



MANCHESTER-BY-THE-SEA

ZONING BOARD OF APPEALS

Manchester-by-the-Sea, Massachusetts 01944-1399

Telephone (978) 526-1410

MINUTES MANCHESTER-BY-THE-SEA ZONING BOARD OF APPEALS

Virtual On-line Meeting January 20, 2021

Members Present Online: Sarah Mellish (Chairperson), Kathryn Howe, John Binieris, James Mitchell, Brian Sollosy, and James Diedrich

Members Not Present: All members were present.

Ms. Sarah Mellish, the Chairperson, called the Meeting of the Manchester-by-the-Sea Zoning Board of Appeals ("ZBA") to Order at 7:03 p.m. and explained this is a virtual/online public hearing, per order of the Governor.

Ms. Mellish explained the Planning Board creates the Zoning By-Laws, the Building Inspector is the Enforcement Officer, and the Zoning Board of Appeals interprets the By-Laws and decides upon applications for relief requested for non-conforming lots, non-conforming structures, non-conforming uses, and whether a Special Permit or Variance should be issued. The procedure is first the Applicant(s) and/or their representatives explain the project, including the explanation of how the request qualifies under the By-Law for the issuance of a Special Permit or Variance. The ZBA members then ask questions of the Applicant regarding the project and will then introduce any correspondence received regarding the Application. The public hearing will then be opened to the public for comment, each member of the public will be limited to speaking once for no longer than five (5) minutes. The public hearing will be closed and the Applicant will be given the opportunity to respond to comments. The ZBA members will deliberate and possibly ask additional questions of the Applicant before the motion is voted on.

PUBLIC HEARING -CONTINUED APPLICATION

Application of **J Barrett & Company (Dale T. & Linda Chapman, Owners)** for a Variance under Section 7.4.6 of the Zoning By-Law, and/or other relief as may be necessary, to allow for only five (5) parking spaces rather than the fifteen (15) parking spaces required as a result of the change from a single family residential dwelling to a real estate office use, at **37 Beach Street**, Assessor's Map No. 45, Lot No. 19 in District G, filed with the Town Clerk on November 17, 2020.

Ms. Mellish stated that the Applicant has submitted a letter to the ZBA requesting to withdraw this application, without prejudice.

Ms. Mellish made a motion to approve the Applicant's request to withdraw without prejudice the Application of **J Barrett & Company (Dale T. & Linda Chapman, Owners)** for a Variance under Section 7.4.6 of the Zoning By-Law, and/or other relief as may be necessary, to allow for only five (5) parking spaces, when fifteen (15) parking spaces are required resulting in a shortage of ten (10) parking spaces due to the change from a single family residential dwelling use to a real estate office use, at **37 Beach Street**, Assessor's Map No. 45, Lot No. 19 in District G, filed with the Town Clerk on November 17, 2020.

There were no comments or discussion from the ZBA members.

Ms. Howe seconded the motion. Roll Call Vote: Mr. Diedrich, Ms. Howe, Mr. Sollosy, and Ms. Mellish voted unanimously in favor of allowing this application to be withdrawn without prejudice (James Mitchell is not participating in this vote and Mr. Binieris was not present at this time). Ms. Mellish stated that the applicant's request to withdraw this Application without prejudice was approved by a 4:0 vote. Ms. Mellish will sign the withdrawal form on the ZBA's behalf.

PUBLIC HEARING -NEW APPLICATIONS

Ms. Mellish introduced the Application of **Nicholas Chareas/MAC Holding Services, LLC** for a Special Permit under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter, expand, or change an existing non-conforming hotel/inn and single-family residential dwelling use to a non-conforming six (6) unit multi-family and a single family dwelling use in accordance with the plans, at **2 Harbor Street (Old Corner Inn)**, Assessor's Map No. 1, Lot No. 65 in District E, filed with the Town Clerk on December 16, 2020.

Orestes Brown, Esq., of the law firm of Metaxas, Brown, and Pidgeon, introduced himself as the attorney representing Mr. Chareas concerning this application and added that Mr. Chareas is also participating in this meeting.

Mr. Brown explained as follows: The Old Corner Inn is an existing non-conforming commercial use. It has been an Inn, consisting of eleven (11) rental bedrooms since the 1930s, since it pre-existed the implementation of zoning by-laws in Manchester-by-the-Sea, it is a lawfully pre-existing non-conforming commercial use and we are seeking to change this to another non-conforming use, which is allowed under the Zoning By-Law by Special Permit. This change of use will not be substantially more detrimental to the neighborhood and will be more beneficial to the neighborhood. This project proposes to change this year-round eleven (11) bedroom Inn use to a six (6) year-round permanent residential apartment use, which will create a more conforming parking arrangement. Currently, there is no provision for parking requirements at the Inn. One and a half (1-1/2) parking spaces per unit is required for residential dwellings and we will have eleven (11) parking spaces, which will represent conforming parking for the apartments and will result in less parking than there is currently on this site. This property also has a three (3) bedroom cottage with parking. The parking spaces will not change in terms of appearance or dimension from the existing parking spaces, so it will be a less intense parking use, and will become a full-time residential use in a residential neighborhood, instead of the existing commercial use, moving it to more of a conforming use. Mr. Brown continued that this is presently a non-conforming lot and non-conforming structure as to setbacks. We are proposing

