

Rockport Board of Appeals
September 30, 2015
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 Alan Battistelli (Chairing), Peter Bergholtz, Lars-Erik Wiberg, Charles W. Christopher, John N. Rees, Tacy D. San Antonio and Michael Bace. Frederick Frithsen absent.
- 2) Hearing of Marie J. DiGiorgio for a special permit and/or variance to construct a shed dormer on an existing non-conforming dwelling at 75 Phillips Avenue, Rockport.
 - A) Opened 7:00 P.M. Closed 7:07 P.M.
 - B) Members of the Board sitting are Alan Battistelli (presiding), Peter Bergholtz, Tacy San Antonio, Lars-Erik Wiberg and Michael Bace.
 - C) Materials presented: photos, general plan, site plan, floor plan, and elevations.
 - D) Thomas Cassidy, 10 Grove Street, Middleton, MA represented the petitioner.
 - a) Property consists of three lots combined into one.
 - b) Shed dormer will be in the backside.
 - c) Will add 2 feet on each side.
 - d) The existing building is over 30 feet in height so it is non-conforming.
 - e) New dormer faces the water.
 - f) Needs relief for new roof line which is still above 30 feet.
 - E) Lars-Erik Wiberg asked since it is now a 2 ½ story dwelling does it meet the bylaw criteria for a third story. The answer was yes.
 - F) No audience participation.
- 3) Approval of minutes: August 26, 2015.
 - A) Peter Bergholtz moved to approve the minutes as presented and Charles W. Christopher seconded.
 - B) The motion passed unanimously with Alan Battistelli, Peter Bergholtz, Lars-Erik Wiberg, Charles W. Christopher, John N. Rees, Tacy D. San Antonio and Michael Bace voting.
- 4) Hearing of Kevin Olson for a variance and/or special permit to construct an exterior staircase in the side-yard setback on an existing non-conforming building at 5 Cleaves Street, Rockport.
 - A) Opened 7:10 P.M. Closed 7:15 P.M.
 - B) Members of the Board sitting are Alan Battistelli (presiding), Peter Bergholtz, Charles W. Christopher, John N. Rees and Lars-Erik Wiberg.
 - C) Materials presented: photos, general plan, site plan, floor plan, and elevations.
 - D) The petitioner Kevin Olson, 5 Cleaves Street, Rockport stated that an outside staircase on the right side of the property was needed for a second floor egress.
 - a) The staircase needs to be 7 feet wide.
 - b) The setback on this side is 9 feet where 10 feet is required.
 - c) After construction there will only be a 2-3 feet of setback remaining.
 - d) Unit has been rented for years without this egress but it is a safety issue.
 - E) Lars-Erik Wiberg asked what the total height of the stairs will be and the answer was 16 feet.

- F) Alan Battistelli emphasized that after construction there must be two feet of setback remaining.
- G) No audience participation.
- 5) Hearing of Steve Dennehy for a special permit and/or variance to construct an addition on a non-conforming dwelling at 8 Green Street, Rockport.
 - A) Opened 7:20 P.M. Closed 7:30 P.M.
 - B) Members of the Board sitting are Alan Battistelli (presiding), Charles W. Christopher, Tacy San Antonio, John N. Rees and Michael Bace.
 - C) Materials presented: Materials presented: photos, site plan, floor plan, and elevations.
 - D) John Buchner, general contractor, 84 Magnolia Avenue, Gloucester MA, represented the petitioner.
 - a) The 6 X 11 foot addition brings the structure 4 inches closer to the property line.
 - b) It is a seven foot setback.
 - c) Tacy San Antonio stated that the last decision recalculated so it is 1207 feet rather than 890 feet.
 - d) Mr. Buchner continued that the lot coverage is increased to 26% with 66 additional square feet.
 - e) A special permit is needed as it is 1% more lot coverage since the last decision.
 - E) No audience participation.
- 6) Hearing of Feather & Wedge, LLC. 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.
 - A) Opened 7:30 P.M. Closed 7:43 P.M.
 - B) Members of the Board sitting are Alan Battistelli (presiding), Peter Bergholtz, Charles W. Christopher, Tacy San Antonio and Lars-Erik Wiberg.
 - C) Materials presented: Materials presented: photos, site plan, floor plan, and elevations.
 - D) Charles Gladstone 5 Lucia Lane, Rockport, stated that the company was very aware of the concerns of the neighbors.
 - a) They have been in front of the Board of Selectmen and received permission for the bar.
 - b) They have received permission from the Historical Commission.
 - c) There will be seating for 50 people with 40 at tables and 10 seats at the bar.
 - E) Charles W. Christopher asked if they had changed any of the previously proposed utilities as there was concern with the noise.
 - F) Petitioner answered that:
 - a) They will use a very quiet AC unit.
 - b) The exhaust will be enclosed and as quiet as possible.
 - G) Lars-Erik Wiberg asked if they will conform to the conditions required in the previous decision and the answer was yes.
 - H) Alan Battistelli asked about the possible hours it will be open. The answer is that they hope to be open late enough to accommodate the theater crowd and hope to be open year round.
 - I) Charles W. Christopher asked if there would be any solution to the parking problem and the petitioner answered that No Parking signs would be used to discourage illegal parking.
 - J) Tacy San Antonio asked if they had any other restaurants and the answer was no.
 - K) No audience participation.

