



MANCHESTER-BY-THE-SEA

ZONING BOARD OF APPEALS

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

Telephone (978) 526-1410

MINUTES

ZONING BOARD OF APPEALS (ZBA)

Virtual Meeting February 17, 2021

Members Present: Sarah Mellish (Chairperson), Kathryn Howe, John Binieris, James Mitchell, Brian Sollosy, James Diedrich and Sean Zahn. All members were present.

Ms. Mellish called the meeting to order at 7:00 p.m. Ms. Mellish indicated the meeting was a virtual meeting per order of the Governor and explained the hearing procedures.

PUBLIC HEARING – CONTINUED APPLICATIONS

Application of **Binnabah, LLC** for a Special Permit under Sections 6.1.2 and 7.5.2 of the Zoning By-Law and/or relief as may be necessary, to alter and expand existing non-conforming single family structure, 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 District G, filed with the Town Clerk on December 16, 2020.

Application of **Binnabah, LLC** for a Special Permit under Sections 6.1.2 and 7.5.2 of the Zoning By-Law and/or relief as may be necessary, to alter and expand existing non-conforming single family structure, 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 District G, filed with the Town Clerk on December 16, 2020.

Application of **Binnabah, LLC** for a Special Permit under Sections 6.1.2 and 7.5.2 of the Zoning By-Law and/or relief as may be necessary, to alter and expand existing non-conforming single family structure, 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 District G, filed with the Town Clerk on December 16, 2020.

Application of **Binnabah, LLC** for a Special Permit under Sections 6.1.2 and 7.5.2 of the Zoning By-Law and/or relief as may be necessary, to alter and expand existing non-conforming single family structure, 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 District G, filed with the Town Clerk on December 16, 2020.

Application of **Binnabah, LLC** for a Special Permit under Sections 6.1.2 and 7.5.2 of the Zoning By-Law and/or relief as may be necessary, to alter and expand existing non-conforming single family structure, 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 District G, filed with the Town Clerk on December 16, 2020.

Binnabah, LLC has requested a continuance to April 28, 2021 with a final decision by June 30, 2021.

Ms. Mellish moved to continue the hearing for properties at Sandpiper Lane, #s 1, 3, 5, 7 and 9, Mr. Mitchell seconded the motion. The motion passed unanimously.

Ms. Mellish proposed hearing the continued application of **Nicholas Chares/MAS Holding Services, LLC** at the conclusion of hearings for new applications.

PUBLIC HEARING – NEW APPLICATIONS

Application of **Montserrat Vera Lionch** for a Special Permit under Sections 6.1.2, 7.5.2, and 4.1.10 (f) of the Zoning By-Law, and/or other relief as may be necessary, to construct a new inground Gunite swimming pool, at **16 Overledge Road**, Assessor's Map No.5, Lot No.32 in District C, filed the Town Clerk on January 19, 2021.

Ms. Mellish stated that at the site visit the Applicant indicated blasting would not be required and noted there were two small trees and two large trees that would need to be removed.

Ms. Howe noted the request met zoning requirements. Mr. Mitchell indicated he had an opportunity to review the project and low level lighting and would approve the proposal, plan and fence. He asked if the 48 inch fence had been reviewed with neighbors. The homeowner stated the fence and plan had been reviewed with neighbors and all were in support.

*Ms. Mellish moved to approve the application of **Montserrat Vera Lionch** for a Special Permit under Sections 6.1.2, 7.5.2, and 4.1.10 (f) of the Zoning By-Law, and/or other relief as may be necessary, to construct a new inground Gunite swimming pool and spa, at **16 Overledge Road**, based on a finding the proposed swimming pool and spa which are accessory to the dwelling are in harmony with the purpose and intent of the By-Law, will not be detrimental or injurious to the neighborhood and meets all requirements for the issuance of a Special Permit, based on the condition that the coverage by structures and impervious surface does not exceed 25% of the lot area; and, further that the proposed pool is constructed in accordance with to the following plans and documents: Design by Kalmia Design revised 12-3-20 of pool, spa, patio and landscaping and Boundary & Partial Topographical Surveyed by Kalmia Design, dated 1/12/2021. Mr. Mitchell seconded the motion The motion passed unanimously.*

Ms. Howe will write the Decision and Mr. Mitchell will review.