no changes to the parking areas, no changes to the impervious surfaces, no changes to the exterior of the building except fixing/repairing/improving the existing façade; however, we are not changing the dimensions of the exterior of the building in any way. The interior of the building will be completely renovated and converted into five (5) two-bedroom apartments, and one (1) one-bedroom apartment, so there will be the same number of bedrooms as the existing Inn building.

Historically, the Old Corner Inn has operated mostly in the summer months, but there is nothing restricting the Inn to be used with more intensity during the rest of the year. If this property is purchased by someone who will maintain the Inn, there is nothing that can prevent the new owner from renting out its rooms in a variety of ways, including functions, short-term rentals on a weekly or monthly basis year-round. Therefore, a permanent residential use with two-bedroom apartments is going to be a quieter use and full-time residents/neighbors rather than transient renters who will create an increase in traffic impact, especially during the summer months. The result of converting to apartments will result in an upgraded and renovated building with neighbors who the neighborhood will get to know and enjoy.

Mr. Nicholas Chareas introduced himself and addressed the neighbors thanking them for their courteous comments and opinions and respects their concerns and explained as follows: I plan to live on-site, so I will be able to oversee the property and the people who will be renting from me. I want a quiet and pleasant setting for me and my family, as well as my tenants and the rest of the neighborhood. I believe that this proposed project will mitigate rather than exacerbate problems/issues.

Ms. Mellish invited the ZBA members to ask questions. Mr. Mitchell stated that he would like to hear from the neighbors first. Mr. Diedrich asked Mr. Chareas how long he has owned the Inn. Mr. Chareas replied that he does not own the Inn, but has an offer to purchase the Inn, pending permitting. Ms. Howe did not have any questions at this time. Mr. Sollosy asked if more pervious material was planned for the area where the single-family house is located. Mr. Chareas replied that there is an asphalt driveway going to the back of the lot from Harbor Street, and I plan to remove the asphalt and replace it with a stone driveway. Ms. Mellish stated that she does not see anything in the Manchester-by-the-Sea Zoning By-Laws in the residential or general districts that allows six (6) unit apartment buildings. Mr. Brown replied that it correct, there are no provisions for a six (6) unit building in Manchester-by-the-Sea, just like there is no provision for the Inn. This would be a change from one non-conforming use to another non-conforming use, which is allowed by law with the finding that it is determined not to be substantially more detrimental to the neighborhood, and the ZBA is allowed to do that. There were no further questions from the ZBA members.

Ms. Mellish read the various correspondence received into the record: (1) Letter from Alfred and Angelica Rossi, 89 Bridge Street stating that they have no objection to the Special Permit. (2) Letter from Seth Bartlett (address not provided) stating that this property has gone downhill over time and thinks that apartments would be better than an Inn. (3) Letter from Thomas Valleo, 47 Forster Road, stating that he is familiar with this property and its iconic structure and believes that rehabbing it would be beneficial. The rest of the correspondence the ZBA has received is not in favor of the application. (4) Letter from Ronald and Mary Skates, 4 Boardman Avenue, expressing concerns about transitioning to permanent residences, parking, traffic, and safety

issues. (5) Letter from Chris Moroni, Jersey Lane, stating that the present Inn is used seasonally with low utilization. The proposed six (6) apartment units and carriage house will increase the danger of the intersection. (6) Letter from Bruce and Cindy Journey, 8 Tuck's Point Road, concerned about traffic and asked if any traffic survey was done and concerned rental units would require a demand for these families wanting to use the Manchester-by-the-Sea schools. (7) Letter from Marianne Mewkell concerned that the conversion is not consistent with current zoning and concerned about the explanation attached to the application. (8) Letter from Lesley Gurley, 2 Tuck's Point Road, concerns with respect to parking for the 6 apartment units and carriage house would exceed the number of parking spaces and there is no alternative parking, as well as concern that the apartments could be used as an Air B&B and the high volume of traffic going into Tuck's Point Road. (9) Letter from Michael and Martha Chapman, 131 Bridge Street, concerns about traffic safety, the danger of the intersection, 1.5 parking spaces per unit will not be enough, and the density of the occupancy of the building. (10) Letter from Peter and Torey Morton, 128 Bridge Street, concerned about traffic at the intersection, pedestrian safety, parking of more permanent vehicles, and the carriage house barn becoming a permanent residence. (11) Letter from Pamela Kenworthy, MD, 1 Harbor Street, concerned about the danger of the intersection, frequency of pedestrians and joggers, children residing in the two-bedroom units, and no common outdoor space for the children to play and the hazard of traffic to these children, as well as concern about the traffic at Tuck's Point going through that intersection. (12) Letter from Donna and Peter Naugler, concerned about the traffic hazard, parking, not a safe intersection. (13) Letter from Sue and Bob Thomas and Adam J. Costa, an attorney, raising concerns about intensifying traffic and safety issues, intensifying parking, additional neighborhood impact regarding waste removal, outdoor community access, overhead cables, and limited sewage capacity. Mr. Costa includes case law regarding other cases in which changing from one non-conformity use to another non-conforming use was not upheld by the courts.

