

**BRIDGTON BOARD OF APPEALS  
MEETING**

**Moose Pond/99 Cedar Drive**

**June 26, 2014  
6:00p.m.**

John Schuettinger, Chair of the Bridgton Board of Appeals reconvened the Public Hearing at 6:00p.m. at the subject site on Moose Pond/99 Cedar Drive. Those in attendance were: John Schuettinger, Chair; Sharon Smith Abbott, Vice Chair; Maria Wisner, Alternate. Absent were: Karen Eller; Robert Mawhinney; Julie Whelchel, Alternate. Vacant position, regular position.

Also present representing the Town of Bridgton was: Georgiann M. Fleck, Deputy Town Manager; Rob Baker, Code Enforcement Officer and Richard Spencer, Drummond Woodsum (legal representative for the Town of Bridgton).

Also present were: Peter Malia, Hastings Malia (legal representative/agent for the applicant), Peter Motel (appellant), Kevin Murrin (property owner of Moose Pond/99 Cedar Drive) Maria Murrin, Bill Warren, Al Knight, Larry Chute, Marie Motel, Deb Murrin, Nona Bauer, Paul Hoyt and Kathy Hoyt.

**PUBLIC HEARING (continued)**

**Administrative Appeal - Issuance of a Building Permit by Rob Baker, Code Enforcement Officer for the Town of Bridgton  
Applicant: Peter Malia Jr., Agent for Peter and Bonnie Motel  
Property Owner: Kevin Murrin, Moose Pond/99 Cedar Drive  
Bridgton Tax Map 60 Lot 7  
Represented by Peter Malia, Hastings Malia, P.A.**

Chair Schuettinger reconvened the Public Hearing at 6:00p.m.

Chair Schuettinger said the purpose of the site visit is to give the Board the opportunity to view the dock, its location to adjacent properties and the condition of the cove.

Attorney Spencer said this is a public meeting so I would like to remind everyone to refrain from private conversations so everyone can hear everything that it being said.

Rob Baker, Code Enforcement Officer, said what does the flagging represent? Mr. Murrin said the flagging is to show what was moved from the center of the cove to gain access to the lake.

Al Knight said when the excavation was done by Larry Chute, the rocks were put against the shore from about 30'. The permit that was issued for the 100' dock begins at that rock.

Attorney Spencer said the purpose of this meeting is to observe physical characteristics of the site. Administration arguments related to the appeal should be addressed at the meeting in the office.

Chair Schuettinger recessed the meeting at 6:25p.m.

Chair Schuettinger reconvened the meeting at 6:55p.m. at the Bridgton Town Office, Three Chase Street, Suite 1, Bridgton, Maine 04009

**Pledge of Allegiance (The Pledge of Allegiance was inadvertently overlooked)**

**Appoint Alternate(s) to vote in place of any absent regular member(s), if necessary**

Chair Schuettinger appointed Marita Wiser, Alternate, to act in the capacity of absent regular member.

**Approval of Minutes - June 12, 2014**

**Vice Chair Smith Abbott moved** to approve the minutes as submitted. Chair Schuettinger 2<sup>nd</sup>. Member Wiser said I was not present for the meeting. Therefore there was not a majority vote to approve the minutes. Georgiann Fleck, Deputy Town Manager, said I will carry the minutes over to the next meeting for consideration.

Attorney Malia submitted items labeled exhibit 10 to show the cove without the dock.

Attorney Malia said at the previous meeting Mr. Warren stated that every Mainer knows the difference between a bog and a lake and that the Murrins own shorefront on a bog. You need to decide if every bog owner has a right to deep water access because that is what Mr. Murrin is asking for. This is the longest dock on Moose Pond. The Board needs to be careful about the precedent you may be setting if you grant this appeal. Mr. Warren is not as concerned because the dock is not as visible from his property as it is from Mr. Motel's property. We believe that Mr. Baker's original decision in January was correct. A 180' dock is not within keeping with the natural appearance of the cove, it is not within keeping with the precedent set elsewhere on the lake, a dock is primarily for a boat. Others on the lake have smaller docks for larger boats. The Town is not obligated to allow a dock system sufficient to allow property owners the ability to swim from their dock. When the 180' dock is in the Murrins and Motels cannot share the cove because it is so narrow. The 100' dock is more appropriate to allow the Murrins and Motels the ability to share the cove.

