



City of Biddeford
Zoning Board of Appeals

July 13, 2026 at 5:30 PM
City Hall Council Chambers & Teams

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1. Approval of Minutes
 - 1.a May 4, 2026
2. Pledge of Allegiance
3. Old Business/Tabled Items
4. New Business
 - 4.a Zoning Board of Appeals Ordinance Review
5. Other Business
6. Adjourn

CITY OF BIDDEFORD, MAINE

ZONING BOARD OF APPEALS

Monday, May 4, 2026 at 6:00 p.m.

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1 (PLEASE NOTE: The following transcript of the
2 requested audio was prepared from the recording
3 provided to the best of my skill and ability based
4 on the quality of the recording provided. I was
5 not present at the proceeding and have transcribed
6 the proceeding after the fact.)

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8 (Audio transcription begins at 00:12:05.)

9 MR. ZAFAR: -- six agenda items.

10 MR. MORIN: Well, I thought that you could
11 probably just go through your agenda items, take
12 them in that order. The timeliness of appeal, I
13 think, everyone can see from the packet submitted
14 that it was within 30 days. So I think the Board
15 can -- we can -- you know, you can make these
16 findings later on; but if we could --

17 MR. ZAFAR: Yep.

18 MR. MORIN: -- if we could, by consensus, move
19 on from that --

20 MR. ZAFAR: Okay.

21 MR. MORIN: Notices. I have no way of knowing
22 if the required notices -- maybe the Court Officer
23 can confirm that the notices were all properly
24 sent.

25 MR. FECTEAU: Yes, all the same notices as the

1 planning board applications for these two projects
2 went out.

3 MR. MORIN: The summary of the appeals. In
4 our package it shows that we have administrative
5 appeals from two decisions of the code enforcement
6 officer, one on the denial of the tree cutting
7 permit and one of the -- on the denial of the
8 demolition permit. I believe everyone's in
9 agreement on that --

10 MR. ZAFAR: Yep.

11 MR. MORIN: -- (inaudible).

12 Jurisdiction. It's my opinion you have
13 jurisdiction because it's a -- an appeal set forth
14 right in the ordinance from an adverse decision of
15 the code enforcement officer. And the type of
16 review to be conducted under the ordinance is de
17 novo review because it's coming up from the code
18 enforcement officer's denial of the permit.

19 Conflict of interest or bias. That's
20 something the Board has to address themselves. I
21 know that one -- one member already recused.

22 MR. ZAFAR: Yep.

23 MR. MORIN: And then standing. You'll have to
24 make a finding that they have standing, but it's
25 pretty evident based on the fact that they are

1 the -- right in the ordinance they're the aggrieved
2 party.

3 And in terms of the application completeness
4 and the fee submitted, again, the court officer can
5 confirm all of that.

6 MR. ZAFAR: Roby, can you confirm that
7 application completeness?

8 MR. FECTEAU: Application fees are completed.

9 MR. ZAFAR: Okay. All right. And we find
10 that they have standing.

11 So the next session will be -- or, sorry, next
12 agenda item will be four. And, so, the way that we
13 will do this is similar to what we did before in
14 the ZBA, which is we will allow interested parties
15 to make their claim and provide their evidence.
16 And then at the conclusion of their presentation
17 and/or evidence, we will give the opportunity to
18 allow the opposing party to speak their
19 presentation as well. So we'll go one by one. So
20 we'll do 4A first, and then once that session is
21 completed, we'll move on to 4B.

22 And, so, I would like to begin with opening up
23 Agenda Item No. 4, which is new business, and 4A,
24 which is the University of New England's
25 Administrative Appeal of the Code Enforcement

1 Officer's Denial of the Tree Cutting Application.

2 And, so, this portion will start with UNE.

3 MR. MAZER: Good evening, Acting Chair Zafar,
4 Members of the Board. My name is Brandon Mazer,
5 I'm an attorney at Perkins Thompson here
6 representing University of New England on both of
7 these appeals. I'm joined with -- tonight by my
8 associate Emily Arvizu. I also have Ron Schneider
9 here as well as Al Thibeault on behalf of UNE that
10 may be able to answer some questions that this
11 board has through some of the -- the process of the
12 original applications that are leading to -- to
13 this appeal.

14 As a little bit of preliminary housekeeping,
15 as part of the record, I do want to submit just the
16 original tree cutting application. It wasn't
17 included as part of our appeal. It's -- I'm not
18 going to go through it, it speaks for itself; but I
19 do just want to make sure, in case we need to do a
20 further appeal, that this is part of the full
21 record here this evening. So I've got that for
22 either Attorney Morin or the Board itself to
23 include in the record.

24 (Whereupon Attorney Mazer hands out papers.)

25 MR. CENTER: Actually, Roby tends to act as

1 the liaison --

2 MR. MORIN: Okay.

3 MR. CENTER: -- even though he's -- his
4 decision is being appealed.

5 MR. MORIN: Okay.

6 MR. CENTER: And no objection to including
7 that. It should be in. Thank you.

8 MR. MAZER: So I want to start this evening
9 by -- by saying that this is a relatively
10 straightforward appeal. We have applied for a tree
11 cutting permit under the approvals from the
12 original pier application from many months ago. So
13 I think as a -- as a, sort of, way of getting
14 everyone grounded, I'd like to go through the
15 timeline of, sort of, the relevant events to get us
16 to where we are today.

17 So back on August 6th, 2025, the planning
18 board voted on and approved Case No. 2024.35 UNE
19 Site Plan and Shoreland Zoning Review Proposed
20 Construction of a Marine Science Center Research
21 Pier. Then on September 4th, 2025, the city
22 planner issued a notice of decision of planning
23 board's approval. Then on January 20th, 2026, the
24 City adopted the moratorium that has caused the
25 denial. March 2nd, 2026, the University applied

1 for a tree cutting permit. April 6th, the CEO
2 issued a denial of that permit of that application.
3 And then April 14th, we filed the appeal.

4 So the -- the denial itself, and I want to be
5 clear, only states that, After consulting with the
6 City Solicitor, I -- meaning the CEO -- have
7 determined that a permit can't be issued based on
8 the language in the resolution. And the resolution
9 meaning the moratorium.

10 So my arguments this evening are only going to
11 be focused on the denial based on the moratorium.
12 There are some memos from the city solicitor that
13 go into other issues. I am happy to address those,
14 and we -- we would respectfully ask that I have the
15 opportunity to do so in rebuttal; but the reason
16 for the denial in the CEO's letter was the
17 moratorium.

18 So looking at the moratorium, that was passed
19 January 20th, 2026, but does not apply to this
20 permit application. Initial -- as an initial
21 matter the moratorium does not apply retroactively.
22 State Statute 30-A M.R.S. Section 3007(7) provides
23 that, quote, A municipality may not enforce or
24 apply a land use ordinance with retroactive effect
25 unless the ordinance includes a provision that

1 expressly states it has retroactive application.

2 The moratorium here does not expressly state
3 that it applies retroactively. And, so, it does
4 not apply retroactively, and you can't read
5 retroactivity into the ordinance. The Pier
6 Project, again, was approved on August 6th, over
7 five months before the City adopted the moratorium.

8 So if you apply the moratorium, which we're
9 not suggesting you do, but the application would
10 then -- the application of the moratorium would
11 constitute a nullification of the planning board's
12 approval of the Pier Project in contradiction of
13 state law. Maine law provides that, quote, A
14 municipality may not nullify or amend a municipal
15 land use permit by a subsequent enactment,
16 amendment, or repeal of a local ordinance after a
17 period of 45 days has passed after the permit has
18 received its lawful final approval; and, if
19 required, a public hearing was held on the permit.

20 Again, that's 30-A M.R.S. Section 3007(6).
21 The final approval reflected in the notice of
22 decision is valid for one year, expiring on
23 August 6th, 2026, and requires UNE to initiate the
24 authorized use within one year of approval,
25 otherwise the permit then becomes void. The

1 planning board specifically approved the work
2 falling within the tree cutting application and
3 allowed the University to pull appropriate permits
4 at any time within one year to begin work on the
5 Pier Project.

6 The planning board staff report dated July 28,
7 2025, and included as Exhibit D as our -- part of
8 our initial appeal packet, specifically notes that
9 49 trees are being removed with 21 of those within
10 the 50-foot HAT setback.

11 And as a side note, while irrelevant to this
12 appeal, I want to note there is a revegetation plan
13 associated with this. This is just one part of the
14 larger approval that we received from the planning
15 board. And the cost estimate that has been
16 questioned was purposely on the high side by the
17 University to account for ensuring there was enough
18 performance guarantee for the City.

19 So the current moratorium is currently in
20 effect until July 19th, 2026, and arguably can be
21 extended. If the moratorium applies to the Pier
22 Project, and the tree cutting permit more
23 specifically, it effectively voids the planning
24 board's decision by leaving UNE without an
25 opportunity to act on the planning board's approval

1 within the one-year approval period.

2 To the extent that the City disagreed with the
3 planning board's approval back last fall, the City
4 should have appealed that approval. The ordinance
5 provides a 30-day appeal period in which the City
6 could have appealed the planning board's approval
7 of the Pier Project. The City did not do so. And
8 at this point the CEO's role is more ministerial to
9 approve the permits under the approval of the
10 planning board, not to step in the place of the
11 planning board.

12 Again, I'm not going to address the other
13 arguments the city solicitor has raised, including
14 a resolution from November 6th, 2025, as that is
15 not a moratorium. And I'm also not -- but I'm
16 happy to address the current appeal to -- under the
17 SR -- Saco River Corridor Commission. Again, those
18 two issues were not cited in the denial. The only
19 thing before this board is the denial based on the
20 moratorium.

21 So in summary, and I'm going to try to be
22 brief because -- and I'm happy to answer any
23 questions of what's in our -- with the exhibits and
24 what's in our -- but I've been sitting where you
25 are in the past and want to be respectful of your

1 time. But in summary we're requesting that the
2 board vacate the denial of the tree cutting permit
3 application, remand the application to Director
4 Fecteau with instructions to approve it. And,
5 again, we're happy to answer any questions
6 regarding the tree cutting permit denial.

7 Thank you for your time.

8 MR. ZAFAR: Thank you.

9 Now we'll hear from -- oh, sorry. Is there
10 anyone from UNE that -- or your team that's going
11 to be speaking beyond this?

12 MR. MAZER: Not unless you have further
13 questions about --

14 MR. ZAFAR: No, not at this time.

15 So we'll hear now from the City regarding the
16 denial of the permit.

17 MR. CENTER: (Inaudible) start.

18 MR. FECTEAU: Thank you.

19 So as you heard from testimony, the
20 applications did come to me. The first one on the
21 agenda is the tree cutting application. Before I
22 even looked into the conformance of city ordinance,
23 the front-and-center piece for me was in
24 determining if the moratorium applied. So I
25 consulted with the city attorney, and after he and

1 I switched a couple different phone calls and he
2 wrote the memo, I determined that based on -- and I
3 concur that based on the language in the moratorium
4 that the city council approved, my hands were tied
5 and I had to deny the application.