Ms. Mellish opened the public hearing to the public, asking people who would like to speak to raise their hands and then Ms. Mellish will call on them.

Richard Blau, 25 Harbor Street, expressed concern about parking and traffic, inadequate number of proposed parking spaces, vehicles parked at 2 Harbor would have to back out onto Harbor Street or Route 127 causing a safety hazard and there is no parking allowed on Harbor Street or Route 127. The Inn rarely had more than six (6) vehicles parked at one time and six (6) apartment units would result in an increase in parked vehicles making it more detrimental to the neighborhood.

Lisa Wilson, Bridge Street, concerned about an increase in number of vehicle accidents (has witnessed several already), traffic flow and safety. This could be an opportunity to mitigate a currently dangerous situation. If Mr. Chareas is willing to work with people to accommodate our concerns, we should give that some thought. It is a great idea to take the existing structure and do something positive with it. Currently, it is in great disrepair, and the existing parking area poses potential dangers. Mr. Chareas was kind enough to reach out to all the neighbors, and I believe that he would like to restore that building and reside in the cottage in the back. Ms. Wilson stated that she shares a sewer line with the Old Corner Inn, a private sewer tie-in and had spoken to Ben Rossi, the engineer, who assured me that there won't be a negative impact on the sewer in any way by converting the Old Corner Inn from its existing condition to a six unit apartment

building. As far as parking, it is up to the owner to make sure that the parking requirements are met. Ms. Wilson stated that she hopes that people will view this potential project in a fair way and all of us work together to find solutions, such as a more clearly delineated parking spaces and a better scope of use of this structure.

John and Lesley Gurley, 2 Tuck's Point Road, are concerned about the dangerous intersection and an increase in the number of vehicles parked as a result of this proposed project. The existing Inn has always had 2-6 vehicles parked at a time. The proposed project would create a high density use of that space (2 units per floor) for a neighborhood that is very low density. Dr. Gurley also expressed concern about this becoming apartments for transient rentals such as Air B&Bs.

Adam Costa, Esq., representing Sue and Bob Thompson, 0 Harbor Street, stated that he hopes the ZBA members will have a chance to review his letter prior to voting on this application. The Thompsons will be significantly affected by any potential change in use. Multi-family dwellings are not an allowed use in the single-residence District E and quoted Section 6.1.2 of the Zoning By-Laws and asked the ZBA member to consider whether or not deciding on this project is something the ZBA can rule on. In regard to "substantial detriment," the applicant is seeking two (2) different Special Permits: modification of a non-conforming structure and a modification of a non-conforming use. This is a significant expansion of a non-conforming structure and a significant expansion of a non-conforming use.

Mike and Martha Chapman, 131 Bridge Street, thanked Mr. Chareas for reaching out to the neighbors and appreciate that Mr. Chareas is going to keep the exterior of the building as is, but expressed concern regarding the occupancy density from a part-time Inn to a full-time residence, traffic flow and safety.

Flow and Noel Johnson, 40 Harbor Street, have significant concerns about the proposed number of units in the building, traffic flow and safety.

Joe and Robin Falzone, 73 Harbor Street, are concerned about the proposed six (6) apartment unit building, its potential effect on parking, traffic flow and safety, and suggested the need for a curb cut.

Bruce Journey, is concerned about the proposed density of occupancy, parking and its effect on traffic, flow and safety and asked if a traffic impact plan/survey been done. Also, the cost of educating children in the Manchester-by-the-Sea schools (\$17,448.00 per student), if the occupants of the proposed apartment units have school age children, the incremental cost burden to the school system could be substantial and asked what are the projected real estate taxes that will be paid to the Town. Ms. Mellish replied that the issue of education costs and tax consequences is not something that the ZBA can take into consideration.

Mr. Brown replied that they haven't undertaken a traffic study but are willing to do so.

Philio Cushing, 16 Harbor Street, a direct abutter to the Old Corner Inn stated that her land runs along the driveway to the right of the little red carriage house. Ms. Cushing expressed concern that she had delivered three (3) letters by hand and they had not been received by the ZBA

members. In addition, Ms. Cushing asked that it be on record that her opinion is clear that she and the other neighbors would love to see the Old Corner Inn houses restored, but the proposed project is unrealistic and that one of her strongest concerns is property value, the increase in parking spaces in the narrow driveway at the little red carriage house, and the increased noise factor. Ms. Cushing stated that she is very opposed to this proposed project.

