

Town of Phippsburg
Public Hearing / Remand of Lesser Buffer Permit
Popham Beach Club
August 29, 2006

Note: The Phippsburg Board of Selectmen and the Planning Board approved a New Business application for the Popham Beach Club (PBC) on April 19, 2006. The PBC approval was conditioned on acquiring a Lesser Buffer Permit from the Planning Board. Mr. Poliquin applied for a Lesser Buffer permit and supplied supporting data at the regular Planning Board meeting on May 16, 2006. The Board approved the Lesser Buffer permit application on May 16, 2006.

Both the New Business and the Lesser Buffer Permit were appealed to the Phippsburg Board of Appeals by abutters Terry and Jean Wyman, represented by Roger Theriault Esq., The Board of Appeals upheld the New Business decision, however, remanded to the Planning Board the Lesser Buffer Permit because the "Board of Appeals felt that the proper notification of all abutters was not given."

Present: Chair Marie Varian, Marion Hebert, Robert Smith, Clifford Newell, Mark Hawkes (alt.)

Public hearing opened at 6:02pm: Lesser Buffer for Bruce Poliquin dba Popham Beach Club, 7 Jane Way, Popham Beach- Tax Map 14 Lot #43

Chair Varian declared a quorum sighting Mark Hawkes as alternate for Steven Thayer. Chair Varian presented the following instructions for the hearing: applicant will present first, including legal issues; terry and Jean Wyman, represented by Attorney Theriault, will present second including any legal issues; then any attendees at large may speak. The Board has the right to question as the hearing progresses and instructed participants to please remain during deliberations in case of any further questions. Testimony is to only be on the Lesser Buffer Permit.

Mr. Bruce Poliquin began by explaining that this is the fourth time arguments have been presented for this permit. Mr. Poliquin explained how the proposed buffer will equal 100ft.of space per Sec.1.7 in Land Use Ordinance. A stockade fence and vegetation will be placed between the Club and the Wyman's property line. The Wyman's will look down onto the Beach Club lot, only from the second floor of their home. The buffer will eliminate any other visual problems the Wyman's may have. The lot is not in a totally quiet neighborhood now due to commercial activities. Mr. Poliquin doesn't feel that the Club will harm any of the existing atmospheres. Mr. Poliquin feels the neighborhood is predominantly commercial. Using the map, Mr. Poliquin showed the other businesses around his property. Mr. Poliquin also showed photos that were taken of surrounding businesses. Mr. Terrance DeWan- Licensed Landscape Architect, citing 1.7 in Land Use Ordinance , stated the reduction of the 100ft buffer will be resolved by an 8ft stockade fence, a mix of trees(specified in the August 15 memo), including evergreens, bayberry bushes and other native plants to enhance the landscape.

Mr. DeWan stated that the Ordinance requires 1 out of 4 conditions be met by the Applicant. 1. Topography- doesn't apply, land is flat. 2. Vegetation- yes, with this proposal in Mr. DeWan's professional opinion. 3. Buildings to screen- yes; fence

qualifies as a building. 4. Commercial neighborhood- yes, proof with the pictures taken last fall. Mr. DeWan presented maps showing the lot, planned buffer, and surrounding area.

Mr. James Hopkinson, attorney for Mr. Poliquin, addressed the legal issues. Mr. Hopkinson believes that 1.6 and 1.7 grant the Planning Board authority to grant lesser buffer permits. A buffer is a transition area between a commercial property and a residential area. Mr. Hopkinson said the proposal provides a greater buffer than the 100ft rule. Mr. Hopkinson explained that the Ordinances are to be interpreted in the land owner's favor. The Ordinance is proper and sufficient for the Board to make a decision. The proposed buffer is equal to the 100ft of vacant space.

Mr. Roger Theriault, attorney for Mr. and Mrs. Wyman, disagreed with Attorney Hopkinson. Attorney Theriault said that it was not a question of a buffer, but a setback. He believes the drafters of the Ordinance were confused in their definition of the buffer. A buffer goes in the middle of a setback and therefore you cannot move a building to create a buffer. A variance is required to have structures within the 100ft. A variance is granted by the Appeals Board, using the Land Use Ordinance 4.9. Sections 1.6 and 1.7 were already on the books when the State approved a new standard (2005). Attorney Theriault says the Town has not adopted this new standard therefore it cannot be applied now. Mr. Theriault believes that the Planning Board does not have the authority to grant the permit.

