rental) registration as an aggrieved party under §125-103.*
4. *The appellant was issued a vacation rental permit (R21-97) on February 24, 2021 for the subject property.*
5. *Permit R21-97 had a check mark next to a line that read, "This registration shall be renewed on 5/31/22 or the use shall cease."*
6. *Permit R21-97 expired on May 31, 2022.*
7. *The subject property is not the appellant's primary residence (defined in §125-109).*
8. *Because the subject property is not the appellant's primary residence, to be used as a short-term rental it would have to be registered as a VR-2 (see §125-109).*
9. *Application forms to renew vacation rental (short-term rental) registrations were available and accepted any time after December 2, 2021, the effective date of changes to LUO.*
10. *Under the provisions of §125-69 Y. (2), the registration of the subject property would be required to have been renewed as a VR-2 by May 31, 2022.*
11. *The appellant submitted a vacation rental (short-term rental) registration application (as a VR-2) on June 7, 2022, which was after the deadline established under §125-69 Y. (2).*

Chairperson Dohmen moved to accept the findings as she had read them. Mr. Siklosi seconded the motion, which then carried unanimously (5-0) on a roll-call vote.

Chairperson Dohmen said that based upon the findings stated above and the provisions of the Land Use Ordinance cited, the Board upholds the Code Enforcement Officer's denial of the vacation rental (short-term rental) registration application filed by the applicant on June 7, 2022 as it did not meet the deadline established in Section 125-69 Y. (2) of the Bar Harbor Land Use Ordinance. Secretary Webber moved to accept that conclusion and Mr. Siklosi seconded the motion. It then carried unanimously (5-0) on a roll-call vote.

Chairperson Dohmen said that the Board determines that the Code Enforcement Officer acted properly and correctly in denying the application on June 8, 2022. Secretary Webber moved to adopt the conclusion, and Mr. Siklosi seconded. The motion then carried unanimously (5-0) on a roll-call vote.

Chairperson Dohmen said that based on the findings and conclusions above, the Board of Appeals votes to deny the application. Secretary Webber moved in favor of the decision, which was seconded by Mr. Siklosi. The motion then carried unanimously (5-0) on a roll-call vote.

"And I'm not happy about this one," said Chairperson Dohmen. "I'm not either," said Mr. Siklosi.

“We find that we cannot make an exception for you,” said Chairperson Dohmen to Ms. Wales.
“It would be nice if we could.”

VII. OTHER BUSINESS

There was no other business before the Board, and no Board members raised any other issues. Chairperson Dohmen thanked Administrative Assistant Tammy DesJardin for her work on keeping the Board up to date.

VIII. ADJOURNMENT

At 5:01 PM, Secretary Webber moved to adjourn the meeting. Mr. Siklosi seconded the motion, which then carried unanimously (5-0) on a roll-call vote.

Signed as approved:



9/13/2022

Robert Webber, Secretary
Bar Harbor Board of Appeals

Date