Sue and Bob Thompson, 0 Harbor Street, directly across from the Old Corner Inn and stated that they are opposed to this proposed project. In 2005, there was a failed attempt to get long-term residents to live at the Old Corner Inn for additional revenue; however, there was not enough parking, resulting in vehicles parking on the streets and in other people's driveways, and the snow made these issues worse. There was no outside common space, so the renters would congregate in the driveways and in the parking lot, the porch, and the sidewalk. This is what happens when multiple year-round residents live on this non-conforming property with a very small lot.

Ronald Skates, 4 Boardman Avenue, stated that he wrote a letter in opposition to the proposed project and asked if there will be a fire sprinkler system installed. Mr. Chareas replied yes, it is mandatory. Mr. Skates stated that per Mr. Costa, there is no provision for six-family apartments in the Town of Manchester-by-the-Sea and suggested that the Planning Board and Town Meeting decide whether we want multi-family apartments. Mr. Skates also expressed concern about traffic flow and safety and stated that due to economics, this proposed apartment building could become an Air B&B.

Peter Morton and Tory Morton, 128 Bridge Street, a direct abutter of the Old Corner Inn, thanked Mr. Chareas for his communications with the neighborhood, but stated that they oppose this proposed project as it is currently presented, which is far too dense for that footprint—it is currently 1-1/2 feet on one end and 4 feet on the other end from our property, and the frontage is only 10 feet from the street/property line. Mr. Morton stated that the carriage house is already being used as an Air B&B. Mr. Morton expressed further concern about trash and trash removal, parking, traffic flow and safety and added that the Mortons have already witnessed several vehicle accidents. Ms. Mellish stated that the parking requirements in the Zoning By-Laws are specific with respect to number of units and it only goes up to four (4), so there is nothing specific in the By-Law with respect to the number of parking units required for a six (6) unit building. Mr. Morton stated that he would like to emphasize what Mr. Skates just mentioned about the possibility of discussing the approval of this six (6)-unit dwelling as something that the Town of Manchester-by-the-Sea wants to consider. Mr. Morton asked if the ZBA is aware of what use is legally allowed in that carriage house at this point, and Ms. Mellish replied that we do not have that information. Mr. Morton also expressed concern that the carriage house is built in the wetlands. Mr. Chareas replied that the construction will be happening on the inside and on the outside just wood rot repair. Mrs. Morton added that the wetlands have become wetter every year, so the safety of the carriage house foundation is at stake as well. Ms. Mellish stated that the wetlands is a Conservation Commission issue.

Mr. Barker, 138 Bridge Street, stated that he is opposed to the proposed project for issues already heard and added that this is a single-family residential district and a six (6)-unit apartment building does not belong in our neighborhood.

Ms. Mellish closed the public hearing and opened the hearing to the ZBA members.

Mr. Mitchell stated that he does support the notion of additional rental units in Manchester-by-the-Sea and supports the restoration of a landmark building. In addition, I appreciate the Applicant's efforts to reach out to the neighbors. However, after hearing everything tonight I do suspect there are perhaps insurmountable challenges with respect to traffic, safety, parking, and density. Could this project be scaled down? I also support a traffic study being done to confirm the traffic concerns.

Ms. Howe stated that in general she is in support of this project. The building has fallen into increasing disrepair and a repair which maintains the character of that lovely old building would be great. I also think that we really need more diversity of housing here in Manchester-by-the-Sea. We don't need another large single-family mansion with a carriage house on site. We need places where young families can come to live in town that are smaller units. I support the diversity of housing as well, but I take the concerns that I have heard from the neighborhood very seriously and agree that that it is a very dangerous intersection. That said, I am not sure that this is ZBA purview to deal in super depth with the traffic and intersection issues. I agree with prior suggestions that there needs to be a compromise made here in terms of potentially reducing the number of units or reducing the total density of the multi-family proposal to something that makes a little more sense for the space and would alleviate some of the concerns over traffic and parking. I do support the idea of getting a traffic study done and I would also put an open question to Ms. Mellish, our chairperson, on whether or not we need a Town Counsel opinion on this changing of a non-conforming use to another non-conforming use. Ms. Mellish replied that she doesn't think we need a ruling from Town Counsel and thinks it is within the By-Laws that the ZBA has to make a determination as a Board if we feel it is appropriate to go from one non-conforming use to another.