6 At this point I will defer any of the
7 rationale pieces on why the city attorney
8 determined it that way; but I do see it the same as
9 Harry.

10 MR. CENTER: Any questions for Roby so far?

11 MR. ZAFAR: None from me.

12 Anyone from the Board?

13 MR. CENTER: Okay. Well, good evening,
14 Members of the Zoning Board. I know that you know
15 me, but for the record, my name is Harry Center.
16 I'm the City Attorney, and I advised Code
17 Enforcement Officer Fecteau on this matter.
18 Attorney Brad Morin from Sanford firm of Bourque
19 Causey Clegg & Morin agreed to represent you. He's
20 independently advising you on any issues or
21 questions that you have. I can't advise you
22 because I'm advocating for Roby.

23 I'll be a little longer, but I think it's
24 important for the record and to help you make your
25 decision. This is what's called a de novo hearing.

1 It means we start fresh. This is my argument to
2 you; but it's, sort of, like you are now deciding
3 whether or not this permit should be issued based
4 upon this moratorium being in place.

5 So this is what I advised Roby. This is how
6 Roby did it, and this is how I would argue you --
7 the January 20th, 2026 moratorium was adopted
8 validly by the Biddeford City Council pursuant to
9 Maine law. Maine statutes on land use regulations
10 expressly provides under section 30-A -- title
11 30-A, 4356 Moratoria, any moratorium adopted by a
12 municipality on the processing or issuance of
13 permits may be -- may be adopted if the following
14 are met. The application of the existing
15 comprehensive plans, land use ordinances or
16 regulations, or other applicable laws, if any, are
17 inadequate to prevent serious public harm from
18 residential, commercial, or industrial development
19 in the affected area. With respect to the
20 University, this isn't just other issues.

21 Now, I have some exhibits for you to go
22 through this. One, two, three, four, I think five
23 down there. And I brought enough -- four -- four
24 for UNE. So before we get to the exhibits, I just
25 want to cite the leading main case on a moratorium

1 because that's what the Biddeford City Council did,
2 they acted lawfully and pursuant to state law. In
3 the leading case, it was an appeal by a mobile home
4 developer in the town of Gray where they slapped a
5 moratorium on because the mobile home development
6 was exceeding the SOR (phonetic) capacity and the
7 zoning regulations and causing problems in
8 neighborhoods, and they didn't have the sufficient
9 ordinances to address it. And the Maine Supreme
10 Court says, absent evidence to the contrary, a
11 moratorium, like any other municipal ordinance, is
12 presumed valid.

13 A court is not going to substitute its
14 judgment for the Biddeford City Council. The
15 ordinance passed by that body is challenged by a
16 party showing the complete absence of facts to
17 justify the moratorium -- absence of facts for this
18 moratorium. You only can consider what's in the
19 record; but if anybody thinks that the ordinances
20 and the master plan and the Saco River prior
21 process was clear, it -- you can't because it was
22 just a difficult process to follow.

23 In response to that -- passing a moratorium,
24 the Biddeford City Council created an ad hoc
25 Institutional Zone Committee. They've met at least

1 11 times, tonight may be the 12th time. Their
2 entire basis of work is trying to redo the land use
3 regulations for the institutional zone because they
4 are not clear in any way, shape, or form. And
5 that's what we see here.

6 So starting off with the City's first exhibit,
7 the resolution, it is relevant. I am not arguing
8 to you that it is the moratorium. The moratorium
9 was passed in November -- I mean, in January; but
10 in November -- I mean, keep in mind it was the
11 prior administration, but it's the city council,
12 the City of Biddeford. They passed this two-page
13 document whereas the Saco River permit had a
14 250-foot buffer, whereas there are questions
15 arisen.

16 Now, I never interfere as city attorney with
17 the municipal government process, and I wasn't
18 about to tell the former mayor of the council,
19 look, don't bother to ask the attorney general to
20 weigh in. The attorney general's not the
21 arbitrator of the State's disputes. The attorney
22 general's a lawyer for governmental, for state
23 agencies, and for the State of Maine. And they
24 weren't going to -- they're going to represent the
25 Saco River Corridor.

1 But in November, the public and the University
2 of New England, which occupies that institutional
3 zone, were placed on notice that pending
4 clarification from the attorney general's office
5 the City of Biddeford will withhold further
6 permitting or authorization related to the UNE pier
7 to ensure full compliance with applicable state
8 law. And that demonstrates the valid good-faith
9 intention of the City of Biddeford.

10 This is not an anti-UNE moratorium. It's not
11 an anti-pier moratorium. The current moratorium in
12 place does not retroactively reduce or eliminate or
13 vacate the approvals that were referenced that
14 happened in August of 2025. What the moratorium
15 done -- does is it precludes, while the moratorium
16 is in place, the issuance of any building permits
17 in that zone.

18 And why did the City do that? Did they do
19 that because they don't like the University or they
20 don't want them to have the pier? No. The City
21 did that because after the planning board reviewed
22 the pier and approved it pursuant solely to site
23 plan review and the Shoreland Zoning Ordinance, the
24 planning board never considered either the
25 University of New England's master plan, and the

1 Saco River approval made no reference to the
2 250-foot zone buffer, no development zone, however
3 it's referenced.

4 Exhibit 2 is the minutes from the Saco River
5 Corridor's -- no, that's their order. That's
6 their -- no. Exhibit 2, actually, is an excerpt
7 from the master plan. I must have -- in my
8 compilation of this -- but in the University's
9 master plan, 2001, 2003, they specifically
10 reference a 250-foot something. The City of
11 Biddeford Institutional Zone creates no-build zones
12 within the UNE campus and requires the creation of
13 a master plan incorporating those standards. So
14 there's an institutional zone, there's a master
15 plan, and the planning board never considered it.
16 So based upon that, an ad hoc committee was
17 established to try and clarify all these rules.

18 Could that committee pass something that could
19 retroactively affect that planning board approval?
20 That's not the issue here tonight. The issue
21 tonight is currently there is in place a no -- a
22 moratorium on any building permits in the
23 institutional zone.

24 Also enclosed are the Saco River Corridor
25 minutes where they specifically reference and

1 create a 250-foot no-build zone. There is the
2 order from the Saco River Corridor Commission
3 approving three or two 50-foot dormitories where
4 the then University of New England president says
5 we're never going to build within the 250 zone
6 because it is so important to the environment.

7 Moving forward, the City's zoning map, which
8 is included as Exhibit 5, references a no-build
9 zone. It's tough to see, the print's small; but it
10 says, conservation restrictions preclude the
11 construction of buildings or structures within
12 the -- the reference zone. Planning board never
13 even considered that, and the Biddeford City
14 Council said, we've got to put a pause on all
15 development. So the city council didn't say this
16 has got to go back to the planning board or we've
17 got to figure out how to appeal it.

18 The city council did ask the Superior Court,
19 and that's still pending whether or not the Saco
20 River was correct in saying, oh, we've reviewed it,
21 but we didn't really miss it on purpose and it
22 might not be applicable, and they double-talked.
23 And they wrote a letter to Roby dated October 20th
24 of 2025, and I appealed that within 30 days to the
25 Superior Court. And that's why we're appealing to

1 the Maine Supreme Court. The decision to dismiss
2 the appeal did not specifically address that
3 October 20, 2025 letter. I wasn't trying to appeal
4 a Saco River permit that happened a year and a half
5 before, which nobody from the City appealed that;
6 but these are all the good-faith reasons for why a
7 moratorium was put in place.

8 Exhibit 6 is a copy of the City's zoning
9 ordinance. Exhibit B, it's convoluted. I know the
10 IZ committee is working on this; but you go to a
11 section towards the end, Section P, restricted
12 development areas, there are areas identified as
13 no-build zones on the map dated September 6, 2001,
14 that's the map I just referenced. No new buildings
15 shall be constructed except for a Hills Beach
16 bypass road.

17 So we've got this in our current city
18 ordinances. It's never even been addressed. And
19 to the extent that it's not clear, there's a
20 current committee that's trying to establish
21 recommendations to clarify all this. Hence, the
22 need for a moratorium.

23 Our last exhibit is a November 10th, 2022,
24 University of New England Campus Master Plan Map
25 that specifically references 250-foot SRCC setback.

1 So, folks, there's something there. And in good
2 faith the City said, we need to put a pause and
3 review this. What happens during the pause? They
4 applied for their permit.

5 They argue in their papers, if you saw it,
6 that Roby's issuing the permit is just a
7 ministerial act. Now, a ministerial act is a
8 governmental function that requires no
9 deliberation, no review. I know they -- it's a
10 legal argument, they weren't insulting him; but
11 he's the code officer, he's not just signing off.
12 A ministerial act would be after the planning board
13 voted to approve it, the city planner refusing to
14 sign it. No, you got to sign it. They had a vote.
15 It was approved.

16 There's a process for Roby when you come to
17 him with a \$200,000 project to cut trees within 250
18 feet of the river, and he's got to review that and
19 determine whether or not to issue it. Well, he
20 denied it because there's a current moratorium
21 place -- moratorium in place. Would he be denying
22 it if there was no moratorium? We don't know; but
23 it was a valid denial.

24 So in summary, that's our argument. Those
25 other issues are absolutely relevant to the basis

1 for the moratorium. I'm not asking you as the ZBA
2 to say is there a 250-foot zone? That's not your
3 job; but I am asking you to consider and accept
4 that the Biddeford City Council said, we need a
5 moratorium on development in the institutional
6 zone. The Institutional Ad Hoc Committee has met
7 at least 11 times, they've discussed this 250-foot
8 buffer at length, they've discussed the master plan
9 and how that interacts with the zoning ordinance,
10 and it's all been done in good faith. And right
11 now there's a pause on the issuance of moratoriums.
12 That's why I advised Roby to deny the permit right
13 now within the moratorium period, and that's why he
14 did it.

15 So that's a summary of the argument on the
16 tree cutting case.

17 MR. ZAFAR: Thank you, Attorney Center.

18 Any questions from the Board?

19 MS. SCHMIDTKE: Yes.

20 Did you say that there was a decision that
21 came down from the State saying that the City of
22 Biddeford could not issue any more building permits
23 in this area? Is that what you said?

