

Town of Phippsburg  
Board of Appeals

TERRY WYMAN, )  
Appellant )  
 )  
v. ) DECISION  
 )  
BRUCE POLIQUIN )  
Appellee )

The Board of Appeals for the Town of Phippsburg met on August 3, 2006 in the town office to consider the appeals of Terry Wyman from the decision of the Planning Board and the Board of Selectmen to grant Bruce Poliquin a new business permit and from the decision of the Planning Board to issue a permit for a lesser buffer. With respect to the new business permit, the Board of Appeals considered the following issues raised by Wyman's attorney:

**The Business Permit**

1. Frontage

The Board of Appeals noted that the Poliquin lot, although undersized, was grandfathered since it was created before the town adopted shoreline zoning. In addition, the Planning Board and Selectmen determined that the proposed beach house and other facilities to which the buffer requirement applies are located outside of the shoreland zone. The Appeals Board therefore voted 5-0 that there was substantial evidence supporting the decision that the proposed development would not violate frontage requirements. (Mr. Totman motioned to accept this statement, with changes made, Mr. Morse seconded, unanimous vote.)

2. Septage and Water Supply

The Wymans questioned the fact that the Planning Board and Selectmen had relied upon the DHHS standard which compared the proposed beach house to a visitor's center determining the adequacy of the proposed septic system. The Board of Appeals nevertheless determined that it was reasonable for the Planning Board and Selectmen to rely on a standard proposed by DHHS. The Board also noted that Poliquin's expert, William Maier, had presented detailed plans of the construction of the proposed septic system. It was also noted that the opponents had failed to show that the system was flawed. The Board of appeals therefore voted 5-0 that there was substantial evidence to support the finding by the Planning Board and Selectmen that the proposed septic and

water systems would be safe and sanitary. (Mr. Bigelow motioned to accept this statement, with changes made, Mr. Cashman seconded, unanimous vote.)

### 3. Parking

The Wymans contended that the Planning Board and Selectmen had failed to address the application of the buffer requirements to the parking area. However, the Board of Appeals observed that the diagram of the development which had been presented by Poliquin showed the parking area buffered by a number of trees as well as a fence. The Board concluded that the Planning Board and Selectmen had determined that an adequate buffer existed between the Wymans' property and the parking area. Accordingly, the Board voted 5-0 that there was substantial evidence to support that conclusion. (Mr. Morse motioned to accept this statement, with changes made, Mr. Cashman seconded, unanimous vote.)

### 4. Subdivision

The Board of Appeals disagreed with the Wymans' contention that the proposed beach house should have been presented to the Planning Board and Selectmen as part of a subdivision which included nearby lots which are to be sold to persons who will thereby acquire a right to use the beach house. The Board noted that the connection between the beach house and ownership of other lots owned by Poliquin is weakened by the fact that non-members would also be allowed to use it. The Board of Appeals therefore voted 5-0 that there was substantial evidence to support the refusal of the Planning Board and Selectmen to subject the beach house proposal to subdivision review. (Mr. Cashman motioned to accept this statement, as a whole, Mr. Bigelow seconded, unanimous vote.)

### 5. Miscellaneous Review Standards

The Board of Appeals noted that the Wymans had also appealed on the grounds that the Poliquin project does not comply with miscellaneous review standards. The Board noted that the Wymans had listed six ordinance sections without specifying in what respect they are contending that the project is insufficient. The Board of Appeals noted that the Planning Board and Selectmen had given the project careful scrutiny and had held several hearings and site walks at which the public was able to comment on the proposed project. The Board felt that the minutes reflected the fact that the Planning Board and Selectmen had given the project careful consideration. The Board of Appeals therefore voted 5-0 that the Wymans had failed to demonstrate that there was not substantial evidence to support the decision to issue a new business permit with respect to the Poliquin proposal.

The Board of Appeals discussed the fact that the issuance of a reduced buffer for the proposed beach house was an essential element of the new business permit and that there was a substantial issue as to whether the abutters had received adequate notice of the May 16, 206 hearing at which the lesser buffer was approved. The Board noted, however, that the new business permit had been issued subject to 10 conditions, one of which was obtaining a permit for a lesser buffer. The Board of Appeals therefore

voted 5-0 to deny the appeal with respect to the new business permit subject to the 10 conditions established by the Selectmen and Planning Board. (Mr. Cashman motioned to accept this statement, as a whole, Mr. Bigelow seconded, unanimous vote.)

**The Lesser Buffer Permit**

1. Lack of Notice

The Wymans complained that they had not been notified of the May 16, 2006 meeting at which the Planning Board voted to issue a permit approving a lesser buffer of 65 feet between the beach house and the Wymans' property line. The Board of Appeals noted that public notice of the fact that there would be a meeting of the Planning Board had been given in various public forums, but that this notice did not include an agenda which reflected the fact that the issuance of a lesser buffer permit to Mr. Poliquin would be addressed.

The Board of Appeals considered it to be significant that section 2.3 of the Phippsburg Land Use Ordinance specifies that a permit for a new business may be issued only after the abutting property owners have been notified. Since obtaining a lesser buffer was a critical element of obtaining a new business permit, the Board of Appeals concluded that, under section 2.3, abutters were entitled to receive personal notice of the May 16<sup>th</sup> meeting of the Planning Board at which the permit for a lesser buffer was approved.

The Board of Appeals also felt that the Planning Board may have erred in stating in its findings of fact that the abutters had been notified when in fact they had not been personally notified of the content of the May 16, 2006 meeting. The Board of Appeals therefore voted 5-0 to uphold the Wymans' appeal as to the lesser buffer permit issue since the required notice was insufficient and to remand the matter to the Planning Board for further proceedings regarding the lesser buffer issue. (Mr. Totman motioned to accept this statement, with changes made, Mr. Bigelow seconded, unanimous vote.)

At its meeting held on August 22, 2006, the Board of Appeals voted to adopt the foregoing statement regarding the conclusion reached at its meeting of August 3, 2006 concerning the Wyman appeal. (Mr. Totman motioned to accept this statement, with changes made, Mr. Cashman seconded, unanimous vote.)

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David L. Thombs, Chairman

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Storrs L. Bigelow

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Thomas R. Cashman

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John G. Morse IV

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Thomas C. Totman