

Rockport Board of Appeals
February 19, 2015
7:30 P.M.
Rockport Public Library
The Brenner Room
17 School Street, Rockport, MA

- 1) Call to order at 7:30 P.M. Members present Alan Battistelli (Chairing), Peter Bergholtz, Frederick Frithsen, Lars-Erik Wiberg, Joyce Fossa, Charles W. Christopher, Tacy D. San Antonio and John N. Rees. Michael Bace absent.
- 2) Pre-hearings.
 - a) Alan Battistelli left the room as he was recused from the first scheduled hearing.
 - b) Charles W. Christopher acting as Chairman reviewed the correct procedures for being heard at a Board of Appeals meeting.
 - c) Charles W. Christopher presented a letter that was received from Attorney Robert Visnick asking that his client's case #150103 be continued to the Board's February 24, 2015 meeting as he was unable to attend the February 19, 2015 meeting.
 - d) Peter Bergholtz moved to continue the hearing #150103 until the next meeting. Charles W. Christopher seconded and it passed unanimously with Peter Bergholtz, Charles W. Christopher, Tacy San Antonio and Lars-Erik Wiberg voting.
- 3) Hearing of Roma III, Ltd. to appeal the decision of the Building Inspector relative to landing a helicopter on the petitioner's property at 129/133R Granite Street, Rockport.
 - a) Opened 7:35 P.M. Closed 8:45 P.M.
 - b) Members of the Board sitting are Charles W. Christopher (presiding), Peter Bergholtz, Tacy San Antonio, Lars-Erik Wiberg and Frederick Frithsen.
 - c) Materials presented: Application and legal arguments.
 - d) The petitioner Ron Roma, 121 Granite Street, and his Attorney Jeffrey Angley, One Bowdoin Square, Boston, MA 02114, argued that the Building Inspector's enforcement order was incorrect and should be vacated.
 - i. Mr. Roma's home is situated in a residential district but it is really a mixed use area as it is surrounded by commercial uses and marinas.
 - ii. The helicopter landed in a flat area and approached over water. It did not approach over land.
 - iii. Mr. Roma has FAA approval and the landing area is only a flat section with a windsock.
 - iv. Since 1992 Mr. Stanley Poole has had a helipad in Rockport.
 - v. Mr. Roma has appealed because he believes that the Building Inspector has erred as a landing is not a use of the property but simply a means of access. As the property is legal so the access is legal. It is subordinate to the use of the home.
 - vi. Use of helicopters has become customary. In Massachusetts, there are approximately 130 public and private heliports in operation, 9 such heliports within a 10 mile radius of Rockport, and 50 within 30 miles.
 - vii. Rockport doesn't regulate helicopter use. It is therefore inappropriate for the Building Inspector to try and use this ban as a method of limiting helicopter use.
 - viii. Mr. Roma stated that the only requirement that the FAA has for a landing pad is that the pilot have permission of the home owner and he does as he is the owner.
 - (1) He applied to the FAA in order to have them review the approach, landing and hover area to be sure it was safe.
 - (2) No license is needed.
 - (3) An absence of a bylaw prohibiting it makes it legal.
 - e) The Board asked a number of questions.

