

## Rockport Board of Appeals

September 24, 2013

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, Charles W. Christopher, John N. Rees, Frederick Frithsen, Joyce Fossa and Michael Bace. Lars-Erik Wiberg absent.
- 2) Zenas Seppala, 92 Granite Street, asked for permission to record the meeting, which was granted by the Chairman, Peter Bergholtz.
- 3) Hearing of Patrick McGehee and Mary Tatem for a special permit and/or variance to construct a shed style roof over an existing deck on their nonconforming building at 14 Beach Street, Rockport.
  - a) Opened 7:30P.M. Closed 7:36 P.M.
  - b) Members of the Board sitting are Peter Bergholtz (Presiding), Charles W. Christopher, Tacy San Antonio, John N. Rees, and Joyce Fossa.
  - c) Materials presented: general plan, site plan, floor plan, elevations and photographs.
  - d) Petitioner Patrick McGehee asked that he be allowed to add a shed roof to the existing deck.
    - i) Doesn't know where the property line is on street side.
    - ii) All construction will be within the footprint of the existing structure.
    - iii) The stairway is staying.
    - iv) The roof is being constructed to protect the deck and doorway from snow and rain.
  - e) Joyce Fossa asked if the melting snow would run onto the sidewalk. Petitioner replied that the roof would have gutters and downspouts.
  - f) Tacy San Antonio mentioned that the 13x23x10 foot roof is slightly smaller than the existing deck and petitioner agreed.
  - g) Charles W. Christopher stated that there have been previous decisions on construction to the back of the house.
- 4) Approval of Minutes
  - a) Charles W. Christopher moved to accept the July 30, 2013 minutes with changes to Section 2.d.iii by changing "river" to "streamlet" and in Section 2.g.i add the word "back"
    - i) Seconded by Frederick Frithsen.
    - ii) Passed unanimously with Peter Bergholtz, Tacy D. San Antonio, Charles W. Christopher, John N. Rees, Frederick Frithsen, Joyce Fossa and Michael Bace voting.
  - b) Frederick Frithsen moved to accept the September 12, 2013 minutes as presented.
    - i) Seconded by John N. Rees.
    - ii) Passed Unanimously with Peter Bergholtz, Tacy D. San Antonio, Charles W. Christopher, John N. Rees, Frederick Frithsen, Joyce Fossa and Michael Bace voting.

- 5) Hearing of Yankee Clipper, LLC seeking a determination that the Rockport Planning Board erred in not enforcing Section IX.H.1.5 of the Rockport Zoning By Laws at 129 Granite Street, Rockport.
  - a) Opened 7:45 P.M. Closed 7:54 P.M.
  - b) Members of the Board sitting are Peter Bergholtz (presiding) Charles W. Christopher, Tacy San Antonio, John N. Rees and Frederick Frithsen.
  - c) Materials presented: site plan review and updated site plan review.
  - d) Petitioner represented by Douglas Kiernan, Suffolk Company, Inc., 200 Terminal Street, Charlestown, MA 02129.
    - i) Asks for a determination that the Planning Board erred by not enforcing Section IX.H.1.7 of the Zoning Bylaws.
    - ii) It is a high impact property that needs a site plan review.
    - iii) The Planning Board said they didn't have the tools to enforce IX.H.1.5. which is an error.
    - iv) Asks for the Board of Appeals to sustain or modify the findings of the Planning Board.
    - v) It should enforce Section IX.H.1.5 of the Rockport Zoning Bylaws.
  - e) Jeffrey Angley, Phillips & Angley, One Bowdoin Square, Boston, MA 02114 representing Roma III Ltd. Believes that this issue should be tabled or refused as the Board has no authority over this issue.
  - f) Chairman Peter Bergholtz read a memo with an opinion from Town Counsel John Goldrosen which was placed in the file:
    - i) That the appeal is premature because a Building Permit has not been issued.
    - ii) Abutters cannot appeal the Planning Boards approval of a Site Plan Review directly to the Board of Appeals, but can appeal the issuance of a Building Permit based on the Site Plan Review.
    - iii) Another aspect concerning the Planning Board's authority to regulate under State Zoning Act, G.L.c. 40A states in section 3 that "No regulation or restriction of use of materials or methods of construction of structures regulated by the State Building Code."
- 6) Hearing of Roma III, Ltd. seeking relief from the decision of the Rockport Building Inspector for denying a building permit for their property and also a special permit to construct a building, which exceeds the height limit at 129 Granite Street, Rockport.
  - a) Opened 8:00 P.M. Closed 9:28 P.M.
  - b) Members of the Board sitting are Peter Bergholtz (presiding), Charles W. Christopher, Tacy San Antonio, John N. Rees and Michael Bace.
  - c) Materials presented: general plan, site plan, floor plans and elevations.
  - d) Chairman Peter Bergholtz stated that this petition was divided into two parts and the Board would deal with each separately. First they would address the issue of the Building Inspectors refusal to issue a Building Permit and then discuss the height of the roof.
  - e) Attorney Jeffrey Angley, Phillips & Angley, One Bowdoin Square, Boston, MA 02114 representing Roma III Ltd. submitted Memorandum Constructive Approval of Site Plan Review, which was stamped in and added to file.
    - i) Building Inspector refused the permit as constructive approval does not apply and it does because section IX.D in the bylaws states that "unless 60 days has passed" and since 60 days had passed it applies.