24 MR. CENTER: No. I apologize. The previous
25 administration in November, which is the first

1 exhibit, asked the attorney general's office to
2 review it. And they just said no, we advised the
3 Saco River Corridor we're not going to give
4 Biddeford an opinion on whether or not the Saco
5 River Corridor failed to apply or even consider in
6 any way, shape, or form their prior 250-foot either
7 vegetative buffer or no-build zone. It's just
8 we're not touching that; but in good faith that
9 prior administration -- you've got two different
10 administrations, two different counselors, it's a
11 governing municipal body that's presumed valid when
12 they act and, you know, to -- it's a mess with the
13 IZ, the master plan, and then all the applications,
14 so they put a pause.

15 MS. SCHMIDTKE: Can I ask -- I guess I'm
16 trying to understand how the state law that UNE
17 brought up saying a municipality may not nullify or
18 amend a municipal land use permit by a subsequent
19 enactment, amendment, or repeal of a local
20 ordinance after a period of 45 days -- 45 days has
21 passed, how -- how does that come into play here?
22 Like, I don't understand.

23 MR. CENTER: It doesn't.

24 MS. SCHMIDTKE: Okay.

25 MR. CENTER: We're not retroactively appeal --

1 repealing the planning board approval. We're not
2 saying they don't have an approval. We're just
3 saying that while the moratorium's in place -- and
4 the moratorium is clear, it's unambiguous. It says
5 we're not issuing any permits, so --

6 MS. SCHMIDTKE: Would --

7 MR. MAZER: This permit is part of the
8 approval of the planning board, so it is acting as
9 a nullification because it doesn't expire until
10 July 28th -- no, July -- sorry. Sometime in July,
11 and that can be -- 20th --

12 Say it again?

13 UNIDENTIFIED SPEAKER: August.

14 MR. MAZER: August --

15 UNIDENTIFIED SPEAKER: (Inaudible).

16 MR. MAZER: August 6th was the one year for
17 the planning board application.

18 And with all due respect, it is ministerial.
19 The tree cutting was part of that application. It
20 is a subpart of the planning board site plan
21 application that was approved on.

22 Some of Attorney Center's arguments may be
23 very valid had they appealed the planning board's
24 decision way back in August or September, depending
25 on how you look at it; but those aren't relevant to

1 tonight's appeal and denial. The moratorium
2 clearly does not state retroactivity. The November
3 resolution that he's referred to doesn't put
4 anybody on notice. It's not -- it's not in
5 compliance with any, sort of, moratorium ordinance
6 under state law. So there's a lot of issues being
7 thrown out there.

8 The -- and also -- and I'm happy to provide
9 it, the letter from the attorney general's office
10 basically declined the request. There was an
11 appeal. There's a letter from the Saco River
12 Corridor Commission that states all permits from
13 them are still valid. So as the City works through
14 that appeal process, which is -- which they can do,
15 nothing -- there was no stay applied for under
16 state statute, so that permit under Saco River
17 Corridor Commission -- although, I'm trying to get
18 into that because I find it irrelevant to tonight's
19 issue -- is still valid and needs to be looked at
20 as valid by -- by the City.

21 So what we're looking at tonight is the
22 moratorium -- and we're not denying that the
23 moratorium was appropriately voted on. It says
24 what it says; but what it doesn't say is it's
25 retroactive. And what it does do if you do apply

1 that retroactivity is, in essence, nullifies the
2 planning board approval, that includes the tree
3 cutting permit.

4 MR. ZAFAR: Attorney Mazer, I have a question
5 for you.

6 MR. MAZER: Yeah.

7 MR. ZAFAR: This tree cutting, what is the --
8 what is the purpose behind it, as in what is it
9 going to -- going to lead to?

10 MR. MAZER: I'm going to ask, I think, Al to
11 maybe come up and discuss the actual purpose. I
12 know it's to do it in preparation of the pier being
13 installed. Some of this we had to wait until
14 spring, after the snow cleared, with issues -- but,
15 Al, if you want to, sort of, address what the
16 specific tree cutting is for.

17 MR. THIBEAULT: Good evening. Al Thibeault,
18 University of New England.

19 The tree cutting is removing vegetation in the
20 path of the access road to the pier that was
21 approved by the planning board on August 6th. In
22 conjunction with that approval, we have approval
23 from the Saco River Corridor Commission for that
24 vegetation to be removed and that area to be
25 revegetated, as well as permission from the Army

1 Corps of Engineers for that, as well as the DEP.
2 So we have all of the permits required for that
3 limit -- limited vegetation removal along the
4 shore.

5 MR. ZAFAR: Okay. And maybe this is for you,
6 Attorney Mazer, but for -- for the planning board's
7 approval, did it authorize that you did not need a
8 permit later on, as in --

9 MR. MAZER: It anticipated tree removal, which
10 the City ordinance requires a tree removal permit,
11 but they approved it, they reviewed that as part of
12 the site plan approval. Similar to if you do a
13 large site plan approval for -- for houses, you
14 still have to pull a building permit; but if it's
15 part of that approval, the governing board was the
16 planning board. The CEO is the staff individual
17 that issues the permits, but he doesn't get to
18 replace the decision of whether or not tree removal
19 should -- should apply. That was approved. The
20 tree removal was approved as part of the larger
21 site plan.

22 MR. ZAFAR: Sure. But the permit wasn't --
23 when would you get the permit, rather? When did
24 you apply for the permit? Or when did --

25 MR. MAZER: The permit was applied for --

1 UNIDENTIFIED SPEAKER: February 18th.

2 MR. MAZER: Well, there's was a -- there's
3 some issues with the City being -- directing the
4 code enforcement office not to take money. So I
5 don't think the actual application was accepted or
6 deemed complete and -- Director Fecteau may be able
7 to say; but it's dated February 18th, but I think
8 it was sometime in early March by the time it was
9 deemed complete and payment was accepted of 2026.

10 But, again, if this is denied, it nullifies,
11 in contradiction to state law, the larger planning
12 board approval. It's all part of a larger package.

13 MR. ZAFAR: Okay.

14 MR. MAZER: And that 45 days has passed.

15 MR. ZAFAR: I appreciate your --

16 MR. MAZER: Yeah.

17 MR. ZAFAR: -- your answers, Attorney.

18 Attorney Center, I have questions for you.
19 When denying the -- the permit, what language in
20 the moratorium did you use to make the basis of
21 the -- of the denial for the permit?

22 MR. CENTER: The expressed language in the
23 moratorium that said that there shall be no permits
24 issued in the IZ, not specific to the pier, the
25 entire institutional zone in which this pier

1 project is located.

2 And if I may respond -- I know we're not in a
3 court of law, but the way I'm trained to do it, I'd
4 like to ask Code Officer Fecteau a few questions in
5 response to the questions -- the answers about the
6 permit, if I may?

7 MR. ZAFAR: Sure.

8 MR. CENTER: Okay.

9 MR. ZAFAR: Yeah.

10 MR. CENTER: So Code Officer Fecteau, are you
11 familiar, generally, with the UNE Pier Project?

12 MR. FECTEAU: Absolutely.

13 MR. CENTER: You have an understanding, you've
14 had meetings with them as to what's going to be
15 required to complete the project?

16 MR. FECTEAU: We haven't had meetings on the
17 pier application, no; but I generally know what
18 their scope of work is.

19 MR. CENTER: Is the application for a tree
20 cutting permit the only building permit from your
21 office that they're going to need to complete this
22 project?

23 MR. FECTEAU: No, you'll need a building
24 permit for the pier construction.

25 MR. CENTER: And what does issuing a building

1 permit entail?

2 MR. FECTEAU: Obviously a set of plans for me
3 to review and payment, but that's basically it.

4 MR. CENTER: Thank you.

5 So I just would argue it's not -- this tree
6 cutting permit is not the only permit that's going
7 to be required --

8 UNIDENTIFIED SPEAKER: (Inaudible) microphone.

9 MR. CENTER: Yep. Sorry.

10 The argument is that this tree cutting permit
11 is not the only permit that would be required for
12 this project; but right now, in response to the
13 moratorium, no permits are being issued for any.
14 We're going to get to a second hearing on a
15 different project, and I don't know where it is
16 in -- there was a third application that I said he
17 has to deny. They want to put solar panels on a
18 building, and until this moratorium expires, no
19 permits are going to issue.

20 MR. MAZER: And I would just, in response, say
21 we're not denying that we have to pull other
22 permits. We're doing these -- this in order
23 methodically as part of our site plan approval, and
24 we have until August to do so. So, again, if
25 they -- if we pull that sooner and it gets denied,

1 we'll be -- we'll -- and it's -- we'll probably be
2 here again on similar arguments.

3 MR. ZAFAR: Okay. Attorney Center, another
4 question for you. Is -- if -- is there a way
5 for -- and I don't know if you know this, but is
6 there a way for the planning board -- or --
7 sorry -- yeah. Is there a way for the planning
8 board to extend the approval that had already been
9 granted to UNE?

10 MR. FECTEAU: Yeah. They have certain
11 thresholds that they -- if they don't meet, they
12 have to go back for an extension of their approval.

13 MR. ZAFAR: Okay. So at the year conclusion
14 when their approval would expire, they have the
15 ability to extend?

16 MR. FECTEAU: They do.

17 MR. ZAFAR: Okay. That's all the questions
18 for me.

19 Anyone else from the Board?

20 MR. LESSARD: So if I'm getting this correct,
21 the planning board approved this on August 6th,
22 2025, the moratorium went into place on
23 January 20th of this year, and then the permit was
24 applied for in March; is that correct? Yeah?

25 MR. FECTEAU: Yes.

1 MR. LESSARD: How long is the permit good for
2 once it's applied for and granted?

3 MR. FECTEAU: So once a permit is issued -- a
4 building permit's issued, it's good for a year if
5 you have a substantial start in the Shoreland Zone
6 and you're granted an additional year.

7 MR. LESSARD: Okay. So the same for the --
8 for the tree cutting. It would be for -- it would
9 be good for a year --

10 MR. FECTEAU: Yes.

11 MR. LESSARD: -- the permit?

12 MR. FECTEAU: Correct. If it was approved,
13 yes.

14 MS. SCHMIDTKE: This may be outside the scope
15 of -- but I'm just trying to understand how --
16 if -- if the planning board approved this project
17 and now, because of the moratorium, our City
18 decides not to issue any permits for it, how will
19 that affect this project going forward?

20 MR. MAZER: There's no -- so this is -- it's
21 directly to the point of nullification.
22 Depending -- we can't guarantee what the committee
23 is going to do. We don't know what the ordinance
24 is going to change. We only have that year.
25 There's no guarantee, I think, to Board Member

1 Lessard's point, that the planning board will
2 extend it. They don't have to.

3 So we have an approval. We are trying to
4 proceed under that approval. And, in essence, it
5 will void if we -- if we don't get an extension and
6 we don't get -- with the unknown of what happens
7 with these -- with these ordinance amendments.

