

Town of Pittston
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**Appeals Board Meeting Minutes
September 16, 2021, 6:30 p.m.**

Board members in attendance:

Becky Symes, Lisa Veregge, Paula Work, Autumn DeVries

Also in attendance:

Greg Bickford, Mary Jean Ambrose

A quorum was established.

Meeting purpose:

Regarding Greg Bickford Automotive Repair business, the Appeals Board (AB) will review and consider all information from the Planning Board (PB) on their decision making process relative to the five (5) car limitation on the approved Business Application for Bickford Automotive Repair.

Discussion:

A motion was made by Paula to accept the August 26th meeting minutes. The motion was seconded by Becky and the minutes were approved and entered into public record.

A motion was made by Lisa to accept the September 9th meeting minutes. The motion was seconded by Autumn and the minutes were approved and entered into public record.

Becky presented information from the Maine Municipal Association (MMA) regarding the authority of the AB and the options open to the AB. In summary, the Appeals Board may conduct a De Novo review or an Appellate review provided these options are not prohibited by local ordinance. "In a *de novo* review proceeding the board of appeals steps into the shoes of the original decision-maker and starts the review process from scratch, holding its own hearing, creating its own record, and making its own independent judgement of whether a project should be approved based on the evidence in the record which the board of appeals created." (MMA Manual for Appeals Boards, page 68.) In an "appellate review, the board's job is to review the record created by the official or board whose decision is being appealed and decide whether that record supports the original decision and whether the original decision is consistent with the ordinance." (MMA Manual for Appeals Boards, page 69.)

Members of AB then read and discussed a letter from the Planning Board dated September 10, 2021. In this letter the PB listed four contributing factors in their decision for the five (5) car limitation. The appeals members considered each of these four factors relative to Pittston ordinance and discussed how to proceed with the review. It was suggested that sufficient information is on record to conduct an "appellate review" and suggested a *de novo* review would be unnecessarily burdensome.

Paula made a motion to proceed with an "appellate review." The motion was seconded by Autumn. The "appellate review" proceeded.

The following information was considered and discussed:

- Becky commented that the site plan lacked specific dimensions of structures and parking areas.
- Autumn suggested that with a diagram an objective, quantitative determination could be made on parking available.
- Paula and Lisa referred to the September 10th PB letter and reviewed the Board's four contributing factors relative to the Pittston Building Code. It was determined that the Code does not prohibit the granting of a business application for a non-conforming lot.
- Becky and Autumn reviewed the four contributing factors relative to the Business Development Ordinance. It was determined that the four factors could not be supported by the Ordinance.
- Mr. Bickford discussed the lot dimensions and parking available.

Becky then reiterated the responsibility of the AB is to consider the reasons the PB defined a five car limit. Then these reasons must be considered relative to all available controlling information to determine how the limitation is justified by Pittston Ordinance or Code. Autumn suggested the Planning Board is justified in granting conditional approval to any application, provided the limitation can be objectively supported by Ordinance. In reviewing the Ordinance and Code, the Appeals Board could not identify justification for the five car limitation.

Decision:

There was consensus that the Planning Board provided insufficient information to support the conditional five (5) car limitation and as such, the limitation is arbitrary. Paula made a motion that the Appeals Board find in favor of the Appellate. Autumn seconded this motion. A vote was taken and the motion passed unanimously.

The challenge that we faced was that the number five was unrelated to any measurement or application of an ordinance. We scrutinized, in an attempt to apply, section 10.F of the Business Development ordinance, but failed to find a way to do so.

Reasoning:

While the Planning Board retains "inherent authority to attach conditions to its approval of an application", any "conditions imposed by the board on its approval must be reasonable and must be directly related to the standards of review governing the proposal." (MMA Manual for Appeals Boards, page 52.)

Further, where ordinance standards are vague, "standards must be something more than as the Board deems to be in the best interest of the public or as the Board deems necessary to protect the public health, safety and welfare." "If an ordinance (or lack of) gives the board basically unlimited discretion in approving or denying an application, it creates two constitutional problems." (MMA Manual for Appeals Boards, page 52-53.) To reduce the possibility of constitutional problems, standards should be objective, quantitative and consistent.

Conclusion:

The Appeals Board thanks the Planning Board for providing answers to all questions. Further, the Appeals Board encourages the Planning Board to employ objective, quantitative measures where the Ordinance is vague or non-defining. An objective decision promotes equal protection and due process to all applicants.

Respectfully submitted by Autumn DeVries, Appeals Board secretary.