Mr. Murrin said my dock is 55' back from my neighboring docks. We want access to the lake. The 100' benchmark was between myself and

Mr. Baker to start this project and Mr. Baker said we could continue until we came to 32-34" depth of water which is where we are at now. Mr. Baker said I am not saying that that statement is not true but I don't recall.

Chair Schuettinger said this meeting has been re-scheduled three times to make sure there is a board majority but now there are only three members present and it needs to be a majority vote for a decision. Do our by-laws state majority or three out of five? Ms. Fleck referred to the by-laws which states "a majority of the Board shall constitute a quorum for the purpose of deciding an appeal." Mr. Spencer referred to the Maine State Statute which is consistent with the By-Laws.

Mr. Murrin said the work done in the cove by Mr. Motel was his decision to pursue, I did not ask for anything, I just wanted to put my dock in the water for access.

Mr. Baker said in 2009 Mr. Murrin applied for a dock for 100' which was permitted. Mr. Knight called to report that the dock was more than 100' so I did go out and measure it. I either wrote a letter to Mr. Murrin, or it was a conversation in the office, informing him that his dock was longer than it was supposed to be. He came in and applied for a permit for an addition up to 80'. It was in July when I got the permit. At that time I did not know if I was going to issue the permit or not because it was a fairly lengthy dock. The application worked its way to the bottom of a "pile". I thought there was a State Statute stating that a dock could not block off more than 1/3 of the cove and therefore in January of this year I denied the permit. I was out of the office for six-seven weeks when Mr. Murrin decided to appeal my decision, I told him I would review the application again. I could not find any reason to deny it. Even though it is a long dock, probably the longest on the lake at least the longest dock I have ever issued a permit for, it is consistent. When we first discussed the dock it was not about access for swimming but more for boating. 30" of depth for water is reasonable for a boat and that is why I changed my opinion to grant the permit and allow the 180' dock.

Chair Schuettinger said is there a specific time-frame you need to act on an application for a permit? Mr. Baker said I believe it is 30-35 days. Chair Schuettinger said if someone submits an application for a permit and you don't act on it right away is it automatically considered denied? Mr. Baker said I think the Ordinance says I am supposed to act on a permit application and I didn't. Mr. Murrin said if you cash the check does that have any legal commitment? Mr. Baker said I may have. Mr. Murrin said because you cashed the check I thought I was all set. Chair Schuettinger said but you never received the permit? Mr. Murrin said correct. Chair Schuettinger said once a permit is approved do you notify the parties? Mr. Baker said normally they will stop by and pick their permit up or I will send it to them.

I have some permits in my office that have not been picked up for years. Attorney Spencer said isn't the check the fee for applying for a permit? Mr. Baker said yes, it is a fee for the permit. Chair Schuettinger said if you deny a permit do they get the money back? Mr. Baker said yes. We erred on that part but I have approved the dock to 180'. The check that was issued paid for the dock out to 180'. Chair Schuettinger said the extension of the dock? Mr. Baker said yes to 180'. I think it is a legitimate permit which I issued. Chair Schuettinger said in previous testimony Mr. Murrin came in to fill out an application for an appeal for his denial but just before his time to appeal was about to expire is when you told him he did not need to because you were going to issue the permit. Mr. Baker said yes. Chair Schuettinger said at that time his chance to appeal had expired. Mr. Baker said he did not need to appeal because I issued the permit. Attorney Spencer said you had not issued the permit when he came in to file the application for an appeal at 29 days? Mr. Baker said I was out of the office for about 7 weeks, Mr. Murrin told me he was going to appeal, I talked with him at that time and told him that I would review the application for the dock extension. At that time I could not find any rule or regulation which would prevent me from issuing the permit.

Vice Chair Smith Abbott said on January 15, 2015 you denied the application dated 7-29-2013. Mr. Baker said that is correct. Mr. Baker said on the 15<sup>th</sup> I was out of the office for several weeks and when I came back there was an application for an appeal from Mr. Murrin based on the application that I denied. I told Mr. Murrin that I would review the application again. I reviewed it and I could not find a reason based on any statute or regulation to deny the application so I issued the permit.

