

TOWN OF WELLS, MAINE

ZONING BOARD OF APPEALS

LEGAL NOTICE

MEETING AGENDA

MONDAY, MARCH 16, 2020 7:00 PM

LITTLEFIELD MEETING ROOM, WELLS TOWN HALL

208 SANFORD ROAD

CALL TO ORDER & QUORUM DETERMINATION

FINDINGS OF FACT

I. ADMINISTRATIVE APPEAL (HALL FAMILY TRUST)

Attorney Gene Libby, acting agent for Hall Family Realty Trust, is appealing the Code Enforcement Officer's determination of an existing use of a particular municipally-owned parcel of land identified as Tax Assessor's Map 142 Lot 021-EXE. The parcel is currently being occupied and used as a municipal parking facility, and has been used as such since the Town acquired the parcel in 1973. The parcel resides within the Residential D (RD) District, the Shoreland Overlay (SO) District, and the Resource Protection (RP) District.

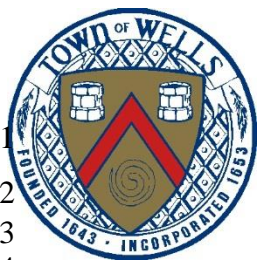
MINUTES

I. ZBA DRAFT MIN.MARCH.02.2020

Documents:

[ZBA DRAFT MIN.MARCH.02.2020_FINAL.PDF](#)

ADJOURN



TOWN OF WELLS, MAINE ZONING BOARD OF APPEALS

208 Sanford Road Wells, Maine 04090

Website: www@wellstown.org

MEETING MINUTES OF MARCH 2, 2019

CALL TO ORDER

Chairman Robert Lavoie called the meeting to order at 7:00 P.M. Members present: Jason Heft, Michael Findley, Dr. Carol Kingston (Associate), and Thomas Pulsifer (Associate).

Staff present: Code Enforcement Officer Jodine Adams, Meeting Recorder Dr. Cynthia Davidson

Also present: Attorney Amy Tchao representing the Code Enforcement Office, Attorney Tom Danylik representing the Zoning Board of Appeals, Attorney Gene Libby representing the appellant, Jim Wright of Post Road Survey representing the appellant, Town Engineer/Planner Mike Livingston.

PUBLIC HEARING

I. ADMINISTRATIVE APPEAL (HALL FAMILY TRUST)

Attorney Gene Libby, acting agent for Hall Family Realty Trust, is appealing the Code Enforcement Officer's determination of an existing use of a particular municipally-owned parcel of land identified as Tax Assessor's Map 142 Lot 021-EXE. The parcel is currently being occupied and used as a municipal parking facility, and has been used as such since the Town acquired the parcel in 1973. The parcel resides within the Residential D (RD) District, the Shoreland Overlay (SO) District, and the Resource Protection (RP) District

Mr. Lavoie asked if there are any conflicts on the Board. Mr. Pulsifer does not know the Hall Family and is not familiar with the parking lot. He did have some legal issues in the past when Mr. Libby represented the opposing side. He did not think that would affect his opinion regarding this appeal. Mr. Libby said he would prefer not to have Mr. Pulsifer participate in this appeal. The Board will have a quorum of 4 members to hear this appeal without Mr. Pulsifer participating.

Motion by Mr. Heft, seconded by Mr. Findley, to accept Mr. Pulsifer's recusal. Passed 4-0 (Mr. Lavoie, Mr. Heft, Mr. Findley, Dr. Kingston FOR the motion.)

45 Mr. Lavoie read the summary of the appeal and asked if the appellant has right, title and interest
46 as an abutter to the subject property. Mr. Libby said there is a survey. Mr. Danylik said the
47 Board should see a copy of the deed.

48

49 **MOTION**

50 Motion by Mr. Findley, seconded by Mr. Heft, to continue hearing the appeal with the
51 understanding that a copy of the deed will be provided to the CEO by the close of business
52 tomorrow. Passed unanimously.