Mr. Sollosy stated that he generally supports this project. The Applicant has shown a lot of faith. I think it is a great repurposing of a property that is going into disrepair. Obviously, it is not going to be an Inn, due to economics this building is not going to be able to stay a 3-4 month occupied building. With the Applicant living on site as an owner/occupant, that gives it a lot of credibility, because the owner is going to be very careful about who he selects to be his neighbors. The neighbors should look at it as a neighborhood as opposed to a transient rental. The neighbors who occupy this building will understand the issues of traffic flow and safety and have a sense of ownership. One of the mandates of the Town of Manchester-by-the-Sea is to increase housing diversity and rental housing. I think this is a good project.

Mr. Binieris stated that he does overall support the rehab of this property. I agree that it would not be financially feasible for someone to renovate this property and attempt to operate it as an Inn on a seasonal basis. I think this is a great opportunity for this structure to be repurposed as a multi-family property. I agree that there is a big difference between people who actually live there as opposed to transient people visiting for a brief period of time, who do not know the area and where to park. I do understand and sympathize with some of the neighbors' objections, but overall I think it would be a great addition to the area as a multi-family property.

Ms. Mellish explained that it certainly makes sense to put this property to a better use than what it is today. I have a significant concern regarding the Board approving a six-unit apartment

building, when the Planning Board and the Town of Manchester-by-the-Sea has never voted to allow a six unit building and we only allow up to four (4) units in the General District. I have a serious concern that it is outside our scope to approve something that has never been contemplated to be allowed in our By-Laws.

Mr. Brown stated that he heard comments from other counsel about the case law. This is definitely not the place to make case law as that is something we do in front of a judge who would make the decision on it. I disagree with my colleague. I am aware of the case law. Most importantly, I know that Manchester-by-the-Sea's By-Law allows for the ZBA to change from one non-conforming use to another. There are cases that uphold a Town's right to restrict that and say no, you can't change from one non-conforming use to another non-conforming use, but under our By-Law the Town chose to give the ZBA more flexibility. I am not opposed to review by Town Counsel if the ZBA so chooses. My understanding is that the case law completely supports this Board's authority to make this change, if it finds that it is not substantially more detrimental to the neighborhood.

Mr. Chareas thanked everyone for their comments and added that he has heard everyone's concerns, some of them are valid and some of them can be mitigated. I feel that the ZBA members like this project, but I don't want the ZBA to support my application right now. It wouldn't be fair considering all these neighbors who have lived here for many years not in support of this project. I would like to take all the concerns into consideration and return to the ZBA's February meeting with a modification that addresses some of these questions and concerns, further mitigates parking issues and still keep the project as close to as I want as possible. Mr. Chareas asks all the neighbors to please reach out to him with any questions or concerns.

Ms. Mellish asked if the applicant is making a request to continue his Application to the February 17th meeting, and Mr. Brown confirmed this.

Ms. Mellish made a motion to continue the application of **Nicholas Chareas/MAC Holding Services, LLC** for a Special Permit under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter, expand, or change an existing non-conforming hotel/Inn and single-family residential dwelling use to a non-conforming six (6) unit multi-family and a single family dwelling use in accordance with the plans, at **2 Harbor Street (Old Corner Inn)**, Assessor's Map No. 1, Lot No. 65 in District E, filed with the Town Clerk on December 16, 2020. That continuance will be on February 17th.

Mr. Mitchell seconded the motion. Roll Call Vote: Ms. Howe, Mr. Sollosy, Mr. Mitchell, Mr. Binieris, and Ms. Mellish voted unanimously in favor of continuing this application to the February 17, 2021 ZBA meeting.

Ms. Mellish stated that she will sign the continuance form on behalf of the ZBA and we will send it to Mr. Brown for his signature.

Orestes Brown, Esq. of the law firm Metaxas, Brown and Pidgeon, introduced himself as representing the applicant, **Binnabah, LLC, (Jeffrey Karpowich)** on the following six (6) applications and explained that they would only like to go forward with the application for Lot

#4, 4 Sandpiper Lane and request a continuance on the applications with respect to Lot #1, Lot #3, Lot #5, Lot #7, and Lot #9. The reason is that we are speaking with the neighbors and most particularly the neighbors in Surf Village above Sandpiper Lane who have concerns about their views. We are looking at design changes to minimize the impact on their views and I think we are going to be able to work that out. I told the neighbors that I will continue the applications to the next meeting to give us time to make modifications to the plans.

Ms. Mellish made motions to continue the applications for 1, 3, 5, 7, and 9 Sandpiper Lane per Mr. Brown's request as follows:

Ms. Mellish made a motion to continue the Application of **Binnabah, LLC for a Special Permit** under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter and expand existing non-conforming single family structure on a non-conforming lot, setbacks, building height, floor area, location, parking and lot coverages by structure and impervious materials in accordance with the plans submitted with the application, at **1 Sandpiper Lane**, Assessor's Map No. 1, Lot No. 65 in District G, filed with the Town Clerk on December 16, 2020.

