

Rockport Board of Appeals
February 25, 2014
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 Peter Bergholtz (Chairing), Tacy D. San Antonio, Alan Battistelli, John N. Rees, Lars-Erik Wiberg, Joyce Fossa, Charles W. Christopher and Michael Bace. Frederick Frithsen was absent.
- 2) Hearing of Eric W. Hutchins and Julia P. McMahon for a variance and/or special permit to raze an existing accessory dwelling and replace it with a one and one half story dwelling at 45 Pooles Lane, Rockport.
 - a) Opened 7:30P.M. Closed 7:56 P.M.
 - b) Members of the Board sitting are Peter Bergholtz (Presiding), Charles W. Christopher, Tacy San Antonio, Joyce Fossa and Michael Bace.
 - c) Materials presented: general plan, site plan, floor plan, elevations and photographs.
 - d) Eric Hutchins, 45 Poole's Lane presented.
 - i) Showed a map of property showing the 12.76 acres of land surrounded by town land in the middle of the woods.
 - ii) Charles W. Christopher asked about the frontage and Eric Hutchins replied that he wasn't sure, as the land is an odd shape with the strange access over to Poole's Lane.
 - iii) Land is not in a watershed protection area so there are no wetland issues. It is in a watershed overlay district (Millbrook, zone 2) that allows construction.
 - iv) Wish to raze the existing accessory dwelling (built in 1995) and rebuild as a guesthouse that will not encroach into the setbacks. The dirt road will not be paved.
 - v) A variance is needed to have an accessory dwelling in the zone.
 - vi) The topography makes it difficult to build.
 - vii) Parcel can never be subdivided and bylaws say than can be no accessory dwellings in zone.
 - viii) Charles W. Christopher asked if building was at lowest level of property and the answer was that it is at the highest.
 - ix) Tacy San Antonio asked why not just knock it down and rebuild in the same footprint. Eric Hutchins answered that it is a ramshackle structure that they wished to make better and keep legal setbacks.
 - e) From the audience Robert Visnick, 40 Jerdens Lane, Rockport spoke in support of the petitioner. Forcing them to stay within the illegal setbacks in order to stay in the same footprint doesn't make sense.
- 3) Hearing of Scott Randall and Diane Taubner for a special permit and/or variance to attach a porch to the conforming house and add a one half story to the non-conforming garage at 6 Harraden Avenue, Rockport.
 - a) Opened 7:58 P.M. Continued to March 25, 2014 meeting.
 - b) Members of the Board sitting are Alan Battistelli (presiding), Charles W. Christopher, Tacy San Antonio, Lars-Erik Wiberg and Michael Bace.
 - c) Materials presented: general plan, site plan, floor plan, elevations and photographs.

- d) Scott Randall said that the property faces Harraden Avenue and they bought it about 6 years ago.
 - i) They are doing a complete renovation of the house staying within the same footprint.
 - ii) Once the deck is added it will extend one foot into the setback.
 - iii) Adding a front door into the main part of the house.
 - iv) The garage will be going up a half story.
 - v) It is on a corner lot and it will be an asset to the neighborhood.
 - vi) The garage is a made of beautiful stonework but the roof and rafters are gone.
 - vii) Will raise the roof of garage about six feet. It is about 9 feet from road so it is within the setback.
 - viii) The half story is to add a room above the garage that will be used as an art studio and part office.
 - ix) Charles W. Christopher asked why there was a bathroom above the garage. Will it be used as an accessory dwelling? The petitioner answered that it was there as a convenience not as an accessory dwelling.
- e) No audience participation.
- 4) Hearing of Allen Waller for a special permit and/or variance to construct a first floor deck attached to the rear of the dwelling at 27 Atlantic Avenue, Rockport.
 - a) Opened 8:29 P.M. Closed 8:51 P.M.
 - b) Members of the Board sitting are Peter Bergholtz (presiding), John N. Rees, Alan Battistelli, Joyce Fossa and Michael Bace.
 - c) Materials presented: general plan, site plan, floor plan, elevations and photographs.
 - d) James Theophalis, contractor, represented the owners.
 - i) Abutters complained about some of the proposed construction so he presented modified plans to the Board that the Chair stamped in.
 - ii) The legal setbacks are inside the house.
 - iii) The deck will be framed with 2X10 pressure treated wood, mahogany deck and cabled railing so it will not hinder views.
 - iv) Alan Battistelli asked for better measurements on the setbacks. The setback problem is on the ocean side.
 - e) Audience participation
 - i) Attorney Robert Visnick, 11 School Street, Rockport, representing Nancy Rulli, 25 Atlantic Avenue, Rockport who wants to be on the record that she is opposed to this construction.
 - (1) There is no hardship to justify a variance.
 - (2) Puts a squeeze on the high percentage of coverage and use near the property.
 - (3) Entered photos into the record of view of property from her home which were stamped in by the Chair.
 - (4) Peter Bergholtz stated that this needs a special permit as of the Gail case.
 - (5) Not intensification but a new nonconformity.
 - (6) If all neighbors started to do this it would really be detrimental to the neighborhood.
 - ii) Mr. Theophalis stated that Mr. Waller had contacted two other neighbors who were fine plans.
 - (1) A back deck is common to the area.
 - (2) The hardship is that the setbacks are within the house.

