

Planning Board

Alan Bellows - Chair
Francis McBrearty – Vice Chair
Michael Tomacelli
Linda Wilcox
Rosemary Bourette
Andrew Morley, Alternate



Town of Boothbay Planning Board Meeting
Wednesday, June 17, 2015

MINUTES

1. Call meeting to order Vice Chair Fran McBrearty called the meeting to order at 6:30 PM.
2. Roll call of members Present: Francis McBrearty, Michael Tomacelli, Linda Wilcox, Rosemary Bourette, Andrew Morley and CEO Art Dunlap

Mike Tomacelli made a motion to grant voting privileges to Andrew Morley for this meeting and Linda Wilcox seconded the motion. Vote: 4-0 in favor.

3. OLD BUSINESS:

4. NEW BUSINESS:

COMPLETENESS REVIEW: (The Planning Board, if Planning Board approval is required, shall notify the applicant either that the application is complete, or if the application is incomplete, that additional material is needed to make the application complete.)

- **John Savage**

Mailing Address: 327 Main Street, Fairfield, ME 04937

Property location: 20 Goodard Point Road, Boothbay, ME 04537 Tax map/lot R01/0001

Zone: SR District, Shoreland Overlay

Principal reviewer: Mike Tomacelli

Applications Review: The applicant proposes to construct a 130' x 6' pile supported pier with a seasonal 36'x4' runway and a 10'x20' float and a skidway for hauling the float.

Lauren Stockwell was present to represent Mr. Savage and she gave an overview of the project. A submerged lands permit was needed for this project. There was an on-site hearing on Monday this week, there is a letter from the Harbor Master saying there are no problems.

Mike Tomacelli asked what the setback was from the skidway to the property line. Ms. Stockwell said it was between 50' and 60'. The closest property line to the pier is 56'.

There were no more questions.

Findings of fact:

The applicant, John Savage represented by Lauren Stockwell, relating to the property located at 20 Goodard Point Road, Tax map/lot R01/0001. Taxes have been paid on the property for which approval is requested have been paid in full.

Applicant proposes to construct a 130;x6' pile supported pier with a seasonal 36'x4' runway and a 10'x20' float and a skidway for hauling the float.

The deed for the proposed project can be seen at the Lincoln County Registry of Deeds in Book 4865 on page 1343. The property is in the Special Residential underlying zoning district and contains 1.75 acres.

Conclusions:

Mike Tomacelli made a motion that the applicant has demonstrated Right, Title or Interest on the property in question and Linda Wilcox seconded the motion. Vote: 5-0 in favor.

Mike Tomacelli made a motion the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.6 (A-H) Review Criteria of the Town of Boothbay Zoning Ordinance and Rosemary Bourette seconded the motion. Vote: 5-0 in favor.

Mike Tomacelli made a motion the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.10.9 (A-G) Docks, Piers, Wharves, Bridges of the Town of Boothbay Zoning Ordinance and Linda Wilcox seconded the motion. Vote: 5-0 in favor.

Mike Tomacelli made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 1.8.5 (A-L) Shoreland of the Town of Boothbay Zoning Ordinance and Linda Wilcox seconded the motion. Vote: 5-0 in favor.

Decision:

Based on the above findings of fact and conclusions, the plans and supporting information submitted testimony and evidence submitted at the Planning Board meetings on the application, on a motion made by Mike Tomacelli and seconded by Rosemary Bourette the Planning Board approved the wharves and weirs/shoreland zoning permit application subject to the conditions of approval set forth below all for the reasons set forth in the findings and conclusions. Vote: 5-0 in favor.

Conditions:

Wharves and Weirs public hearing and approval by the Selectmen at their next meeting.

- **John and Catherine Meisten**

Mailing address: 3 Sea Mist Lane N. Boothbay, ME 04537

Property location: 3 Sea Mist Lane N. Boothbay, ME 04537 tax map/lot R06/0093/05

Zone: GR District, Shoreland Overlay

Principal reviewer: Linda Wilcox

Applications Review: The applicant proposes to construct an addition to the existing pier increasing its length by 20' moving the support pilings to the new float location and construction of a skidway for hauling the float.

Lauren Stockwell was present to represent the applicants and gave an overview of the project. This application needs a submerged lands conveyance and it has been obtained. The pier is 45' from the south abutter and 109' from the north abutter.

Linda Wilcox questioned the book and page, it appears in two places with two different numbers. It was determined which was correct. The onsite hearing for this application take place on Monday and there is a letter from the Harbor Master in the file, he has no objections to this application.

