

Rockport Board of Appeals  
September 28, 2016  
7:00 P.M.  
Rockport Public Library  
The Brenner Room  
17 School Street, Rockport, MA

- 1) Call to order at 7:00 P.M. Members present Charles W. Christopher (Chairing), Alan Battistelli, Peter Bergholtz, Lars-Erik Wiberg, John N. Rees, Tacy D. San Antonio, Debra Dellacona and Michael Bace. Frederick Frithsen absent.
- 2) Hearing of Mark and Ronda Jackowitz for a special permit and/or variance to construct a two-story addition and a porch on the front of an existing non-conforming building at 46 Marmion Way, Unit #1, Rockport. Case No. 160901.
  - A) Opened 7:00 P.M. Closed 7:12 P.M.
  - B) Members of the Board sitting are Charles W. Christopher (presiding), Tacy San Antonio, John N. Rees, Alan Battistelli and Lars-Erik Wiberg.
  - C) Materials presented: photos, site plan, floor plan, and elevations.
  - D) Ellen Levine, Treehouse Design, 31 Poole's lane represented the petitioner.
    - a) Presented a picture of the existing structure.
    - b) Once part of the Seaward Inn.
    - c) There are 4 separate units on the property.
    - d) A variance was previously given to add kitchenettes but no expansion of units.
    - e) All the units are now connected to the sewer system.
    - f) This Board had previously voted to null and void a previous seasonal restriction so that now all the units can be expanded and used year round.
    - g) The front expansion of the structure will encroach into the setbacks.
    - h) Floor plans were shown.
    - i) The proposed roof ridge will be 5 ft. 8 inches higher than the existing roof ridge.
    - j) Submitted letters of approval that were stamped in by the Chair.
  - E) No audience participation.
- 3) Hearing of Bruce Sunstein, John Thompson, and Mason Browne to appeal a decision of the Building Inspector regarding the property at 151 South Street, Rockport. Case No. 160902.
  - A) Opened 7:15 P.M. Continued to November meeting of the Board.
  - B) Members of the Board sitting are Charles W. Christopher (presiding), Peter Bergholtz, Tacy San Antonio, Michael Bace and Debra Dellacona. (Alan Battistelli stepped down for this hearing.)
  - C) Materials presented: photos, parcel plans and supporting evidence as to why the Inspectors decision should be negated.
  - D) Chair, Charles W. Christopher, wanted it known that all members of the panel hearing this petition have no conflict of interest. The Chair stated the panel would have to invoke the Rule of Necessity as all members know and have worked with Alan Battistelli. All members can be unbiased in this a case. Michael Bace restated that it was disclosed that all members know and have served with Alan Battistelli. All 5 members (Charles W. Christopher, Peter Bergholtz, Tacy San Antonio, Michael Bace and Debra Dellacona individually stated that they could make an unbiased decision on this petition.
  - E) Attorney Doug Troyer, 45 Braintree Hill Office Park, Suite 107, Braintree, represented the petitioners.
    - a) Appealing the Rockport Building Inspector's refusal to enforce what the applicants believe is an illegal use of the property.

