

Rockport Board of Appeals  
October 17, 2016  
11:05 P.M.  
Town Hall  
Conference Room A  
34 Broadway, Rockport, MA

1. 11:05 am Rockport Board of Appeals call to order Conference Room A in Town Hall.
2. 11:06am – Continued deliberation and review town attorney K&P's letter on petition 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.
  - a. Reopening discussion of this petition with a quorum of panel members present. John N. Rees, Charles W. Christopher, Tacy San Antonio, Alan Battistelli (arrived at 11:07) and Lars-Erik Wiberg present. Peter Bergholtz observing.
  - b. Charles W. Christopher said that decision was contingent on contacting Town Attorney for his opinion.
    - i. The opinion was received.
    - ii. 4 individual buildings are on the site each with its own setback requirements.
    - iii. The Gale decision does not apply to this building as it has conforming setbacks.
  - c. John N. Rees lot is conforming in all ways. Unit 2 is nonconforming which is not shared with all of the buildings.
  - d. Tacy San Antonio said that a variance is needed to add the addition presented at the September Board meeting.
  - e. Charles W. Christopher stated that the Board never asked if any hardships applied at the meeting.
  - f. John N. Rees felt that the extrusion into the setback of only 2 feet was minor.
  - g. Alan Battistelli said it is trivial in nature as the setback is the picture window encroaching 1 foot 2 inches into setback.
  - h. Charles W. Christopher replied that if we consider this it would have an effect on other condo decisions.
  - i. Tacy San Antonio wonders if a change can be made to the second floor window so that it no longer encroaches on the setback.
  - j. Lars-Erik Wiberg said there were a number of ways this can be fixed but the Board cannot pick the method of fixing the problem.
  - k. Charles W. Christopher felt the petitioner has options.
  - l. Lars-Erik Wiberg felt perhaps we should deny without prejudice.
  - m. Alan Battistelli suggested that the Board could approve the request subject to the plans be changed so that no part of the building encroaches into the setback.
  - n. Alan Battistelli made the motion: The Rockport Board of Appeals approves the basic design as presented contingent on modified plans submitted to the Board by the applicant that shows no part of the building is within the setback.
    - i. John N. Rees seconded.

- ii. The motion passed unanimously with John N. Rees, Charles W. Christopher, Tacy San Antonio, Alan Battistelli and Lars-Erik Wiberg voting.
3. Alan Battistelli made a motion to change the agenda to include procedural questions from the audience.
  - a. John N. Rees seconded.
  - b. The motion passed unanimously with John N. Rees, Peter Bergholtz, Charles W. Christopher, Tacy San Antonio, Alan Battistelli and Lars-Erik Wiberg voting.
  - c. Ellen Levine, Treehouse Design, 31 Poole's Lane said that she goes to the building Inspector for interpretation of zoning bylaws. How should she contact the Board if needed?
  - d. Alan Battistelli said she should contact either of the Zoning Administrators but keep in mind that any single member can still interpret it differently from the full board.
  - e. Charles W. Christopher said that you can request an informal discussion at the regular Board meetings.
  - f. You also have the option to go to a land use lawyer.
  - g. Ellen Levine then asked how the Gale Decision might apply to an upcoming request for another building on the same property.
  - h. Lars-Erik Wiberg left at 11:38
  - i. After a lengthy discussion Peter Bergholtz made the suggestion that the Board should go back to the Town Attorney for clarification of how the Gale Decision applies to all of the 4 units on the property.
  - j. Ellen Levine then asked if the frontage of a unit could be the average of the other condo frontages.
  - k. The answer is that it has to be an average of abutting lots.
  - l. Charles W. Christopher suggested that when the Town Attorney is asked for her opinion she should be notified that this refers to the same property she was previously asked about.
  - m. Alan Battistelli said that there is a possibility that we are wrong and it can be appealed by going to court.
  - n. Peter Bergholtz stated that we haven't had a lot of experience with the Gale Decision.
4. Alan Battistelli moved to adjourn.
  - a. Tacy San Antonio seconded.
  - b. The motion passed unanimously with John N. Rees, Charles W. Christopher, Tacy San Antonio, Alan Battistelli and Peter Bergholtz voting.
  - c. Adjourned at 12:30 P.M.