

**STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS A LAW COURT
DOCKET #LIN-25-566**

Joseph and Jill Doyle

Appellants

v.

Town of Boothbay Harbor

and

Boothbay Harbor Waterfront Preservation

Appellees

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT

**BRIEF OF APPELLANTS
Joseph and Jill Doyle**

April 24, 2026

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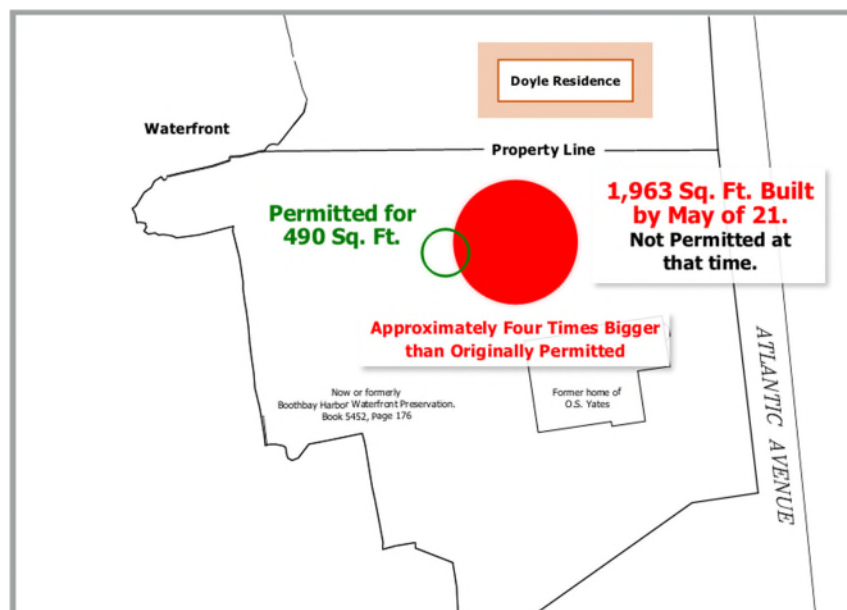
I. STATEMENT OF FACTS

Joseph and Jill Doyle are direct abutters to the property at 65 Atlantic Avenue in the Town of Boothbay Harbor (the “Property”) for which Boothbay Harbor Waterfront Preservation (“BBHWP”) sought various approvals from the Town’s Planning Board (the “Development”) related to a proposed mixed-use development.¹ R. 111. The Property was last used as a waterfront hotel and marina which included structure setbacks and lot coverage that were not compliant with current shoreland zoning standards codified in the Town’s Land Use Ordinance (“LUO”). R. 94-97. The Development sought to remove most existing improvements (e.g. hotel buildings and parking lots) from the Property and replace them with a waterfront “park” including walkways, pavilions, a large “splash pad” for children, and commercial and recreational wharf space, all on less than an acre. R. at 6-15. The site plan also referenced conversion of an existing house on the Property to two apartments and a general store. A. 47.

Following approval of its site plan, BBHWP started work. Notice of the site plan approval was never sent to the Doyles. The Doyles on August 13, 2021 sent a letter to the Town’s Code Enforcement Officer (“CEO”) which, among other issues, raised concern that (1 the splash pad had been built in a different location (much closer to the Doyles) and larger than approved, and (2) the Planning Board

¹ While BBHWP frequently refers to its development as a “park,” its approved site plan includes a general store, apartments, commercial and recreational marinas, “splash pad,” other park uses and associated parking, all on a 38,000 square foot lot. Unlike most parks, it is not deed-restricted in any way for public or conservation use.

had not reviewed any of the Town’s shoreland zoning standards prior to issuing site plan approval to BBHWP. R. 56-59. The below graphic demonstrates the extent to which BBHWP violated its site plan approval, with the splash pad built 15 feet closer to the Doyles’ residence and approximately four times in area:



R. 240.

The Planning Board’s findings of fact from the October 14, 2020 site plan approval referenced only the site plan criteria in Article V of the LUO and not the shoreland zoning standards under Article VIII of the LUO. *Id.*

Following the Doyles’ complaint, BBHWP on October 25, 2021 submitted a request to the Planning Board for a “building permit” under the shoreland zoning standards. R. 40-42. It submitted a further letter on November 8, 2021, which discussed approvability of the Development under the shoreland zoning standards. The Doyles responded to BBHWP’s application by a letter dated November 9,

2021, which raised multiple issues regarding the Development's proposed lot coverage, setbacks and other issues of compliance with the shoreland zoning standards. R. 43-51. On November 10, 2021, the Planning Board considered BBHWP's shoreland zoning application, made findings of fact, and approved the shoreland zoning application. R. 76-78; 99; A. 50. While the Doyles' attorney was present at the meeting, the Planning Board, over his objection, allowed only limited questions from him prior to making its findings of fact, and then did not take further public comment until after it had completed its review and findings on the relevant approval standards. R. 76-78; 99; video of November 10, 2020 meeting, at 13:35-17:00.

Moreover, the Planning Board admitted to having conferred about and made its findings on an *ex parte* basis before the November 10, 2021 hearing. At the October 12, 2022 meeting that would later be held on remand from the Board of Appeals, the following exchange occurred regarding the Planning Board's past approval procedures:

Chair: So I'm going to make a motion that the November 9th Planning Board meeting we'll hold a public hearing to discuss the remand order from the Zoning Board of Appeals.

Member Dunsford: But we should circulate some draft language before then. We send our ideas to [CEO Geoff Smith], I guess that's how we normally do this?

Town Attorney: Mr. Chair, because of course this is a very important issue and we will be under a lot of scrutiny, I want to remind the board of the legal requirement that the board cannot conduct its business outside the

confines of a public hearing – excuse me, a public meeting. If people are sending you information, you can read it or not at your decision, and you may make your own notes as to ideas you want to bring up at the meeting but you must not discuss the matters amongst yourselves outside of a public meeting. Or circulate drafts to one another.

Member Dunsford: John what we've done in the past is each of us does a draft of things. We send them in to Geoff. He sort of mixes it all up and once he has them all he gets ready to share it and then he sends it to everybody and then we come to the meeting, we're prepared.