- ii) There was an extension and the Planning Board acted on the last day but there was no written decision or filing with the Town Clerk.
- iii) Would like the Board to tell the Building inspector that he was incorrect in not issuing the Building Permit as Mr. Roma could submit the plans without conditions as constructive approval does apply.
- f) Audience participation
  - i) Carolyn J. Britt speaking for the Planning Board.
    - (1) The applicant agreed to the extensions.
    - (2) On July 11, 2013 the Board had a written decision but didn't sign or file it as they were still waiting for plans from the applicant and there were some water issues to settle.
    - (3) The decision was signed on August 1, 2013.
  - ii) Greg Blaha, 133 Granite Street, felt the applicant was trying to obtain a permit without conditions. The 60 days applies to the submission of a complete Site Plan review and as the Planning Board was still waiting for plans on July 11, 2013 the 60 days does not apply.
  - iii) Attorney Douglas Kiernan speaking for the Yankee Clipper Inn stated that 60 days applied after the submission of a complete application.
  - iv) Ron Roma, 149 Granite Street
    - (1) Sixty days was really 120 days. The application was complete in the first 60 days. They were asked to make changes or they wouldn't like the Board's decision. The requested changes were made but this doesn't mean that the application was not complete.
    - (2) Roma, the petitioner alleged that the Planning Board backdated the decision he received in mid-September. Roma stated that the Planning Board actually signed the most recent decision in September, but dated their signatures to read August 1, 2013.
  - v) Henry Betts, 13 Penzance Road, speaking as a Planning Board member.
    - (1) The Planning Board had extensive conversations with the applicant but the Board never said that if changes were not made the applicant would not like the Board's decision.
    - (2) No one ever said that the final decision should to be filed with the Town Clerk before July 11, 2013.
  - vi) Mike Bace for the ZBA asked if the Board could get an answer with regard to the backdating allegation.
  - vii) Toby Arsenian, 95 Granite Street.
    - (1) Mr. Roma's attorney wanted newly elected members to the Planning Board to have time to review the site plan.
    - (2) Applicant agreed to time extensions.
  - viii) Zenas Seppala, 92 Granite Street stated that he had recordings of all of the Planning Board hearings on this case.
  - ix) Ted Tarr, 154 Main Street, spoke as a former member of the Planning Board stated that there were many changes to the plans and no decision could be made as there were incomplete plans and the storm water issue was not resolved.
  - x) Ron Roma, 129 Granite Street
    - (1) Not contesting the extension, it was extended to July 11, 2013.