Ms. Mellish made a motion to continue the Application of **Binnabah, LLC for a Special Permit** under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter and expand existing non-conforming single family structure on a non-conforming lot, setbacks, building height, floor area, location, parking and lot coverages by structure and impervious materials in accordance with the plans submitted with the application, at **3 Sandpiper Lane**, Assessor's Map No. 1, Lot No. 66 in District G, filed with the Town Clerk on December 16, 2020.

Ms. Mellish made a motion to continue the Application of **Binnabah, LLC for a Special Permit** under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter and expand existing non-conforming single family structure on a non-conforming lot, setbacks, building height, floor area, location, parking and lot coverages by structure and impervious materials in accordance with the plans submitted with the application, at **5 Sandpiper Lane**, Assessor's Map No. 1, Lot No. 67 in District G, filed with the Town Clerk on December 16, 2020.

Ms. Mellish made a motion to continue the Application of **Binnabah, LLC for a Special Permit** under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter and expand existing non-conforming single family structure on a non-conforming lot, setbacks, building height, floor area, location, parking and lot coverages by structure and impervious materials in accordance with the plans submitted with the application, at **7 Sandpiper Lane**, Assessor's Map No. 1, Lot No. 71 in District G, filed with the Town Clerk on December 16, 2020.

Ms. Mellish made a motion to continue the Application of **Binnabah, LLC for a Special Permit** under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter and expand existing non-conforming single family structure on a non-conforming lot, setbacks, building height, floor area, location, parking and lot coverages by structure and impervious materials in accordance with the plans submitted with the application,

at **9 Sandpiper Lane**, Assessor's Map No. 1, Lot No. 70 in District G, filed with the Town Clerk on December 16, 2020.

These applications will be continued to the February 17, 2021 ZBA meeting. There was no discussion from the ZBA members.

Mr. Mitchell seconded the motions. Roll Call Vote: Ms. Howe, Mr. Mitchell, Mr. Sollosy, Mr. Binieris, and Ms. Mellish voted unanimously to approve the continuation of these applications to the February 17, 2021 ZBA meeting.

Ms. Mellish introduced the application of **Binnabah, LLC** for a Modification of a Special Permit under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter and expand an existing non-conforming single family structure on a non-conforming lot, setbacks, building height, floor area, location, parking and lot coverages by structure and impervious materials in accordance with the plans submitted with the application, at **4 Sandpiper Lane**, Assessor's Map No. 1, Lot No. 68 in District G, filed with the Town Clerk on December 16, 2020.

Orestes Brown, Esq. of the law firm of Metaxas, Brown and Pidgeon, introduced himself as the representative of the applicant, Binnabah, LLC (Jeffrey Karpowich) and explained that this application is to modify an existing Special Permit approved by the ZBA approved on August 26, 2020 to construct a two-story one-bedroom structure on this lot. We have also received Conservation Commission approval of the revised plans being presented today. After some consideration we are returning to ask the ZBA members permission to alter the orientation of this structure. We are not changing the design or square footage of this building but would like to modify the deck so that it will be facing south. We are doing this at the request of the neighbor David Bell, who was unhappy with the way we originally positioned this building, running parallel in front of his house. We decided that it would be better overall to accommodate Mr. Bell since it will have little impact to our design plans. We have received Conservation Commission approval for the repositioning of this structure and are asking the ZBA to approve this repositioning as a betterment of the previous Special Permit. This is a single-family house, so it is entitled to the special protections afforded to single-family housing with a more liberal standard being applied for altering these types of structures.

Ms. Mellish asked if any members of the Board have any questions, and they did not at this time.

Chuck Johnson from CT Johnson Engineering introduced himself as the design civil engineer for Arthur Neuner (prior owner) for his septic upgrade from 2016 to 2018. Jeffrey Karpowich from Binnabah, LLC purchased the property in December, 2018. I am currently taking care of the septic upgrade for Mr. David Bell. Mr. Johnson explained as follows: I submitted a transmittal and a discussion plan for this project. In 1942, the property consisted of nine (9) lots. In 1954 Sandpiper Lane was created as a private lane with a subdivision plan. It begins 10 feet wide from Raymond Street and then widens to 15 feet wide. Mr. Bell's primary concern is that vehicles are often parked within the 15-foot right-of-way and could potentially obstruct emergency vehicles. The right-of-way is not well defined. As part of Mr. Bell's upgrade plan four (4) granite bounds will be placed on his property lines to define the right-of-way and we are requesting that Mr. Karpowich place three (3) granite bounds in the locations shown on the discussion plan.

Mr. Brown stated that he has not had a chance to talk to my client, Mr. Jeffrey Karpowich (Binnabah, LLC), about installing stone bounds. We are not necessarily opposed to demarcating the right-of-way, provided that it is not an impediment to traveling over the right-of-way. We are interested in making sure that people do not block that right-of-way. Since my client owns most of the property on Sandpiper Lane, we are repositioning all of these buildings to accommodate vehicle parking so that they are not parking in the right-of-way. I will ask my client to opine on it, after he has spoken to the contractor, because in the end it is my client's decision.