Town Attorney: Right, but he should not do that. So, we will not be doing that.

Chair: He can't take our comments individually, put them together and then say...

Town Attorney: Because then you would be discussing and considering the matter outside of a public meeting. You're not allowed to do that.

Chair: So you can make comments to yourself and bring them up at the meeting but you can't share it with the rest of the board.

Member Dunsford: So we should have gone to jail several years ago then.

Town Attorney: Well you're off the hook on that but I'm pointing out what the law requires.²

Reviewing the October 10, 2021 meeting in light of this information, it is notable how little meaningful discussion is had regarding the approval standards, evoking concern that indeed some consideration of the merits must have taken place outside the meeting, or not at all.

² BBHWP included in the record the minutes of the October 12, 2022 Planning Board meeting, but has not included the video. This appears to have been an oversight, as other meeting videos have been provided. The video in question can be viewed at <https://www.facebook.com/100064844524505/videos/480038337502604>, starting at 1:17:35.

The plan for the Development, as approved, depicts a new parking lot within 75 feet from the shoreline. A. 47. The Planning Board's findings of fact do not explain why the Planning Board found the parking lot to be a reconstructed nonconforming structure, rather than a new structure. A. 50-52. The findings do not describe how, or upon what evidence, the parking lot met the standard under Section 170-101.7(C) of the LUO, which states that a reconstructed nonconforming structure must be moved away from the shoreline to the "greatest practical extent." *Id.* The findings also do not address any of the other issues raised by the Doyles in their letter dated November 9, 2021. *Id.*

The Doyles timely submitted an appeal of the shoreland zoning decision to the Town's Board of Appeals on December 16, 2021. The BOA, acting in an appellate capacity, held several hearings and ultimately remanded the application back to the Planning Board on two separate occasions. Its remand order dated January 18, 2022 requested that the Planning Board address four specific questions with the intent of receiving further explanation of the Planning Board's rationale related to application of parking and shoreland zoning standards. A. 53. Seven months later, the Planning Board still had not addressed the remand and had to be prompted to do so by the Doyles. R. 230; 234; A. 54.

On December 14, 2022, the Planning Board finally held an additional hearing on the remand that included public comment, and provided a response to the BOA dated on the same date. A. 55. The BOA then reviewed the Planning

Board's decision at subsequent hearings, and issued another remand order dated February 2, 2023, which requested that the Planning Board specify which record documents it was relying upon in finding that the proposed parking lot met the "greatest practical extent" standard for nonconforming structures. A. 57. The Planning Board, after another public meeting held on February 8, 2023, issued a further response to the BOA on February 9, 2023, which listed record documents pertaining to the issues on appeal. A. 58. Upon receipt of the Planning Board's response and in-depth review of the Planning Board meeting videos and minutes, on March 30, 2023 the BOA voted 3 to 0 to vacate the Planning Board's shoreland zoning approval on the grounds that there was insufficient evidence in the record to find that the parking area within the 75' setback had been moved back from the shoreline to the greatest practical extent. A. 59. BBHWP timely requested reconsideration from the BOA, but the BOA denied the request. BBHWP then submitted a Rule 80B appeal to the Lincoln County Superior Court.

The Superior Court consolidated BBHWP's appeal related to the shoreland zoning denial alongside the Doyles' appeal of the amended site plan approval. On May 2, 2024, the Superior Court issued a Consolidated Order on Pending Motions (A.11), which (1) vacated the Planning Board's approval of BBHWP's amended site plan; (2) denied most of the Doyles' substantive challenges to the shoreland zoning approval; and (3) as to the Planning Board's finding that a new parking lot was set back from the shore to the "greatest practical extent," remanded the

shoreland zoning permit application to the Planning Board “to produce further findings of fact and law, tied to a reviewable record, within 30 days of the Order.” The Superior Court indicated that it retained jurisdiction of the shoreland zoning matter, but did not indicate whether it retained jurisdiction of the site plan matter. Following a procedural conference with the parties regarding whether the Court intended to retain jurisdiction of the site plan amendment (it did not), the Superior Court on September 26, 2024 issued an Amended Consolidated Order on Pending Motions which did not change the mandate. A. 30.

Following the Superior Court’s ruling, the Planning Board held an additional hearing on November 20, 2024 and issued additional findings of fact on December 11, 2024. A.61. Its findings were then filed with the Superior Court. A. 60. However, proceedings on the site plan application stalled, with BBHWP failing to return to the Planning Board as ordered until November of 2025. Proceedings on the site plan remand are still underway. As of the date of this Brief, the Planning Board has not even determined the application to be complete, and has noted that the underlying site plan and shoreland zoning permits appear to have expired.

On December 5, 2025, the Superior Court issued an Order on 80B Appeal Concerning Shoreland Zoning Permit Application which granted BBHWP’s appeal, finding in a conclusory fashion that the Planning Board’s findings on shoreland zoning setback and lot coverage were reasonable and supported by

substantial evidence in the record. A.8. The Doyles then timely submitted this appeal to the Law Court.

II. ISSUES PRESENTED

1. Is this appeal moot due to expiration of the challenged shoreland zoning permit?

2. Did the Superior Court err in rendering a judgment on the shoreland zoning permit when there has not been a final administrative decision?

3. Did the Planning Board err in finding that Boothbay Harbor Waterfront Preservation's shoreland zoning application complies with the Town's Land Use Ordinance?

III. SUMMARY OF ARGUMENT

Appellants find themselves in the unfortunate position of having to appeal a judgment of the Superior Court on an expired permit that, even if it were valid, does not constitute the final administrative decision. If the Court is to consider the substance of the challenged shoreland zoning approval of Boothbay Harbor Waterfront Preservation's application for a park, two marinas (commercial and recreational), store and other facilities in the Town of Boothbay Harbor, it must deny it for failure to meet multiple provisions of the Town's Land Use Ordinance, including but not limited to failure to meet lot coverage requirements, lot area requirements, requirements pertaining to multiple uses, and shoreland setbacks.

