

**Town of Boothbay Harbor  
BOARD OF APPEALS Meeting  
Thursday, April 27, 2023  
Meeting Minutes**

**Board of Appeals Administrative Hearing (Hybrid/Zoom)**

Chair Wolf called the Board of Appeals hearing to order at 6:02 pm.

Members Present: R Bourette, K Bradsell, B Prince, L Rebel (Hybrid/Zoom), W Wolf (Chair)  
Town Staff: Geoff Smith, Code Enforcement Officer; Julia Latter, Town Manager; James Haddow, Board of Appeals' Attorney with Petruccelli, Martin and Haddow (Hybrid/Zoom)  
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 5 members in attendance. Since the two new Appeals Board members, Ken Bradsell and Bill Prince, that not participated in the review of this appeal, they recused themselves from the request for reconsideration.

**OLD BUSINESS**

1. Approval of March 30, 2023 minutes: *It was moved and seconded (Bourette/Bradsell) to approved the minutes. Motion passed (5-0).*
2. *Request to reconsider the March 30, 2023 decision on the appeal made 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*
  - This reconsideration request and the scope of the Appeals Board review is pursuant to Code § 170-101.11 (H)(6).
  - Notice of hearing regarding the request for reconsideration was published in Boothbay Register on April 13 and 20, 2023.

**Initial Matters:**

- Appeals Board authority to consider a request for reconsideration is pursuant to §170-101.11(H)(6).
- No members had a pecuniary interest or conflict of interest in the request.
- Each member affirmed they could be fair and impartial in this matter.
- Notification of abutters by certified mail was completed [§ 170-109(c)].
- The request was filed properly [§ 170-101.11 (H)].

**Request for Reconsideration**

The Chair noted that the request for reconsideration involve two separate decisions:

1. The Board determines if it will accept the request for reconsideration;
2. If the request is accepted, the Board will act on the request for reconsideration.

The Chair invited brief presentations by the project applicant and the appellant:

- Mr. Siviski, on behalf of Boothbay Harbor Waterfront Preservation, reviewed the information in his legal written submission. He noted that the appeal was granted based on a very narrow, single issue, yet the Board took the step of vacating the entire Shoreland Zone permit. Mr. Siviski outlined two possible remedies as part of the request for reconsideration:
  - The Board could remand the matter back to the Planning Board so they could explain to the Appeals Board satisfaction, how it relied on the evidence in the record to reach its decision, or
  - The Board could modify its decision to vacate the permit to apply only to the park, but not the marina. This would allow construction of the other elements of the park and marina to proceed while the parking lot issue is resolved.
- For the appellant, Ms. Collins reviewed the information in her legal submission stressing that the Appeals Board, in fact, did not commit an error in its decision. She noted that reconsideration is typically entertained only where the Appeals Board decision is based on mistake of the facts of law, relevant to the appeal. To date, there is no additional information or findings that indicates the Appeals Board made an inaccurate decision. The Appeals Board may entertain a request for reconsideration, but there is no obligation for the Board to revisit their decision. She also noted that the Board of Appeals (as well as the Planning Board) cannot issue partial approvals, or a partial vacation of the permit.

Members of the Board asked several questions. Regarding the request for another remand, members noted that if the Appeals Board members had only relied on the written record, there could be the possibility that discussion from the actual Planning Board review could have been omitted in the written record. However, BBHWP specifically requested that the Appeals Board review the entire videotaped meeting of the Planning Board 's review of the building permit. Based on the video recording, the Appeals Board did not find that the Planning Board discussed the Shoreland Zone setback requirement review requirement. Therefore, remanding this issue back to the Planning Board would essentially be asking the Planning Board to issue new findings, which were not reflected in the video tape.

Appeals Board members requested that Attorney Haddow provide guidance on the legality of granting a partial decision that would only affect the park and not the marina. It was the attorney's legal opinion that the board cannot do a "cafeteria style" selective vacation of the building permit.

Mr. Siviski and the BBHWP group was asked why the group did not immediately return to the Planning Board to seek Shoreland Zone approval, with the intention of addressing the issues raised in the appeal. Board members noted that the only issue the Board of Appeals questioned was with the Shoreland Zoning setback requirement of the greatest possible extent for the southern parking lot.

Board members inquired about the issue of the delay in beginning the BBHWP's wharf and weir dock approval. The CEO indicated that it was a complex issue, and that this was not in the purview of the Appeals Board.

Based on the testimony presented, the Chair asked members of the Board if they felt there was an error in the Board's decision granting the appeal. Ms. Bourette, Mr. Rebel and Chair Wolf each indicated they did not feel the Board erred in its decision to grant the appeal.

The Chair then asked if the Board accepted the request for reconsideration. *It was moved and seconded (Wolf, Bourette) to approve the request for reconsideration. The motion failed (Rebel for, Bourette and Wolf against, Bradsell and Prince recused).* Because the request for reconsideration failed, there was no additional discussion on the request.

The Chair ask for a motion to adjourn. *The motion was moved, seconded (Bourette/Rebel) and approved.* The meeting was adjourned at 6:59 pm.

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