Ms. Susan Carter, from Gnome Landscape & Design, expressed her concerns that the proposed buffer will not meet the 100ft rule. Ms. Carter explained that there was not enough information to be able to adequately say that the buffer will provide any effectiveness in controlling noise, light, or fumes. Ms. Carter also said that the proposed buffer will not provide any abatement of noise- the burden is on the developer to prohibit the increase of nuisances. Ms. Carter read from her letter to the Board, presented as testimony, citing decibel limits, protecting the native plants (pitch pines), and the proposal's desire to be a commercial entity in a residential neighborhood.

Mr. DeWan rebutted that Ms. Carter used to work for him and is a Landscape designer, not a certified Landscape Architect. Mr. DeWan feels that Ms. Carter doesn't understand the nature of the Beach Club's application. There would be no pitch pines added or removed from the property. Mr. DeWan believes he can achieve the same affect with the buffer as 100ft of open space.

Public comment was accepted at 7:48pm.

Some attendees of this meeting expressed their concerns of this area being considered predominantly commercial. One person felt that it was the Planning Board's responsibility to maintain the "unique and untouched beauty" of Phippsburg. Mr. Wyman asked that the Planning Board put themselves in his shoes. Mr. Wyman felt that the proposal would adversely affect their lives. Mr. Wyman asked Mr. Poliquin what he would have done if someone had done to him what he is doing. Mr. Poliquin said he would move on.

Mr. Smith motioned to close the public hearing. Mr. Newell seconded. Unanimous vote. Closed hearing at 8:22pm

Town of Phippsburg
Planning Board
Public Hearing for
Douglass Percy- Lot #5 of
Ledge-Meadow-Bay Subdivision
August 29, 2006

Present: Chair Marie Varian, Marion Hebert, Robert Smith, Clifford Newell, Mark Hawkes (alt.)

Chair Varian declared a quorum sighting Mark Hawkes as alternate for Steven Thayer.

Opened public hearing at 4:45

Douglas Percy- Lot#5 of Ledge-Meadow-Bay Subdivision, Parker Head Road – Tax Map 12, Lot #3. Mr. Percy had previously appeared before the Board (August 8, 2006) in an attempt to resolve the access/entrance to his property from Parker Head Road. Failure to examine established boundaries had led Mr. Percy to believe that a driveway locations established by Subdivision proposal had been placed in error, by the abutting owner of Lot #5.

At the outset of the Public Hearing, Mr. Percy announced that the driveway issue had been resolved as it is in fact in the location described by the Subdivision plan.

Mr. Percy requested a letter from the Board stating what had been said and done at the previous hearings for “the files”. Mr. Robert Smith motioned to write said letter for the files for Mr. Percy. Mr. Newell seconded. Unanimous vote.

Hearing ended at 5:10pm

Lynn Totman
Recording Secretary

Town of Phippsburg
Regular Planning Board Meeting
August 29, 2006

Present: Chair Marie Varian, Marion Hebert, Robert Smith, Clifford Newell, Mark Hawkes (alt.)

Chair Varian declared a quorum, citing Mark Hawkes as alternate for Steve Thayer.

Mr. Smith made a motion to write a letter for Mr. Percy stating that previous issues were resolved. Mr. Newell seconded, unanimous vote.

Richard Wallace- Sam Day Hill Road- Tax Map 10, Lot 1 seeking verification of previous decision (December 13, 2000) concerning his selling a portion of his property. The Board discussed the fact that the original permission was never followed thru, so there was no problem with signing the letter stating that the selling of Mr. Wallace's land will not create a subdivision. Mr. Newell motioned to sign the letter from Mr. Wallace saying that the selling of the land will not create a subdivision. Mr. Smith seconded. Unanimous vote. Board signed the letter- gave the letter to Mr. Vorhees and Mr. Vorhees paid the fee.

Mr. Newell motioned to recess at 5:45 until 6pm, Mr. Smith seconded, unanimous vote.

Mr. Newell motioned to come out of recess at 6pm, Mrs. Hebert seconded, unanimous vote.

Mrs. Hebert motioned at 6:01 pm to recess for public hearing regarding the Lesser Buffer for the Popham Beach Club, Mr. Newell seconded, unanimous vote.

Mr. Newell motioned to go into session. Mr. Smith seconded. Unanimous vote.
Session started at 8:23pm

Lesser Buffer Permit- Popham beach Club, Tax Map14, Lot 43

Board entered deliberation of testimony and document presentation at the forgoing Public Hearing(minutes of the hearing will become part of this record.)

Mrs. Hebert motioned to table decision until a future time. Mr. Hawkes seconded.
Defeated 2-3.

Mr. Newell motioned to stay and hash it out, Mr. Smith seconded, 3-2 Approved

Break at 8:27pm.

Mr. Hawkes was excused to go to work.