53

54 Mr. Lavoie discussed jurisdiction and read #2, 3 and 6 in the administrative appeal application.
55 Counsel has advised Mr. Lavoie that Notices of Violation as well as the absence of an NOV are
56 appealable to the Zoning Board. There is no site approval application or site plan approval
57 application before the Town, and he feels that #2 & 3 are not met. Mr. Danylik said the Code
58 Office or Planning Office should rule first before the Board reviews the matter. The question is
59 whether the parking lot is a conforming or permitted use in that district. Ms. Tchao concurred
60 with Mr. Danylik and said that the sole issue is whether the lot is a “commercial enterprise” and
61 therefore prohibited. She noted that Mr. Libby’s PowerPoint presentation raises issues that the
62 Code Office hasn’t had the opportunity to review including restrooms, a kiosk, drainage swales
63 and boundary areas. Those items are not part of this appeal and it is premature for the Board to
64 consider them. Mr. Lavoie said it is premature for the Board to consider an appeal on something
65 the Code Office hasn’t reviewed and ruled on. Mr. Libby read from the December 20, 2019 Code
66 Office letter about the establishment of the parking lot and felt that no site review is needed. Ms.
67 Tchao said that Mr. Libby erred in calling the lot a non-conforming use and that the Board should
68 not consider the issues he raised in his February 28 letter.

69 Mr. Lavoie polled the Board members and the consensus was that the review is premature since
70 there is no site plan and the jurisdiction of # 2 & 3 is in question.

71

72 Mr. Libby said he planned to question Ms. Adams. Ms. Tchao said the questions should be
73 limited to whether the lot is a permissible use and whether there has been any expansion, with no
74 questions about the latest issues that were raised. Mr. Libby agreed.

75

76 Mr. Libby questioned whether the lot was a permitted use when the ordinance was established, or
77 if it is a grandfathered use. Photos of the lot over time were part of his presentation and showed
78 an expansion of 6421 sq. ft. The expansion was sometime after June 1982 when a new survey
79 was done and the boundary lines were changed. Ms. Adams’ letter states that the Town has
80 operated the lot as a municipal parking facility since it was acquired, and that the Town can
81 charge a fee for parking without making it a commercial use. Board members discussed the
82 parking fee. Municipal use is not a commercial use, and the lot provides public access to the
83 beach. Town funds are used to maintain the lot.

84

85 Ms. Tchao referred to Ms. Adams’ December 2019 letter about municipal parking, that the lot is a
86 public amenity and the Town can charge to maintain it. The lot was never non-conforming; it was
87 a permitted use in 1950 and its status hasn’t changed under the current ordinance. She disagreed
88 with the statement in Mr. Libby’s January 16 letter calling it a commercial parking lot that is not
89 a permitted use at Drakes Island. The Town vote in 1973 allowed up to a 2 acre expansion.
90 Aerials from 2003 to 2018 show no change in the area. Using GIS the Town Engineer/Planner
91 calculated the current area as approximately 1.2 acres. Ms. Tchao concluded that Ms. Adams
92 hasn’t ruled that any review is necessary, or who should conduct a review.

93
94 Mr. Libby asked Ms. Adams about the permit for the lot's ticket booth. The permit allows the
95 booth to stay on the lot for 7 months per year. Boundary lines on photos dating from 1974 were
96 examined and expansion of the lot was not proven. Mr. Libby stated that the appellant contests
97 several alleged expansions and contests the use. Mr. Heft asked why the discussion focused on
98 the top of the survey and changing rear lot lines, when the area in question is at the lower right
99 corner. Mr. Libby offered to table the review. Ms. Tchao said that the question is whether the lot
100 is a lawful, permitted use today. If any violations are found when Ms. Adams has a chance to
101 complete her review, that would be a matter for another appeal. Mr. Lavoie asked for a motion to
102 end the discussion. Mr. Libby said he had more material to present. Mr. Danylik said the sole
103 question for the Board tonight is whether the lot is permitted or not.