- (3) Owner purchased property under the assumption that since all the neighbors had a back deck he would have no problem constructing one himself.
 - (4) An inability to build a back deck would have affected his decision to purchase the property.
- 5) Hearing of 57 High Street Properties LLC for a special permit and/or variance to construct a three-family, townhouse/condominium-style residence on property at 15 Sandy Bay Terrace, Rockport.
- a) Opened 8:52 P.M. Continued to March 25, 2014 meeting.
 - b) Members of the Board sitting are Peter Bergholtz (presiding), Tacy San Antonio, John N. Rees, Alan Battistelli and Joyce Fossa.
 - c) Materials presented: general plan, site plan, floor plan, elevations and photographs.
 - d) Eliza Lucas, 57 High Street, Rockport, bought the land less than a year ago.
 - i) She has a history of doing renovations in Rockport.
 - ii) Got a foundation permit before purchasing the property.
 - iii) Planned a 2 family house but since then her plans have changed and now wishes to keep ownership and rent out units which is only feasible if it is a 3 units.
 - iv) Is asking for a special permit for 3 units rather than two.
 - v) Neighbors are Sandy Bay with 80 units, single family each side and a duplex. It will not be a detriment to the neighborhood.
 - vi) It will have the same number of bedrooms as the 2 family would have.
 - vii) The total size will be 31,000 square feet of property.
 - viii) A special permit will also be needed to have parking spaces between the house and the street.
 - e) The Board needs a Site Plan Review before they can make a decision.
 - f) Audience participation
 - i) Steve Pappas, 13 Sandy Bay Terrace, voiced concerns
 - (1) The structure will be a bit imposing and asked for trees to buffer the effect.
 - (2) Does the roof have the proper drainage?
 - (3) These issues will probably come up in the Planning Board's Site Plan Review.
 - (4) He was advised by the Board to go to the DPW for an answer to his question asking if the sewage was adequate for a 3-family unit.
 - ii) Rae O'Shea, 17 Sandy Bay Terrace, is concerned with parking at the end of the cul-de-sac and it lowering property values as it is an apartment building.
 - iii) Eliza Lucas, 57 High Street stated
 - (1) The sewer system can handle 6 bedrooms.
 - (2) Plan on building a nice space and a nice space gets nice tenants.
 - (3) 2 vs. 3 makes no difference as it is the same number of bedrooms.
 - (4) Would be very surprised if property values went down.
- 6) Hearing of Claire T. Marotta for a variance and/or special permit to allow a change of use from an existing single family dwelling to a two family dwelling at 13 South Street, Rockport.
- a) Opened 9:28 P.M. Closed 9:42 P.M.
 - b) Members of the Board sitting are Peter Bergholtz (Presiding), Charles W. Christopher, Tacy San Antonio, Lars-Erik Wiberg and Joyce Fossa.
 - c) Materials presented: general plan, site plan, floor plan, elevations and photographs.
 - d) Bill Marotta stated that the structure has a preexisting nonconforming use.
 - i) Submitted an assessors note that predated adding the addition that was stamped in by the Chair.