8 MS. ARVIZU: So this is the final (inaudible).
9 This is (inaudible).

10 MR. MAZER: Yeah, okay.

11 And just for the record, the approval from the
12 planning board minutes states this final approval
13 is valid for one year, expiration date August 6th,
14 2026. If the authorized use is not initiated
15 within one year of approval, the permit becomes
16 void and a new application must be submitted for
17 reconsideration. Appeals of the planning board
18 decision may be made as per the Biddeford revised
19 Code of Ordinances.

20 So the approval doesn't really entertain an
21 extension. There may be a process under the
22 ordinance, but it talks about it being void and
23 having to reapply.

24 MS. SCHMIDTKE: Okay.

25 MR. ZAFAR: Any more questions?

1 MS. SCHMIDTKE: No.

2 MR. ZAFAR: Okay.

3 MR. MORIN: I have a couple questions.

4 MR. ZAFAR: Yep.

5 MR. MORIN: Can I ask them?

6 MR. ZAFAR: Yep, go ahead.

7 MR. MORIN: If the -- the purpose of a
8 moratorium is usually to enact new -- give you time
9 to enact new ordinances. Are there new ordinances
10 that could be enacted that could affect this
11 project, given the fact that it was approved by the
12 planning board over -- you know, several months
13 ago? I guess I ask that of Harry. Is there
14 anything that was even going to change what has
15 been done because they do have an approval?

16 MR. CENTER: Right. Well, that's difficult
17 for me to answer because I don't know what the
18 process is. There's an Institutional Zone Ad Hoc
19 Committee that the president of UNE is serving on
20 as a boarding member, so they're having a voice in
21 that process. They will make recommendations for
22 amendments and revisions to the current zoning
23 ordinance, then it goes to the planning board that
24 reviews and has input and, ultimately, the
25 Biddeford City Council will have to adopt any new

1 land use regulations.

2 I don't want to guess, but an overlaying --
3 overlying issue here is the issue of this 250-foot
4 buffer zone that's been ignored by both Saco River
5 and the City. I don't know if by clarifying it in
6 a subsequent past amendment or ordinance that could
7 have any affect on this project, but I'm not going
8 to speculate.

9 MR. MORIN: Because I believe it's -- it's not
10 just -- it can't nullify or it also can't amend a
11 previous approval, right, I mean, under that
12 statute 3007?

13 MR. MAZER: Correct.

14 MR. CENTER: Yeah.

15 MR. MAZER: And, again, if I may, the 250-foot
16 buffer issue should have been appealed if the City
17 felt like it was wrongly decided by the planning
18 board. They had 30 days to appeal the planning
19 board decision. It's not -- maybe good argument,
20 wrong venue, as another mayor likes to say.

21 MR. MORIN: That -- did -- I did have another
22 question on that. If the -- is it the City's
23 position that you -- there are conflicting laws
24 that he has to apply, and does that make his
25 issuance of the building permit more than

1 ministerial if there's conflicting laws that he has
2 to apply?

3 MR. CENTER: Well, first, his role is more
4 than ministerial. He absolutely has deliberative
5 process, he has to review, and he has to issue a
6 decision that's reviewable by administrative
7 remedies, potentially judicial remedies. So he is
8 far beyond that.

9 Secondly, the 250-foot, we'll call it the
10 issue for sake of argument, was raised by news
11 accounts when Saco River -- there were minutes.
12 And I think interested citizens found -- or former
13 people involved at the time the institutional zone
14 was established and the -- one of the first
15 projects that UNE went through -- that the Saco
16 River minutes and ultimate order says there's a
17 250-foot no-build zone.

18 Now, as city attorney, I met with the code
19 officer, and I said, can you deny anything based
20 on -- because what happened -- Saco River says
21 we're imposing this because Biddeford has a
22 250-foot no-build zone. Well, you can't -- well, I
23 used to say that, but now I'm not so sure. With
24 the map referencing the Exhibit 6 that's under
25 subsection P that says there's no development, if

1 you dig, there could be an argument that there
2 should be no development within 250 feet of the
3 river.

4 And it was missed, if you will; but I concede
5 that it's not clear. It's not, like, a there shall
6 be no, in a clear reference. But the University
7 drafts its master plan, and in the first iteration
8 of it, they put in that they weren't going to
9 develop. And that's -- my note -- my note was
10 wrong. It's excerpt four. So I've got that
11 language in No. 4 that I highlighted for you in
12 yellow that references a 250-foot something's
13 there.

14 And I'll agree with Attorney Mazer that
15 tonight isn't the issue for that; but tonight the
16 issue is is there a valid moratorium or did the
17 City pass a moratorium just to be unfair to this
18 institution in the City of Biddeford? And the
19 answer is absolutely not. We'll get to the next
20 case and you'll see another huge confusion about
21 whether staff can review and approve minor projects
22 or they have to go to the full planning board.
23 There are numerous conflicts in these -- the master
24 plan gets resubmitted every four -- every five
25 years. Is the master plan a zoning ordinance? Is

1 it part of it? Or is it just what UNE proposes to
2 do? It's clear as mud.

3 And in good faith the new administration says
4 we're going to pause everything right now. And
5 everything means everything. And it's not
6 repealing or prohibiting any prior approvals.

7 MR. MORIN: If the moratorium wasn't passed --
8 does he have any discretion when he gets that tree
9 cutting permit? Are there conditions? I mean,
10 is -- or is he just -- if the moratorium wasn't
11 passed, would he just have to sign it or does he
12 actually have to go through -- because isn't one of
13 the issues -- and maybe both of you can address
14 this. There's -- one of the issues tonight is they
15 need to decide -- the tree cutting permit,
16 obviously that was filed after the moratorium. Was
17 that a new permit process that's subject to the
18 moratorium or was it purely ministerial relating
19 back to something from before?

20 So was there -- was there any discretion on
21 his part, absent the moratorium, about -- about
22 issuing that, I guess is my question.

23 MR. MAZER: It -- I would direct in our memo
24 and -- and I can -- I'll defer to Director Roby --
25 Director Fecteau, sorry.

1 So section 3B, 3 little B, The proposed
2 building or structure is so constructed or is of
3 such use as the required review of the application
4 by other authorities or boards.

5 The building inspector is directed to, quote,
6 Refer the applicant to the appropriate authority
7 for board review, approval, or denial.

8 So this application came in to the code
9 enforcement officer, originally, when we go back to
10 last fall -- summer and fall. He took a look at it
11 and said, this has to go to the planning board.
12 And then upon the receipt of reviewing the board's
13 approval here, the planning board, the building
14 inspector -- in here the building inspector is
15 defined in the ordinance as the CEO -- quote, Shall
16 issue the permit with any conditions prescribed by
17 the reviewing authority or board.

18 Again, this gets to that ministerial aspect of
19 if this was under his purview. Absolutely. It
20 went through the proper process at the planning
21 board. The planning board has their -- their
22 findings as part of the record. His job is to
23 issue those permits. So I'm not sure, Attorney
24 Morin, I'm directly -- but it's -- this isn't a new
25 permit. This is an approved permit under the site

1 plan application from -- from last summer. So
2 where the planning board has approved the site
3 plan, it is ministerial in a lot of ways and
4 confined to issuing the permit, so long as that
5 permit is in conformance with the site plan
6 approval, which there's been no arguments that it
7 isn't.

8 MR. CENTER: Can Code Officer Fecteau address
9 the question about what -- what he would -- no, to
10 your question, Attorney Morin?

11 MR. MORIN: Yeah.

12 MR. CENTER: Go ahead, Roby.

13 MR. FECTEAU: So I'm not sure this section --
14 do you -- can you repeat the section that you're
15 quoting please?

16 MR. MAZER: It's Article -- Article 8,
17 Section 3 big B, subpart 3 little B -- oh, sorry.
18 I apologize. I'll repeat for the record. It's
19 Article 8, Section 3B, 3 little B.

20 MR. FECTEAU: So what is the title of that
21 article?

22 MR. MAZER: Building Permit Applications.

23 MR. FECTEAU: Building Permit Applications.

24 So you're -- Article 18, not Article 8, right?

25 MR. MAZER: I apologize.

1 MR. FECTEAU: Yeah. Okay.

2 So we have very specific language in
3 Article 18. And we have very specific language in
4 Article 9. We have very specific language in the
5 Shoreland Zoning section that talks about permits
6 and what the code enforcement has to do. I would
7 argue that some of that language is archaic, but
8 it's still written. Okay? Just because a planning
9 board issues a conditional use permit or a special
10 use permit, it doesn't -- it doesn't abstain the
11 code officer from reviewing the application in
12 conformance with the rules and regulations of the
13 city ordinance. There's a process for a reason.

14 So I would argue that I still have to review
15 it for conformance. I'm not suggesting this in any
16 way, that the planning board made a mistake, but
17 it's possible. I have a certain authority within
18 the City, and I exercise that under different
19 sections of the ordinance, not specifically one
20 point in Article 18.

21 Thank you.

22 MS. SCHMIDTKE: Did the Saco River Corridor
23 Commission approve this permit?

24 MR. MAZER: It -- it approved the -- they
25 don't have jurisdiction over the specific tree

1 cutting permit that went in front of -- but they
2 did approve the -- and for them it's Permit No.
3 20-491, which was issued by the SRCC in August of
4 2024. And I'm happy to -- to circulate this letter
5 as part of the record. It granted by the
6 commission -- this is the staff letter referral
7 that states that the permit is still approved, and
8 I'm just trying to find the language.

9 MS. ARVIZU: (Inaudible).

10 MR. MAZER: What? Okay.

11 Let me circulate this for your -- for your
12 records. But basically the permit that was granted
13 by the SRCC -- and, Al -- again, I wasn't involved
14 directly -- can probably address directly what the
15 jurisdiction of the SRCC was to grant the permit;
16 but it was anticipated to be the tree -- so No. 2,
17 Permit No. 20-491 is granted by the Commission,
18 remains valid, and is neither under review or in
19 question at the SRCC Office. No reconsideration
20 petition was received and there has been no finding
21 of a falsification in the application materials.

22 So they looked at the Pier Project and granted
23 their -- their approval. And, again, I'm happy
24 to --

25 MR. CENTER: I'm sorry to interrupt, but for

1 the record, that's the October 20th --

2 MR. MAZER: Correct.

3 MR. CENTER: -- 2025 letter to Roby Fecteau,
4 which I've asked for judicial review of.

5 MR. MAZER: But, again, it was -- it's -- and
6 being appealed to the law court. That
7 application's still valid and is irrelevant to the
8 deliberations of this board.