- i. Peter Bergholtz asked how often Mr. Roma planned to land his helicopter. Mr. Roma stated that he had no plans to land often only when necessary. There would be no fueling on site. It is for occasional use only.
 - ii. Lars-Erik Wiberg asked if helicopter storage etc. Mr. Roma answered that the helicopter would be stored, fueled and maintained elsewhere.
 - iii. Peter Bergholtz asked if Mr. Roma was the pilot and the answer was yes.
 - iv. Tacy San Antonio asked if flight in and out was over the water and what about strong winds. Mr. Roma replied that the flight in and out was over the water and if the wind was too strong he would turn around.
- f) The audience was asked to limit themselves to five minutes and Mr. Roma and his attorney would be allowed to reply to each speaker.
- i. Gregory Blaha, 133 Granite Street, argued that:
 - (1) Landing a helicopter at 129 Granite St is:
 - (2) Not allowed
 - (3) Not safe
 - (4) Not approved by the FAA
 - (5) There was never any discussion of helicopter landings or a heliport during the Site Plan Review for 129 Granite St.
 - (6) The FAA "does not issue licenses, permits, or any other approval that would authorize the establishment of or govern the operations of private heliports. The FAA leaves such determinations up to the town in question.
 - (7) Roma's appeal does not cite the Edgartown Superior Court case which is the most relevant case and which agrees with the town and prohibits helicopter landings.
 - (8) The Poole heliport is not in same residential zoning district (i.e. Residential A) as 129 Granite St. and is on a significantly larger lot.
 - (9) Helicopters and planes are loud, create disturbance on the ground when they take off and land, and can crash. We stand with the Town and the neighborhood and oppose any helicopter use at 129 Granite St.
 - ii. Rebuttal of petitioner:
 - (1) Poole's land is in a RA district
 - (2) FAA license not required.
 - iii. Dora Tevan, 16 South Street, stated:
 - (1) Limit helicopter landing to emergencies.
 - (2) It has adverse effects on sea life.
 - (3) The Atlantic path needs to stay sound.
 - (4) This must be brought to Town Meeting.
 - iv. No rebuttal
 - v. Frederick Tarr, 154 Main Street, stated:
 - (1) Helipad was never on any plans for this property.
 - (2) Is it going to land and stay for number of days?
 - (3) How many passengers?
 - vi. Rebuttal of petitioner.
 - (1) There will be no helicopter storage overnight.
 - (2) The site plan is not applicable.
 - (3) The helicopter seats 5 but has never carried more than 3 and usually only one.
 - vii. Eric Hutchins, 45 Pooles Lane stated:
 - (1) The Board should check the customary use argument.

- (2) The high noise level of a helicopter will impact the entire town.
- viii. No rebuttal.
- ix. The Building Inspector Paul Orlando asked Town Council about this issue and was informed that it:
- (1) Must be a customary use.
 - (2) Cannot be detrimental to the neighborhood.
- x. Attorney Angley replied that the definition standard for customary is not limited to the town but of a more widespread area.
- xi. John Penaloza, 46 Main Street, brought up the issue of two plane crashes that occurred when Mr. Roma was piloting.
- xii. Mr. Roma explained that one crash was caused by catastrophic engine failure at 28,000 feet and the other by small wind eddies causing tail drag.
- xiii. Michael Kenyon, 4 Landmark Lane, said that helicopter landings were not in the bylaws and is pretty sure if they had been in the Bylaws presented to Town Meeting they would have been voted down. Allowing this would eviscerate the Bylaws of the Town.
- xiv. Robert Ellis, 8 Captains Way, believes this area is too tightly packed for a helicopter landing. He didn't like the threat of further legal action by the petitioner if the Building Inspectors decision wasn't reversed.
- xv. Jane Montecalvo, 92 Granite Street, asked Mr. Roma when he was licensed and was told in April-May of 2012.
- xvi. Paul Decourcy, 1 Gott Avenue, concerned with other pilots landing on this site.
- xvii. Zenas Seppala, 92 Granite Street, presented photos of the area after Mr. Roma landed the helicopter. He was concerned:
- (1) With the fact that Mr. Roma landed near flapping tarps that were covering building materials at the site.
 - (2) Also that the Site Plan Review should have included the helipad.
 - (3) That landing a helicopter should not be considered customary.
- xviii. Mr. Roma replied that the tarps were a good 100 feet from the landing.
- xix. Linda Decourcy, 1 Gott Avenue is concerned:
- (1) If there is an accident how will emergency vehicles gain access to the helipad.
 - (2) Will there be 24 hour landings?
 - (3) What about fuel leakage?
- xx. Mr. Roma replied that there will be no night landings and the helicopter has a double bladder so there are no fuel leaks.
- xxi. Benjamin Smith, 45 Mt. Pleasant Street, concerned with the possibility of a fire caused by the helicopter.
- xxii. Board member Frederick Frithsen asked how much fuel the helicopter carried and was told by Mr. Roma 69 gallons.
- xxiii. Sarah Kent, 133 Granite Street, said that
- (1) Where Mr. Roma landed is not the location the FAA had listed.
 - (2) The Building Inspector is right in this case and his decision should not be reversed.
 - (3) The same approach should be taken as in the Edgartown case.
- xxiv. Mr. Roma replied that the FAA is not interested in the actual location of the landing but rather the routes taken in and out of the site.

