

**Town of Rockport Zoning Board of Appeals  
PUBLIC HEARING  
Wednesday, September 22, 2010 – 7:00 p.m.  
Rockport Opera House Downstairs Meeting Room  
Meeting Televised on Channel 22**

**Present:** George D. Benson, Chairman  
Stephen Bowen  
Michael P. Galgano  
David C. Gordon

**Also Present:** Thomas Ford, Planning Director  
Nancy Ninnis, Recording Secretary

**AGENDA**

**NEW BUSINESS**

1. Election of a Zoning Board of Appeals Chair and Vice Chair for the period of September 2010 to June 2011
2. **Elliott and Sandra Mitchell**, 90 Pascal Avenue, Rockport, ME 04856  
**Request:** Section 505 review to modify a grandfathered nonconforming lot by paving an existing crushed stone driveway.  
**Property:** 90 Pascal Avenue – Tax Map 29, Lot 69  
District #901 – Harbor Village District

**OTHER BUSINESS**

3. Review and Approval of Minutes

The meeting was called to order at 7:00 p.m.

**I. ELECTION OF OFFICERS**

**MOTION – Michael Galgano/SECOND – George Benson:** To nominate Stephen Bowen as Chair and David Gordon as Vice Chair of the Zoning Board of Appeals for the period September 2010 to June 2011. The motion was passed 4-0-0.

## II. ELLIOTT AND SANDRA MITCHELL

**Representation:** Elliott Mitchell

90 Pascal Avenue, Rockport, ME 04856

**Re:** 90 Pascal Avenue – Map 29, Lot 69

District #901 – Harbor Village District

**Request:** Section 505 review to modify a grandfathered nonconforming lot by paving an existing crushed stone driveway.

**Elliott Mitchell:** Our home is at the corner of Pascal Avenue and Pine Street on a 4,500 sq. ft. lot. The old house was torn down and our current residence built in 2002. The home itself is within the guidelines of the 33% rule for Section 901, but with landscaping it is over the 33%. I have submitted supporting materials identifying the lot, showing the size of the existing lot, the footprints of all structures, and the square footage of impervious surface including landscaping, driveways and walkways, as well as photographs illustrating the problem with water runoff and erosion. I have come before the Board for permission to have my gravel driveway tarred because of life safety issues, health issues and soil erosion. My wife and I are in our late 60's. I am an insulin dependent diabetic and my wife had a heart attack in 2008. We have to take care of snow removal ourselves. I have a snow blower, but it is very difficult to remove snow from a gravel driveway. The same reason applies if we try to have it plowed. We also get soil erosion year round in the front of the driveway because of water drainage from Amsbury and Pine Street. We have the front of the driveway built up with a small berm when the Town tarred the street, but heavy rain or snow overflows the berm and erodes the earth under the gravel at the front of driveway as shown in the photographs. This area of Pascal Avenue and Pine Street is well known as a flood area in bad storms by the Highway Department. It should also be noted that the construction of the berm to keep water from flowing into the driveway also acts as a deterrent for the drainage of water from the driveway. When the driveway was constructed, it was graded from a high spot at the front of the garage to a low point at the front of the driveway. The berm was stopped leaving about a foot so allow the water that builds up behind the berm to drain off. This has sometimes worked, but erosion takes place at the end of the driveway where the berm meets. We also have a gutter that drains into the north end of the driveway from the front of the garage. This adds to the water buildup. In winter the channel in the street by the berm fills with sand, snow and ice and the berm is useless. I have responded to the Special Exception criteria as follows:

1. *That the proposed use will not have an adverse effect on the natural environment and/or that the site for that use does not have unusual physical characteristics such as topography, soils, lot size or shape which would have an adverse effect on surrounding properties.*

My request will not have an adverse effect on the natural environment and/or that the requested change does not have unusual physical characteristics such as topography, soils, lot size or shape which would have an adverse effect on surrounding properties.

2. *That the proposed use would not significantly depreciate the value of surrounding property.*

My request for the proposed use would not significantly depreciate the value of surrounding property.

3. *That the proposed use will not create an unreasonable demand for public services, including, but not limited to, public roads, fire protection, police protection, solid waste disposal, sewage treatment, public water supplies, schools, public open spaces and recreational programs and facilities.*

My requested use will not create an unreasonable demand for public services, including, but not limited to, public roads, fire protection, police protection, solid waste disposal, sewage treatment, public water supplies, schools, public open spaces and recreational programs and facilities.

4. *That the proposed use would not result in an inordinate amount of pedestrian and/or vehicular traffic at or surrounding the site and/or cause any problems regarding emergency vehicle access.*

My proposed use would not result in an inordinate amount of pedestrian and/or vehicular traffic at or surrounding the site and/or cause any problems regarding emergency vehicle access.

5. *When put to any other use, a structure originally designed as a dwelling unit shall not be put to a use that would cause rapid deterioration of the structure.*

This item does not apply, as my request is not for a structure.