IV. ARGUMENT

A. Standard of Review

The Law Court reviews the decision of a municipal planning board directly for errors of law, abuse of discretion, or findings not supported by substantial evidence in the record. *Aydelott v. City of Portland*, 2010 ME 25, ¶ 10, 990 A.2d 1024, 1026.

The interpretation of local ordinances is a question of law that the court reviews *de novo*. *Rudolph v. Golick*, 2010 ME 106, ¶ 8, 8 A.3d 684. The court examines an ordinance for its plain meaning and construes it “reasonably in light of the purposes and objectives of the ordinance and its general structure.” *Id.* at ¶ 9. If the ordinance defines a term specifically, the court will not redefine the term. *Id.* The court will not construe an ordinance “to create absurd, inconsistent, unreasonable or illogical results.” *Duffy v. Town of Berwick*, 2013 ME 105, ¶ 23, 82 A.3d 148. Whether a proposed use fits within a given categorization contained in zoning regulations is also a question of law, reviewed *de novo*. *Your Home, Inc. v. City of Portland*, 432 A.2d 1250, 1256 (Me. 1981).

B. The Shoreland Zoning Permit has Expired and this Appeal is Moot.

The Law Court must dismiss this litigation without prejudice, as it is moot due to expiration of the subject permit. BBHWP’s shoreland zoning approval was granted on November 17, 2021. Pursuant to Section 170-101.11(F) of the Town’s

Land Use Ordinance (“LUO”) (A. 153), “[p]ermits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have two additional years to complete the project, at which time the permit shall expire.”

The Town has never determined that BBHWP made a substantial start on its project, as defined in the shoreland zoning standards.³ The only substantial work it did on the property was conducted in violation of its site plan approval and before it received shoreland zoning approval. However, if a substantial start was made, it was made on or before May of 2021, when the splashpad was built. R. 44.

BBHWP did not complete any further substantive work on the Development after that point. It moved the Superior Court to stay the expiration dates and the Court, by Order on September 26, 2024, granted a stay retroactive to October 3, 2023 “pending further order of the Court extending, modifying or otherwise affecting such permitting deadlines.” The Superior Court later lifted the stay by order dated November 11, 2025, emphasizing that the stay was “prospective” from the date of the order.

Even if BBHWP could be deemed to have met the “substantial start” deadline by completing the “splash pad” and other work by May of 2021 (a fact that is

³ Section 170-101.12 (A. 154) defines “substantial start” as “completion of 30% of a permitted structure or use measured as a percentage of estimated total cost.” BBHWP never submitted the estimated total cost of the project, nor the amount it has spent on the physical development..

certainly not conceded given that the work preceded the shoreland permit and violated the site plan permit), BBHWP had until May of 2023 to complete the permitted work. The Superior Court’s stay order was entered retroactive to October 3, 2023, meaning that it took effect well after BBHWP’s shoreland zoning permit expired. The approval was therefore void years before the Superior Court issued its December 5, 2025 decision, making the decision and BBHWP’s subsequent Rule 80B appeal moot.

Expiration of an administrative decision renders any appeal of that decision moot. *See e.g. Bryant v. Town of Wiscasset & Big Al’s Outlet*, 2021 Me. Super. LEXIS 5, 4-7 (May 10, 2021) (citing *Monroe v. Town of Gray*, 1999 ME 190, ¶ 4, 743 A.2d 1257 and *Halfway House, Inc. v. City of Portland*, 67 A.3d 1377, 1379-80 (Me. 1996) and dismissing the litigation as moot after expiration of annual license). *See also Lynch v. Town of Kittery*, 473 A.2d 1277, 1279 (Me. 1984) (declining to dismiss appeal of an expired junkyard permit as moot only where narrow exception applied).

“The doctrine of mootness is designed to prevent [the] Court from deciding issues that, by virtue of valid and recognizable supervening circumstances, have lost their controversial vitality. *Dyer v. Town of Cumberland*, 632 A.2d 145, 147 (Me. 1993), citing *State v. Irish*, 551 A.2d 860, 861 (Me.1989). “The test is whether there remain sufficient practical effects flowing from the resolution of the litigation to justify the application of limited judicial resources.” *Id.* at 861–862.

BBHWP's appeal did not toll the expiration date specified in the ordinance; its permit expiration was stayed only to the extent imposed by the Court's temporary order. *Id.*

"A court will consider a question of mootness even sua sponte to ensure that it does not reach the merits of nonjusticiable cases" *Chretien v. Chretien*, 170 A.3d 260 fn. 3 (2017), and in fact is obligated to do so even if not raised by the parties below. *Ruskai v. Pistole*, 775 F.3d 61, 67 (1st Cir. 2014). The shoreland zoning issues raised in this appeal are nonjusticiable due to the expiration of the shoreland zoning approval and due to the fact that the underlying site plan amendment is pending before the Planning Board (see the following section for further discussion). With the expiration of the shoreland zoning approval, BBHWP has lost any vested rights in that approval. *Cayer v. Town of Madawaska*, 2017 Me. Super. LEXIS 225 (Dec. 4, 2017). This includes any rights to reconstruct nonconforming structures pursuant to Section 170.101.7(C)(3), because those rights extend for only 18 months after demolition of the prior nonconforming structure. BBHWP will need to apply for a new approval from the Planning Board and that board, now largely comprised of new members, will need to apply the new application to the version of the ordinance in effect at the time of the review. Further, the amended site plan on which the Planning Board based its shoreland zoning approval has been vacated. While BBHWP has finally returned to the Planning Board for that approval, the plan it has submitted is different than that

approved by the Board in 2021.⁴ The Doyles' points of view on the location and compliance of the site elements will also be taken into account for the first time. Given that the application has not even been deemed complete as of the submission of this Brief, it is reasonable to expect that there will be further changes to the plan during the review process and different findings of fact by the Planning Board.