- 4) Hearing of Jay Smith for a special permit and/or variance to change the use of the second floor from a commercial space to residential and to add an outside stairway leading to the second floor on a non-conforming building at 3 Station Square, Rockport.
 - a) Opened 8:46 P.M. Closed 8:54 P.M.
 - b) Members of the Board sitting are Alan Battistelli (presiding), Peter Bergholtz, John N. Rees, Joyce Fossa and Frederick Frithsen.
 - c) Materials presented: Materials presented: general plan, site plan, floor plan, and elevations.
 - d) Architect John Campbell, 4 Bayridge Lane, representing the petitioner.
 - i. The petitioner is asking for a Special Permit to convert the second floor of a commercial site to a residence.
 - ii. The second floor will be gutted and remodeled. A few doors and windows will be changed.
 - iii. An outside stairway will be added for access.
 - iv. Frontage is on the Town access road through the railroad yard.
 - v. The setback will be encroached upon by 2-3 feet.
 - vi. The first floor will be warehouse space separated by a two hour fire separation.
 - e) Jay Smith, 45 Mt. Pleasant Street, spoke.
 - i. This is for the short term use of my son to live in.
 - ii. Later it might be used by an employee so there would be a 24 hour presence on the site.
 - iii. Mrs. Parady was concerned about loud parties etc. but I assured her that I would monitor it and she could contact me directly if it got noisy at any time.
 - f) From the audience, Hildy Feuerbach, 15 Pigeon Hill Street, voiced her concern that there should be no flammable products stored on the first floor.
 - g) Jay Smith replied that presently they stored doors and windows there and it was also used as office space for the garden center.
- 5) Hearing of Yijie He and Qunxiao Wu for a special permit and/or variance to change the use from a retail space to a restaurant in an existing non-conforming building at 3-5 Main Street, Rockport was continued to the February 24, 2015 meeting of the Board.
- 6) Approval of Minutes
 - a) Charles W. Christopher asked that a typing error be removed from the draft of November 24, 2014 meeting.
 - b) Peter Bergholtz made a motion to accept the November 25, 2014 Board of Appeals, November 25, 2014 Zoning Administrator Meeting and Special Meeting December 11, 2014 minutes.
 - c) Frederick Frithsen seconded and it passed unanimously with Alan Battistelli, Peter Bergholtz, Frederick Frithsen, Lars-Erik Wiberg, Joyce Fossa, Charles W. Christopher, Tacy D. San Antonio and John N. Rees voting.
- 7) Old Business: Withdrawal of Petition of Gregory Titterington / Jacqueline Comiskey for a Variance.
 - a) Peter Bergholtz made a motion to accept the withdrawal and Charles W. Christopher seconded.
 - b) It passed unanimously with Peter Bergholtz, Charles W. Christopher, Joyce Fossa and Frederick Frithsen voting.
- 8) Discussion of Hearings
 - a) Roma Alan Battistelli Battistelli left the room as the discussion took place.
 - i. Peter Bergholtz referred to the Town Council's letter that if it was a non-customary use or detrimental to the neighborhood the appeal can be denied.
 - ii. Lars-Erik Wiberg stated that a helipad is not in the Bylaws but neither are commercial parking lots, motels or rock crushers. The Bylaw has permitted uses and anything else needs a Variance. This should go to Town Meeting.
 - iii. Peter Bergholtz said this is not a customary use and it is detrimental to the area.

- iv. Tacy San Antonio made a motion to deny the Appeal of Roma III, Ltd. And Frederick Frithsen seconded. It passed unanimously with Charles W. Christopher, Peter Bergholtz, Tacy San Antonio, Lars-Erik Wiberg and Frederick Frithsen voting.
- b) Jay Smith
 - i. Frederick Frithsen moved to approve the plans submitted for a second floor residence and Joyce Fossa seconded.
 - ii. The motion passed unanimously with Alan Battistelli, Peter Bergholtz, John N. Rees, Joyce Fossa and Frederick Frithsen voting.
- 9) Next Possible Meeting February 24, 2015
- 10) Motion to adjourn made by Peter Bergholtz and seconded by Charles W. Christopher. Passed unanimously with Alan Battistelli, Peter Bergholtz, Frederick Frithsen, Lars-Erik Wiberg, Joyce Fossa, Charles W. Christopher, Tacy D. San Antonio and John N. Rees voting.
Adjournment at 9:15 P.M.