9 And I -- I do want to say this is a little bit
10 of a scary precedent that may be set. If -- if you
11 can go to a planning board, get full approval, and
12 then six months later have a moratorium that isn't
13 retroactive, pass the 45 days of approvals, in
14 essence, change the plan because of a change in
15 administration or a change of opinion, that's not
16 the point of state statute and that's not the point
17 of having knowledge of what you can and can't do.
18 It, in fact, makes moratoriums untouchable for
19 everything. If -- if they -- if you don't -- you
20 don't have to meet the state's statute, this does
21 nullify.

22 Based on the following of the Commission, we
23 feel strongly that there is going to be
24 restrictions that come of the -- or recommendations
25 that come out of the Institutional Review Committee

1 that aren't going to allow this project. And it's
2 a dangerous precedent to set, I think.

3 MR. ZAFAR: Attorney Mazer, I have a question
4 for you. Is it your opinion that when UNE got the
5 approval from the planning board that there was a
6 requirement to get another permit or was it the
7 belief that the planning board's decision allowed
8 for the tree cutting without a permit?

9 MR. MAZER: You still need to pull additional
10 permits as part of your site plan approval. So
11 just because you get -- and maybe tree cutting's
12 kind of confusing; but if you were to go to a --
13 for a building and get approval at site plan
14 because it's big enough square footage, it's too
15 tall, you got parking requirements, you still need
16 to pull DEP permits, you still need to pull Saco
17 River Corridor permits and approvals, you still
18 need to pull building permits; but the code
19 enforcement officer's review at that point is does
20 it comply with the approvals as approved by the
21 planning board? So if you came in with a
22 drastically different building, absolutely, he
23 should deny that or tell the applicant to go back
24 to the planning board for an amendment. There's
25 none of that here.

1 And he has -- and it's somewhat irrelevant,
2 but I think Attorney Center, sort of, alluded to
3 who knows what would happen if the moratorium
4 wasn't there, maybe he would still deny it.
5 There's been no evidence that this permit should be
6 denied but for the moratorium. And that's --
7 that's the issue. That's the heart of the issue
8 is, yeah, we knew these permits -- but we can't
9 pull a permit -- one, we waited for the spring, for
10 the snow to melt, but we had a year based on the
11 approval to pull those permits. And we have not
12 drastically -- we have not changed anything from
13 those original approvals.

14 MR. ZAFAR: And, Attorney Center, I would
15 probably ask you the same question. Is it your
16 belief that the planning board's decision did
17 require a permit to be pulled for specifically this
18 tree cutting process?

19 MR. CENTER: Absolutely. I mean, the planning
20 board process was just one part of it. You still
21 have, separate from ZBA, the issue of the moorings
22 and you have a code enforcement officer that has to
23 issue building permits and this tree cutting
24 permit. So that was not the final act of approval
25 for this project to go forward.

1 I just want to rebut. Attorney Mazer
2 referenced a new administration. The resolution
3 that I put in my package to you was the prior
4 administration that passed unanimously. And I
5 didn't copy it because it's in your package from
6 UNE's materials. If you read the moratorium that
7 they submitted, which is the public record for it,
8 it is clear, for a period of 180 days a temporary
9 moratorium is imposed on all new construction, all
10 development, everything within the University zone.
11 The law says that's presumed valid unless there's
12 no way you need to put it in.

13 And we could be here -- that IZ Committee, if
14 they have 12 meetings at an average of an hour,
15 that's 12 hours. They probably go more than --
16 they probably go two hours. There's a committee
17 that's already got 25 hours into all these cross
18 references and this -- what does this appeal --
19 what does this mean, what does that mean?

20 I mean the flip side of the argument is
21 there's going to be a project approved ignoring a
22 250-foot something, whether it's vegetation, a
23 building, construction, because it was missed and
24 UNE didn't bring it up. It's in their master plan.
25 They talk about partnership and collaboration and

1 being a good neighbor. Planning staff met on this
2 project, it never was brought up, so, hey, back in
3 2001, we -- we told the Saco River we're not going
4 to build within 250, but what we really meant is
5 any building is just going to be, you know, worked
6 around or whatever excuse they want to come up with
7 or it doesn't apply because of this, it's just a
8 vegetative buffer and it's not really clear and
9 even though we depicted on our map -- you know,
10 never was raised. Nothing to see here, folks.

11 Whether -- that's not the issue before you
12 tonight, I would argue. It's just whether or not
13 this clear expressed language for a moratorium that
14 was desperately needed and obviously being worked
15 on allows no permits at this time. And there's no
16 law to the contrary that says, well, you got to
17 issue a permit if there was a previous planning
18 board approval. There's still an independent for
19 tree and the building permit for the structures
20 that are going to be on land.

21 MR. MAZER: If I may, I just want to clarify
22 that there was no secret meetings, underlying,
23 hiding the ball here on the site plan. It went
24 through a thorough review. And for Attorney Center
25 to say otherwise about UNE, who has been a good

1 steward of this city for many, many years, is -- is
2 a little -- a little sad.

3 So I just want to be clear that, again,
4 I've -- we -- I think we're going a little bit in
5 circles. The 250-foot buffer doesn't matter for
6 the purposes of whether or not the moratorium is
7 applicable. There has been no evidence submitted
8 tonight that there's language in the moratorium
9 that states that it's retroactive going back for
10 the original planning board application. And
11 the -- we haven't gotten into it, but the 2001
12 master plan is also irrelevant. There have been
13 four subsequent master plans that have been
14 reviewed and approved by the planning board.
15 Again, maybe good arguments, wrong venue.

16 So we would just ask if you -- if you really
17 distill this down, the moratorium does not have
18 retroactive language in it pursuant to state law.
19 By approving it -- and it -- if we just go through
20 the timeline a little bit, if they take the full
21 180 days, that gets us to July 19th, 2026, at which
22 point, we -- the permit has been denied, so we'll
23 have to reapply for a permit. I believe -- and he
24 can correct me, I don't have this section here --
25 he has 30 days to approve that. That assumes that

1 the moratorium doesn't get extended. That assumes
2 that we don't -- that ordinances don't change.
3 Then it does nullify or significantly amends the --
4 the approvals.

5 So I appreciate the appeals that are happening
6 with that 250-foot rule. The planning board
7 reviewed it and approved it. And there was nothing
8 shady about how that approval went. It was done in
9 the public eye.

10 MR. ZAFAR: Attorney Mazer, I have one final
11 question. Is there any work, construction,
12 anything similar to that, synonyms, happening at
13 UNE or regarding this pier proposal or any, sort
14 of, construction related to it at the current
15 state?

16 MR. MAZER: Just to clarify, do you mean for
17 the Pier Project or at UNE period?

18 MR. ZAFAR: Not UNE. Just regarding this tree
19 cutting and overall --

20 MR. MAZER: So I'll try to answer, and if --
21 Al, if I get anything -- so we have the tree
22 cutting. We'll need to do the access road. There
23 will need to be, which have already been approved,
24 I believe, by the state, but moorings will need to
25 be relocated, so we'll have to work with the

1 harbormaster on that and install the pier. I
2 believe those are just the -- the four things that
3 need to happen. This is part one to do the
4 subsequent pieces.

5 MR. ZAFAR: And since the moratorium, has any
6 work been conducted?

7 MR. MAZER: No.

8 MR. ZAFAR: No. Okay. All right. Thank you.

9 MR. MAZER: And, again, just to clarify, it's
10 partly due to -- it's somewhat phased. We got the
11 approvals in the fall. We waited until the --
12 after the thaw and the spring and the snow --

13 MR. ZAFAR: Sure.

14 MR. MAZER: -- to do that.

15 MR. ZAFAR: I appreciate that. Thank you.

16 Any other questions from the Board?

17 All right. Is the Board ready to make a
18 motion?

19 MR. MORIN: Do you want to ask if there's
20 anything else --

21 MR. ZAFAR: Oh.

22 MR. MORIN: -- (inaudible).

23 MR. ZAFAR: Any -- are there any other
24 parties -- any abutters and/or any interested
25 parties in this appeal from either side for the

1 appellate or the city?

2 Please -- please state your name.

3 MR. NOBLE: Good evening. My name is Kyle
4 Noble. Yeah, I'm an abutter to the University.
5 Yes. And I would argue that this should not even
6 be here. There is no existing pier permit in the
7 City of Biddeford. It has not been signed by our
8 harbormaster. Without a permit, this tree cutting
9 should not be happening. Whether that pier ever
10 gets built remains to be seen. The permit hasn't
11 been signed by a harbormaster. Biddeford has not
12 issued any permits that are to build this pier.
13 This is premature. This does not belong here. You
14 should not approve this appeal.

15 Thank you.

16 MR. ZAFAR: Thank you.

17 Anyone else?

18 All right. Well, I want to thank UNE and
19 Attorney Mazer for your arguments, as well as the
20 City of Biddeford and Attorney Center for your
21 argument.

22 So I will -- I will ask the Board if there is
23 a motion that would like to be heard?

24 (Mr. Zafar is inaudible due to microphone
25 being off.)

1 MR. ZAFAR: Oh, sorry.

2 Anyone want to put a motion forward for the
3 vote if you have a vote that you want to push
4 forward?

5 MR. LESSARD: Yeah, I make a motion to vote on
6 this. Do you want my vote?

7 MR. ZAFAR: What's your motion? Not the vote.

8 MR. LESSARD: My motion would be to oppose the
9 issuance of the permit or to oppose letting this
10 happen.

11 MR. ZAFAR: Would it be to deny the permit?

12 MR. LESSARD: Correct.

13 MR. ZAFAR: And deny the appeal --

14 MR. LESSARD: Correct.

15 MR. ZAFAR: -- of the permit?

16 Okay. I will second that motion.

17 All those in favor?

18 (Whereupon, the panel took a vote.)

19 MR. ZAFAR: Do you want to discuss?

20 MR. MORIN: You can take a vote. I think that
21 we should also discuss the grounds for the decision
22 as well. I mean, you could do it -- we should have
23 some discussion and --

24 MR. ZAFAR: Sure.

25 MR. MORIN: -- go over the specific grounds

1 for the decision.

2 MR. ZAFAR: Do you want to present your
3 grounds?

4 MR. LESSARD: Well, I'm just going -- I'm just
5 going back to the language in the moratorium. And
6 based on what I understand about the permitting
7 process, the permit could have been gotten prior to
8 the moratorium going into effect, correct? And
9 then that -- they would have been able to do it;
10 but obviously the -- we need some review. And
11 language in the moratorium prevents any new
12 construction or conversion or expansion of the
13 land. And, in my opinion, even though the planning
14 board approved this last year, no earth or no
15 anything has been disturbed up until this point.
16 So the moratorium went into effect -- so to me it's
17 new, whether it was approved by the planning board
18 or not.

