

Approved 2/28/12

CITY OF ROCKLAND
ZONING BOARD OF APPEALS
Minutes of Meeting
October 11, 2011

Board Present: Chairman H. Grover, B. Carter, M. Lund, and H. Simmons

Board Absent: None

Staff Present: CEO J. Root and Secretary D. Sealey

The Chairman called the meeting to order at 7:01 P.M. A roll call was taken and a quorum declared. Mr. Grover asked if any member had a conflict of interest with the matter before the Board. None did.

Communications: None

Minutes of Previous Meeting: 3/4/10

ACTION: Mr. Carter made a motion, seconded by Mr. Lund, to accept the minutes of the 3/4/10 meeting as written.
Carried 4-0-0

New Business:

O'Hara Corporation/Frank O'Hara – 117 Tillson Avenue – Variance from Article VI.P.1. VI.P.2.a, and X.D. of the Floodplain Management Ordinance to Reconstruct Building and Pier (a Functionally Dependent Use). Frank O'Hara, an owner and Vice-President of O'Hara Corporation, and Gary Neville of Prock Marine appeared before the ZBA. Mr. O'Hara said Prock Marine had helped his company repair its waterfront buildings for twenty years. The building in question tonight was almost 100-years old, stuck out over the water, and had originally been a fish-cutting house. O'Hara Corp. had purchased the building in 1991 and Prock had driven new pilings for it at that time. Since its purchase, O'Hara Corp. had used it for boat storage and repair. During that time \$400,000 had been spent repairing areas of the building as they failed. Mr. O'Hara estimated that 20% of the 70' X 270' building had been replaced in that manner; however, now the concrete had started to fail.

O'Hara Corp.'s recent purchase of the former Bonnar-Vawter building on New County Rd. had given them the opportunity to temporarily move boats there for storage and repair, thus enabling replacement of the waterfront building. Mr. O'Hara said the entire building could be fixed and a newly-design dock could be installed. This dock would have removable panels that would allow pilings to be driven as needed. The Bureau of Submerged Lands had asked that the building be ramped up since there had been times when there had been 3"-4" of water inside. Prock Marine had determined that a 4' height increase would be required, but a travel-lift could not operate at such a grade. The company had considered raising its parking lot instead, but that would leave its other buildings 3' below it. Mr. O'Hara said the current wooden building was unsprinklered, had a very low ceiling, and was 2' lower than O'Hara's other docks. They wanted to replace it with a taller building that could accommodate boats that could not go up the street.

O'Hara Corp. had hired Kleinschmidt Associates to review City of Rockland, FEMA, and State of Maine requirements regarding building within a coastal flood hazard zone because it wanted to ensure that Rockland would not be held liable. Chair Grover asked if O'Hara Corp. was seeking a variance for floodplain elevation. Mr. Neville responded that they wanted to move the base of the building 2' higher than the current base. CEO Root stated that the metal building would be above the base flood, but the concrete foundation would not. Since the building would be below the floodplain, Mr. O'Hara said they wanted to put the building on slabs with ½" cracks and blowout panels so water could get back out. Mr. Root noted that the pier itself was exempt from floodplain regulations. He explained that the lowest structural member would not be above base flood level, even though it would be 2' higher than now. The CEO read aloud from the floodplain ordinance and said the O'Hara project

would qualify as substantial improvement rather than new construction. The crux of the variance was elevation. State NFIP Coordinator Sue Baker had stated that the O'Hara building warranted a variance.

Chair Grover said the Board needed to clarify the base statement of the appeal. Mr. O'Hara said the structure would be reconstructed with the lowest structural member at Elevation 12 NGVD. Mr. Carter asked if 50% of the work would be on the building, or if the pier work would use that up. CEO Root replied that the value of the building and pier would be more than 50% of the current value. Mr. O'Hara said the building would be worth \$600,000.

Mr. Lund asked about FEMA's history with towns that granted variances. Mr. Root said Farmington had been suspended. He said wind and waves, rather than high tides, were the issue. Mr. O'Hara's building and pier were engineered to withstand the forces of wind and water. Mr. Lund asked if the project was functionally dependent and Mr. Root said there were boats that could not easily be moved. Mr. O'Hara said every boat put into the building had work performed on it. He added that the *Victory Chimes* had lain at his dock for twenty years and loaded and unloaded passengers there. CEO Root read aloud the definition of "functionally dependent." He had asked Sue Baker why O'Hara Corp. couldn't simply meet the criteria specified for a functionally dependent use rather than apply for a variance. Ms. Baker had replied that State law required going through the hardship criteria.

Mr. Carter asked if the first 30' of the building itself could be ramped. Mr. Neville responded that inside the building 50' would be used for ramping up. Mr. Lund remarked that the problem with the hardship criteria was that there was no land to yield a return since the building was entirely over water. Mr. Neville said O'Hara Corp. was leasing the submerged land below the structure from the State. Mr. Lund then concluded there was no use for the land without the building. Mr. Root said he wished the State wouldn't call it a variance since it was a functionally dependent use in a floodplain, which the book said entitled a variance.

Mr. Carter noted that Sue Baker had brought up insurance issues. Mr. O'Hara said his company would have insurance on the building, but did not and would not have any on its docks. This building would be sprinklered, fire-rated, not habitable, and above the floodplain.

Chair Grover opened the meeting to the public at 7:41 P.M. Frankie O'Hara said the existing building was almost 100 years old and this would improve it.

Chair Grover then read aloud each variance qualification criteria and O'Hara Corp.'s written response from its application. Board members commented on each item.

Question #1: The land in question cannot yield a reasonable return unless the variance is granted. Mr. Carter said this was not a problem because the company was leasing land under the water that clearly had no other use.

Question #2: The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. No one had concerns with O'Hara's explanation.

Question #3: The granting of the variance will not alter the essential character of the locality. Frank O'Hara said the new building would be 26' high at the shoulders, while other buildings in the area were 30' high. Mr. Simmons stated that the only way the new building would alter the character of the area would be to improve it.

Question #4: The hardship is not the result of action taken by the appellant or a prior owner. Mr. Lund said the existing building was a lawful use that could be allowed to continue with piecemeal improvements; however, in this case raising the building would decrease its non-conformance.

Mr. O'Hara emphasized that his company could keep fixing the dock, but it would always be 4' below the floodplain. Now the building would be 2-1/2' higher. Mr. Grover said this made good sense.

Chair Grover asked the members if they were all in agreement to answer "Yes" to the first three variance criteria and "No" to the fourth. They were.

ACTION: Mr. Lund made a motion, seconded by Mr. Simmons, to approve the application for a variance.
Carried 4-0-0

Adjournment:

ACTION: Mr. Carter made a motion, seconded by Mr. Lund, to adjourn at 8:00 P.M.
Carried 4-0-0

Respectfully submitted,

Deborah E. Sealey
Recording Secretary