Application of **Hancock Associates, Deborah Colbert, PE** for a Special Permit under Sections 6.1.2, and 4.1.10 (f) of the Zoning By-Law, and/or other relief as may be necessary to construct a new pool house, spa and swimming pool to replace the asphalt tennis court at 195 Summer Street, Assessor's Map No. 12, Lot No. 1 in District E, filed with the Town Clerk on January 20, 2021.

Ms. Colbert with Hancock Associates introduced herself and shared a view of the automatic cover proposed for the pool which meets State requirements. Additionally, she stated there were four lights in the proposed pool house and some within the pool. Ms. Colbert indicated the nearest neighbor was more than 500 feet away from the proposed pool house, spa and swimming pool. The area is surrounded by shrubbery facing the ocean and plans call for additional shrubbery. The lot is 28 acres and is relatively isolated.

Mr. Mitchell had a question regarding C-1 permit on the site plan indicating a 30 foot and 50 foot no disturb zone which intersects with the pool. Ms. Hancock replied following a meeting with the Conservation Commission and discussions around insulation for the pool it was concluded the construction was improving the area sensitive to the coastal bank by reducing the impervious surface by 2,500 square feet (tennis court). Following the approval of the Conservation Commission the applicant is returning to the Zoning Board of Appeals for approval.

Ms. Howe asked if the automatic safety cover was in lieu of fencing. When she reviewed the application, she did not see an exception noted on the plan. Ms. Mellish indicated there was a deer fence around the property and the fence would keep children and neighbors out. The property line is 20 feet, with the closest neighbor 500 feet from the property, additionally there is only one way into and out of the property. Ms. Mellish asked how the safety cover worked. Ms. Colbert stated the cover worked by pushing a button to close and lock.

Mr. Mitchell asked how high the deer fence was. Ms. Colbert indicated it was 7 to 8 feet high and surrounded the property and sloped down to the ocean.

Ms. Mellish asked if the Public would like to speak on the application. There was no comment from the Public.

Ms. Mellish moved to approve the application for a Special Permit under Sections 6.1.2, and 4.1.10 (f) of the Zoning By-Law, and/or other relief as may be necessary to construct a new pool house, spa and swimming pool to replace the asphalt tennis court at 195 Summer Street, Assessor's Map No. 12, Lot No. 1 in District E, filed with the Town Clerk on January 20, 2021, based on a finding that the pool, spa and pool house are in harmony with the purpose and intent of the By-Law, will not be detrimental or injurious to the neighborhood and meets all requirements for the grant of a Special Permit, provided the proposed pool, spa and pool house are constructed in accordance with with the following documents and plans:

- *C1 ZBA Permit Site Plan prepared by Hancock Associates, dated 1/19/2020*

- *A1.1 First Floor 2010 Pool House Project prepared by Catherine Truman Architects, dated 1/15/2021*
- *A2.0 Exterior Elevation 2010 Pool House Project prepared by Catherine Truman Architects, dated 1/15/2021*

Mr. Mitchell seconded the motion. Ms. Howe added that the cover needed to be in accordance with State requirements. The motion passed 4-0 with Mr. Sollosy abstaining.

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

Application of **Steve & Jenny Athanas** for a Variance under section 5.4 of the Zoning By-Law with regard to side setback, lot coverage by structure, and lot coverage by impervious surface, and/or other relief as may be necessary, to construct a 2-story addition on an existing non-conforming lot, at **144 Summer Street**, Assessor's Map No. 39, Lot No. 56 in District A, filed with the Town Clerk on January 20, 2021.

Mr. Athanas stated the structure is a 12 x 22, two-story addition to his home on a small lot. Mr. Athanas is aware of questions raised by the Conservation Commission and he is working with Mr. Andrew Crocker, an Architect, to address the questions.

Mr. Crocker stated the Athanas family home is on a slab with no storage. The family needs an additional bedroom, storage space and a family room. The proposed addition is 500 square feet the second floor extends over the main block of the building. The home is on a small lot which makes it difficult to meet all zoning requirements.