There were no questions from other board members or the audience.

Findings of fact:

The applicant, John and Catherine Meisten, represented by Lauren Stockwell relating to the property located at 3 Sea Mist Lane N. tax map/lot R06/93-5. Taxes on the property have been paid in full.

The applicant proposes to construct an addition to the existing pier increasing its length by 20' moving the support pilings to the new float location and construction of a skidway for hauling the float.

The deed for the proposed project can be seen at the Lincoln County Registry of Deeds in Book 2249 on page 122. The property is located in the General Residential underlying zoning district and in the Shoreland Zone and contains 1.08 acres.

The town has received a copy of the Army Corp of Engineering permit and the DEP NRPA permit.

Conclusions:

Linda Wilcox made a motion that the applicant has demonstrated Right Title or Interest on the property in question and Mike Tomacelli seconded the motion. Vote: 5-0 in favor.

Linda Wilcox made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.6 (A-H) Review Criteria of the Town of Boothbay Zoning Ordinance and Mike Tomacelli seconded the motion. Vote: 5-0 in favor.

Linda Wilcox made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 3.10.9 (A-G) Docks, Piers, Wharves, Bridges of the town of Boothbay Zoning Ordinance and Mike Tomacelli seconded the motion. Vote: 5-0 in favor.

Linda Wilcox made a motion that the applicant has demonstrated that this proposal meets the criteria set forth in Section 1.8.5 (A-L) Shoreland of the Town of Boothbay Zoning Ordinance and Mike Tomacelli seconded the motion. Vote: 5-0 in favor.

Decision:

Based on the above findings of fact and conclusions, the plans and supporting information submitted testimony and evidence submitted at the Planning Board meetings on the application, on a motion made by Linda Wilcox and seconded by Mike Tomacelli the Planning Board approved the wharves and weirs/shoreland zoning permit application subject to the conditions of approval set forth below all for the reasons set forth in the findings and conclusions. Vote: 5-0 in favor.

Conditions:

Wharves and Weirs public hearing and approval by the Selectmen at their next meeting.

- **Applicant: Kevin Reilly (owners: Robert and Ruth Guillard)**
Mailing Address: 7 West Street, Bordentown, NJ 08505
Property location: 282 River Road, Boothbay, ME 04537 tax map/lot R05/0053
Zone: GR district
Principal reviewer: Rosemary Bourette
Applications review: The applicant requests approval for an Accessory Use retail business.

This district does not allow for retail business. Only home occupations are allowed and what Mr. Reilly proposes to sell does not come under the definition of home occupation. There is nothing the Planning Board can do with this application.

Mr. Reilly withdrew his application.

APPLICATION REVIEW: NONE

PRE-APPLICATION REVIEW: ([Pre-Application Meeting. An applicant may appear informally at a regular meeting of the Planning Board to informally discuss a proposed development. No fees shall apply and no binding commitment shall be made between the applicant and the Planning Board.](#))

- Edwin Mitchell
Mr. Mitchell said he had questions of how to interpret the ordinance.

In his application last month he requested the board lift the restriction on outside seating for his restaurant. He said the board said it would be an expansion and he does not believe it is.

Mr. Mitchell referred to a letter from Sandy Barker and a 2013 Outdoor Seating Policy from the State. Mr. Mitchell said the letter says you can add up to 30 seats outside an existing restaurant and it is not considered an increase.

Mr. Mitchell said he is not going to increase volume just give people an option of where to sit.

Fran McBrearty said there are currently 45 seats in the restaurant if he adds 30 seats outside that is a total of 75 seats. He does not believe that the restaurant when busy and seats are available will turn people away because there are more than 45 diners there.

Mr. Mitchell said Mr. McBrearty is wrong, how many people they serve goes by the kitchen and their license not the number of seats. Mr. Mitchell said the board does not know how restaurants work.

Mr. Mitchell said if his original application said more seats then he would not be here today, it is not an expansion.

Fran McBrearty said that he does have restaurant experience and knows how they work. If there are going to be more seats, he does not see how you can say it is not an expansion.

Mr. Mitchell said if his resort guests can order to go and set outside the restaurant then why not allow his restaurant guests to do the same.

Fran McBrearty said there are distinctions between the resort area and the premises of the Brewery.

Mr. Mitchell said he does not believe the Restaurant is the inside of the building only, it is the whole area.