- 7) Request for Extension for Decision 140701 by Michael McKinnell of 9 Phillips Ave, Rockport.
 - A) Original members of the Board sitting are Alan Battistelli (presiding), Charles W. Christopher, Tacy San Antonio, John N. Rees and Frederick Frithsen who is absent.
 - B) Materials presented: request letter.
 - C) Alan Battistelli made a motion to grant the request and Charles W. Christopher seconded. It passed unanimously with the four members present, Alan Battistelli (presiding), Charles W. Christopher, Tacy San Antonio, John N. Rees voting.
- 8) Old Business discussion of Hearings
 - A) DiGiorgio
 - a) Alan Battistelli stated that the building is the same height. They are just extending the roof line.
 - b) The dormer conforms to the bylaws.
 - c) Peter Bergholtz made a motion to approve the request.
 - d) Lars-Erik Wiberg seconded and it passed unanimously with Alan Battistelli, Peter Bergholtz, Tacy San Antonio, Lars-Erik Wiberg and Michael Bace voting.
 - B) Olson
 - a) 16 feet is too much height to not have a turn in the staircase.
 - b) Charles W. Christopher asked is it an addition?
 - c) Lars-Erik Wiberg said no even though it is seven feet off of building.
 - d) Peter Bergholtz stated that the hardship is that a legal egress is needed.
 - e) Lars-Erik Wiberg stated that a Variance is required. It allows the building to be functional.
 - f) Peter Bergholtz moved to approve the Variance and Lars-Erik Wiberg seconded.
 - g) The motion passed unanimously with Alan Battistelli, Peter Bergholtz, Charles W. Christopher, John N. Rees and Lars-Erik Wiberg voting.
 - C) Discussion:
 - a) Need to add to next agenda a change to the application.
 - b) When members are writing a decision put the writer as last on the list of sitting members.
 - c) Protocol for vetting and file name protocol need updating.
 - D) Dennehy
 - a) Request is for a 6 X 11 Ft. addition.
 - b) Michael Bace moved to approve petition and Charles W. Christopher seconded.
 - c) Motion passed unanimously with Alan Battistelli, Charles W. Christopher, Tacy San Antonio, John N. Rees and Michael Bace voting.
 - E) Feather & Wedge, LLC
 - a) Public hearing on usage in non-conforming structure.
 - b) Peter Bergholtz felt the applicant appeared sincere in his desire to maintain good relations with neighbors.
 - c) Propane tanks might make it difficult to plow.
 - d) Peter Bergholtz moved to approve the change of use and Tacy San Antonio seconded.
 - e) The motion passed unanimously with Alan Battistelli, Peter Bergholtz, Charles W. Christopher, Tacy San Antonio and Lars-Erik Wiberg voting.
- 9) New Business
 - A) Discussion and any action pertaining to the approved Sections of Article Q from Town Meeting: 2 acres for homes over 7,000 sq. ft. and increased setbacks for larger homes.
 - a) Alan Battistelli approached the Attorney General with questions about the effect on current homes that will become non-conforming. Also are there any conflicts with other town bylaws.