Re-opened at 8:39pm

There was much discussion of the amendment to sec 435394-C) of Title 30-AM.R.S.A.. The Board feels it has the authority to act under Section 1.7 of the Phippsburg Land use Ordinance and that Section 435394-C) does not require a Town to re-adopt an existing Ordinance section. Mr. Newell motioned that the Planning Board did have the authority to act on the Lesser Buffer permit. Chair Varian seconded, unanimous vote.

Reviewed all Ordinance Sections that pertain to this application:

1.1 Mr. Smith motioned that 1.1 has been represented adequately by the applicant during the last 4 public sessions and will not create any undue hardships on any abutters based on original application and comments made. Mr. Newell seconded, unanimous vote.

1.2 Does not apply

1.3 Chair Varian motioned that the applicant has rights under the grandfather law in Section 1.3 because he had rental cottages already established prior to the land Use laws. Mr. Newell seconded, unanimous vote.

1.4 Does not apply

1.5 Applicant has met standards of this section and the permit has been upheld by the Board of Appeals,

1.6 Chair Varian motioned that the applicant will comply with this section by using the provisions of Section 1.7. (1.6a 100ft from residential lot line and parking lot at 20ft unless exempted under 1.7.) Mrs. Hebert seconded, unanimous vote.

Ms. Carter (landscape designer) does not believe that the proposed plan provides adequate buffering for noise or glare. Mr. DeWan (landscape architect) does believe that the plan provides adequate buffering.

1.7 (part1) Mr. Smith motioned to accept the landscape Architect's opinion to the adequacy of the 100ft buffer. Mrs. Hebert seconded, unanimous vote. (part2) Mr. Newell motioned that the immediate area around the proposed Beach Club is predominately commercial, to the west Ocean View Campground and Cottages and to the east 2 separate lots of Kennebec Cottages. Mr. Smith seconded, unanimous vote.

1.8 Does not apply.

1.9 Does not apply

2.1 Chair Varian motioned to acknowledge the purpose of this Section and use it to discuss the following sections. Mr. Smith seconded, unanimous vote.

2.2 Chair Varian motioned that any permit that the applicant may require will be obtained by the applicant. Mrs. Hebert seconded, unanimous vote.

2.3 Chair Varian motioned that the Board has concluded that the applicant has obtained a new business permit with conditions. Mr. Smith seconded, unanimous vote.

2.4 Chair Varian motioned that the standards were addressed with the new business permit. Mr. Smith seconded, unanimous vote.

2.5 thru 3.7 do not apply

3.8 Chair Varian motioned that this buffer will not be treated with any material that will cause any damage to any surface or ground water and the applicant will maintain a list of operating procedures. Mr. Smith seconded, unanimous vote.

3.9 thru 4.3 do not apply

4.4 Applicant has proven with the documents provided that:

- a. Mrs. Hebert motioned to accept, Mr. Smith seconded, unanimous vote.
- b. Mr. Newell motioned to accept, Mrs. Hebert seconded, unanimous vote.
- c. Mr. Newell motioned to accept, Mr. Smith seconded, unanimous vote.
- d. Mrs. Hebert motioned to accept, Mr. Newell seconded, unanimous vote.
- e. Mrs. Hebert motioned to accept, Mr. Smith seconded, unanimous vote.
- f. Mr. Newell motioned to accept, Mr. Smith seconded, unanimous vote.
- g. does not apply
- h. does not apply
- i. will not adversely affect- Mr. Newell motioned to accept, Mr. Smith seconded, unanimous vote.
- j. Mr. Newell motioned to accept, Mr. Smith seconded, unanimous vote.

4.5 Conditions:

1. Under 3.8 in the Land Use Ordinance the applicant will not use any material that will harm water quality.
2. Vegetation in the 20' buffer must be maintained and dead vegetation replaced
3. Berms may be used to gain height of vegetation, if practical.
4. Minimum of an 8ft high fence along the Wyman boundary line- length will be 275ft +- and will start approximately 20' from Rte.209.

4.6 thru 4.10 do not apply

Section 5

Chair Varian motioned that this section, language and definitions, was used through out this entire process, including using the dictionary once. Mr. Smith seconded, unanimous vote.

After due deliberations and consideration of all testimony and documents presented, Mr. Newell motioned to approve the lesser buffer permit, with conditions. Mr. Smith seconded, unanimous vote.

Chair Varian stated that by reaching a decision during this business meeting based on information gathered at the public hearing, the Board has addressed the remand of the Board of Appeals. All comments received regarding the lesser buffer are noted and kept on file.

Mr. Newell motioned to adjourn, Mr. Smith seconded, unanimous vote.

Adjourned at 10:53pm

Lynn Totman- Recording Secretary