This Rule 80B must be dismissed as moot. BBHWP's Development requires both site plan and shoreland zoning approvals. Its site plan application is under review and it will need to reapply for a shoreland zoning approval. If the Law Court proceeds to a determination on the shoreland issues, it will be passing judgment on a plan that is no longer factually correct or legally viable. This will undermine the clean slate that should be applied in the Planning Board's review of the site plan amendment and expected new application for shoreland zoning approval. The Law Court should appropriately dismiss this appeal, allow the Planning Board to complete its review of the site plan amendment and a new shoreland zoning application, and allow for any aggrieved party to package and appeal the issues arising from those decisions together.

C. There Has Been No Final Administrative Decision.

The Superior Court erred in failing, on motion by the Doyles, to dismiss or stay the appeal for lack of a final administrative decision. The Law Court must

⁴ While the new site plan amendment application is not part of the record, Appellants represent to the court that it includes changes to site elements including the challenged parking lot, changes the method of wastewater disposal, and includes a higher lot coverage calculation.

correct this error and dismiss this appeal to allow completion of the remand to the Planning Board on the site plan amendment and any other necessary permitting applications (including a new shoreland zoning approval) for the Development.

Through its Amended Consolidated Order dated September 26, 2024 on the consolidated site plan and shoreland zoning appeals, the Court issued two remand orders. A. 30. The first remand order, on AP-2022-03, remanded BBHWP's amended site plan application back to the Planning Board so that a properly noticed hearing could be held. The Court did not retain jurisdiction over this matter, meaning that following the Planning Board hearing, any affected party will have the right to appeal to the Town's Board of Appeals and then, through a newly filed Rule 80B petition, to the Superior Court. The second remand order, on AP-2023-04, remanded BBHWP's shoreland zoning application back to the Planning Board so that it could issue better developed factual findings related to the issue of whether a parking lot was set back to the "greatest practical extent" as required by the Town's Land Use Ordinance. The Court did retain jurisdiction over this matter and ultimately entered its December 5, 2025 decision following completion of the shoreland zoning remand.

For reasons that are not clear to the Appellants, BBHWP did not return to the Planning Board for its site plan amendment review for two and a half years after the Superior Court's remand order. There can be no justiciable appeal of the shoreland zoning approval until the Planning Board completes the site plan

amendment process, the Board of Appeals has acted on any appeal, and either a Rule 80B appeal on that application has been filed or the appeal deadline has passed. As the Superior Court acknowledged, and the parties have conceded, BBHWP requires approval under both the Town's shoreland zoning standards and site plan standards before its project may proceed. BBHWP received site plan approval on one version of its plan, but then built the project differently than shown on that plan. Following that construction, the Town realized that BBHWP had violated its original site plan, and that it had failed to receive approval under the shoreland zoning standards. BBHWP then sought after-the-fact approval under the site plan standards and the shoreland zoning standards. This litigation has been made vastly more complicated by the fact that the two requests were considered separately and addressed in two separate decisions following two separate meetings. It has been made more complicated still by the fact that the site plan amendment was vacated and returned to the Planning Board, with the Superior Court ceding jurisdiction, while the shoreland zoning approval was remanded to the Planning Board with the Superior Court retaining jurisdiction.

With the site plan amendment having been remanded to the Planning Board for the holding of a hearing, the original approved amendment was vacated by the Superior Court and no longer stands. BBHWP only has *site plan* approval for the version of the plan that was originally permitted, not the version it ultimately

built.⁵ However, BBHWP only received *shoreland zoning* approval on the version it built (the amended site plan that was later vacated by the Superior Court). In sum, BBHWP has not received all approvals for the amended version of the plan that was the subject of the recent decision of the Planning Board on remand, and will not have those final approvals until the site plan amendment has been granted, all local administrative appeals have been heard, and a new Rule 80B petition is filed with this Court if any party wishes to do so. Moreover, the version of the site plan amendment that is now pending before the Planning Board is different from the version that was approved under the shoreland zoning standards. Even if the underlying shoreland zoning approval has not expired, BBHWP will require shoreland zoning approval of whatever version of the site plan is ultimately approved by the Planning Board – if it is, in fact, approved.

Appeals concerning BBHWP’s Development – including on the shoreland zoning approval for the project - are not ripe to be further heard until site plan and shoreland reviews are complete on the final version of the plan. To reiterate, BBHWP currently lacks site plan approval for the amended version of the plan that is before this Court on the shoreland zoning approval. Pursuant to 30-A M.R.S. § 2691(3)(H), (“[A] decision of the board is a final decision when the project for which the approval of the board is requested has received all required municipal

⁵ The Planning Board recently acknowledged the apparent expiration of both the shoreland and original site plan approvals, but as it is only in the preliminary phase of determining completeness, has not rendered any decision on the application.

administrative approvals by the board, the planning board or municipal reviewing authority, a site plan or design review board, a historic preservation review board and any other review board created by municipal charter or ordinance.”) Section 2691(3)(H) follows the rule set forth in *Bryant v. Town of Camden* providing that finality on all municipal permits is required before the Superior Court may hear an appeal regarding a project. 2016 ME 27, ¶ 19, 32 A.3d 1183, 1189 (requiring planning board action on a site plan application before an appeal related to a special exception permit could be heard by the Court).

D. The Superior Court’s Consolidated Order and Final Order Are Not in Conformance with Rule 80B(m).

The Superior Court’s decision not only complicated further review of the Development; it was not in conformance with M.R. Civ. P. 80B(m), which provides as follows:

(m) Remand by the Superior Court. If the Superior Court remands the case for further action or proceedings by the governmental agency, the Superior Court’s decision is not a final judgment, and all issues raised on the Superior Court’s review of the governmental action shall be preserved in a subsequent appeal taken from a final judgment entered on review of such governmental action. The Superior Court does not, however, retain jurisdiction of the case.