Mr. Murrin said when I was in the office on August 6, 2012, I asked to fill out a building permit but I was told it was unnecessary. I was told by Mr. Motel that he was going to take me to court so when I was in the office I was told that I did not need a permit. Mr. Baker said I am not saying that I did not say that but I find that inconsistent with how I do business. Attorney Spencer said you went into the Town Office to apply for a permit for the extra 75'? Mr. Murrin said yes, because Mr. Motel was taking me to court in 6 days. Attorney Spencer said and you did not get the permit? Mr. Murrin said I did not get the permit because I was told it was unnecessary.

Chair Schuettinger said to Mr. Baker, from your point of view a dock 175' is acceptable? Mr. Baker said yes, I think it is consistent with the neighborhood and it allows access to the lake. It is longer than any permit I have ever issued but it is consistent with most docks which vary in length to get adequate water depth for a boat. I thought that 30" at the end of the dock was sufficient to get a boat in.

Chair Schuettinger said as far as I know you can have a 175' dock as long as it does not interfere with navigation.

Mr. Baker said my cutoff is 200' because of the encroachment into a safety zone area for headway speed of a boat.

Attorney Spencer said Section 15.C.4 of the Town of Bridgton Shoreland Zoning Ordinance states "that the facility shall be not larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses, of the area." Attorney Malia said this case "boils down" to this section.

Attorney Malia said in January when Mr. Baker denied the building permit for a dock extension he relied on the state law. His decision does not say anything about that but cites the applicable section of the Town of Bridgton Ordinance and says that by having such a long dock (Exhibit 7) in a small cove you may be depriving others of the use of that area. That decision was not appealed by Mr. Murrin who had 30 days to appeal that decision which he did not do. When Mr. Baker returned from his medical leave he took it upon himself to reverse the decision of denial.

Attorney Spencer said when Mr. Murrin came in to file his appeal he was told that he did not need to because the Code Enforcement Officer was going to reverse the decision. Attorney Malia said I have no idea what Mr. Murrin was told but legally you have 30 days to file an appeal. We have appealed Mr. Bakers March decision allowing the dock to be extended an additional 80'. It is my understanding that when you vote you will be voting as to whether or not to grant or deny our appeal. A 2-1 vote in our favor grants the appeal and brings the dock back to 100' and a vote against the appeal allows the March decision made by Mr. Baker to stand.

Attorney Malia said Mr. Murrin has made the statement that Mr. Motel was going to take him to court. What he is talking about is Exhibit 5, if Mr. Motel wanted to take Mr. Murrin to court he would have done so. Mr. Murrin has not responded to any of our letters. The Warrens and the Motels have a shorefront lot on Moose Pond and Mr. Murrin has a buildable shorefront lot across the street yet Mr. Murrin argues that he should be entitled to bring his dock out to be at the same distance as the Motels. If you start letting everyone that owns lots across a street extend their dock out into the lake to a length that is consistent with the people that do own property on a water body you are going to have a lot of docks that exceed 180'.

Mr. Murrin said I drove from Massachusettes to the Bridgton Town Office to file the appeal, collating documentation with photographs in the office, and I submitted a check. I have done everything correctly. Ms. Fleck said that is correct. I withheld the appeal application and did not process the application or the check because

Mr. Baker was due in the office the next day and wanted to review the building permit again and the appeal application. Attorney Spencer said Mr. Murrin did not withdraw his appeal? Ms. Fleck said no, he submitted the appeal but we held it pending review of the building permit and the appeal application. Attorney Spencer said to Attorney Malia, do you have a different point of view as to what filing an appeal is? Attorney Malia said I don't know what he did, I just know that when I filed the appeal I had to submit an application, notify the abutters and pay a fee.

Attorney Spencer said the process has been procedurally "tangled up" so this Board is going to have to decide this issue on the merits of the Ordinance. How do you feel about having the Board act on the merits as opposed to dealing with the procedural issues? Attorney Malia said that is fine. Mr. Murrin said that is fine, I want you to vote on the merits of the Ordinance.

Attorney Spencer said the applicable section of the Ordinance is Section 15.C to determine merit and not take into consideration the procedural issues.

