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Agenda
Bar Harbor Board of Appeals
Tuesday, September 12, 2023 — 4:30 PM
Council Chambers, Municipal Building — 93 Cottage Street

I. CALL TO ORDER

II. ELECTION OF OFFICERS

- a. Chair
- b. Vice-chair
- c. Secretary

III. ADOPTION OF THE AGENDA

IV. EXCUSED ABSENCES

V. APPROVAL OF MINUTES

- a. October 11, 2022

VI. REGULAR BUSINESS

- a. **AB-2023-01 — Relocation of a Nonconforming Structure**

Applicant: Caresse Hanson

Project Location: The property is located at 155 Otter Creek Drive, Bar Harbor, Tax Map 267, Lots 014 within the Otter Creek zoning district.

Application: Replace two existing nonconforming structures with one new structure in a different location pursuant to §125-55 C. of the Bar Harbor Land Use Ordinance.

VII. OTHER BUSINESS

VIII. ADJOURNMENT

Minutes — Bar Harbor Board of Appeals
October 11, 2022 — 4:30 PM
Remote Meeting – 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, and Assistant Planner Steven Fuller. Thomas and Nina Rubel were present as the applicants.

I. CALL TO ORDER

Chairperson Dohmen called the meeting to order at 4:30 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. September 13, 2022

Secretary Robert Webber moved to approve the minutes from the September 13, 2022 meeting, and Vice-chairperson Durand seconded the motion. The motion carried unanimously, 5-0, on a roll call vote.

V. REGULAR BUSINESS

a. Public Hearing - AB-2022-05 – Administrative Appeal

Applicant –Heirs of Rachel Geist Rubel

Project Location – 14 Albert Meadow

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 August 23, 2022 of a vacation rental-2 renewal (short-term rental) registration application, pursuant to §125-103 of the Bar Harbor Land Use Ordinance.

Chairperson Dohmen introduced the appeal. She then proceeded to ask if the appellant had anything to add. Thomas Rubel said that they had clearly missed the deadline and that they were asking for leniency on the first year of enforcement and an exception. He referred to the letters of support that were sent to the board. He explained that having a short-term rental registration would allow for the upkeep of the property. Nina Rubel described the property as part of who they are and that they really love Bar Harbor. She added that they are trying to preserve a part of the family history and a part of the Bar Harbor’s history. Now that they are aware of all the rules, she stated that this would never happen again.

Chairperson Dohmen asked if Code Enforcement Officer Angie Chamberlain had anything to add. Ms. Chamberlain responded that she followed the ordinance and that they are no options for exceptions to the rules in the ordinance.

Ms. Rubel then stressed that they had never received anything regarding the renewal deadline. Ms. Chamberlain proceeded to explain that the renewal deadline was written on both the application form and the registration card. Ms. Chamberlain also said that the short-term rental Land Use Ordinance amendment was a lengthy process and that property owners were notified.

Chairperson Dohmen opened the public hearing at 5:12 PM. As there were no comments, the hearing was closed.

Chairperson Dohmen then proceed to read the list of findings in the staff report. She asked if there were questions about any of the findings. Seeing none, she said that she would group all the findings together, and asked for a motion to accept the findings.

Secretary Webber moved to accept the findings. It was seconded by Mr. Siklosi. The motion carried unanimously, 5-0, on a roll call vote.

Mr. Siklosi moved that based on the above-noted findings [reading from the staff report], the Bar Harbor Board of Appeals upholds the Code Enforcement Officer’s denial of the vacation rental (short-term rental) registration application filed by the appellant on August 22, 2022, as it did not meet the deadline established in §125-69 Y. (2) of the Bar Harbor Land

Use Ordinance. The motion was seconded by Secretary Webber. The motion carried unanimously, 5-0, on a roll call vote.

Mr. Siklosi moved that as the Code Enforcement Officer acted properly and correctly in denying the application on August 23, 2022, the appeal is therefore denied. The motion was seconded by Chairperson Dohmen. The motion carried unanimously, 5-0, on a roll call vote.

Chairperson Dohmen then proceeded to thank all the people who took the time to write letters to the Board in support of the appellant and remarked that she loves that people in Bar Harbor go to bat for each other which shows how much they care.

VI. OTHER BUSINESS

There was no other business.

VII. ADJOURNMENT

Chairperson Dohmen adjourned the meeting at 5:30 PM.