Ms. Mellish explained that her concern with this plan is that it appears to me that Mr. Bell is planning to put granite bounds within the right-of-way. Mr. Johnson replied that Mr. Bell is proposing to put granite bounds at the points of the intersection of his property line and the right-of-way. Ms. Mellish replied they will be within the right-of-way and the whole issue of this case has been with respect to the right-of-way, so Mr. Bell is putting bounds in the right-of-way and not leaving the right-of-way open. Mr. Johnson replied that the intention is for these granite bounds (4 x 4 inches with a drill hole in the middle) to be flush with the ground surface when it is all done, not to be raised above the ground surface. During the winter the concern would be vehicles and plows knocking into the bounds. The granite bounds are \$43.00 each.

Mr. Brown asked Ms. Mellish for the sake of efficiency, I think that this may be a better discussion in the context of our other Sandpiper Lane applications, because as we are putting this entire project together with all six (6) units, we will address road maintenance and probably create a home owners' association for the road maintenance, so we can have an organized approach for the maintenance of this road. We will want to have a conversation with Mr. Johnson and Mr. Bell, so that we can organize this issue. Our interests are aligned, so we do not want to burden the ZBA members at this time. Mr. Johnson agreed.

Ms. Mellish asked the ZBA members if they want to go ahead with this 4 Sandpiper Lane application or continue it with the other Sandpiper Lane applications. Mr. Sollosy stated that the issue of the right-of-way was discussed at the August 26, 2020 meeting. This modification of the 4 Sandpiper Lane Special Permit does not affect the access into the site, so we should go ahead with this application instead of continuing it. Ms. Howe replied that she has a preference to consider all the Sandpiper Lane applications together for consistency purposes and would prefer to make all the decisions at one time. Mr. Mitchell agreed with Ms. Howe. Mr. Binieris stated that he would like to vote on the 4 Sandpiper Lane application tonight and continue the other Sandpiper Lane applications to the February 17, 2021 ZBA meeting. Ms. Mellish asked the Applicant what he would like to do. Mr. Brown explained that they elected to proceed on the 4 Sandpiper Lane application because we believe this Application is the non-controversial unit and it would be easier to get this Application out of the way.

Ms. Mellish asked about the status of the appeal of this Decision, and Mr. Brown replied if this Modification of a Special Permit is approved, that litigation will be moot and Mr. Bell will be free to appeal this modification, but I believe this modification solves the problem with this unit for Mr. Bell, so I am hoping we do not have further litigation on this modification.

Ms. Howe and Mr. Mitchell both stated they are okay with voting on this application tonight.

There were no other questions or concerns from the public or the ZBA members.

Ms. Mellish made a motion to approve the application of **Binnabah, LLC** for a Modification of a Special Permit, originally approved on August 26, 2020, under Sections 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to alter and expand an existing non-conforming single family structure on a non-conforming lot, setbacks, building height, floor area, location, parking and lot coverages by structure and impervious materials in accordance with the plans submitted with the application, at **4 Sandpiper Lane**, Assessor's Map No. 1, Lot No. 68 in District G, filed with the Town Clerk on December 16, 2020. Based on the finding that the modification of the Special Permit is in harmony with the purpose and intent of this By-Law and is not more detrimental or injurious to the neighborhood than the existing non-conforming structure or the prior Special Permit granted on August 26, 2020 (Decision filed with the Town Clerk on October 7, 2020), with respect to the various factors required for a Special Permit.

Mr. Sollosy seconded the motion. Roll Call Vote: Mr. Sollosy, Mr. Mitchell, Ms. Howe, Mr. Binieris, and Ms. Mellish voted unanimously in favor of approving this application.

Ms. Mellish will write the Decision and Mr. Sollosy will review the Decision.

ADMINISTRATIVE MATTERS

2 Tanglewood Road: Ms. Mellish explained that the 2 Tanglewood Road application was approved at the December 16, 2020 meeting with the caveat that we wanted a response from the Conservation Commission regarding whether or not there were wetlands. Chris Bertoni, the Conservation Commission Administrator, explained that a Building Permit was submitted in October, 2020 for this property. Ms. Bertoni had reviewed the property and there are no wetlands, but instead uplands, so it is not covered under the Wetlands Protection Act.

4 Crafts Court: Ms. Mellish explained that the ZBA approved the Special Permit in October. The applicants are now making a modification to the plans and are asking if we would consider this to be a minor modification or whether we need to go back into a new public hearing. They want to add an exterior bulkhead (3x5 feet) and will not be going any further into the setback than the house corner that is already there and was approved; in addition, they are going to remove one (1) foot off the back of the proposed garage accessory structure to shorten it from 24 feet to 23 feet, in order stay within the 15% lot coverage. A neighbor had been concerned about the wetlands side of the property, but these new changes are not on that side of the property. Do we feel that this is minor and let the Building Inspector that these changes are within reason of the Special Permit we granted? The ZBA members all agreed that this is a minor modification and there is no need to conduct a new public hearing. Ms. Mellish stated that she will contact the Building Inspector.

