

**Town of Boothbay Harbor
Board of Appeals Minutes
Wednesday, September 6, 2023, at 4:30 PM**

Chair Wendy Wolf called the meeting to order at 4:30 pm.

Members Attending: Rosemary Bourette, Ken Bradsell, Bill Hamblen (Alternate), Bill Prince, Lawrence Rebel, Wendy Wolf (Chair). The Chair welcomed Mr. Hamblen to the Board, noting that he brings considerable municipal experience having served on the Select and Planning Boards.

Quorum: The Chair confirmed the presence of a quorum with 5 voting members.

Town Staff Present: Geoff Smith, CEO; Julia Latter, Town Manager

Applicant Representatives: Robert Kahler, AOS Superintendent of Schools; Joseph Britton, Lavallee Brensinger

OLD BUSINESS:

Approval of April 27, 2023 minutes: *It was moved and seconded (Bradsell/Prince) to approve the minutes as presented. Motion approved 5-0.*

NEW BUSINESS:

Election of Appeals Board Chair and Secretary: In accordance with the Town ordinances, the Chair called for nominations or volunteers to serve as Chair. *It was moved and seconded (Prince/Bourette) to nominate Wendy Wolf as Chair. The vote was 4-0 with Wolf abstaining.* The Chair asked for nominations of Secretary. *It was moved and seconded (Wolf/Bradsell) to elect Rosemary Bourette as Secretary. Motion passed 4-0 with Bourette abstaining.*

Ordinance Interpretation: The Chair indicated there were differing interpretations of the Town ordinance regarding the materials required for filing a variance. Board members were asked whether they interpret Code § 170-109(A)(3)(b) and (c) to state that variance applications should include a scaled sketch and a list of abutters to make the application complete. The Chair interpreted §170-109(A) as specifying the procedure for filing both administrative appeals and variances, noting the code does not differentiate between what is required for a variance request and what is required for an administrative appeal. The Chair asked Code Enforcement Officer to share his interpretation. Mr. Smith indicated that the code is explicit about what is required for an appeal, but did not feel the ordinance specified that a sketch and abutter information were required for a variance. The Chair felt a variance request should require a scaled sketch and a list of abutters since abutters would be most affected by the granting of a variance.

Board members discussed the ordinance and provided some illustrations of why having a scale sketch and a list of abutters would be important in a variance hearing. After some discussion, they expressed their unanimous opinion that the greater amount of information provided to the Appeals Board, the greater likelihood that members can reach an informed decision based on the evidence presented. Board members supported the interpretation that variances require a scaled sketch and a list of abutters as part of the application for the variance. The Chair asked the Code Enforcement Officer to convey this issue to the Planning Board with a request to clarify the ordinance so that the required materials for a variance request include a sketch and names of abutters, as required for an administrative appeal.

Variance Request: The Board of Appeals received an application submitted August 7, 2023 by AOS 98 Rocky Channels School System, 51 Emery Lane, Boothbay Harbor, ME (Map 30, Lot 10 in General Business Zoning District) requesting a variance from Article 4, Chapter 170-41, subsection B, which states that the maximum height of a building in the General Business District shall be 35 feet or 2 ½ stories, whichever is less. This request is brought pursuant to Code § 170-108(D)(2)(c). Notice of the variance hearing was published in *The Boothbay Register* on August 24 and 31, 2023.

The Chair reviewed the initial matters:

- No board members have a pecuniary interest or conflict of interest in the appeal.
- All members affirmed their capacity to be fair and impartial in this matter.
- The CEO indicated the Notification of Abutters (170-109(c)) had occurred.
- The Board reviewed whether the appeal had been filed properly (170-109(A)):
 - Members agreed the variance presented a concise written statement indicating what relief is requested and why it should be granted .
 - The appeal indicated which Article of this Land Use Code is involved.
 - *With regard to receiving a sketch drawn to scale showing lot lines, location of existing and proposed buildings and structures, contours at realistic intervals, and other physical features of the lot pertinent to the relief sought, the Board has been given a diagram of the lot with the pertinent information noted above at the hearing. It was unclear if this information would be sufficient until the applicant reviewed the information.*
 - The CEO distributed the names and addresses of abutting property owners.
 - The application is signed by the applicant.
 - The CEO confirmed the appeal was accompanied by the fee payable to the Town.
 - The Board determined that the appellant has standing (the right to appear before the Board).

