

GILBERT & GREIF, P.A.

CHARLES E. GILBERT, III ATTORNEYS AT LAW
ARTHUR J. GREIF YOUR LAW PARTNERSM
ERIK M. P. BLACK www.yourlawpartner.com

MAINE TOLL FREE
1-800-427-2293
(207) 947-2223
e-mail: info@yourlawpartner.com

Rec'd @
3:44 PM on
4/24/2020
-SEF

82 COLUMBIA STREET
PEGGY B. GILBERT, OF COUNSEL P.O. BOX 2339
BANGOR, ME 04402-2339

TELECOPIER/FAX
(207) 941-9871

April 24, 2020

Bar Harbor Planning Department
93 Cottage St.
Bar Harbor, ME 04609

Re: BHAPTS, LLC and Elizabeth Mills

Dear Chairman St. Germain and Members of the Planning Board:

On behalf of Elizabeth Mills, and pursuant to LUO Section 125-61(B)(2), I submit ten copies of this letter of opposition. I attach to each copy Exhibit A, which is Ms. Mills written authorization to represent her. This was previously submitted to the Planning Department as part of Ms. Mills successful appeal to the Board of Appeals.

I have reviewed the notice of the Zoom-assisted hearing to be held on April 29, 2020 at 4 p.m. That notice is silent as to how I, as a representative of a party, can participate. While there is a public comment period call-in phone number provided, Ms. Mills has a status in this proceeding beyond that of a member of the public and I trust that I will, via Zoom or telephone, be able to respond to the presentation made by the applicant and be able to remain on line should I need to raise a point of order.

The current application complies with only two of the four findings by the Planning Board, those as to base development density (finding 7) and maximum allowable units (finding 8). It completely fails to deal with finding 2, that the current structures on the lot are non-conforming, and finding 9, which set aside the Planning Board's decision that only two units needed to be affordable. There is nothing in the current application that commits the applicant to construct five affordable units.

Affiliate Office
Mire Gloriane Blais, Lawyer
PO Box 260, 4473A, Laval
Lac-Mégantic, Québec
CANADA G6B 2S6
(819) 583-2776

I note that Justice Murray, in her November 27, 2019 decision staying all construction on this project, held that Ms. Mills was likely to prevail on at least four legal errors made by the Planning Board, two of which remain unresolved by the current application:

A. The Planning Board's decision that the four non-conforming structures and non-conforming use could be expanded and enlarged for temporary worker housing in seven buildings, including construction of three new buildings and reconfiguration of the existing four structures;

....

D. The Planning Board's decision that only 2 of the 18 units needed to be "affordable housing" as defined by the LUO; and potentially other issues.

(Superior Court opinion, pp. 13-14)

The Board of Appeals found that the four structures containing 16 dwelling units were non-conforming as they did not meet the dimensional standards for the Village Residential District, LUO Section 125-20(B)(10), of having at least 10,000 square feet for each family dwelling unit. This finding is critical. Non-conforming structures cannot be extended or enlarged, LUO Section 125-54(B). They cannot be altered so as to extend beyond existing walls, LUO Section 125-55(A). If a non-conforming structure is razed, it can only be rebuilt to its precise prior dimensions, LUO Section 125-55(B). A non-conforming structure may be relocated on the same lot only with the approval of the Board of Appeals, subject to very specific conditions, LUO Section 125-55(C).

The applicant proposes to take the current status of non-conforming structures and apply it to three entirely new structures. This is a clear violation of the LUO. All nonconformities are encouraged to "convert to conformity," LUO Section 125-53(A). The applicant, by converting each of the four existing structures with four dwelling units each to four structures with two dwelling units each, will have finally met the dimensional standards of the Village Residential District. It will have 10,000 square feet of area for each family dwelling unit. Once converted to conformity, no structure can revert to nonconformity, LUO Section 125-53(E).

The applicant claims that this Board has authority to modify the dimensional standards that make each of these four current buildings nonconforming. It cites no provision of the LUO for this claim. Modification of non-conformities is generally left to the Board of Appeals, as noted above. Per LUO Section 125-69-S(6)(d), the only power granted the Planning Board in the PUD-V process is that of modifying setbacks or the general requirements of LUO Section 125-67. The PUD-V process grants no authority to the Planning Board to modify the other

Affiliate Office

Mire Gloriane Blais, Lawyer
PO Box 260, 4473A, Laval
Lac-Mégantic, Québec
CANADA G6B 2S6
(819) 583-2776

Page 3

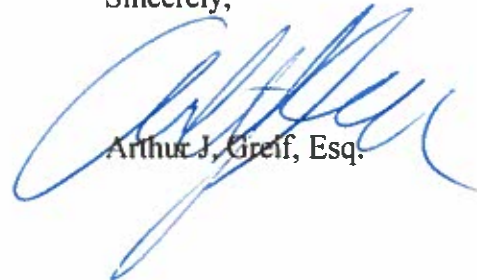
Bar Harbor Planning Department
93 Cottage St.
Bar Harbor, ME 04609

dimensional standards for this or any other District.

The only way the applicant can add eight new dwelling units in three new buildings is to comply with the PUD-V process as to affordable housing. Those requirements make it clear that at least five of the total of sixteen dwelling units must be affordable. The minimum number of affordable units must be 20% of the base development density of 8, LUO Section 125-69(S)(6)(b). This minimum of 1.6 affordable units is rounded down to 1. For each additional affordable unit, a market rate unit may be built, LUO Section 125-69(S)(6)(a)[2][a]. To add eight more units under the PUD-V process, four more units must be affordable, bringing the total number of affordable units to five.

The application should be rejected as it seeks to misuse the nonconforming structure status of the four existing buildings for three new buildings and it fails to provide the required five affordable units.

Sincerely,



Arthur J. Greif, Esq.

cc: Andrew Hamilton, Esq.

Affiliate Office

Mire Glorane Blais, Lawyer
PO Box 260, 4473A, Laval
Lac-Mégantic, Québec
CANADA G6B 2S6
(819) 583-2776

Elizabeth Mills

15 Highbrook Rd
Bar Harbor ME 04609



RECEIVED JAN 13 2020

December 29, 2019

Bar Harbor Planning Board
93 Cottage St I
Bar Harbor, ME 04609

Bar Harbor Board of Appeals
93 Cottage St I
Bar Harbor, ME 04609

Dear Members of the Planning Board and Board of Appeals,

By this letter I expressly authorize Arthur J. Greif, Esq., and any attorney at his firm to represent me for any proceedings before the Planning Board and/or Board of Appeals and in particular, for the hearing scheduled before the Board of Appeals on Tuesday, February 11, 2020.

Sincerely,

Elizabeth H. Mills

Elizabeth Mills