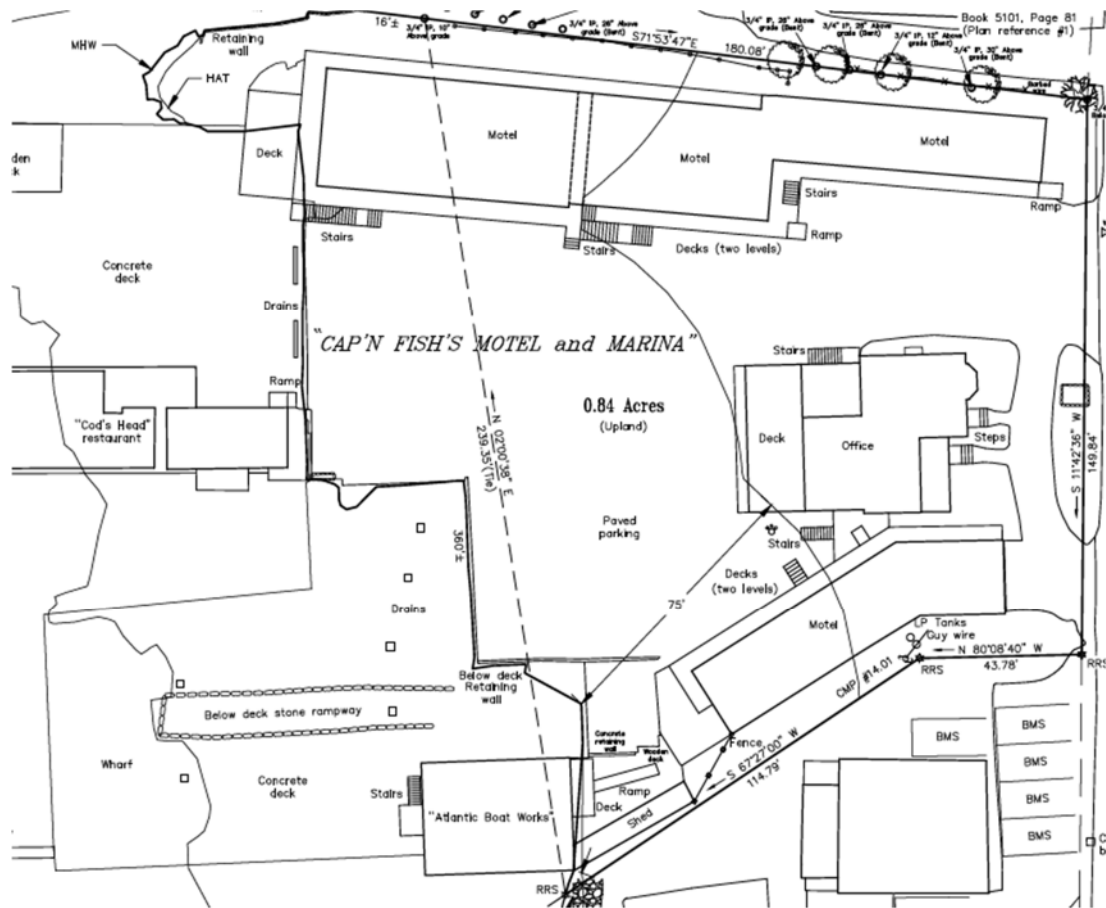
The Superior Court's remand on the shoreland zoning matter is governed by Rule 80B(m). The Superior Court should have ceded jurisdiction when it remanded the shoreland zoning permit for further administrative action. Because the Superior Court's decision following remand was made when, pursuant to Rule 80B(m), it did not have jurisdiction over the case, it should be vacated.

Under the statute and case law cited above, as well as Rule 80B and general principles of administrative finality, the Superior Court's order must be vacated to allow the administrative process on BBHWP's newly revised development to be completed based on all applicable ordinance standards.

E. The Planning Board Erred in Finding BBHWP's Application Met the Shoreland Zoning Standards.

1. The Parking Lot is a new structure that cannot be located within the 75' setback.

The Development replaced a hotel and marina that included two nonconforming hotel buildings and a large asphalt and concrete parking area that served those uses and spanned most of the area between the two hotel buildings. See existing conditions plan, Rec. at 96, and excerpt below:



R. at 95.

To serve its redevelopment of the site, BBHWP proposed a new, smaller parking area (labeled below). The new parking area is to be located in an area of the site that was formerly covered by a hotel building and a small portion of the original parking area. The existing wharf parking would be improved to serve the wharf use that would remain on the site.

setback requirement by apparently construing the parking area not as a new structure, but as the reconstruction and/or relocation of the previously existing nonconforming parking lot (which by the time of the shoreland zoning approval had been removed for 14 months). Section 170-101.7(C)(2) provides that subject to certain restrictions (discussed below) a nonconforming structure⁶ may be relocated on its site. A. 140. Section 170-101.7(C)(3) provides that subject to certain similar restrictions, a nonconforming structure may be reconstructed if it is damaged or destroyed by over 50% of its value. A. 141. In its agent's submission letter dated October 28, 2021, BBHWP stated that "[a]ll principal and accessory structures proposed as part of the Project meet the 75-foot setback applicable in the LC/M District, are grandfathered from such setback, or are functionally water dependent uses as to which the 75-foot setback does not apply." R. 137. It further stated that, "[t]he Park project proposes to dramatically reduce the size of the existing parking area and move it back from the shoreline to the greatest practical extent." R. 138.

The Planning Board appears to have accepted BBHWP's argument, since it permitted the new parking lot to be located within the setback. The Planning Board came to that conclusion despite the new parking area sharing no identity in time, location, features or purposes with the parking area that had been removed. It must

⁶ "Nonconforming structure" is defined as "a structure which does not house or is used for a functionally water-dependent use, or which does not meet any one or more of the following dimensional requirements, setback, height, lot coverage, or in, on or over the water or wetland, but which is allowed solely because it was in lawful existence at the time this article or subsequent amendments took effect." LUO § 170-101.12, Rec. at 438.

be emphasized that by the time of the shoreland zoning application, BBHWP had long since razed and removed the hotel buildings and associated parking from the original development and was proposing a full redevelopment of the parcel with new uses. The relocation and expansion provisions in Section 170-101.7 refer to “any nonconforming structure” with the intent being that the structure following relocation or reconstruction is still principally the same in character as what came before it. That is not the case here, where the parking lot is smaller, shaped differently, serves a different use (park and marina vs. hotel), and is located on a significantly different part of the site. This is not a situation where an original parking lot is being rebuilt because it is failing, or where the structure served by the parking lot is being relocated and therefore the parking lot is being relocated to join it. Instead, this is a new development from scratch, which should afford the developer the opportunity to design the project in compliance with shoreland zoning standards in keeping with the purpose of shoreland zoning regulations.⁷