This is an older building close to wetlands on two sides which restricts building in the right side of the house. In order to build the addition, it is necessary to encroach five feet into the southerly side setback, but only a small corner of the proposed building will encroach into the setback. Lot coverage issue currently is in violation for impervious surface, due to the paving of the driveway by the Applicant. They could look into removing a portion of the paved driveway if the application is granted approval to help mitigate the coverage by impervious surfaces issue.

Ms. Mellish stated it appeared the request increases lot coverage by structures from 15% to 16.75% and she is reluctant to grant relief. She suggested the water issues need to be resolved by eliminating asphalt to reduce the amount of relief requested. Mr. Crocker indicated the building will improve water run off issues. Ms. Athanas asked if the question was are they willing to mitigate driveway as part of their plan. Ms. Mellish stated the application is asking the ZBA to give a variance for a driveway never approved.

Mr. Sollosy indicated he was reluctant to approve and believes the building and driveway should be brought into compliance. Mr. Binieris stated the addition is fairly minimal and proposed using pavers to bring the impervious surface percentage down. Mr. Mitchell supports the non-conforming driveway being replaced. Ms. Howe agreed with bringing the impervious surface into compliance.

Application was opened to public discussion.

Mr. Louis Logue, 142 Summer Street – Mr. Logue stated the structure was originally a camp and a developer had attempted to construct a building with a foundation and garage. The Building Inspector had the developer remove the foundation due to wetlands and water. The current driveway run-off moves onto my driveway and puddles and pools. Mr. Logue suggested a driveway of pavers or crushed stone with a different pitch which he mentioned to Board members during the site visit.

Mr. Demakes, 2 Harold Street – Mr. Demakes stated the run-off coming from Mr. Athanas' pavement starts at his front door and into his driveway. He knows Mr. Athanas is working on a plan to mitigate the low pitch from his land. Mr. Athanas stated he knows the driveway was not completed professionally and although it is a great place for his children to ride their bikes, he understands the concerns and a solution will be part of the project.

Mr. Mellish pointed out when requesting variances there is a higher bar. Ms. Mellish indicated the ZBA would continue Mr. Athanas's application request and requested a water mitigation plan. Mr. Crocker stated the water issue at 144 Summer Street is a different issue and he believed it was being addressed through the Conservation Commission.

Mary Jo Feuerbach, 5 Harold Street – Ms. Feuerbach stated her property is one of three houses by the 144 Summer Street address and our lawns flood. Fifteen years ago, ZBA reviewed the hydrology and noted the sizable increase of structures impacted the flooding. She is not in opposition to the application as long as flooding issues are addressed.

Mr. Sollosy suggested storm water run-off could move into a French drain. Mr. Crocker agreed all run-off would move into a French drain and the asphalt driveway was creating the problem. Ms. Mellish stated she was concerned the asphalt was installed in violation of the zoning coverage requirements and it never came before the ZBA. As a result, the driveway should be taken into consideration. Mr. Crocker asked if the ZBA, with conditions outlined, would be of a mind to approve the application if the surface is corrected. Ms. Mellish stated she is reluctant to approve without more information.

Mr. Mitchell stated in L-01 of the original drawing proposed a dwelling with two leaching stations for stormwater. The Board will need to see plans for leaching chambers to determine if adequate for the new construction. Ms. Mellish reiterated runoff and variance are reasonable for the Board to take into consideration for the project. Ms. Howe requested a more detailed mitigation plan in writing before approving the application.

Ms. Mellish informed Mr. Athanas it did not appear that his application would be approved this evening and asked if he would like to continue the Application to the March 24, 2021, ZBA meeting, so he can provide additional information on the drainage issues.

Plans/drawings incorporated prepared by Andrew Crocker Architect: L-01 Site Plan dated 1-4-21; A-01 & A-02, Floor Plans dated 1-4-21; A-03 & A-04, Elevations dated 1-4-21.

Ms. Mellish moved the application be continued to March 24, 2021 at the request of the applicant, Mr. Sollosy seconded the motion. The motion passed unanimously.

