


**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: July 14, 2021

TO: ZONING BOARD OF ADJUSTMENT (BOA)

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY

RE: APPEAL OF DECISION OF PORTSMOUTH PLANNING BOARD
105 BARTLETT STREET



By document certified on May 14, 2021, Attorney Duncan MacCallum, on behalf of numerous petitioners, filed a pleading entitled "Appeal of Decision of Portsmouth Planning Board" with the Zoning Board of Adjustment of the City (BOA). The Appeal concerns the application of Clipper Traders LLC, Portsmouth Lumber and Hardware, LLC, and Iron Horse Properties LLC, regarding property located at 105 Bartlett Street in the City. The appeal is said to be filed pursuant to RSA 676:5 III. That is a statute infrequently used in Portsmouth, which authorizes appeals to the BOA of "any decision or determination [by the Planning Board] which is based upon the terms of the Zoning Ordinance, or upon any construction, interpretation or application of the Zoning Ordinance which would have been appealable to the board of adjustment if it had been made by the administrative officer ...", RSA 676:5 III. Attorney Michael Ramsdell subsequently filed a timely Motion to Intervene and Dismiss the Appeal.

This memorandum is written on the recommendation of Planning Director Juliet Walker to provide procedural guidance to the BOA in handling this appeal. This memo will not address the merits of the appeal, which are within the province of the BOA to decide.

The key to the procedures to be followed by the BOA lies in the quotation from RSA 676:5 III written above. Specifically, the authorization for the Board of Adjustment to hear this Planning Board Appeal is linked by the statute to appeals "made by the administrative officer." Appeals to the BOA of decisions made by administrative officers of the City are relatively common. I recently had the opportunity to review in detail a transcript of a hearing by the BOA of such an appeal in the case of *James G. Boyle, Trustee of the 150 Greenleaf Avenue Realty Trust*. It was clear from a review of that transcript that the BOA knows how to deal with an appeal of an administrative officer. In fact, on appeal to Superior Court, no issue was raised by any party or the Court concerning the procedural steps taken by the BOA in the Boyle case.

Therefore, my procedural recommendation to the BOA in the present case is that it treat this appeal from the Planning Board in exactly the manner in which it would treat an appeal from a City administrative officer, see RSA 676:5 I.

In general, this means that the BOA should commence by hearing Attorney MacCallum on behalf of the appealing parties, followed by a response by Attorney Ramsdell on behalf of the intervenors. Opportunity should also be provided to any members of the public who wish to speak to the appeal. The Planning Department will be available to provide support to the BOA at every step of the proceeding and should be relied upon by the members of the BOA for that purpose whenever necessary.

cc: Duncan MacCallum, Esq.
Michael Ramsdell, Esq.