Because the intent of zoning is generally to abolish nonconforming structures and uses, “zoning provisions that restrict nonconformities are liberally construed, and zoning provisions that allow nonconformities are strictly construed.” *Wolfram v. Town of North Haven*, 2017 ME 114, ¶ 9, 163 A.3d 835, 839, citing *Day v. Town of Phippsburg*, 2015 ME 13, ¶ 15, 110 A.3d 645. If the

⁷ It is likely that BBHWP was not considering the shoreland zoning standards at all when it created the site plan for the development, since it did not file for shoreland zoning approval or reference the relevant standards when it originally submitted the project.

reconstruction and relocation allowances under shoreland zoning are instead to be applied so liberally that a completely new structure serving a completely new use may perpetuate the nonconformities possessed by its predecessors, these nonconformities would never be remedied over time.

Colin Clark, the shoreland zoning coordinator at Maine Department of Environmental Protection, repeatedly stated on the record that the proposed parking lot was a new structure and not the relocation or reconstruction of an existing nonconforming structure. In an email to the CEO dated October 13, 2021, he referred to the lot as a “new parking lot [which] would need to meet the setback.” R. 190. In a January 13, 2022 letter, Mr. Clark stated that “[a] parking lot was approved by the planning board as park (sic) of this project in an area that was once part of the prior hotel. The area for this new parking area is located within 75ft of the resource. A new parking lot would need to meet the setback for the district in which it is located.”⁸ He then reiterated in a June 23, 2022 email to a representative of BBHWP that “new parking areas must meet the setbacks for structures. With respect to the parking spaces proposed within the footprint of the former hotel, this can be viewed as new parking and subject to the setback requirements for parking areas in Section 15(G) of Chapter 1000.”⁹ R. 284. As the

⁸ The BOA referenced Clark’s January 13, 2022 letter in paragraph number 3 of its January 18, 2022 remand order and transmitted the Clark letter with the remand order. BBHWP has not included the referenced Clark letter in the Record, so it was included with Appellants’ Brief to the Superior Court as a Supplemental Record.

⁹ Chapter 1000 is the Maine DEP rule setting forth the minimum guidelines for municipal shoreland zoning ordinances. The analogous provision in Boothbay Harbor’s LUO is Section 170-101.10(G). R. 426.

entity which administers the minimum shoreland zoning guidelines and generally oversees municipal implementation and application of shoreland zoning standards, DEP's position that the parking area constitutes a new structure is credible and should be respected as it comes from the agency that drafted the standards.

2. The new parking lot must meet structure setback requirements.

Parking lots are treated separately from other structures under the shoreland zoning standards. Section 170-101.10(G) provides that “[p]arking areas shall meet the shoreline and tributary stream requirements for the district in which such areas are located.” A. 146. This requirement is written as an absolute; there is no exception listed for reconstructed or relocated nonconforming parking lots. It makes sense that parking lots would be required to be located outside of the setback in all circumstances, since they of course risk pollution if located close to the shore. But even if the standard nonconforming structure replacement or relocation provisions apply to parking lots, Section 170-101.7 would apply to require any reconstruction or replacement to be set back to the greatest practical extent.

3. The parking lot is not set back to the greatest practical extent.

Even if the proposed parking area appropriately counts as the reconstruction or relocation of a nonconforming parking area, the Planning Board did not properly grant approval because there was no evidence in the record that the parking lot was being set back to the greatest practical extent according to the narrow standards

that guide that determination. Section 170-101.7(C)(2)(b) provides that, “[i]n determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.” A. 140. Even after two remands from the Board of Appeals and one from the Court, the Planning Board still has not put forward credible facts from the record that support its conclusion that this standard was met.

The Planning Board’s supplemental findings following remand (A. 61) note the size of the lot (just under an acre) and constraints imposed by the water and sideline setbacks, as well as other structures. The splash pad (one of the structures referenced) should not have been considered, since it is a new structure. The standard is clearly meant to work around preexisting structures. Moreover, in the originally approved site plan, the splash pad was smaller and located further toward the water, demonstrating that BBHWP had made a deliberate choice to take up more of the land than it needed. Importantly, the Board never inquired, nor did the applicant state any reasons why site elements couldn’t be shifted around on the lot to permit the parking area to be located outside the setback. Having started from scratch, BBHWP could have designed the park with fewer walkways and a smaller

splash pad (and consequently less impervious surface), therefore permitting more opportunities to locate the parking upland. These opportunities simply weren't explored.

The applicant's submissions do not provide substantial evidence supporting the Planning Board's findings. In a letter dated October 28, 2021 and submitted with the shoreland zoning application, BBHWP's agent stated in a conclusory fashion that, "[t]he Park project proposes to dramatically reduce the size of the existing parking area and move it back from the shoreline to the greatest practical extent." R. 138. He did not cite any of the impediments noted by the Planning Board as the reason why it could not be set wholly outside of the setback.

Similarly, a letter from BBHWP's attorney that was submitted in support of the shoreland zoning application failed to establish facts supporting the greatest practical extent factors. R. 170. The attorney mentions the "Hodgdon House," and that the lot is small and "not very deep." However, a quick glance at the plan demonstrates that there are no impediments to locating the parking area partially or even wholly outside of the setback, to include the area between the splash pad and Atlantic Avenue, and even an existing parking area across Atlantic Avenue that is owned by BBHWP. R. 340. The graphic on Page 23 demonstrates the availability of other suitable areas both within the development area and within an existing parking area across the street.