19 So that's my position for opposing the permit.

20 MR. ZAFAR: Thank you.

21 And I would say that I -- again, I appreciate
22 everyone's arguments. Similar to Josh, my -- my
23 opinion would be that based off of the information
24 that was presented, the moratorium was passed in
25 January and this permit application happened three

1 months after that period of time. And in that
2 period of time, while the planning board did
3 approve the project, no construction, no part of
4 this pier proposal has taken place.

5 And, so, the planning board's approval of the
6 overall plan was just that, the approval of this
7 proposal. The City obviously has its own steps
8 that require a -- a permit to be received by the
9 CEO in order for work and/or any type of
10 construction or synonyms of that word to be
11 conducted. And being that the moratorium was in
12 place at the time when UNE did file for their
13 permit and the moratorium has explicit language
14 that states that no construction, similar words of
15 that nature, would occur, it is my belief that this
16 appeal is not allowed underneath the moratorium
17 statute. That's what I believe.

18 Caroline, or anyone else on the Board, I don't
19 know if you guys have any other thoughts and any
20 other discussions to be had.

21 MR. MORIN: Can I just ask some -- to help
22 with writing of the --

23 MR. ZAFAR: Yep.

24 MR. MORIN: -- decision?

25 So when we ran -- when we ran through -- the

1 preliminaries that we ran through, I think, was --
2 were already agreed to, timeliness, standing, all
3 those things here. And I believe that the basis
4 that's going to be written up would be that you're
5 finding that the tree cutting permit is a new
6 permit or significant enough that was passed
7 after -- after the moratorium is subject to the
8 moratorium.

9 (Mr. Zafar is inaudible due to microphone
10 being off.)

11 MR. MORIN: All right. You're not finding
12 that it's retroactive to the planning board, but
13 that it's because this is a new and significant
14 step?

15 MR. ZAFAR: Yes. It's a -- it's a permit that
16 was issued -- or a permit that was wanted, for lack
17 of a better word, after the moratorium went into --
18 into place in January.

19 MR. MORIN: Okay. Okay. Okay.

20 MS. SCHMIDTKE: Can I just ask a clarification
21 legal question? I did not vote that way, so -- but
22 I was under the impression that it needed to be
23 unanimous with three people.

24 MR. MORIN: Well, you have a quorum with
25 three. And I was just looking back through the

1 ordinance while we were talking -- so you had a
2 quorum of three. It had to be a majority of the
3 people who were voting. So, yeah, had there been
4 four of you here, if the other person had been
5 here, we still would have been -- we would have
6 needed a three. A two to two vote would not --
7 would result in a denial; but right now we have a
8 three-member board with majority voting.

9 MR. ZAFAR: So does the motion fail? Is that
10 your understanding?

11 MR. MORIN: No, it carried.

12 MR. ZAFAR: It carried.

13 MR. MORIN: Yeah, you denied the appeal, and
14 that carried two to one.

15 MR. ZAFAR: But we needed a unanimous vote?
16 Is that --

17 (Ms. Schmidtke is inaudible due to microphone
18 being off.)

19 MR. MORIN: No. You have a quorum of three.

20 MR. ZAFAR: Okay.

21 MR. MORIN: If anyone -- if anyone has any
22 different reading -- but that's my reading of the
23 ordinance.

24 MR. ZAFAR: All right. So the -- so is --
25 sorry, Attorney. Is it that the motion -- sorry,

1 the appeal is -- the appeal failed. Is that your
2 understanding?

3 MR. MORIN: You voted two to one to deny the
4 appeal.

5 MR. ZAFAR: Yes.

6 MR. MORIN: And, so, that's the -- that's the
7 motion that passed.

8 MR. ZAFAR: Okay. All right.

9 MR. MORIN: I just asked some clarification
10 for help to writing up your written findings
11 because you have to write something to provide a
12 meaningful review for them.

13 MR. ZAFAR: Sure. Okay.

14 On the -- on the business of 4A for the Tree
15 Cutting Application the appeal by the University of
16 New England fails on a two to one vote.

17 And now we'll go to 4B, which is the
18 University of New England Administrative Appeal of
19 Code Enforcement Officer's Denial of Leonard Hall
20 Demolition. And I will open it up to UNE again for
21 their presentation.

22 MR. MAZER: Thank you.

23 Good evening. For the purpose of the record,
24 Brandon Mazer with Perkins Thompson, joined by
25 Emily Arvizu, Ron Schneider, and Al Thibeault.

1 We're going to have similar arguments, but the
2 timing here is slightly different. I'm going to
3 try to respect the time and, sort of, reference
4 those arguments without getting into a lot of info,
5 sort of, on the nuance distinctions.

6 Again, as part of just the housekeeping, I'm
7 going to provide just the original application for
8 the demolition just to make sure we have a complete
9 record.

10 So, again, this one -- I'm going to help with
11 the background, just go through the timeline
12 briefly for everybody on this demolition permit.
13 So in September of 20 -- September 25, 2025, the
14 University submitted a minor site plan approval
15 application, which is included in -- as Exhibit A
16 in our original appeal packet. December 3rd, the
17 site plan application was brought before the
18 planning board. The planning board at that time
19 determined that staff review committee could
20 process the application under minor site plan
21 review, so the planning board then referred it to
22 the SRC. December 30th, the SRC approved the
23 application.

24 In January of 2026 the City asked the city
25 solicitor to confirm that SRC should properly

1 process the application. Then January 20th, 2026,
2 the city council adopted the moratorium that we've
3 already extensively discussed. January 27th, 2026,
4 the SRC reconsidered its approval and voted to send
5 the application back to the planning board.

6 As a side note, the University did not appeal
7 that, was happy to present the project in front of
8 the planning board, although, it did question
9 whether or not it really needed planning board
10 approval.

11 March 4th, 2026, the planning board reviewed
12 the application and approved the application.
13 March 10th, we -- the University applied for a
14 demolition permit. And on March 20th, the code
15 enforcement officer issued the denial.

16 Again, the denial is -- states that, after
17 consulting with the city solicitor, I have
18 determined that a permit can't be issued based on
19 the language in the resolution. And the denial did
20 not cite any other reasons for -- for the denial.

21 I think there's a question here of what
22 approval applies. So high level, the SRC approval,
23 again, was pre-moratorium. And as we've stated in
24 the prior appeal, there is no explicit language in
25 the moratorium that applies retroactively.

1 Here's the difference with this application
2 for the demolition. The planning board, in its
3 review, assuming that the planning board did have
4 jurisdiction and authority, extensively reviewed
5 the application. There was extensive discussion
6 about their authority and the moratorium at that
7 meeting. The planning board still approved the
8 site -- the application -- the minor site plan
9 application for the demolition. So they took into
10 account at that point the moratorium and
11 determined, based on the staff memos, the staff
12 review, that the moratorium did not apply.

13 So, again, upon the receipt of the planning
14 board's approval, the building inspector, the CEO,
15 shall issue the permit with any conditions
16 prescribed by the reviewing authority or board. He
17 has not followed that -- that approval.

18 Again, they -- they approved that site plan
19 application with full knowledge of the planned
20 demolition. The planning board staff report dated
21 Exhibit -- dated February 4th, Exhibit D, included
22 a diagram expressly noting the portion to be
23 demolished. During the March 4th, 2026
24 post-moratorium there was robust discussion about
25 the demolition and the moratorium, and the planning

1 board approved it.

2 Again, similar to the last one, to the extent
3 that the City felt that that approval was wrong,
4 the City should have appealed the planning board's
5 approval. The ordinance provides a 30-day appeals
6 period during which the City could have appealed
7 the planning board's approval of the demolition.
8 They did not do so.

9 So, again, in summary, we -- we request that
10 the board vacate the denial of the demolition
11 permit and remand the application to Director
12 Fecteau with instructions to approve it. And,
13 again, we are happy to answer any questions the
14 board may have. And, again, relying on similar
15 arguments of the last appeal, but I want to be
16 respectful of everybody's time this evening.

17 Thank you.

18 MR. ZAFAR: Thank you, Attorney Mazer.

19 I will pass it to Attorney Center.

20 MR. CENTER: Thank you, Members of the Board.

21 Again, I'm Harry Center, City Attorney here
22 advocating for the Active Code Enforcement Officer
23 to deny this permit.

24 First, I want to say, with respect to the
25 University being sad, I meant to cast no

1 aspersions; but it's a little bit different.
2 Sometimes you have a zoning hearing where there's
3 two abutters and there's not a lot of public
4 chatter about it, but this is a single institution
5 in a huge zone. There's a committee reviewing the
6 ordinance with the president of the University on
7 it, and as part of that process, I have been
8 advised by staff members that, previously, they
9 wished that this issue on the master plan --
10 because the current ordinance says there shall be a
11 master plan every five years. So it's been
12 referred to as, sort of, the University's wish list
13 or, at least, their effort to let the neighbors
14 know what they'd like to do, to plan; but when you
15 look at our ordinance, it almost mandates that all
16 developments have to be consistent with the master
17 plan, but it's the developer that gets to write
18 what the plan is. And it's just a cumbersome
19 process that needs to be reviewed and revamped.

20 This issue is, in my opinion and argument,
21 clear demonstration that there is no animus or
22 improper motive with the pier. This project on the
23 Carrie Hall -- the Carrie Hall currently is less
24 than 50 feet from the road. It's a preexisting
25 nonconforming structure. They're going to raise it

1 and demolish it and make it conforming. There's no
2 controversy with that project.

3 But, once again, we see the difficulty with
4 the process of the current language in the
5 institutional zone. Projects under 1,000 square
6 feet go to the staff review. Staff review will
7 meet on a Tuesday morning in a conference room, not
8 the formality of a planning board hearing or
9 anything. So they initially reviewed it; but I was
10 then asked, well, wait a minute, you look at
11 Article 5, Section 11 of the Land Development
12 Regulations, which is the Institutional Zone, the
13 IZ, the planning board shall consider conformance
14 for proposed activities within the institutional
15 master plan and approve a project only if those
16 activities are consistent with the institutional
17 master plan as well as other standards.

18 And I made the statement, when the abutters
19 come around the corner and see the place gone and
20 they go to City Hall and say, when was this
21 approved? Oh, well it was a staff review in the
22 morning. And then they point to this language,
23 it's not going to look very good. And we needed to
24 clarify that. And, yes, they made a motion to
25 reconsider. The University cooperated. I was at

1 that planning board meeting. It was approved, and
2 the project would go forward.

3 Back to the moratorium. Established in good
4 faith for valid reasons, and the clear expressed
5 language in the moratorium says no permits. It
6 doesn't say there shall be no regulatory review.
7 It doesn't say that any applications before the
8 planning board shall be paused. But he can't issue
9 the permit while the moratorium's in place. That's
10 the case.

11 MR. ZAFAR: Thank you, Attorney Center.

12 Any questions from the Board?

13 Attorney Mazer, when -- sorry, I have another
14 question for you. When was the application for
15 this demolition applied for?

