

Town of Boothbay Harbor
BOARD OF APPEALS Meeting
Thursday, February 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, L Rebel, 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 4 members in attendance.

OLD BUSINESS

- A. Approval of January 31, 2023 minutes: It was moved and seconded (Cohen, Bourette) to approved the minutes. Motion passed (4-0)

NEW BUSINESS

1. *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 decision.*
 - This administrative appeal is brought pursuant to Code § 170-73.
 - Notice of hearing regarding the remand response was published in Boothbay Register on February 2 and February 9, 2023
 - The Chair outlined the scope of the Appeals Board review citing Code § 170-73, which 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”
 - Initial Matters:
 - The Chair noted the Appeals Board had the authority to hear the appeal pursuant to § 170-73.
 - 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 the notification of abutters by certified mail [§ 170-109(C)].
 - The Chair indicated the appeal had been filed properly [§ 170-109(A)]
 - The Chair asked the board to confirm whether the appellant had standing? Members confirmed the appellant had standing.

Prior to the presentation from the parties, the Chair noted that the original request for an Administrative Appeal from the appellants filed January 13, 2023 would have only required the Board of Appeals to address the interpretation of the terms “Multifamily Dwelling” and “Boarding House” as used in the Land Use Code. Under Section § 170-73, this review by the Appeals Board would not have required a review of the factual findings of the Planning Board.

On February 10, 2023, the town received additional appeal information from the appellants that disputed at least some of the Planning Board’s Findings of Fact. In their review of the site plan application, the Planning Board did not adopt a written decision setting forth its findings and conclusions. The Chair noted that according to the town attorney, a written Findings of Fact is not required under the ordinance. Since there is no written record, the Appeals Board is currently unable to review and respond to the appellant’s request.

Because the Board of Appeals cannot properly act upon the February 9, 2023 supplemental appeal without a written decision from the Planning Board, the Chair suggested remanding the matter back to the Planning Board with a request that it prepare a written decision of its findings and conclusions. Members discussed this course of action.

It was then moved and seconded (Wolf, Cohen) to remand the matter back to the Planning Board with a request that the Board issue a written record of the finding of fact at their meeting on March 8, 2023. This written record would be forwarded to the Board of Appeals for review. The motion passed unanimously (4-0).

The Chair noted that the Administrative Appeal is still in effect, pending review of the remanded Planning Board action.

Adjourn: There being no further business, the meeting was adjourned at 6:12 p.m. by a unanimous vote.

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