

**BOARD OF APPEALS**  
**March 17, 2010**  
**Southwest Harbor Town Office**  
**6:00 p.m.**

**MINUTES**

- I. Roll Call/Call to Order: The meeting was called to order at 6:004pm  
Present: Donald Lagrange, Code Enforcement Officer; James Geary, Charles Morrill, Lunn Sawyer, Ted Fletcher (excused)

Visitors: Robert Bosserman, Erika Schriner, Steve Lyman, Charlotte Gill

- II. Request for Reconsideration: Robert Bosserman, 148 Seawall Road: denial of appeal of the issuance of a permit for renewal of previous permit # 1320 (1998) for a 26 seat restaurant. Lyman asked to clarify the ground rules of a reconsideration saying he understands it is reconsideration of the evidence already presented. Geary explained that if the Board decides to reconsider it was possible to enter new evidence and if either party needed time to prepare materials that time could be allowed. All members of the Board would need to vote unanimously to reconsider, as the BOA ordinance requires a majority of three (3) under Section 7 Voting. Gill questioned how the Board could reconsider the permit for a 26 seat restaurant as the appeal was for the sign and the dumpster. Geary and the Board said they did hear testimony about other items during the appeal process.

Mr. Bosserman was asked to speak to the Board. Bosserman asked why the Town Council was not here, as his appeal is against the Code Officer. Lyman asked if the Board was going to allow testimony before the reconsideration decision. Bosserman asked if there was anything in his letter requesting reconsideration that was of interest. Lyman objected. Geary asked Bosserman to convince him and the other Board members to reconsider. Bosserman addressed the due process issue re the closed hearing on February 11<sup>th</sup>. He felt he did not have the same privilege. He also did not get to present a summary and the questions that went to the CEO and his council was specific from the BOA and he felt they re-argued and summarize the case which Bosserman did not have. Currently this is a limited opportunity to do that. There was incorrect testimony as to when the road came into being as it refers to the parking issues and changed the travel way. Bosserman said the change wasn't grandfathered into the 1998 permit. The driveway at that point was non-conforming. There was conflicting and suspect testimony regarding the measurements of the back parking lot. Why take such pains with that while ignoring other standards of parking such as the isle width. There was an error in the number of parking spots in the front area which would affect the number of seats in the restaurant. Bosserman read from the Planning Board minutes of March 5, 1998 and amended on March 19, 1998: Reports # 4, last paragraph. The fact that the parking situation was not modified resulted,

according to Bosserman, in the CEO looking at a sketch that was incorrect. Parking and buffering are connected to that. He contends that the adjustments would only allow a 20 seat restaurant. He referred to Section II a 9 of the LUO which states that if there are areas out of compliance no additional permits may be issued. Geary read the section allowed. Bosserman does not believe the CEO has the authority to evaluate the buffering, and feels strongly that it is a change of use and that creates a need for the Planning Board to determine the impact of the change of use on the buffering, as is parking. Bosserman said because of those issues, the property is out of compliance. There is, according to Bosserman, a real issue of allowing this type of establishment in a predominantly residential area. He feels the Board should assure themselves that they are enforcing all the parking standards, and to mitigate the increased impact of that use through a Planning Board review of the buffering standards. Section VI, A, buffering was quoted. Geary told Bosserman he was covering the same ground as before. Bosserman said his is contesting the issuance of a permit. Bosserman said the new evidence is that the previous Planning Board eliminated the two parking spaces and reduced the number. Geary said the only authority the Board has is to tell the CEO to take away the permit for the sign and the dumpster. Geary reiterated that Bosserman needs to convince the Board that there is reason to reconsider. Bosserman again referred to the error of parking. Geary urged him to move on. Bosserman referred to the conflicting testimony of the CEO about measuring the back parking lot and does not agree with the measurements. He stated he went to the file today and still did not find any additional information on the parking spaces measured. Bosserman said it is a very simple process for the BOA to send this back to the Planning Board. Geary said the CEO issued a permit for a sign and a dumpster only. It is untimely to appeal the permit issued in 1998 and the Board does not have jurisdiction over that. The Board had no questions. Bosserman said the Board has the authority to negate the sign and dumpster permits. Sawyer said if the permits for those two items were taken away the restaurant would still be there. Bosserman said the BOA could remand this back to the Planning Board – and Geary and Sawyer both said this Board did not have the authority to remand a permit that was issued in 1998 back to the Planning Board. Bosserman said the findings of fact (14d) (14e) are in error and the reliance on that was in error.

Geary asked for a motion to reconsider the appeal of Bosserman. No member of the Board made a motion to reconsider the appeal.

The Board discussed with CEO and recorder, upcoming appeals, drafts of minutes and the appeal to superior court of a decision on Village at Ocean's End.

III. Adjournment: The meeting was adjourned at 7:30 PM