There is no mention in the record that locating the parking area behind the setback would cause erosion. BBHWP's attorney stated that the land "slopes gently from Atlantic Avenue down to the harbor." R. 328. The grading and erosion control plan, R. 145, further demonstrates this. It is apparent from the face of the site plan that the size and existence of other structures were not true impediments to construction for the purposes of Section 170-101.7(2)(b)(2), and the applicant offered no testimony or evidence why alternative designs could not allow the setback to be met. BBHWP had a mostly clean site to work with. If the Development is truly a park as opposed to a commercial development, it should require minimal structural development. A simple look at the site plan shows plenty of room for the parking area on the parcel either behind or straddling the shoreline setback line, including an existing and available parking area across Atlantic Avenue. There was no evidence in the record that these areas were unavailable or unable to be used, despite multiple opportunities to enter that evidence in contradiction to evidence and argument offered by Appellants.

4. The Planning Board erred in classifying the Development as an institutional use.

Apart from the parking lot issue which ultimately resulted in the Board of Appeals' vacation of BBHWP's approval, the Planning Board committed other errors of fact and law that independently justify that result. One of these is its classification of the Development as an institutional use rather than as a recreation

facility. A. 50. This definition is critical, as “public and private recreational facilities” in the shoreland zone require a 40,000 square foot minimum lot size, whereas “governmental, institutional, commercial or industrial uses adjacent to tidal areas zoned for commercial fisheries and maritime activities” require no minimum lot area. § 170-101.10(A)(1). A. 143. The court reviews *de novo* questions regarding the proper characterization of proposed uses under a land use ordinance. *Jordan v. City of Ellsworth*, 2003 ME 82, ¶ 9, 828 A.2d 768.¹⁰ The Planning Board’s characterization of the type of use as a “park and marina” (A. 50) is a finding of fact that is afforded deference, but how that characterization best fits in the various use definitions is a question of law to be decided by this Court. *Id.*

The shoreland zoning standards under the LUO define a “recreational facility” as “[a] place designed and equipped for the conduct of sports, leisure-time activities, and other customary and usual recreational activities, excluding boat-launching facilities.” A. 159. The table at § 170-101.10(A)(1) contains the further modifier that the 40,000 minimum lot size pertains to *public or private* recreational facilities, meaning that a facility such as a park or waterpark would still be subject to the 40,000 square foot minimum whether it is publicly or privately owned, or whether or not it is open to the general public. A. 143. The description of the uses to which the 40,000 minimum lot size applies therefore squarely covers a privately

¹⁰ The Superior Court in its December 5, 2025 order erred by deferring to the Planning Board’s classification of the Development, providing no explanation regarding its concurrence.

held but open-to-the-public park which contains a splash pad and dock for recreational use and green areas for picnicking, sports, and other leisure-time activities. The Development is best classified as a “recreational facility” and does not meet the applicable 40,000 minimum lot size.

By contrast, the proposal does not meet the definition of an institutional use. That term is defined under the shoreland zoning standards as, “[a] nonprofit or quasipublic use, or institution, such as a church, library, public or private school, hospital or municipally owned or operated building, structure or land used for public purposes.” A. 158. While the Development is held by a nonprofit corporation, it is not similar to any of the uses cited, or at least it is much more similar to the uses referenced in the definition of a “recreational facility.” The Planning Board seems to have focused on the “land used for public purposes” part of the “institutional” definition, but in context, it is only “*municipally* owned or operated” “land used for public purposes” that qualifies as institutional. The Planning Board’s categorization also negates the more specific language in the definition of “recreational facility” that would bring the use under that header if the “public purposes” of the land are for recreation. The shoreland zoning standards are to be interpreted so that the more restrictive of two conflicting provisions takes precedence. LUO § 170-101.2, A. 139. The categorization of the Development as an institutional use, especially given the active recreational components of the splash pad and recreational marine facilities, was plainly incorrect as a matter of

law.

The Planning Board also erred in failing to apply Section 170-101.10(A)(5) to the Development. That section provides that “[if] more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, or principal structure, or use.” This requires the Development to be parsed out and the standards applied to each principal structure or use. The Planning Board never made this analysis. Its failure to take into account the total lot area required when tallying up the applicable requirements for the recreational “park” area, the commercial and recreational marinas, the grocery store, the dining pavilion, and the apartments that are each shown on the plan resulted in the improper granting of the approval under Section 170-101.10(A)(1) and (5). For even if the park and splash pad were considered an institutional use, the other uses taken individually do require more than 40,000 square feet of lot area. Because the lot does not contain that minimum area, the Planning Board should have denied the application.

5. The Development does not comply with the 20% lot coverage cap.

The shoreland zoning standards provide that, “[t]he total footprint area of all structures, parking lots and other non-vegetated surfaces, within the Shoreland Zone shall not exceed 20% of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed.” 170-101.10(B)(4); A.

144. (emphasis added). The Development as depicted in BBHWP’s site plan calls for lot coverage of 29.47%. The Doyles disputed this measurement as being too low during the Planning Board proceedings (see, e.g. R. 47) and presented an independent analysis by Ransom Engineering that the coverage would be 37%. For the purposes of argument, it is conceded by all parties that the lot coverage for the Development certainly exceeds the 20% lot coverage cap set forth in Section 170-101.10(B)(4). BBHWP asserted in its application, and the Planning Board appears to have agreed, that the lot coverage could be exceeded because the lot coverage under the previous Cap’n Fish’s Motel development exceeded the 20% cap. BBHWP made much of the fact that the Development would reduce the prior lot coverage, but that is not the standard – the standard is one of strict compliance with the coverage cap unless a particular structure’s lot coverage is grandfathered under nonconformity provisions.

It is the purpose of the Town’s shoreland zoning to “promote land use conformities.” LUO § 170-101.7(A). R. 420. The objective of the Town’s shoreland zoning regulations, as with all zoning, is “to abolish nonconformities as speedily as justice will permit.” *Day v. Town of Phippsburg*, 2015 ME 13, ¶ 15, 110 A.3d 656, 649. A grandfather clause exists only to allow the “limited continuance of nonconformities” to avoid a constitutional takings claim. Zoning provisions that allow nonconformities are strictly interpreted to limit their application. *Id.* Thus, the Town’s grandfathering (nonconformance) provisions are

intended to ensure, in this case, that the owner of the hotel and marina could maintain those buildings and those uses. They do not exist to allow a new developer to completely redevelop a site with new uses while continuing to violate the Town's shoreland zoning requirements. It is for precisely this reason that the shoreland zoning standards look for fair opportunities to eliminate nonconformities. For example, when a nonconforming structure is placed on a new foundation or reconstructed, it is required to be removed from the setback to the greatest practical extent.