Signed as approved:

**Ellen L. Dohmen, Chairperson
Bar Harbor Board of Appeals**

Date



Town of Bar Harbor Planning Department Staff Report

Date:

August 31, 2023

Application:

AB-2023-01 - The applicant is requesting review of an application to relocate a nonconforming structure within the boundaries of the lot pursuant to section 125-55 C. of the Bar Harbor Land Use Ordinance.

Meeting Date:

September 12, 2023

Property Owner/Applicant:

Caresse Hanson
4 Gray Road
Bar Harbor, ME 04609

Applicant's Representative:

Nicholas Wood – Acadia Modular Consulting
93 Main Street Suite 1
Ellsworth, ME 04605

Property Address:

155 Otter Creek Drive, Bar Harbor

Map and Lot:

Map 267, Lot 014-000

Zoning:

Otter Creek

Overview

Section 125-55 C. of the Bar Harbor Land Use Ordinance allows a property owner to relocate a nonconforming structure to another nonconforming location on the property provided that the new location is more appropriate in regards to several criteria. Currently, there is an existing, legally nonconforming lot and two existing, legally nonconforming structures (home and garage). The lot currently does not meet the 200' road frontage or the 40,000 square feet minimum lot size requirements. There is also an existing, legally nonconforming garage and house both located within the 75' front setbacks. The existing garage also does not meet the side setback facing the intersection of Route 3 and Gray Road. The applicant is proposing to demolish the existing nonconforming structures and replace them with a new two-bedroom, two-bathroom house with a garage as described in the exhibits contained in the application. The proposed new project would reduce the overall existing lot coverage and the applicant proposes to access the property through

Gray Road instead of Route 3. The proposed home would be located within the 75' front setbacks, but overall, the proposed project will lower the total amount of built area within the setbacks.

Findings of Fact the Board needs to consider

1. The Bar Harbor Board of Appeals finds that the proposed new location and design **is/is not** more appropriate with regard to location.
2. The Bar Harbor Board of Appeals finds that the proposed new location and design **is/is not** more appropriate with regard to character and natural features.
3. The Bar Harbor Board of Appeals finds that the proposed new location and design **is/is not** more appropriate with regard to fencing and screening.
4. The Bar Harbor Board of Appeals finds that the proposed new location and design **is/is not** more appropriate with regard to landscaping and topography.
5. The Bar Harbor Board of Appeals finds that the proposed new location and design **is/is not** more appropriate with regard to traffic and access.
6. The Bar Harbor Board of Appeals finds that the proposed new location and design **is/is not** more appropriate with regard to signs and lighting.
7. The Bar Harbor Board of Appeals finds that the proposed new location and design **is/is not** more appropriate with regard to potential nuisance.
8. The Bar Harbor Board of Appeals finds that the relocation **meets/does not meet** the setback 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, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

Possible Motion - Based on the above noted findings, the Bar Harbor Board of Appeals **approves/denies** the request to relocate the two nonconforming structures to a more appropriate location within the boundaries of the lot as shown in application AB-2023-01 and permitted under section 125-55 C. of the Bar Harbor Land Use Ordinance.

MEMORANDUM

DATE: SEPTEMBER 12, 2023
TO: BAR HARBOR BOARD OF APPEALS
FROM: CALI MARTINEZ, STAFF PLANNER
RE: AB 2023-01 RELOCATION OF A NONCONFORMING STRUCTURE

Background. The following is an analysis of how the Land Use Ordinance applies in the case of the current application for the replacement of two legally nonconforming structures with a proposed new structure within the boundaries of a nonconforming lot. The proposed overall lot coverage is less than the existing development and staff would suggest that the nonconformity is not increased. Generally, the Land Use Ordinance discourages nonconforming uses and structures encouraging that they be converted to conformity where possible. Nevertheless, under Section 125-55 C., the Ordinance creates a path by which the Board can approve changes to nonconformity provided that certain standards are adhered to. Those standards called out are that the new location and design be more appropriate with regard to (1) Location, character, and natural features; (2) Fencing and screening; (3) Landscaping and topography; (4) Traffic and access; (5) Signs and lighting; and (6) Potential nuisance. In this case the new plan improves the appearance and functionality of the site and the neighborhood. The site is surrounded by mature wooded area and additional screening and landscaping would not appear necessary. The landscaping and topographic appearance of the parcel is improved with the overall design. The traffic and access components were analyzed and the proposed design is intended to improve access. The site and its operation would reduce any nuisance issues.