16 MR. MAZER: So the original project that
17 included the demolition of the -- was submitted
18 back in September 25th, 2025, for minor site plan,
19 which we've included as Exhibit A and is, I think,
20 part of the -- what I -- what I circulated.

21 So -- and, again, both -- it was -- when the
22 moratorium passed -- and this isn't in the
23 moratorium, so I didn't raise it -- these weren't
24 supposed to affect any projects that were already
25 in the works. That was on the record. It wasn't

1 part of the -- part of the actual ordinance that
2 passed, but both the Pier Project and this
3 demolition were -- were not supposed to be
4 affected. We don't have that in writing. We don't
5 have it in the ordinance, so we're -- I'm keeping
6 it pretty legal in focus; but the planning board,
7 who is the reviewing authority here -- whether
8 Attorney Center likes it or not, he was there
9 advising the board -- they voted. They talked
10 about the moratorium. The staff decide -- stated
11 that it wasn't -- the moratorium wasn't applicable.
12 Others commented that it wasn't applicable. They
13 approved the minor site plan. There's a question
14 of whether or not it should have been in front of
15 the planning board. We didn't appeal that, we're
16 not -- but it is a question and interpretation of
17 the ordinance.

18 But regardless, even if we say the planning
19 board had authority, they reviewed it, and they
20 reviewed it under the moratorium and determined
21 that the moratorium did not apply. And Attorney
22 Center and the CEO don't get to change the planning
23 board's mind on that. And if they want -- if they
24 thought it was done wrongly, I -- it's very
25 uncommon, but I have seen towns appeal their own

1 planning board's decisions, and they could have
2 done that, and they didn't. So, again, I think
3 they're foreclosed from trying to make some of
4 those arguments here in front of that -- this
5 board.

6 MR. ZAFAR: Attorney Mazer, can you -- when
7 did the -- when did this planning board --

8 MR. MAZER: So the planning board --

9 MR. ZAFAR: -- have --

10 MR. MAZER: -- reviewed the application on
11 March 4th and approved it that evening. It was a
12 pretty lengthy meeting. I got to watch most of
13 it --

14 MR. ZAFAR: Okay.

15 MR. MAZER: -- after the fact.

16 MR. ZAFAR: All right. I have no questions --
17 no further questions right now.

18 (Ms. Schmidtke is inaudible due to microphone
19 being off.)

20 MR. ZAFAR: I'm sorry, what?

21 (Ms. Schmidtke is inaudible due to microphone
22 being off.)

23 MR. ZAFAR: Oh, yeah.

24 Are there any abutters or anyone else that
25 would like to speak?

1 No. Okay. Anyone from the Board?

2 Attorney?

3 MR. MORIN: No. I think motion and
4 discussion, and I think we can go through the
5 process again.

6 MR. ZAFAR: Okay. Well, I'll entertain a
7 motion or a discussion for any part.

8 MR. LESSARD: You're going to need to help me
9 out.

10 (Mr. Lessard is inaudible due to microphone
11 being off.)

12 MR. LESSARD: What are we doing here?

13 MR. ZAFAR: You can ask Attorney.

14 (Mr. Lessard is inaudible due to microphone
15 being off.)

16 MR. MORIN: To make a motion to act on the
17 appeal and then open it up for discussion -- or get
18 a second and open it up for discussion. Either to
19 uphold it -- either to grant or deny the appeal to
20 get it on the table, get a second, then you can
21 have discussion and then take a vote on it.

22 MS. SCHMIDTKE: I'd like to make a motion to
23 vote. And I will vote to -- to -- what is the
24 word? To not uphold the appeal.

25 MR. MORIN: So, I mean, do you want to --

1 MS. SCHMIDTKE: To vacate the appeal.

2 MR. MORIN: Okay. So do you -- if you vote to
3 approve the appeal, then you reverse the decision
4 of the Code Enforcement Officer and UNE gets their
5 demo permit. If you deny the appeal, you uphold
6 the Code Officer and UNE doesn't get their demo
7 appeal.

8 MS. SCHMIDTKE: I want to -- I want to uphold
9 the appeal then.

10 MR. MORIN: Grant -- grant the -- grant UNE's
11 appeal?

12 MS. SCHMIDTKE: Correct.

13 MR. MORIN: So I was doing it -- okay.

14 We'll do it --

15 MS. SCHMIDTKE: Yes.

16 MR. MORIN: -- make a -- you'll make a motion
17 to --

18 MS. SCHMIDTKE: Thank you.

19 I would like to make it a motion to uphold the
20 appeal.

21 MR. MORIN: Grant the -- grant the appeal?

22 MS. SCHMIDTKE: Grant the appeal.

23 MR. MORIN: (Inaudible.)

24 MS. SCHMIDTKE: Thank you.

25 MR. MORIN: Yep.

1 MR. ZAFAR: Any seconds?

2 MR. MORIN: So that fails.

3 MR. ZAFAR: The motion fails.

4 Any discussion on it?

5 All right. I will make a motion to deny

6 the -- what's the word I'm looking for?

7 MR. MORIN: Deny UNE's --

8 MR. ZAFAR: Yeah.

9 MR. MORIN: -- appeal.

10 MR. ZAFAR: Deny UNE's appeal on the basis of

11 the moratorium being in effect during the

12 application.

13 Any seconds?

14 MR. LESSARD: I second.

15 MR. ZAFAR: Any discussion?

16 I will speak. My belief is that this
17 moratorium was in place, and the application at the
18 time for this demolition should not be approved by
19 the code enforcement officer on the basis of the
20 moratorium being in effect. And in the explicit
21 language of the moratorium there is four different
22 words, as in the new construction, redevelopment,
23 expansion -- and there's another word -- while I
24 don't see this -- you know, while -- I see it as an
25 expansion of what is currently proposed. So that

1 is the, sort of, belief behind the denial.

2 Does anyone else on the Board have any other
3 discussion and/or words to bring forth to the -- to
4 the meeting?

5 Okay. And, so, the motion passed, right,
6 Attorney?

7 MR. MORIN: I don't think you've taken a vote
8 yet.

9 MR. ZAFAR: I didn't take a vote yet?

10 MR. MORIN: No.

11 MR. ZAFAR: Sorry, you guys.

12 Can I get a second for the --

13 MR. LESSARD: You gave --

14 MR. ZAFAR: I did?

15 MR. LESSARD: -- that.

16 MR. ZAFAR: Okay. All those in favor for the
17 motion to -- what's it -- is it vacate? No, it's
18 not vacate.

19 MR. MORIN: Deny the appeal --

20 MR. ZAFAR: Deny the --

21 MR. MORIN: -- was your motion, yeah.

22 MR. ZAFAR: Deny the appeal.

23 (Whereupon, the panel took a vote.)

24 MR. ZAFAR: Okay. Two in favor. Motion
25 passes?

1 MR. MORIN: Yep.

2 MR. ZAFAR: Okay.

3 MR. CENTER: Before you adjourn, may I ask,
4 and with UNE's -- could we incorporate both
5 arguments into the record, like, together? You
6 know, on the -- on the moratorium, like, I --

7 MR. MAZER: I'm not quite sure I understand
8 what you're requesting.

9 MR. CENTER: Well, I didn't go through the --
10 the cases on the moratorium and the -- you know,
11 it's -- the same moratorium applies to both
12 projects.

13 MR. MAZER: Sure. I think it's part of the
14 record --

15 MR. CENTER: Okay.

16 MR. MAZER: -- already. Yeah.

17 MR. CENTER: And all of your arguments reply
18 to both. Everything you argued about the pier --

19 MR. MAZER: Yeah. Oh, understood.

20 MR. CENTER: -- being denied applies to the
21 Carrie Hall and vice versa.

22 MR. MAZER: To the extent that -- yeah. I
23 think there's some nuance, but --

24 MR. CENTER: Right.

25 MR. MAZER: -- yes.

1 MR. CENTER: There's nuance.

2 MR. MAZER: Yeah.

3 MR. CENTER: But to the extent -- I just don't
4 want to, you know, we miss something, you know, and
5 we can't review it later.

6 MR. MAZER: And I suspect that we would be
7 making these arguments again to each other, Harry.

8 MR. CENTER: Agreed. Thank you. Appreciate
9 it.

10 MR. ZAFAR: All right. Addendum No. 5 is
11 other business. Is there any other business from
12 the Board and/or anyone else? No?

13 MR. MORIN: Can I ask a question?

14 MR. ZAFAR: Sure.

15 MR. MORIN: So I'm going to help write up your
16 decision.

17 MR. ZAFAR: Yep.

18 MR. MORIN: I noticed last time it appeared
19 that we wrote the decision, it was just signed by
20 you as the acting chair.

21 MR. ZAFAR: Okay.

22 MR. MORIN: And I don't know if you need to
23 hold another -- I don't think you need to hold
24 another meeting to go over it -- you do? You
25 guys --

1 (Simultaneous crosstalk.)

2 MR. MORIN: Yeah.

3 MS. SCHMIDTKE: Yes.

4 MR. MORIN: Well, we have to make sure we
5 issue a decision within 30 days to them.

6 MR. ZAFAR: Yeah.

7 MR. MORIN: When is your next meeting?

8 MR. ZAFAR: We did not meet --

9 MS. SCHMIDTKE: We usually meet on the
10 first --

11 MR. ZAFAR: -- the last time.

12 MS. SCHMIDTKE: -- of the -- the first Monday,
13 I believe.

14 MR. ZAFAR: Yeah.

15 MR. FECTEAU: Yeah, it was determined by
16 previous counsel that they did not have to
17 officially meet because they talked about the terms
18 of the findings of fact in public. So Syed was
19 able to sign --

20 MR. MORIN: That's what I was talking about.

21 MR. FECTEAU: Yeah. Yeah.

22 MR. MORIN: So last time you just signed the
23 decision that the attorney helped write up based on
24 what you discussed here today.

25 MR. ZAFAR: Correct.

1 MR. MORIN: Is that how you want to proceed
2 this time as well?

3 MR. ZAFAR: Yeah. If you send it for my
4 review, yeah.

5 MR. MORIN: Okay. And, so, I'm going to go --
6 I'm going to incorporate everything that was
7 discussed today. And, basically, the decision or
8 the basis for it was that the two permits at issue
9 that -- at least two members of the board found
10 that those were new items that were being decided
11 after the moratorium, and for that reason, you are
12 denying it.

13 MR. ZAFAR: The expansion, yeah.

14 MR. MORIN: Yeah. Yeah. All right.

15 MR. ZAFAR: Any other business?

16 All right. Meeting is adjourned. Thank you,
17 everyone, for your time. I appreciate everyone's
18 dedicated effort into discussing this. Have a good
19 evening.