104
105 **MOTION**

106 Motion by Mr. Findley, seconded by Dr. Kingston, to foreclose further discussion from Mr.
107 Libby. Passed 3-1 with Mr. Heft opposed.

108
109 **PUBLIC COMMENTS**

- 110
- 111 • The parking lot has been there for years and we need it for the Town beach.
 - 112 • The lot keeps growing and is being overrun.
 - 113 • We need tourist business. The lot is part of it.
 - 114 • If the Hall Trust wins their appeal will they close the parking lot? Mr. Libby said the
115 appellant is willing to talk.

116 **MOTION**

117 Motion by Mr. Findley, seconded by Mr. Heft, to close the public hearing. Passed unanimously.
118

119 **BOARD DISCUSSION**

120 Tonight the Board is considering whether this is a permitted use. Mr. Lavoie cited the 1950's
121 ordinance preventing commercial parking "for profit". The Town charging a fee is "not for
122 profit". Mr. Heft asked when the abutters purchased their land and if the parking lot was already
123 there. Mr. Lavoie said if there is any encroachment, that would be another matter and not part of
124 this appeal. Mr. Findley and Dr. Kingston felt that the use is permissible and the Town has the
125 right to charge a parking fee. Dr. Kingston asked who should determine the property lines. Mr.
126 Danylik said that site plans and boundaries are not the issue here and the Board cannot resolve
127 them. The Board should limit discussion to whether it is a permissible use.

128
129 A straw poll was taken.

- 130
- 131 • Does the ZBA lack jurisdiction to review #2& 3 (site plan approval) in the administrative
132 appeal? 4-0 yes.
 - 133 • Is the municipal parking lot a permissible use? 4-0 yes.

134 Mr. Danylik said the first vote on jurisdiction should be a motion, not a straw poll.
135

136 **MOTION**

137 Motion by Mr. Heft, seconded by Mr. Findley, that the Board does not have jurisdiction over the
138 site plan issues #2 & 3. Passed 4-0.

139

140 **FINDINGS OF FACT**

141

142 February 3, 2020; VARIANCE APPEAL (HUDSON)

143

144 Mr. Findley read the draft Findings which he had written. The Conclusions section was expanded
145 to include motions on the 4 criteria for granting a variance.

146

147 **MOTIONS**

148 1) Motion by Mr. Heft, seconded by Mr. Findley, to find that the property can yield a reasonable
149 return without a variance. Passed 5-0.

150 2) Motion by Mr. Pulsifer, seconded by Dr. Kingston, to find that the need for a variance is not
151 due to the unique circumstance of the property. Passed 5-0.

152 3) Motion by Mr. Heft, seconded by Mr. Findley, to find that granting a variance would not
153 change the character of the neighborhood. Passed 5-0.

154 4) Motion by Mr. Pulsifer, seconded by Dr. Kingston, to find that the hardship is due to the
155 action of the appellants. Passed 5-0.

156

157 **MOTION**

158 Motion by Mr. Pulsifer, seconded by Dr. Kingston, to deny the appeal because 3 of the 4 criteria
159 were not met and approve the Findings as amended. Passed 5-0.

160

161 **MINUTES**

162

163 February 3, 2020

164

165 **MOTION**

166 Motion by Mr. Findley, seconded by Mr. Heft, to approve the minutes as amended. Passed
167 unanimously.

168

169 **ADJOURN**

170

171 **MOTION**

172 Motion by Mr. Findley, seconded by Mr. Heft, to adjourn. Passed unanimously.

173

174

175

176 RESPECTFULLY SUBMITTED:

DATE:

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180 _____
Dr. Cynthia Davidson, Meeting Recorder

181

182 ACCEPTED BY:

DATE:

183

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186 _____
Robert Lavoie, Chairman

187