Applicant Presentation:

In advance of the applicant's presentation, Board members were given a topographical map and land plot of the high school and surrounding area that also included photos of the existing conditions of the current building and diagrams of the new high school design. Robert Kahler, Superintendent of AOS 98 Rocky Channel School System, and resident of Lisbon Falls, presented on behalf of the applicant. He noted that the variance request focused on a proposed area on the roof that is designed to enhance natural light from an elevated roof window "spine" that projects to a height of 42 feet. The spine is oriented to the south, allowing more natural sunlight into the school's central corridor. Mr. Kahler went through the merits of the design, focusing on the inclusion of the elevated window that would provide natural light into areas such as the student commons and library. He emphasized the importance of natural light and felt this design feature would enhance student well-being, potentially improving the quality of student education.

Mr. Kahler then invited Joseph Britton, Architect, to discuss the lot and building illustrations. Mr. Britton reviewed the building site topographical map, noting that the school sits on a very irregular parcel of land with steep slopes. The design of the school was made in such a way to place the building within the current location, but ensure the building captures natural sunlight through an elevated roof section (42 feet) that includes a large southerly facing window designed to direct natural light into a central section of the school. The lot and building diagram included photos of two places in the current school where the roof exceeds the 35 foot height limit, including the rear glass entry (built in 1996) and the gymnasium (1954 original building). The Architect was unsure of the actual height of these two parts of the current school building. Directional photos showed that the impact on abutters would be minimal since the view sheds are such that the solar window elevated spine would not be visible from either the east or the west.

Board members asked several questions of Mr. Britton focused on whether it was necessary to have the window at 42 feet to capture the axis of natural light or whether it could be less. Mr. Britton indicated this was the optimal height to direct as much natural light as possible. Members also inquired whether the school had any previous variances for the two areas that exceeded the 35 maximum height that could be carried forward. The CEO indicated it was unknown if the height ordinance was in place that required a variance at the time these structures were built.

The Board also asked Mr. Britton and Mr. Kahler to provide more explicit, descriptive information about the justification of the variance regarding the question of whether “the land cannot yield a reasonable return unless the variance is granted.” Both presenters emphasized the positive effect that ambient sunlight has on the interior environment improving the emotional well-being of students, noting that this is an important feature that could potentially enhance learning.

The Chair asked if any abutters to the property wished to speak. No abutters came forward.

Closure of Hearing:

The Chair closed the hearing and then explained that an application for an undue hardship variance requires the applicant to meet the provisions specified in the statute, and that to obtain a variance all four provisions must be met.

Board Review of Findings and Facts

Based on the application materials, testimony, statements, evidence and documents, the Boothbay Harbor Board of Appeals discussed the following statutory requirements for an undue hardship as established by 30-A MRS §4353(4) and makes the following conclusions based on the applicable provisions in the statute:

- *It was moved and seconded (Wolf/Bradsell) that the land in question cannot yield a reasonable return without a variance. By a vote of 1–4, the Board found the standard was not met because the applicant did not provide sufficient justification that the land cannot yield a reasonable return. The emphasis of the inclusion of the sun window at a height of 42 feet to enhance natural light may improve the interior lighting and exposure to natural light, but the inability to include this feature does not prohibit the property from yielding a reasonable return.*
- *It was moved and seconded (Wolf/Rebel)) that the applicant demonstrated the need for a variance is due to the unique circumstances of the property, not general neighborhood conditions. By a vote of 5–0 the Board found the standard was met because the topography of the land on which the high school is located is adjacent to steep slopes that would prohibit the placement of the new school.*
- *It was moved and seconded (Wolf/Rebel) that granting the variance will not alter the essential character of the locality. By a vote of 5–0 the Board found that the standard was met because there was no change in use of the lot or the proposed building.*
- *It was moved and seconded (Wolf/Prince) that the hardship is not the result of the action of the applicant or prior owner. By a vote of 5–0, the board found the standard was met.*

*Based on the conclusions of law, it was moved in seconded that the Boothbay Harbor Board of Appeals finds that the project **did not meet** the statutory requirements for an undue hardship variance. The motion passed 4-1.*

The Chair thanked members of the Board of Appeals and the applicant, and assured the applicant that the Board vote on the variance was not a reflection or comment on the school's plans, the quality of the architectural design, or the anticipated plans for the renovation of the school.

OTHER BUSINESS: none

ADJOURN: *It was moved and seconded (Bradsell/Wolf) to adjourn. Motion passed 5-0. The meeting adjourned at 5:37 PM.*

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