

Town of Boothbay Harbor
BOARD OF APPEALS Meeting
Thursday, March 16, 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; John Cunningham, Town Attorney

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

OLD BUSINESS

- A. Approval of March 9, 2023 minutes: *It was moved and seconded (Cohen, Bourette) to approved the minutes. Motion passed (3-0).*
- B. Review of the Planning Board response to the remand order from the Board of Appeals with continuation of the *Administrative Appeal request submitted January 13, 2023 by Adria Sibily abutter and John M.T. Seitzer regarding the property at 60 Atlantic Avenue (Map 16, Lots 115 and 116 in the General Residential District), Boothbay Harbor, ME requesting an administrative appeal of the December 14, 2022 Planning Board site plan decision.*
 - This administrative appeal is brought pursuant to Code §170-73 and §170-108(D).
 - Notice of hearing regarding the remand response was published in Boothbay Register on March 2 and March 9, 2023
 - The Chair outlined the scope of the Appeals Board review:
 - Under Code § 170-73 the Board is to interpret the “*meanings of terms which are called into question, and to hearing a request to determine if the Planning Board acted in accordance with the procedures of this article. The Board of Appeals shall not have the authority to substitute its judgement for that of the Planning Board with respect to any of the standards of this article*”
 - Under Code § 170-101.11(H)(3)(b) the Board should determine whether the Planning Board *decision was contrary to specific provisions of the article or contrary to the facts presented in the record of the Planning Board.*”
 - Initial Matters:
 - The Chair noted the Appeals Board had the authority to hear the appeal pursuant to § 170-73 and § 170-108(D)
 - Members were asked if they had any pecuniary interest or conflict of interest in the appeal? No member had such a conflict.
 - Members affirmed they could be fair and impartial in this matter.
 - The CEO confirmed notification of abutters by certified mail [§ 170-109(C)].
 - The Chair indicated the appeal had been filed properly [§ 170-109(A)]
 - The Chair confirmed the appellant had standing.

Prior to the presentation from the parties, the Chair noted that on March 13, 2023, the appellant submitted a request to postpone this hearing. Subsequently, on March 16, 2023, the appellant submitted additional information on the appeal. The Chair inquired whether Mr. Seitzer still requested a postponement. Mr. Seitzer indicated he no longer required a postponement, and that he was prepared for the meeting to proceed.

Board Action: It was moved, seconded (Cohen, Bourette) and unanimously approved to dismiss the request for postponement.

Prior to the presentation of the parties, the Chair indicated the Board would first consider the appeal under § 170-73 regarding the Planning Board interpretation of the terms “Multifamily Dwelling”, “Dwelling Unit”, and “Boarding House”, as used in the Land Use Code, to conduct the site plan review.

The Board would then evaluate the appeal under § 170-101.11(H)(3)(b) and review the Planning Board’s written response to the remand, that outlined the Findings of Fact, to determine whether the Planning Board decision was contrary to specific provisions of the article or contrary to the facts presented in the record of the Planning Board.

Presentation of the Parties

- Mr. Seitzer on behalf of the appellants, outlined the key facts behind the appeal, including:
 - The Planning Board’s decision was based on the erroneous interpretation of the terms “Multifamily Dwelling”, “Dwelling Unit” and “Boarding House” as they are used in the Boothbay Harbor Land Use Code
 - The Planning Board failed to consider that the Maine Department of Transportation determined the proposed structures in the site plan were “Multi Family 6 or more” structures;
 - The Planning Board failed to conduct a Shoreland Zoning review as required by the Code; and
 - The Application was incomplete and misleading, and therefore should not have been considered unless and until these deficiencies were corrected.
- Ms. Costigan, on behalf of PGC3, noted that because Boothbay Harbor does not have a definition for Employee Housing, the Planning Board applied § 170-27(C) of the Ordinance which allows the Board to determine if the proposed use is sufficiently similar to those in the Land Use Code that require site plan review.
 - Ms. Costigan reviewed the definitions of “Multifamily Dwelling”, noting that it requires three or more dwelling units with occupancy by three or more families living independently. She pointed out that the proposed housing did not meet this definition, but more closely aligned to a “Boarding House”.
 - She emphasized that the site review was appropriate, and that the Planning Board did not err in the interpretation of the Ordinance.

Appeals Board members asked several questions, including whether the employees living in the proposed housing provided compensation for living there. Ms. Costigan confirmed that they are not “living there for free.” The Chair asked for clarification from the CEO regarding the process to correct or complete site plan applications that are missing information.

Mr. Cunningham answered, noting that PGC3 had participated in an initial meeting with the Planning Board where it was noted that the application was not complete, so PGC3 provided additional information at a follow up meeting where the Planning Board deemed the application complete.

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

- The Chair suggested the Board of Appeals deliberate on the issue prompting the initial appeal regarding the Planning Board's decision to designate that the proposed project was sufficiently similar to a "Boarding House" to allow it to proceed with the site plan review. Members referred to the Planning Board's justification for this action in the written response to remand, which members felt provided adequate explanation for the Planning Board's decision.

Board Action: It was moved and seconded (Cohen, Bourette) to affirm there was no err in the Planning Board decision that the proposed project was sufficiently similar to a Boarding House to allow site plan review. The motion was unanimously approved (3-0).

- Appeals Board members were asked to then evaluate the written Findings of Fact which was included in the Response to the Remand. Members commented that the written response and Findings of Fact was one of the more descriptive and comprehensive reviews of the site plan review decisions.
 - The Chair pointed out that the issue with the Maine Department of Transportation indicating the proposed structures in the site plan were "Multi Family 6 or more" had no relevance in the appeal since decisions by MDOT fell outside the purview of the Board of Appeals.
 - The Chair asked for clarification regarding Mr. Seitzer's concern that the retaining wall is not shown on the sketch provided with the site plan application. Mr. Smith stated site plan submissions and site plan review criteria make no mention of retaining walls.
 - The Chair asked Mr. Cunningham for clarification on the issue of the Planning Board failing to conduct a Shoreland Zone review. Mr. Cunningham indicated this was not required for the site plan review since there were no proposed structures to be built in the Shoreland Zone.

The Chair invited comments from members of the public; however, no one had questions or comments.

Board Action: It was then moved and seconded (Cohen, Bourette) to agree with the Planning Board's Findings of Fact and affirm there was no err in the Planning Board's site plan approval. The motion was unanimously approved (3-0).

Board Action: Based on the prior two decisions, it was then moved and seconded (Cohen, Bourette) to deny the appeal. The motion passed unanimously (3-0).

Adjourn: There being no further business, the meeting was adjourned at 6:44 p.m. by a unanimous vote.

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