Mr. Mitchell said if he has 45 seats inside could he add 5 seats outside. His application was for up to 50 seats.

Fran McBrearty said, yes, under most conditions but not in this case as there is a condition prohibiting it.

Mr. Mitchell pointed out that Bet's is wrong. She does not have the proper parking for the number of seats that she has. He feels he is being treated different than others and if that is so then everyone in Boothbay who has a restaurant needs to be looked at.

Mr. Mitchell said his building permit is for the use of the property and for 50 seats, not specifically inside, he is not expanding his use. This condition just needs to be lifted.

Andrew Morley said it is a fact that the condition prohibiting outside seating is a condition of the restaurant. If the condition was placed there originally there must have been a reason, what has changed, why should it be lifted now.

Mr. Mitchell said it was placed there because of the heat from the neighbors. Both he and his neighbor have planted trees and you cannot even see the neighbors now. Mr. Mitchell said he thinks Fran wants him to talk with the neighbors and Fran is worried about problems with the neighbors. Mr. Mitchell said his proposal would have zero impact, it is a commercial district and he has a solid case. He should not have to go through all the criteria of expansion. The State is OK with the plan and there have been no complaints about the restaurant.

Art Dunlap said the condition was for inside seating. As long as Mr. Mitchell only has 50 seats he agrees it would not be an expansion but the condition would have to be lifted.

Mr. Mitchell said it is only 50 seats because the Town said so, his State license allows 50-75 seats plus 30 outside seats.

Fran McBrearty said he wants to see Mr. Mitchell's business grow, but is having a tough time lifting a condition. It still looks like expansion to him.

Mr. Mitchell said he doesn't think he should have to say any number of seats, this is a miniscule problem and if the town won't lift the condition, then he is not doing the whole application. He feels the board should be encouraging businesses. He will add the seats.

Fran McBrearty said if more seats are added there will be more people.

Mr. Mitchell said Mr. McBrearty does not know what he is talking about. There has been no parking on the road this year, but it would not matter anyway as there is no law saying you cannot park on the side of the road.

Andrew Morley said before he personally would feel comfortable he would like to give the abutters a chance to weigh in on this. If they do not have a problem with this then he would be more comfortable, he feels they have to be given the chance to speak.

Mr. Mitchell said all they had to do is ask the CEO if there had been any complaints.

Rosemary Bourette suggested they might want to do a site visit to see where the seating would be.

Art Dunlap said he would want a confined area.

Mr. Mitchell said if he has to go through the whole criteria he will ask for 100 more seats.

Fran McBrearty referred to the town code saying that the opinions of the abutters count but the whole decision is not based on their opinions. He referred back to the minutes of the July 2013 meeting where many people objected to the restaurant.

Mr. Mitchell asked if the abutters concerns change the outcome and Mr. McBrearty said it prompted a conditions be placed on the application. He personally is in favor of business.

Mr. Mitchell said he wished Alan Bellows was here this evening. He does not think it right that board members get to recuse themselves. They should be counted on to do their job and be there for everyone in town. When members recuse themselves that sometimes does not leave a majority on the board to vote. Mr. Mitchell said when he has come for advice everyone gives their advice so they should not drop like flies when there is a decision to make.

Mike Tomacelli said at classes the board members go to they are told to recuse themselves if they feel there could be a bias. Mr. Mitchell said he believes they should be objective if they are in that seat.

Fran McBrearty said the bottom line is if he changes the application to 5 seats outside and there is a site plan to show where those 5 seats are and it is determined what is restaurant and what is resort hopefully 3 members of the board can be unbiased.

Mr. Mitchell said he will just do it, he can seat them outside now. He is not making money wasting time in here.

Fran McBrearty told Mr. Mitchell if he does not serve people outside and everything consumed outside is packaged to go there is not a problem.

Mr. Mitchell was advised if he feels he is being treated with inequality then he should feel free to complain to the CEO.

Mr. Mitchell suggested the CEO look around and make others more equitable. Others do not have conditions placed on them.

OTHER BUSINESS:

5. APPROVE MINUTES: Fran McBrearty made a motion to approve the minutes of May 20, 2015 as amended and Mike Tomacelli seconded the motion. Vote: 5-0 in favor.
6. ADJOURN MEETING: Fran McBrearty made a motion to adjourn the meeting at 8:00PM and Mike Tomacelli seconded the motion. Vote: 5-0 in favor.

Minutes respectfully submitted
Sherry Tibbetts
Secretary