

Town of Boothbay Harbor
BOARD OF APPEALS Meeting
Thursday, March 9, 2023 Meeting Minutes

Board of Appeals Administrative Hearing

Chair Wolf called the Board of Appeals hearing to order at 6:00 p.m.

Members Present: R Bourette, R Cohen, W Wolf (Chair)

Town Staff: Geoff Smith, Code Enforcement Officer; Julia Latter, Town Manager; James Haddow, Attorney with Petruccelli, Martin and Haddow

Others: Attorney Kristin Collins with PretiFlaherty, representing Joseph and Jill Doyle; Attorney Joe Siviski with Perkins Thompson, representing Boothbay Harbor Waterfront Preservation.

The Chair confirmed the presence of a quorum with 3 members in attendance.

OLD BUSINESS

1. Approval of February 16, 2023 minutes: It was moved and seconded (Bourette, Cohen) to approved the minutes. Motion passed (3-0)

2. Review of the Planning Board response to the Remand Order from the Board of Appeals with continuation of the *Administrative Appeal request submitted December 16, 2021 by abutters Joseph and Jill Doyle, represented by attorney Kristin Collins, PretiFlaherty, regarding the property at 65 Atlantic Avenue (Map 16, Lot 24 in the Limited Commercial/Maritime Zoning District), Boothbay Harbor, ME requesting an administrative appeal of the November 17, 2021 Planning Board decision.*
 - The Chair noted the authority for the Appeals Board review is pursuant to Code §170-108(D)(2)(a) and pursuant to the Shoreland Zoning Code §170-101-11(H)(1)(a).
 - Notice of hearing regarding the Remand Order response was published in *The Boothbay Register* on February 16, 2023 and February 23, 2023.
 - The Chair outlined the scope of the Appeals Board review under Code § 170-101.11(H)(3)(b) is to determine whether any Planning Board finding essential to approval of the amended building permit under the Shoreland Zoning ordinances is unsupported by evidence, or whether the Planning Board misinterpreted the ordinances.

Initial Matters: The Chair asked the following initial questions:

- Do any members have a pecuniary interest or conflict of interest in the appeal?
Chair Wolf reiterated her status as a donor to the waterfront park. Members did not feel this constituted a conflict. There were no other issues.
- Can members be fair and impartial? Each member affirmed they could.
- Notification of abutters by certified mail was confirmed by the CEO under §170-109(c).
- The appeal was filed properly [§ 170-109(A)].

- The appellate has standing in this appeal.

Review of Planning Board response to the January 31, 2023 Order of Remand

- The Chair reviewed the sequence of events that culminated in the January 31, 2023 Order of Remand, which was answered by the Planning Board in a memo dated February 9, 2023. Appeals Board members received the Planning Board response as well as correspondence from Ms. Collins, on behalf of the Doyles, and Mr. Siviski, representing Boothbay Harbor Waterfront Preservation. Chair Wolf invited the attorneys to briefly address issues relevant to the review of the remand responses that were not outlined in their written correspondence.

Presentation by the Parties:

- Attorney Kristin Collins reiterated that the issue before the Appeals Board is whether the Planning Board provided sufficient evidence that the upper southerly parking was relocated in the Shoreland Zone “to the greatest practical extent” instead of beyond the required 75 foot setback. She indicated the Planning Board listed several of site plans as constituting the evidence to support this decision, but there was no description or justification of how the Board used this information as the basis for their approval. Ms. Collins also questioned the designation of the park as an institutional facility, as opposed to a recreation facility.
- Attorney Joe Siviski briefly outlined the scope of authority for the Board of Appeals review, and reiterated that the placement of the southerly parking lot met the standard of being located to comply with the setback requirement to the greatest practical extent.
- At the conclusion of the attorney presentation, Board members asked Mr. Siviski and representatives of the Waterfront Park if they could provide greater detail about why the location of the southerly parking area had to be within the 75 foot setback. The Boothbay Harbor Waterfront Preservation representatives noted the needed for a connection between the wharf parking and the road, and placing the southerly parking contiguous to the wharf parking made it accessible by one entrance road with just one curb cut. Also, if parking was placed in the northern corner of the lot, there would have to be a road connecting the parking to the wharf that would run through the center of the lot, thereby effectively bisecting the green space and decreasing safety for visitors by introducing traffic into areas where families and children would be.

Board deliberation and review of the Response to the Order of Remand:

Members discussed the information presented in the response to the Remand at length, noting that the response provided references by citing specific site plans, but the Planning Board failed to provide any justification or further description that explained how they reached the decision that the southerly parking area was relocated to the greatest practical extent within the Shoreland Zone. The Chair asked Attorney Haddow if the Board of Appeals could remand this question once again to the Planning Board; however, after discussion, it was agreed that the Planning Board was already provided

the opportunity to describe the evidence supporting this decision in the most recent Remand and sending it back may not result in a more descriptive response.

The Chair explained to members of the public attending the meeting that under the statute, the Appeals Board can only review information that is provided in the written record to evaluate the merits of an administrative appeal. Members of the waterfront park asked if the Appeals Board had received the minutes of the Planning Board in the written record as additional information that could provide sufficient justification to support the Planning Board's decision. The Chair noted that Planning Board minutes had not been provided in the written materials for the appeal. In consultation with the CEO and Attorney Haddow, the Chair asked if Appeals Board members could review the minutes. Attorney Haddow indicated that he and the CEO would have to review the existing minutes to determine which meetings were relevant to the current hearing. Once this process had been completed, the relevant documents could be shared with the Appeals Board members. Members of the public also asked if Appeals Board members could view the recordings of the Planning Board meeting. Attorney Haddow indicated he would need to review this option since appeals are typically conducted with a review of the written record.

Board Action: After considering the Planning Board's February 9, 2023 Response to the Order of Remand, it was moved and seconded (Cohen, Bourette) *to table the hearing so the written record could be supplemented by the addition of the relevant written Planning Board minutes and any meeting recordings that were pertinent to the current appeal so this information could be included as part of the record.* The motion passed unanimously (3-0).

Adjourn: There being no further business, the meeting was adjourned at 7:05 p.m. by a unanimous vote.

Respectfully Submitted,
Rosemary B. Bourette
Secretary, Board of Appeals