In this case, BBHWP asserted that the excessive lot coverage of the prior development was a “legally nonconforming condition” that was allowed to be retained in the new development. But there is no such concept as a “nonconforming condition.” Nonconformities fall under the categories of nonconforming use, nonconforming structure, or nonconforming lot. See, generally, LUO § 170-101.7, A. 140-142. The definition of “nonconforming structure” is “[a] structure which...does not meet any one or more of the following dimensional requirements, setback, height, lot coverage, or in, on or over the water or wetland, but which is allowed solely because it was in lawful existence at the time this article or subsequent amendments took effect.” A. 186 (emphasis added). Grandfathering pertaining to lot coverage is therefore tied specifically to each preexisting structure, not to the use or to the lot. Section 170-101.10(B)(4) makes this clear when it states that the 20% lot coverage limit is “including land area

previously developed.” This means that land area attributable to the existing structures, including the Hodgdon House and “pavilion,” would first be deducted from the 20%, allowing only the remainder to be used for the development. Thus it was incorrect for the Planning Board to tally and grandfather the total lot coverage applicable to the prior development’s hotel buildings and parking lots and other structures, when those structures were being removed and not replaced. If this incorrect application of the shoreland zoning standards is upheld, it would have serious implications for Maine’s environment. Lot coverage would never be reduced over time because successor developments could each take advantage of the previous development’s coverage regardless of the nature or scope of the new development or the fact that the structures that created the coverage have long since disappeared.

The Planning Board’s allowance of the continued nonconforming lot coverage is clearly contradictory to the language of the LUO and to the purposes of shoreland zoning. The approval cannot be sustained. The Court cannot allow any lot coverage attributable to structures that no longer remain to be used by this development. This includes at the very least the lot coverage attributable to the hotel buildings, but also (per the above argument) the former parking areas. There is not enough information in the record to determine the lot coverage of the “existing development” that will remain, but if that coverage exceeds 20% already, the new structural development proposed by BBHWP cannot be permitted.

6. The application lacked information necessary to determine compliance.

The Doyles have continuously noted, to no effect, that the plans presented by BBHWP are insufficient to demonstrate compliance with the shoreland zoning standards, which must result in a finding that the Planning Board's decision was not based on substantial evidence in the record. First, the submitted plans show the alleged location of the 75' setback line as a clean, curved line that is plainly a "best fit" measurement from the shoreline and does not follow its natural contours. *See* A. 47 and the image on Page 23 of this Brief. A submitted site plan is required under the LUO to include "[t]he location of the Shoreland Zone and the seventy-five-foot or hundred-foot Shoreland Zone setback." § 170-66, A. 118. Without the precise 75' measurement having been shown on the plans, it was impossible for the Planning Board to rely on substantial evidence in the record when evaluating whether the structures proposed in the Development met the setback requirement, or (to the extent that a structure was nonconforming) met the setback to the greatest practical extent. This is an inherent deficiency in the application materials. The Planning Board should have found the application incomplete and not proceeded to make findings. Having failed to do that, its findings must be found not to have been based upon substantial evidence in the record.

BBHWP's application also did not include traffic estimates associated with the proposed uses, or estimated parking requirements. Section 170-101.10(G)(2) requires that "[p]arking areas shall be adequately sized for the proposed use."

There is no evidence in the record as to the amount of parking needed for the proposed development; therefore the Planning Board lacked substantial evidence to determine whether the parking areas, particularly the new one to be located within the shoreline setback, needed to be the size proposed. The Planning Board's initial findings state in a conclusory fashion that the parking standard is "met, based on the plans submitted." R. 105; A. 51. Despite having been specifically asked to do so by the BOA on remand, the Planning Board still failed to address the size of the parking lots or the amount of parking required, finding again just that the parking standard was met. R. 296; A. 55. Again, it is impossible to understand how the Planning Board could have found the parking lots to be "adequately sized" when it had no competent evidence as to the amount of parking needed. This is a problem in the clarity and thoroughness of the findings but also in the quality of evidence presented to the Planning Board. BBHWP had an obligation in this application to provide evidence demonstrating substantial compliance with the shoreland zoning standards, including adequacy of parking. It failed to do so, and the Planning Board's conclusory finding based on the necessity of such parking cannot be sustained.

V. CONCLUSION

After a 2.5-year delay in returning to the Planning Board after the Superior Court's remand, BBHWP's proposed development is still in the early stages of review. There has been no final determination under Chapter 170 of the Town's

Land Use Ordinance, because BBHWP has not received the site plan and shoreland zoning approvals it needs for its project. The shoreland zoning approval that gave rise to this appeal has expired, rendering the appeal and all prior nonconforming allowances moot. The Law Court cannot interfere with its established precedent by considering this appeal of a non-final land use approval, and must vacate the Superior Court's order.

If this Court is to nevertheless consider the merits of the appeal, it must vacate the Planning Board's approval because BBHWP's application improperly perpetuates multiple violations of the shoreland zoning standards, allowing a new structure within the shoreland setback, new uses on a lot that doesn't meet the minimum lot size requirements, and new structures that push lot coverage (and its consequent effects on stormwater) well over the ordinance's restrictions. To affirm the approval would erode the purpose of shoreland zoning: to eliminate environmentally unsound development conditions when given the opportunity, and to do so for a development billing itself as an "institutional" park would be particularly ironic.

Dated at Augusta, Maine this 24th day of April, 2026.

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CERTIFICATE OF SERVICE

I, Kristin M. Collins, Attorney for Appellants in the above matter, hereby certify that I have served the parties to this appeal by emailing a copy of this Brief in pdf format to the following counsel:

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