20 (Whereupon the hearing adjourned.)

21 * * * * *

22

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CERTIFICATE

I, Brianna L. Jackson, a Notary Public in and for the State of Maine, hereby certify that this audio recording was stenographically reported by me and later reduced to print through Computer-Aided Transcription, and the foregoing is a full and true record to the best of my skill and ability from the video recording that was provided.

I further certify that I am a disinterested person in the event or outcome in the above-mentioned cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this 21st day of May, 2025. Dated at Bradley, Maine.



Brianna L. Jackson

Notary Public/Court Reporter

My Commission Expires: December 23, 2031

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Article IX

BOARD OF APPEALS

Section 1.	Establishment and organization.	Section 5.	Appeals to the Board of Appeals.
Section 2.	Proceedings of the Board of Appeals.	Section 6.	Decisions of the Board of Appeals.
Section 3.	Conflicts.	Section 7.	Stay of proceedings.
Section 4.	Powers and duties.	Section 8.	Rehearing.

Section 1. Establishment and organization. [Ord. of 7-7-1992; Ord. No. 2002.68, 9-3-2002]

- A. A Board of Appeals is a quasijudicial body which shall consist of five voting members plus two associate members, all of whom shall be resident of the City of Biddeford. Members of the Board of Appeals shall reflect as much as possible several geographic areas of the City, and shall have diverse professional and/or employment backgrounds. In no case shall more than two members be from the same ward. Current members whose terms expire after 12/2005 shall have their term reduced to 12/2005. The term of office of a member and an associate member shall be three years, provided that those members and associate members appointed pursuant to this section shall continue in such capacity until the expiration of the term to which they are appointed, so long as they meet the qualifications of membership imposed by this section. In order to comply with the provisions of this ordinance requiring geographical balance, any current members of the Zoning Board of Appeals who reside in the same ward with more than two other members shall have their terms of office reduced to expire on June 30, 2003.
- B. A municipal officer or his spouse may not be a member or associate member of the Board of Appeals. No member shall serve more than three consecutive terms, including any term or part of a term served under any predecessor to this section. Any member appointed to fill a vacancy for which more than half of the unexpired term remains, for purposes of this provision shall be deemed to have served one full term.
- C. Three members of the board shall constitute a quorum for purposes of conducting a meeting and taking action. When a regular member of the board is unable to act because of interest, incapacity or absence, an associate member shall be designated by the Chairman to act in his/her stead. Members of the Board of Appeals shall be nominated by the Mayor and confirmed by the Council. When there is a permanent vacancy, a new member shall be appointed to serve for the remainder of the unexpired term. A permanent vacancy arises upon the death, resignation or removal of a member, or upon the failure of a member at any time during his term to meet any of the qualifications herein provided for appointment as a member. Members of the Board of Appeals may be removed from office by the Mayor, Council or board for cause after notice and hearing before the expiration of their term. Failure to attend three or more consecutive meetings of the board without excuse shall constitute cause for removal of a member.
- D. The chairman shall be appointed by the Mayor and confirmed by the Council. Annually, at its first meeting in January, the Board of Appeals shall elect a vice chairman and secretary from its own

membership. The term of these officers shall be one year. The chairman may not be appointed for more than two consecutive terms. The results of the annual election shall be submitted to the municipal officers. The Chairman of the Board of Appeals is a voting member and his/her vote shall be cast at the same time as other members of the board.

Section 2. Proceedings of the Board of Appeals. [Ord. No. 2002.68, 9-3-2002]

The Board of Appeals shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this ordinance, and shall also adopt Roberts Rules of Order. Meetings shall be held at the call of the chairman and at such other times as the board may determine. The Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or of absence or failure to vote, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the offices of the Board.

Section 3. Conflicts. [Ord. No. 2002.68, 9-3-2002]

Any questions raised by any interested party of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting shall be decided by a majority of the members present except the member who is being challenged.

Section 4. Powers and duties. [Ord. of 12-19-1995; Ord. No. 2002.68, 9-3-2002]

Appeals shall be from decisions of the Building Inspector or Planning Board to the Board of Appeals. The Department of Environmental Protection shall be notified of the results of the appeals hearing involving land within the Shoreland Zone. Any appeal denied by the Board of Appeals may be appealed to the superior court in accordance with Maine State Rules of Civil Procedures, Rule 80B.

The Board of Appeals shall have the following powers:

- A. Administrative appeals. To hear and decide appeals where it is alleged there is a zoning violation or error in any order, requirement, decision, or determination made by the Building Inspector or Planning Board in the enforcement of this ordinance. The following procedure governs administrative appeals:
 - 1. When errors of administrative procedures or interpretation are found, the case shall be remanded back to the Building Inspector or Planning Board for correction.
- B. Variance appeals.
 - 1. The board shall hear and decide cases where a relaxation of this ordinance may be sought. Additional conditions and safeguards may be prescribed by the Board upon the applicant so as to minimize any adverse impact as a result of granting the variance. The burden of proof rests with the applicant to demonstrate that the conditions for a variance exists. A variance may be granted by the Board for undue hardship which shall be interpreted only in strict compliance with all of the following criteria and with the criteria of 30-A M.R.S.A. § 4353:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted; and
 - b. That the need for a variance is due to the unique circumstances of the property (not desired use or personal hardship) and not to the general conditions in the neighborhood; and

- c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner; and
 - e. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of this ordinance.
2. A variance is not justified unless all of the foregoing five criteria are present in the case. A variance is a relaxation of the dimensional requirements of this ordinance that may be granted by the Board of Appeals only where strict application of this ordinance, or a provision thereof, to the petitioner or his property, would cause undue hardship. A variance may only be granted for a permitted use or legal nonconforming use in that particular district. The Board of Appeals is prohibited from issuing a variance for a new use that is not permitted by this ordinance.
 3. In order to preserve the terms of this ordinance as much as possible, the board may impose such conditions to a variance as it deems necessary. Variances shall be the exception, not the rule. Variances which are granted shall be the minimum necessary to relieve hardship.

Section 5. Appeals to the Board of Appeals. [Ord. No. 2002.68, 9-3-2002]

A. Making an appeal.

1. An appeal may be taken by any person aggrieved by a decision of the Building Inspector or Planning Board to the Board of Appeals within 30 days of such decision, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty-day requirement.
2. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal.
3. For a variance appeal the applicant shall submit:
 - (a) A sketch drawn to scale showing lot lines, location of existing building and other physical features pertinent to the variance request.
 - (b) A concise written statement stating what variance is requested.
 - (c) A written response to the five criteria which determine undue hardship.
 - (d) All documentary evidence shall be submitted at the time of application. Such documentary evidence, along with oral testimony, shall constitute the record of the board's hearing. No documentary material submitted at the hearing shall be reviewed by the board or made part of the record.
4. Upon being notified of an appeal, the Building Inspector shall forthwith transmit to the Board and Planning Board all the papers specifying the record of the decision under appeal. Each appeal shall be accompanied by a check for \$50 to cover advertising and administrative costs. If the actual cost of advertising exceeds \$50, the applicant shall pay the balance. The Board of Appeals shall hold a public hearing on the appeal. For appeals involving the issuance of a building permit, the Building Inspector shall issue a cease and desist order.

B. Procedure on appeal.

1. least 10 days prior to the date of the hearing the Board shall cause written notice be provided to all property owners of record whose properties lie within 200 feet of the affected property, and/

or immediate abutters and property owners across the street or stream; the person making the appeal; and the Planning Board and any other parties of record. Such written notice shall include: **[Amended 3-5-2019 by Ord. No. 2019.14]**

- (a) The name of the person appealing;
- (b) A brief description of the property involved;
- (c) A brief description of the decision under appeal, or the nature of the variance appeal; and
- (d) The time and place of the Board's hearing.

The failure of a property owner to receive notice of the hearing shall not invalidate the hearing or the decision of the Board of Appeals.

2. (Reserved)¹

3. Hearings.

- (a) The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence or hearsay evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, and to submit rebuttal evidence.
- (b) The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. All persons at the hearing shall abide by the order of the Chairman.
- (c) At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause as determined by the Board. If a hearing is tabled and rescheduled, proper notice shall be sent to the appellant and abutters and/or property owners of record within 200 feet.
- (d) The Building Inspector or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- (e) The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. Proposed findings of fact may be submitted by any party, but shall not be considered as evidence.
- (f) The Board of Appeals may go into executive session only upon a three-fifths vote of the members present and voting. A motion to go into executive session shall indicate the precise nature of the business of the executive session. No other matters may be considered in that particular executive session. An executive session may be held only for the following purposes. No other matters may be considered in executive session.
 - (1) Consultations between the Board of Appeals and its attorney concerning the legal rights and duties of the Board, pending or contemplated litigation, settlement offers and matters where the duties of the Board's counsel to his client pursuant to the code of professional responsibility clearly conflict with the requirements of the Public Right to Know Law, 1 M.R.S.A. §§ 401 through 410, or where premature general

1. Editor's Note: Former Subsection 2, regarding written notice, was repealed 3-5-2019 by Ord. No. 2019-14.

public knowledge would clearly place the board at a substantial disadvantage.

- (2) Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute.

Section 6. Decisions of the Board of Appeals. [Ord. No. 2002.68, 9-3-2002]

- A. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of Building Inspector, or to decide in favor of the applicant on any matter on which it is required to pass under this ordinance, or to affect any variation in the application of this ordinance.
- B. The Board shall decide all appeals within 30 days after the conclusion of the hearing, and shall issue a written decision on all appeals. A two-to-two vote is a denial.
- C. All decisions shall become a part of the record. The decisions shall include:
 1. A statement of findings and conclusions;
 2. The reasons or basis therefor, upon all the material issues of fact, law or discretion presented; and
 3. The appropriate order, relief or denial thereof.
- D. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Planning Board, agency or office and the municipal officers within seven days of the decision date.
- E. Upon notification of the granting of an appeal by the Board of Appeals, the Building Inspector shall immediately issue a permit in accordance with the conditions of the approval, unless the applicant needs a conditional use permit.
- F. All decisions of the Board of Appeals are final. Appeals may be taken as permitted by law from any decision of the Board of Appeals to superior court.
- G. When a variance is granted, the recipient must apply within one month for a building permit to carry out the terms of the variance, or the variance becomes void.

Section 7. Stay of proceedings. [Ord. No. 2002.68, 9-3-2002]

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

Section 8. Rehearing. [Ord. No. 2002.68, 9-3-2002]

The Zoning Board of Appeals shall not entertain a second application for a variance, conditional use or administrative appeal concerning the same property after the previous application was denied unless two years have passed or there is substantial change in the relief requested. The board shall determine if the requested relief in the second application is substantially different from that requested in the first. The

determination shall be made by looking at the physical dimensions of the request only.