

**TOWN OF WELLS, MAINE**

**ZONING BOARD OF APPEALS**

**LEGAL NOTICE**

MEETING AGENDA

MONDAY, JUNE 22, 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.

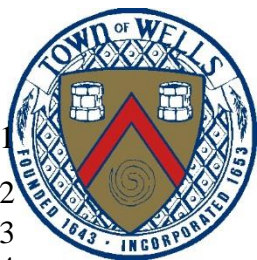
**MINUTES**

**I. MARCH 2, 2020 DRAFT MEETING MINUTES**

Documents:

[ZBA MIN 03-02-2020.PDF](#)

**ADJOURN**



# TOWN OF WELLS, MAINE ZONING BOARD OF APPEALS

208 Sanford Road Wells, Maine 04090

Website: [www@wellstown.org](http://www@wellstown.org)

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## 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)**

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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**

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171 **MOTION**

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

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174

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176 RESPECTFULLY SUBMITTED:

DATE:

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178

179

180 \_\_\_\_\_  
Dr. Cynthia Davidson, Meeting Recorder

181

182 ACCEPTED BY:

DATE:

183

184

185

186 \_\_\_\_\_  
Robert Lavoie, Chairman

187