Review Findings:

Staff recommends that the Board of Appeals can make favorable findings on all of the review standards set out below.

The Board of Appeals must review and make the following findings:

C. A nonconforming structure may be relocated within the boundaries of the lot on which the structure is located, provided that the Board of Appeals finds that the proposed new location and design are more appropriate with regard to location, character and natural features; fencing and screening; landscaping and topography; traffic and access; signs and lighting; and potential nuisance, provided that the site of relocation conforms to all setback requirements to the greatest practical extent, as determined by the Board of Appeals, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (rules), or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback to the greatest practical extent, the Board of Appeals shall consider 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, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the

relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (1) Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that is removed or destroyed in order to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
- (2) Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

(1) Location, character, and natural features;

Yes No N/A The Board finds that the proposed new location, character and natural features of the subject property more appropriate?

(2) Fencing and screening;

Yes No N/A The Board finds that the proposed fencing and screening of the subject property more appropriate?

(3) Landscaping and topography;

Yes No N/A The Board finds that the proposed landscaping and topography of the subject property more appropriate?

(4) Traffic and access;

Yes No N/A The Board finds that the proposed traffic and access of the subject property more appropriate?

(5) Signs and lighting; and

Yes No N/A The Board finds that the proposed signs and lighting of the subject property more appropriate?

(6) Potential nuisance.

Yes No N/A The Board finds that the proposed design limits the potential nuisance of the subject property making it more appropriate?

The Board of Appeals finds that the provisions of 125 55 C. are met, are found to be more appropriate and hereby approve the relocation of two nonconforming structures through a new build as presented.

Bar Harbor Land Use Ordinance

§ 125-52 Defined.

A legally existing (grandfathered) nonconforming lot, structure or use is a lot, structure or use that lawfully existed immediately prior to the enactment of this chapter, or any subsequent amendment, and which, as a result of the enactment of this chapter, or any subsequent amendment, presently fails to comply with any of the requirements of this chapter or its amendments, including, but not limited to, the use restrictions and lot standards for the district in which it is located, or any standards set forth in Article V. Any other lot, structure or use that fails to comply with any of the requirements of this chapter or its amendments is an illegal nonconformity.

§ 125-53 General policies.

A. All nonconformities shall be encouraged to convert to conformity whenever possible and, when required by this chapter, shall convert to conformity.

B. Any nonconformity not expressly allowed to exist by this article is hereby deemed illegal and shall cease or be corrected immediately.

C. The burden of establishing that any nonconformity is a legal nonconformity shall, in all cases, be upon the owner of such nonconformity and not upon the Town of Bar Harbor.

D. Any legally existing nonconformity may be transferred and the new owner may, subject strictly to the requirements of this article, continue such nonconformity; provided, however, that nothing contained herein shall be construed to permit any person or entity to occupy or use any lot or structure or to continue any use in violation of any other federal, state or municipal statute, ordinance or regulation.

E. Once converted to conformity, no lot, structure or use shall revert to nonconformity.

F. Nothing herein shall require any change in the plans, construction, size or designated use for any building, structure or part thereof for which a completed application for a local permit is pending, or for which a permit has been issued and upon which construction has been lawfully commenced, prior to the adoption of this chapter or any amendment.

G. Any relief sought under this article to the Board of Appeals shall adhere to the process found in Article IX, § 125-102C(1), (2), and (3), respectively, as well § 125-102D, E, F, and G, respectively.

[Added 6-10-2008]

H. Any relief sought under this article to the Planning Board shall adhere to the process outlined in Article V, Site Plan Review, as may be applicable.

[Added 6-10-2008]

§ 125-54 Nonconforming structures.

Any structure which is made nonconforming as a result of this chapter, or any subsequent amendment, may be continued, but only in strict compliance with the following:

C. A nonconforming structure may be relocated within the boundaries of the lot on which the structure is located, provided that the Board of Appeals finds that the proposed new location and design are more appropriate with regard to location, character and natural features; fencing and screening; landscaping and topography; traffic and access; signs and lighting; and potential nuisance, provided that the site of relocation conforms to all setback requirements to the greatest practical extent, as determined by the Board of Appeals, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (rules), or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback to the greatest practical extent, the Board of Appeals shall consider 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, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

[Amended 11-5-1991; 11-4-2008]

(1) Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that is removed or destroyed in order to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

(2) Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.