

**Town of Boothbay Harbor  
BOARD OF APPEALS Meeting  
Thursday, January 31, 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, L Rebel, W Wolf (Chair)

Town Staff: Geoff Smith, Code Enforcement Officer; Julia Latter, Town Manager; James Haddow, Attorney with Petrocelli, 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 4 members in attendance.

**OLD BUSINESS**

1. Approval of Minutes:
  - a. August 25, 2022 minutes: It was moved and seconded (Cohen, Rebel) to approved the minutes. Motion passed (3-0) with one abstention (Ms. Bourette was absent).
  - b. Approval of January 24, 2023 minutes: It was moved and seconded (Bourette, Rebel) to approved the minutes. Motion passed (4-0)
  
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 response was published in Boothbay Register on December 29, 2022 and January 5, 2023
  - The Chair outlined the scope of the Appeals Board review under Code § 170-101.11(H)(3)(b) 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 ordinance.

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 in this matter? 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 18, 2022 Order of Remand

- The Chair reviewed the sequence of events that culminated in the January 18, 2022 Order of Remand, which was answered by the Planning Board in a memo dated December 14,

2022. Members of the Appeals Board had received the Planning Board response as well as correspondence from Ms. Collins, on behalf of the Doyles, and Mr. Savisky, representing Boothbay Harbor Waterfront Preservation. Chair Wolf invited the attorneys to make brief presentations that would address issues that were relevant to the review of the remand responses that were not outlined in the attorney correspondence.

Presentation by the Parties:

- Attorney Kristin Collins noted that the issue before the Appeals Board is whether the Planning Board made any errors in its review. She reviewed some of the pertinent issues with regard to the appellate case, particularly noting the issue with the setback of the parking lot in the Shoreland Zone and reiterated that there are aspects of the BHWP project that do not comply with the town's shoreland zoning.
- Attorney Joe Siviski briefly reviewed pertinent elements of the site plan amendment for the building permit. He noted that the Planning Board had reviewed and approved the site plan, including the position of the two parking areas. He also briefly reviewed the status of DEP and NRPA permitting.

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

The Chair suggested the Appeals Board review each element of the Findings of Fact, as well as the responses to the Remand, to see if any members had issues with any element of the documented findings. The chair proceeded to go through each element of the Findings of Fact.

- Mr. Cohen asked the Code Enforcement Officer about the interpretation of the park being an institutional use. The CEO pointed to the definition in the code.
- Mr. Rebel noted that one of the goals of the permit process in the Shoreland Zone is to diminish nonconformity. He felt, in general, the building permit amendment accomplished this.
- Members indicated there were continued questions about the specific evidence the Planning Board used to support the placement of the southerly parking lot within the 75 foot setback. Although the Planning Board indicated that because the parking lot was relocated to comply with the setback requirements "to the greatest practical extent," there was no citation of the evidence that supported that assertion. Board of Appeals members agreed that this required further elaboration by the Planning Board.

*Board Action:* After considering the Planning Board's December 14, 2022 response to the Order of Remand from the Board of Appeals, the rest of the record and the arguments of counsel for the appellate and the applicant, it was moved and seconded (Wolf, Cohen) *to remand back to the Planning Board pursuant to 170 -101.11(h)(3)(b) with the request that the Planning Board specify, from the record of the Planning Board's proceedings, the evidence they relied on to support its finding "that the parking area near the southerly side of the property has been relocated to comply with setback requirements to the greatest practical extent."*

The motion passed unanimously (4-0).

The Chair pointed out that the Administrative Appeal is still in effect, pending review of the remanded Planning Board action. She also expressed the expectation that the Planning Board would respond to the Remand Order in a timely way so the appeal may be acted upon.

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