- b) John Goldrosen the town attorney did not know how this would all play out.
- c) The Attorney General's office noted that if the Board had any concerns they should submit them in a letter to the Attorney General.
- d) Peter Bergholtz submitted following concerns he has with Article Q.
 - Chapter 40A Section 3 states that: "No *zoning* ordinance or by-law shall regulate or restrict the interior area of a single family residential building ...
 - This seems to be in conflict with our new bylaw which regulates the gross floor area of single residences.
 - Accessory Dwellings are now allowed by special permit in the RA and R districts when there is twice the required lot area for single family homes. (A two and one-half story home with 7,000 square feet of living area would convert into a footprint of approximately 2,700 square feet for Building Coverage purposes.) This would limit the two residences, the main house and the accessory dwelling, to a total footprint of 2,700 square feet or conceivably 1,350 per structure. The current bylaw allows 4,800 and 5,000 square foot total Building Coverage in RA and R respectively for minimum qualifying accessory dwelling lots. This seems to be a large effect on the rights currently allowed.
 - There is no relief specified for the 7,000 square foot gross floor area limitation for single, two- family and accessory dwellings. Side setback relief could be as it exists currently: Variance for new nonconformities and special permit for further penetration beyond existing nonconformities . Of interest is a situation where a new 20 foot setback is imposed on an existing structure that is conforming at a 10 or 15 foot side setback. The newly nonconforming structure can be relieved for a new penetration into that setback by special permit applying the Gale case because there is now an existing nonconformity created by the change to a 20 foot setback.
 - The attached charts show the severe reduction in the permitted residential use of various properties in the effected zoning districts. Reduction in the size of structures was the goal of the proposed bylaw. However, in some cases, particularly in the SRAA District, the reduction of existing Building Coverage rights is, indeed, severe at 3.35% from 10% for a double minimum lot size and may be questioned as a taking of the property. (Chart is attached at the end of the Minutes)
- e) Michael Bace under 40A you can't have a bylaw that limits internal space.
 - You cannot limit internal space.
 - Drafted bylaws regulate by % of coverage but doesn't directly regulate interior space.
- f) This seems to put definite limits on internal space.
- g) Could be challenged in court and lead to appeals and litigation.
- h) The Chair of the Planning Board submitted tabulations showing configurations for each zoning area. Stated that the Zoning Board should use this in a realistic fashion and keep in mind the intent of the bylaw.
- i) Peter Bergholtz remarked that this is putting the town into liability as it is illegal under 40A.
- j) Alan Battistelli asked if the Board wanted to send a letter to the Attorney General with the concerns of the Board.
- k) John N. Rees wants Town Counsel involved in the writing of the letter.
- l) Informal poll of Board was that all present wanted a letter sent except Tacy San Antonio.

- m) Alan Battistelli asked if the Board wanted the tone of the letter be questioning or to take a position.
 - n) The consensus was to formulate a questioning letter and stating the problems that the Board feels might exist.
 - o) A motion was made by Alan Battistelli and seconded by Peter Bergholtz to write the letter to the Attorney General. It passed with Alan Battistelli, Peter Bergholtz, Lars-Erik Wiberg, Charles W. Christopher, John N. Rees, and Michael Bace voting **yes** and Tacy D. San Antonio voting **no**.
- B) Discussion of Zoning By-laws and future meeting to discuss Zoning By-laws will occur at the next meeting.
- C) Deborah Dellacona spoke with the Board about her interest in becoming an associate member. She is a social worker and has been in the town for 2 years.
- 10) Next Possible Meeting October 28, 2015
- 11) Motion to adjourn made by Peter Bergholtz and seconded by John N. Rees. The motion passed unanimously with Alan Battistelli (Chairing), Peter Bergholtz, Lars-Erik Wiberg, Charles W. Christopher, John N. Rees, Tacy D. San Antonio and Michael Bace voting. Adjournment at 9:18 P.M.

9-27-15
P.B.

New Proposed Bylaw Effect
on Building
Coverage

Zone	% Allowed Bldg Coverage	Lot Size	Currently Permitted Bldg. Foot Print on min. lot	Proposed Bylaw Footprint <small>7000 sq ft max. 2.6 stories</small>
SRAA	10%	40,000 min	4000	2692
SR	15%	20,000 min	3000	2692
RA	20%	12,000 min	2400	2692
R	25%	10,000 min	2500	2692
"	"	Twice the min. lot size	Currently Permitted Bldg. Foot Print 2x min	Proposed Bylaw Footprint % Bldg. Coverage
SRAA	10%	80,000	8,000	2692 3.3%
SR	15%	40,000	4,000	2692 6.7%
RA*	20%	24,000	4,800	2692 11.2%
R*	25%	20,000	5000	2692 13.4%
* Accessory Dwellings, Allowed SP Acre = 43,560 2 Acres = 87,120				