- b) The inn was reconstructed in the 70's.
  - c) Kitchen units were added 2011.
  - d) In 2013 potential buyers came before the Board to change to multiple units.
  - e) The Board denied the request and the buyers withdrew their offer to purchase the inn.
  - f) It was later sold to Turk's Head LLC which is managed by Alan Battistelli.
  - g) The question is whether it is an inn or a multi-unit dwelling. Has its use changed from inn to rental apartments? The petitioners believe it has.
    - Leases or rental agreements make it apartments.
    - Is it a landlord tenant situation?
    - Turks Head LLC has only long term rentals with leases or agreements.
    - It has no cleaning service which you would have in an inn.
    - No services provided by an inn keeper.
    - Front door is locked.
  - h) Alan Battistelli has used it as an apartment building since 2014.
  - i) Its legal use as an inn is also forfeited as it has been used as an apartment building for over two years rather than as an inn.
  - j) Michael Bace asked about difference between permanent inn guests and apartment guests. Isn't the line blurry?
  - k) Mr. Troyer replied it is an apartment as long term resident has rights with landlord and tenant rental agreements.
  - l) Michael Bace remarked that if it is an inn guests can stay permanently.
  - m) Mr. Troyer replied yes, but look at the facts around usage. This is a usage issue. It is no longer an inn.
- F) Alan Battistelli, 57 Phillips Avenue, Rockport, presented the case for Turks Head LLC.
- a) The inn provides a lot of amenities such as heat, air conditioning, internet connections, televisions (upgrading televisions) and cable.
  - b) The inn has 21 rooms with 21 guests who have extended stay options but no leases. Guests come and go.
  - c) The inn provides furnishings.
  - d) The front door is not locked.
  - e) There are personnel and maid's area with linens, sheets etc. on site.
  - f) Have a laundry room.
  - g) 16 inns in Rockport and 9 of them have rooms with kitchenettes.
  - h) Four rooms with guests have no kitchenettes or closets.
  - i) Michael Bace asked as the lines between an inn or apartment complex may be blurry how does it look more like an inn or apartment?
  - j) Alan Battistelli replied that it has an inn keeper's license. It was bought as an inn and Turks Head LLC is keeping it as an inn.
  - k) Debra Dellacona asked if the guests were allowed to have pets and the answer was yes.
  - l) Michael Bace asked about the maid service and was told that the service was used when guests leave and in all the common areas daily.
- G) Erin Battistelli, 57 Phillips Avenue, Rockport, stated
- a) The inn has a variety of guests such as a 92 year old gentleman who retired from the Rockport post office, and people who grew up in Rockport and want to remain near their families. Meets the requirements of an inn.
  - b) The potential buyers, who came before the Board previously, wanted to change the use to multi-dwelling units and they were denied. Turks Head LLC purchased it as an inn and will keep it as an inn.

- c) Kitchenettes are not uncommon in inns.
  - d) According to the Rockport Zoning Bylaws inn guests can be transient or permanent. Use this to make determination that it is an inn.
- H) Attorney Troyer:
- a) Not unusual to have furnished apartments with AC, heating, TV etc. Are they guests or tenants?
  - b) Is hotel or inn business occurring in the office?
- I) Debra Dellacona remarked that amenities can apply to an inn or apartment building. Is there another business being run out of the office? Is it a summer inn that has gradually become an apartment building?
- J) Audience
- a) Michael Beaton, 7 Gap Head Road, (former owner of the inn)
    - The previous potential buyer wanted to have it as an apartment complex but they were turned down by the Board.
    - The decision was that the inn was in conformance at that time.
    - A lease on investment property just means that if there is a foreclosure the bank can keep the income from the guests.
    - Most of the guests are in transition. The length of their stay is irrelevant.
    - The property is consistent with its use as an inn.
  - b) John Thompson, 4 Ruthern Way.
    - The South End Association has investigated other inns.
    - How much room tax is collected by the town?
    - The inn has no telephone number.
    - No maid service for when the room turns.
  - c) Mason Browne, 140 South Street and 207 Haggets Road, Andover.
    - Building a house within 300 feet of the inn.
    - Family has lived in the area for 100 years.
    - It is not being run as an inn. You can drive up to an inn and enter.
    - The front door is locked and it has no website, no listed phone and when you get a number you are passed off to a fax machine, pool is abandoned. No restaurant and provides no services.
    - Once kitchenettes were added they became dwelling units.
    - With 3 or more dwelling units it becomes an apartment complex.
    - If you don't enforce the law, it will become a precedent that other inns may follow.
  - d) Joseph Muzio, 7 Normanstone Drive.
    - People reside there permanently and the area is not zoned for multifamily dwellings.
    - This is very strange. This doesn't smell right.
    - Lots of vehicles are coming and going.
    - There are many other solutions for this property.
  - e) Bruce Sunstein, 14 Penzance Road.
    - Have watched the inn go downhill for 14 years.
    - There is no one to receive guests as there are no guests.
    - Difference between tenants and guests is the law. Once a person becomes a tenant the law protects tenant's rights against eviction.
    - This place is run like an apartment building. It is a blight on the neighborhood.
    - Make the owners abide by the law.
  - f) Doug Hought, 143 South Street.
    - When he moved in it was an inn but now it is different as the same people live there. .