6. *That the proposed use will not have an adverse effect on surrounding property in consideration of the expanse of pavement, intensity of use and the buildings' bulk and material.*

My requested use will not have an adverse effect on surrounding property in consideration of the expanse of pavement, intensity of use and the buildings' bulk and material.

7. *That the proposed use will not have an adverse effect on the use and quiet possession of surrounding property owners, including, but not limited to, hours of operation, type of traffic and noise levels at property lines.*

My proposed request will not have an adverse effect on the use and quiet possession of surrounding property owners, including, but not limited to, hours of operation, type of traffic and noise levels at property lines.

*The applicant shall provide sufficient information and documentation to assure that the use will meet all applicable requirements under Section 800, General Standards of Performance.*

I am attaching sufficient information and documentation to assure that the use will meet all applicable requirements under Section 800, General Standards of Performance, as it applies to this request.

*Before granting any special exceptions, the Board of Appeals may refer the application to the Planning Board for an informational report concerning the effect of the request on the surrounding area and any other pertinent data with respect to the Comprehensive Plan of the Town of Rockport.*

I feel that Section 801.4 Surface and Stormwater Drainage specifically applies to my situation. It states that adequate provision shall be made for surface drainage so that removal of such waters will not adversely affect neighborhood properties, downstream water quality, soil erosion or the public storm drain system. I have attached photographs showing stormwater drainage flowing from Amsbury, down Pine Street and past my house during a rainstorm. I am also showing water buildup at the end of the driveway.

8. *The use of heavy equipment on a regular basis in a residential neighborhood shall not be allowed before 6:00 a.m. and after 6:00 p.m.*

This item is not applicable, as the request is not for use of any heavy equipment at any time in a residential neighborhood.

9. *Landscaping is to be preserved in its natural state insofar as practicable and shall be designed to stabilize slopes and buffer the site where necessary. The Board shall also consider the degree to which landscaping, fencing and other design elements have been incorporated to mitigate adverse effects on surrounding properties.*

My proposed request considers landscaping to be preserved in its natural state insofar as practicable and shall be designed to stabilize slopes and buffer the site where necessary.

10. *Review of the State Fire Marshall's Office (or its approved agent) is required for industrial and light industrial uses.*

Review by the State Fire Marshall's Office does not apply.

**Mr. Galgano:** Your presentation was excellent and thorough and well characterized the situation. I am in favor of your request.

**Chairman Benson:** When I review the Ordinance, I could easily approve your request per the definition of lot coverage, as you already have a driveway.

**Elliott Mitchell:** My question was whether a gravel driveway is considered to be an impervious surface.

**Planning Director Ford:** The lot coverage definition speaks to the visual appearance of landscaping. Paving is a permanent change that will permanently increase the lot coverage.

When I look at the character of the Village, I find that more than 50% of the driveways are paved.

**Mr. Bowen:** This would not be inconsistent with the rest of the neighborhood.

**Chairman Benson:** If the applicant is allowed to include the existing driveway as being impervious in the lot coverage percentage, the switch to pavement would not make the lot any more nonconforming.

**Planning Director Ford:** In 2002 the applicant stated that the driveway as non-gravel to keep down the lot coverage, but it has become completely impractical.

**Elliott Mitchell:** The driveway started out sodded. We moved in during the winter and by April we had five inches of mud, as we live at the bottom of a hill.

**Planning Director Ford:** I suggest that the Board not get into pervious or impervious because the Ordinance does not speak to that. If it had a landscaped appearance, it would not count toward lot coverage as I interpret that language.

**Chairman Benson:** The applicant is not permitted to make the lot more nonconforming.

**Planning Director Ford:** Land Use Ordinance Section 703.8.1 – Special Exceptions/Miscellaneous Appeals gives the Board some leeway to permit some variance in nonconformance: “To permit variations of nonconformance as authorized under Section 505 of this Ordinance.” Your point is valid, but you need to be able to make some judgment.

**Mr. Bowen:** The question is whether the lot will be significantly more nonconforming because of the hot top. In my mind it will not, so I can approve the application.

**MOTION – George Benson/SECOND – Michael Galgano:** To approve the application of Elliott and Sandra Mitchell for Section 505 review to modify a grandfathered nonconforming lot by paving an existing crushed stone driveway on property at 90 Pascal Avenue located at Map 29, Lot 69 in District #901, provided that the area paved is not larger than the existing gravel area.

<b>VOTE:</b>	George D. Benson	Yes
	Stephen Bowen	Yes
	Michael P. Galgano	Yes
	David C. Gordon	Yes

The motion was passed 4-0-0.

### **III. OTHER BUSINESS**

The minutes of the February 24, 2010 meeting of the Zoning Board of Appeals will be reviewed and approved at the next meeting.

The meeting was adjourned at 7:25 p.m.

The next meeting of the Zoning Board of Appeals has not yet been scheduled.

Nancy Ninnis  
Recording Secretary