- ii) There were five units on property. 13 South Street had 3 units prior to Mr. Pollock's death. His estate had property subdivided and 13 South Street was made into a single family dwelling.
 - iii) The hardship is the preexisting nonconforming use.
 - iv) The neighborhood is multi-unit dwellings.
 - (1) 11 South Street has 5 units and the other side has 3.
 - (2) Number 12 has 2 units.
 - (3) Number 14 has 3 or 4 units.
 - (4) There are 2 inns on the street.
 - v) Want to get property assessed as 2-family for tax purposes.
 - e) No audience participation.
- 7) Continued hearing of Keith and Edna Beaudoin for a special permit and/or variance to construct an addition to, and raise the height of, the existing third level of the two and one half story dwelling at 52 Pigeon Hill Street, Rockport.
- a) Opened 9:42 P.M. Closed 9:49 P.M.
 - b) Members of the Board sitting are Peter Bergholtz (Presiding), John N. Rees, Alan Battistelli, Lars-Erik Wiberg and Michael Bace.
 - c) Materials presented: general plan, site plan, floor plan, elevations and photographs.
 - d) Edna Beaudoin will be constructing a dormer that is nonconforming and needs a special permit. The half floor can only have 66% livable space of the floor below it not counting halls and storage.
- 8) Alan Battistelli made a motion to add Scott Story's modification request to the agenda and Lars-Erik Wiberg seconded. It passed unanimously with Peter Bergholtz, Tacy D. San Antonio, Alan Battistelli, John N. Rees, Lars-Erik Wiberg, Joyce Fossa, Charles W. Christopher and Michael Bace voting.
- 9) Scott Story asked to add a dormer to the ocean side of the roof without raising the roof.
- a) Charles W. Christopher, Peter Bergholtz, Tacy San Antonio, Lars-Erik Wiberg and Frederick Frithsen were signed the original decision. The four members of the panel present Charles W. Christopher, Peter Bergholtz, Tacy San Antonio and Lars-Erik Wiberg voted allow the modification.
- 10) Approval of Minutes of January 28, 2014
- a) Presented minutes were modified.
 - i) Section 10.c.i the word request was changed to special permit.
 - ii) Section 10.d.i the word permit was capitalized.
 - b) Lars-Erik Wiberg moved to accept the minutes as modified and John N. Rees seconded. It passed unanimously with Peter Bergholtz, Tacy D. San Antonio, Alan Battistelli, John N. Rees, Lars-Erik Wiberg, Joyce Fossa, Charles W. Christopher and Michael Bace voting.
- 11) Old Business:
- a) Report on New Application and Rules of Procedure
 - i) Helen Barnett reported that the online form was in the process of being completed.
 - ii) Michael Bace is working on phase one of accessing and displaying digital applications.
 - b) The Board previously approved electronic applications when the modified Rules of Procedure were approved.
- 12) Discussion of Petitions
- a) Eric W. Hutchins and Julia P. McMahon
 - i) Charles W. Christopher wondered if a variance or special permit is needed.

- ii) It seems to be a special permit as the accessory dwelling has been there for longer than ten years.
 - iii) The construction also eliminates the nonconformity as to the setbacks.
 - iv) Michael Bace moved to approve a special permit and Charles W. Christopher seconded it. It passed unanimously with Peter Bergholtz, Charles W. Christopher, Tacy San Antonio, Joyce Fossa and Michael Bace voting.
- b) Scott Randall and Diane Taubner continued to March meeting.
- c) Allen Waller
- i) Does this request need a special permit or a variance?
 - ii) Deck is a new structure in a nonconforming area.
 - iii) Most of the other houses in area have a deck.
 - iv) Michael Bace said that adding the new deck is a new structure causing a new nonconformity so it needs a variance.
 - v) Board will ask Town Counsel for an opinion on this and discuss further at the March meeting of the Board.
- d) 57 High Street Properties LLC continued to March meeting.
- e) Claire T. Marotta
- i) Mr. Pollock just created apartments without legal approval.
 - ii) Peter Bergholtz said there were previous decisions on this matter in 1992 and 1994.
 - iii) Preexisting nonconforming use ends after 2 years.
 - iv) Joyce Fossa moved to deny request and Peter Bergholtz seconded it. Denial passed unanimously with Peter Bergholtz, Charles W. Christopher, Tacy San Antonio, Lars-Erik Wiberg and Joyce Fossa voting.
- f) Keith and Edna Beaudoin
- i) Michael Bace moved to approve a special permit and Peter Bergholtz seconded.
 - ii) It passed unanimously with Peter Bergholtz, John N. Rees, Alan Battistelli, Lars-Erik Wiberg and Michael Bace voting.
- 13) Next Possible Meeting March 25, 2014
- 14) Motion to adjourn made by Alan Battistelli and seconded by John N. Rees. It passed unanimously with Peter Bergholtz, Tacy D. San Antonio, Alan Battistelli, John N. Rees, Lars-Erik Wiberg, Joyce Fossa, Charles W. Christopher and Michael Bace voting.
Adjournment at 10:30 P.M.