- (2) The Planning Board asked for second opinion on the storm water management even though the Conservation Commission had already approved.
- xi) Ron Roma's attorney said that the Planning Board was fine to work with but they simply did not meet the deadlines.
  - xii) Mike Barnhart General Manager of the Yankee Clipper Inn felt the Planning Board tried to compromise but they never received a complete Site Plan.
  - xiii) Paul Orland, Rockport Building Inspector stated that his refusal was based on Town Counsel's opinion that since the applicant signed an extension the July 11, 2013 decision was within the allotted time so they are not eligible for constructive approval.
- g) Attorney Jeffrey Angley, Phillips & Angley, One Bowdoin Square, Boston, MA 02114 representing Roma III Ltd. submitted Memorandum Special Permit Under Bylaw IV.A.5, which was stamped in and added to file. Petitioner asking for a Special Permit to exceed the 30 foot height limits of the Zoning Bylaws by 8 inches.
- i) The height of the building did not change from the original plans.
  - ii) The method of figuring average grade level changed since the plans were formulated.
  - iii) This change in formulation caused the house to be 8 inches above what was legally allowed.
  - iv) The Board has the authority to issue a Special Permit so that the original plan can be executed.
- h) Peter Bergholtz asked if the plans submitted to the Board of Appeals was the same as the plans submitted to the Planning Board and when did the applicant learn about the change in method used to figure the average elevation.
- i) The reply was that the attorney learned about the change on July 9, 2013 and the plans are the same. They are not arguing the method used but asking for a Special Permit so that the original house structure can remain the same.
- j) Audience Participation
- i) Attorney Kiernan representing the Yankee Clipper Inn is opposed to the granting of the Special Permit, as the measurements on the plans are not reliable, as an architect did not stamp the plans.
  - ii) Henry Betts, 13 Penzance Road, speaking as a Planning Board member.
    - (1) The height was established in late June.
    - (2) Decision on September 1, 2013 told the Building inspector that in the approved plans the house is 8 inches above the legal requirements.
  - iii) Charles W. Christopher asked if the foundation was a slab and was answered in the affirmative.
  - iv) Greg Blaha, 133 Granite Street, said that the height has not changed and the Planning Board spoke for hours on the method that should be used to measure the average grade height.
  - v) Toby Arsenian, 95 Granite Street the Planning Board approved the site plan with the condition that the Building Inspector said it is too high.
  - vi) Ed hand a member of the Planning Board reviewed the methodology of figuring the average grade of a property and that the Building Inspector choose the method best used for this particular property.

- vii) Ron Roma's attorney stated that his client did not disagree with the Building Inspector's method of figuring the average grade but is asking for a Special Permit so that he can build his house as planned. The attorney submitted 2 previous Board Decisions that granted such permits. Discussion of Petitions
- 7) Discussion of Petitions
- a) Patrick McGehee and Mary Tatem
    - i) House was built in 1865.
    - ii) Charles W. Christopher moved to approve the petition and Tacy San Antonio seconded.
    - iii) The motion passed unanimously with Peter Bergholtz, Charles W. Christopher, Tacy San Antonio, John N. Rees, and Joyce Fossa voting.
  - b) Yankee Clipper, LLC.
    - i) Peter Bergholtz recommended that the Board agree with the opinion of Town Counsel and deny the petition.
    - ii) Tacy San Antonio doesn't think that 40A applies in this instance. The Site Plan Review came out with some good results.
    - iii) John N. Rees moved to deny the petition. Charles W. Christopher seconded.
    - iv) The motion passed unanimously with Peter Bergholtz, Charles W. Christopher, Tacy San Antonio, John N. Rees and Frederick Frithsen voting.
  - c) Roma III, Ltd.
    - i) Town Counsels opinion is that there is no constructive relief on the Site Olan Review.
    - ii) Mike Bace moved to approve the Special Permit for the extra 8 inches of height with the planning Board conditions included. John N. Rees seconded and the motion passed unanimously with Peter Bergholtz, Charles W. Christopher, Tacy San Antonio, John N. Rees and Michael Bace voting.
    - iii) Tacy San Antonio made a motion to deny relief from the Building Inspector's denial of a Building Permit. John N. Rees seconded and it passed unanimously with Peter Bergholtz, Charles W. Christopher, Tacy San Antonio, John N. Rees and Michael Bace voting.
- 8) Next Possible Meeting October 29, 2013
- 9) Motion to adjourn made by Joyce Fossa and seconded by Tacy San Antonio. The motion passed unanimously with Peter Bergholtz, Tacy D. San Antonio, Charles W. Christopher, John N. Rees, Frederick Frithsen, Joyce Fossa and Michael Bace voting. Adjournment at 10:34 P.M.