- It is not in conformance.
  - Noisy
- g) Joan Erb, 143 South Street.
- Never heard of an inn where you can't see office staff.
  - Never heard of an inn where you can bring in your own furniture.
  - There must be a conflict as the Board members all work with Alan Battistelli.
- h) Charles W. Christopher replied that the Board is doing its very best to be unbiased.
- i) Frans Van Berkhout, 3 Seaview Street.
- Lived 30 years in Rockport,
  - Been in the hotel business for many years.
  - Since a prominent family is involved in this dispute, it should be turned over to an impartial third party.
- j) Sharon Grandmaison, 151 South Street.
- Furniture belongs to the inn.
  - The Battistellis are there.
  - You can have linens but I want my own.
  - They are improving and upgrading the property.
  - Landscaping service is provided.
  - Noise level now is lower than it ever has been.
  - There are no vacation drunks.
  - Neighbors' parties are noisier than anything at the inn.
  - Televisions are replaced.
- k) John Doue, 73 Eden Road wants to know about the taxes.
- l) Alan Battistelli replied that after 90 days there are no room taxes. He also listed some other inns in town that have kitchenettes. He does not ask that 100% of the guests stay over 90 days.
- m) Mr. Troyer
- Have read the bylaws.
  - A lot has been going on at the property since 2009.
  - These are apartments. If it looks and sounds like a duck it is a duck.
  - It is not an inn.
- n) Charles W. Christopher read allowed two letters in the file from Richard and Alice Osgood and Dr. Wedmore.
- o) Charles W. Christopher asked the panel if a site visit was necessary and Charles W. Christopher, Peter Bergholtz, Tacy San Antonio, Michael Bace and Debra Dellacona all said no.
- p) A continuance to the November meeting was requested and granted.
- 4) Approval of minutes: July 27, 2016
- A) Michael Bace made a motion to accept the July 27, 2016 minutes as presented and John N. Rees seconded.
- B) The motion passed unanimously with Charles W. Christopher, Alan Battistelli, Peter Bergholtz, Lars-Erik Wiberg, John N. Rees, Tacy D. San Antonio, Debra Dellacona and Michael Bace voting.
- 5) Discussion and vote of September 28, 2016 hearings
- A) Jackowitz
- a) Tacy San Antonio thinks that this is a nice addition but the measurement for the nonconformity is from a different building on the site.
- This is a new nonconformity and the Gale decision may not apply. It may need a variance.
  - This should be submitted to the Town Attorney as to whether this is a new nonconformity or if the Gale decision applies.

- b) Postponed until an opinion is received from the Town Attorney. The Board will meet to vote again if a variance is needed.
  - c) Alan Battistelli made a motion to approve the special permit if the Town Attorney is of the opinion that the Gail decision applies. Lars-Erik Wiberg seconded and it passed unanimously with Charles W. Christopher. Tacy San Antonio, John N. Rees, Alan Battistelli and Lars-Erik Wiberg voting.
- B) Sunstein hearing was continued to the November 30, 2016 meeting.
- 6) Old Business: Rules of Procedure Updates: John N. Rees thinks that the package material to extensive. The applicant should be given less to read. He will continue to work on it.
- 7) New Business: Report on 09-20-2016 Board of Health Meeting, as it applies to Zoning.
- A) The Board of Health was looking at the Board's 1974 decision to allow six outside tables at the Lobster Pool.
  - B) Six outside tables means 36 more seats that will push it over 90 seats which is more than the septic system can handle.
  - C) The issue may come back to the Board.
- 8) Other Business: SAI Communications [New Cellular Wireless PCS, LLC ("AT&T")] request for upgrade work on Thatcher Rd Water Tower.
- A) A letter came in to the Board asking if the company had to apply in order to make upgrades to the tower.
  - B) The DPW needs more information on what the company wants to do.
  - C) Once the Board receives this information from the DPW, the Board can decide if an application is needed. The Board can decide if the company can come in informally for minor changes or apply and pay the \$300 fee for a request of major changes.
- 9) Next Possible Meeting October 26, 2016
- 10) Motion to adjourn made by Lars-Erik Wiberg and seconded by Debra Dellacona passed unanimously with Charles W. Christopher, Alan Battistelli, Peter Bergholtz, Lars-Erik Wiberg, John N. Rees, Tacy D. San Antonio, Debra Dellacona and Michael Bace voting.
- Adjournment at 9:38 P.M.