Decision Writing: Ms. Mellish explained that more people are coming forward with respect to criticizing our Decisions. One Special Permit we issued (48 Central Street) and attached to the Decision were plans that included some landscaping, but our Decision was only with respect to the structure itself. An abutter has come forward to try to force the applicant to do the landscaping. When we are discussing issues at meetings and when we write the Decisions, we need to be very specific as to what the Decision covers. Quite often the plans we receive with various applications are for a mixed use for various Town Boards. In this case, these plans were also submitted to the Conservation Commission. Mr. Sollosy stated the issue he had with this

application is that the applicant stated that he was going to decrease the pervious surface by removing the asphalt. Ms. Mellish explained that if we want to have conditions in our Decisions, then we need to be very explicit regarding what the conditions are, and they need to be incorporated into the Motions. If we talk about something like landscaping and we want it to actually be implemented, we need to make sure that this gets into the Motion and the Decision. If we are going to discuss items like impervious material and we want it to be implemented as part of the Special Permit, then we need to make it a condition. We must be careful to write our Decisions to make sure that we are incorporating those aspects that we really want incorporated. The ZBA members can discuss a lot of conditions and not incorporate them into the Decision, if we do not want to, we just need to be clear.

Overview of State 40B Handbook: Ms. Mellish made reference to pages 3 and 4 of the handbook and explained that there are a lot of things the ZBA members need to take into consideration regarding Comprehensive Permits, etc. The ZBA's jurisdiction includes Zoning, Subdivision Regulations, other types of local By-Laws, Ordinances, and Regulations, Historic By-Law, Earth Removal, Stormwater Management, and local Wetlands Regulations. Regarding the upcoming 40B, we must be prepared to look at the entire subset of the Zoning By-Laws, even the segments that are traditionally under the Planning Board's authority.

If the 40B is denied, the applicant can appeal to the Housing Appeals Committee ("HAC"), and the HAC is likely to overrule the ZBA and let the project go forward, because the Town of Manchester-by-the-Sea presently does not meet the statutory requirement for affordable housing. If the ZBA approves a Permit with conditions and the developer appeals, then the standards of review are different and the developer has to prove in court that the conditions make the project uneconomic.

Under the Zoning By-Laws, the ZBA can include conditions, if they are appropriate and reasonable, such as greater than minimal setback requirements, installation of screening, fencing, etc. and modifications to the exterior features or appearance of the structure. We can also limit the size, number of occupants, method of time of operation. Under a comprehensive permit, the ZBA can regulate the location of access drives and other traffic features, which we normally do not do on the standard permit applications. The ZBA can also require the applicant to install devices to limit noise, light, odor and objectionable aspects of the use. Ms. Mellish explained that the ZBA members need to think of those conditions when we are reviewing regular Special Permits.

Mr. Sollosy stated that the Board of Selectmen are reviewing this 40B and asked if the ZBA can add additional conditions beyond those negotiated by the Board of Selectmen. Ms. Mellish replied yes and added that the ZBA is bound by any conditions that the Board of Selectmen negotiate with the developer so we can't change those conditions, but the ZBA can impose additional conditions.

Ms. Mellish explained that the Board of Selectmen are having weekly meetings with some public input, but it is really the Zoning Board of Appeals' public hearing that is intended to allow for public input.

Ms. Jaques stated that if the Board of Selectmen come up with an agreement, the types of stipulations that the Board of Selectmen put on the developer are a much broader picture. The Board of Selectmen do not get involved with the types of decisions that are in the purview of the ZBA that pertain to the By-Laws. The ZBA will be doing the finer tuned, nuanced, very important aspects.

Ms. Mellish explained that if the Board of Selectmen negotiates an agreement with the developer, once that negotiation is done, the 40B application goes to the State for certification. If the Board of Selectmen are not successful with negotiations, the developer goes to the State for certification. Once the 40B application is certified by the State, it comes to the ZBA.

Ms. Mellish urged the ZBA members to review and understand the 40B Handbook and the Town of Manchester-by-the-Sea By-Laws, in preparation of the 40B application.

Adjournment: Ms. Mellish made a motion to adjourn the meeting. Mr. Sollosy seconded the motion. Vote: Ms. Mellish, Mr. Sollosy, Ms. Howe, Mr. Binieris, and Mr. Mitchell voted unanimously in favor of adjourning this meeting. The meeting was adjourned at 9:29 p.m.

Respectfully submitted,
Adele Ardolino, Administrative Assistant
Manchester-by-the-Sea Zoning Board of Appeals

N.B. These minutes are not verbatim. They are the clerk's interpretation of what took place at the meeting.