Mr. Warren said the Town of Bridgton has made the determination that that is lake front. I chaired the Moose Pond Association when the 36 lots were purchased by the Town in 1968. There is about 110' of frontage that Mr. Murrin owns and he pays the same taxes as we do and therefore I believe he has a reasonable expectation to reach accessible use of the water. When you visited the location a big rock was pointed out and the dock used to go right down the middle of the cove. Mr. Murrin has readjusted that to my Mother's accommodation and I have continued it to follow the shoreline by 6" to 1'5" so he can get out deep enough to use it leaving adequate room. His dock does not extend beyond either my dock or Mr. Motel's dock.

Attorney Spencer said what are the dimensions of the lot on the lakeside of the road? Mr. Murrin said 110' of frontage. Attorney Spencer said is that a straight line? Mr. Baker said it appears to be straight at 109' on the shore line. Attorney Spencer said what is the acreage of the lot? Mr. Baker said I am not sure. Attorney Spencer said the Ordinance states that if a lot is on two sides of the road it is actually two separate lots. Mr. Murrin said I only pay one tax bill. Attorney Spencer said that is for tax purposes but I am not sure that makes much difference. Mr. Murrin said everyone has two lots because the road splits the lots.

Chair Schuettinger closed the Public Hearing at 7:15p.m.

Chair Schuettinger said is anyone ready to make a motion? Attorney Spencer said the Board should discuss the application before making a decision because you are going to want to create Findings of Fact and

you are going to want to apply the standards of Section 15.C. of the Town of Bridgton Shoreland Zoning Ordinance.

Vice Chair Smith Abbott said Mr. Baker said it is consistent, it should be no longer, but the Ordinance reads no larger. Chair Schuettinger said there are people who try to go with larger and it says it can't be wider than 6'.

Chair Schuettinger said are we in agreement that the length of the dock is o.k.? Vice Chair Smith Abbott said what do you think? Chair Schuettinger said I think it seems reasonable. For boating it is going to have to be that long and he has put it as far over on one side as possible.

Member Wisner said there is nothing in the Ordinance that addresses it being a bog and a statement that you can have a dock extend out beyond the bog, we can't prove conditions. Chair Schuettinger said this is unique because of the condition of the bog.

Vice Chair Smith Abbott said can we assume there will be no appeal for an extension beyond 175? Mr. Murrin said the original permit was submitted was for an additional 100'. Mr. Baker said can the Board condition the approval? Attorney Spencer said yes, if the Board felt that extending the dock further would impact the surrounding character and uses.

Member Wisner said it meets the needs for access to the water but I am not sure about the criteria that it be consistent with the surrounding character and uses. Chair Schuettinger said everyone else around there has a dock, however, theirs is smaller because of their deeper water frontage.

**Vice Chair Smith Abbott moved** to deny the Motel appeal and uphold the Code Enforcement Officer's decision to grant the permit for the 175' dock.

Chair Schuettinger said this is for the extension. Mr. Baker said the extension was 80' but the dock measured a total of 175'. Attorney Spencer said it is for an additional 80'.

**Vice Chair Smith Abbott** revised the motion to deny the Motel appeal and uphold the Code Enforcement Officer's decision to grant a permit for an additional 80' extension to Mr. Murrin's dock. Chair Schuettinger 2<sup>nd</sup>. 3 Approve / 0 Oppose

Attorney Spencer said I would recommend to the Board that you make your decision tentative and then prepare Findings of Fact for the next meeting.

**Vice Chair Smith Abbott moved** that the decision is not final until the Board acts on the Findings of Fact and Conclusions of Law.  
Member Wisner 2<sup>nd</sup>. 3 Approve / 0 Oppose

**Old Business** - None

**New Business** - None

**Mail and Miscellaneous - None**

**Topics for Discussion**

A. Karen Eller - Resignation Submitted

B. Vice Chair Smith Abbott said I would like to suggest that Section 15.C.4 be clarified by whomever reviews the Ordinances for changes. Mr. Baker said that language mirrors the State Ordinance.

Chair Schuettinger adjourned the meeting at 8:15p.m.

Respectfully submitted,

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Georgiann M. Fleck, Deputy Town Manager  
Town of Bridgton