PUBLIC HEARING – CONTINUED APPLICATION

Application of **Nicolas 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 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**, Assessor's Map No. 1, Lot No.65 in District E, filed with the Town Clerk on December 16, 2020.

Ms. Mellish introduced the hearing by stating the Board had received 25 additional letters not supporting the application. The letters expressed concern around the single-family home in the back and mentioned the home was not eligible for a variance.

Ms. Mellish opened the continued hearing. In response to comments on the existing non-conforming use, she stated the Applicant may make an application to change the use and submitted new plans to lessen the amount of required parking. Ms. Mellish will not read each letter received but will open the hearing for public input around items regarding proposed changes. The Board is unlikely to reach a decision this evening.

Attorney Brown spoke on behalf of his client indicating that the application for 6, 2 bedroom units with a 2 bedroom house in the rear was not well received by the Board and neighbors and in the interest of being a good neighbor Mr. Chareas submitted a new floor plan on February 5, 2021 for 3, 3 bedroom units decreasing the need for parking spaces for 6 units. Mr. Brown stated when operating as an Inn there were 11 separate rooms and likely 11 cars parked on the property. Mr. Brown believes this is a step in the right direction and is amending Mr. Chareas' application to a conversion to 3, 3-bedroom units.

Ms. Mellish stated there has been a lot of conversation about the Inn being a seasonal Inn with no restrictions plus the Inn was also licensed to serve food multiple times a day. Ms. Mellish would like the Board to review the current allowed use when considering the application.

Mr. Chareas said the process has been a rough ride with lots of opinions around the proposed changes. He does not intend to change the outside appearance of the Inn only the use with the addition of high-end units and parking spaces for 4 cars in the front with an additional 4 parking spaces in the back. His objective is to have 3 luxury owner occupied units.

Mr. Chareas indicated he had received an uncomfortable call following the previous meeting and was informed by the caller that no one wants you here and we will fight your request.

Mr. Mitchell stated he originally wanted to support the application and has read all the letters. The letters addressed traffic, safety and congestion. Mr. Mitchell would like to see a better plan for entering and exiting the parking lot and noted one abutter requested a traffic mitigation plan. Mr. Mitchell added now that the scale of the application has been cut in half additional information is required on several items in the application.

Ms. Howe stated she appreciated the change to 3 luxury condos and recognized the Inn was a beautiful old building and would like to see it habitable. Ms. Howe recognizes the Inn is located

at a dangerous intersection and agreed further conversation around parking design and the number of spaces needs to occur. Additionally, she heard the concerns from neighbors around storage and refuse removal. Ms. Howe understands the need to repurpose the building to provide for additional services.

Ms. Mellish read into the record the list of residents who had forwarded comments since the January 2021 hearing:

January 18, 2021 – Philio Cushing, 16 Harbor Street

January 18, 2021 – Sharon Deveney, 18 Harbor Street

January 19, 2021 – Susan Durkin, 20 Harbor Street

January 26, 2021 – Roald Skates, 4 Boardman Ave.

January 30, 2021 – Garlan Morse, 11 Jersey Lane

January 31, 2021 – Carroll Cabot, 1 Tuck's Point Road

February 1, 2021 – Devereux Barker, 148 Bridge Street

February 1, 2021 – Dana Landry, 11 Tuck's Point Road

February 1, 2021 – Marianthe Mewkill, 44 Harbor Street

February 5, 2021 – Donna Naugler, 29 Harbor Street

February 7, 2021 – Melissa Landsvik, 22 Boardman Ave.

February 7, 2021 – Raymond Ozzie and Dawna Bousquet, 50 Harbor Street

February 8, 2021 – Richard Blau, 25 Harbor Street

February 8, 2021 – Jonathan and Beth Payson, 11 Boardman Ave.

February 10, 2021 – Armins Ruisis, 31 Harbor Street

February 10, 2021 – Michael Chapman, 131 Bridge Street

February 10, 2021 – John and Leslie Gurley, 2 Tuck's Point Road

February 10, 2021 – Peter Morton, 128 Bridge Street

February 14, 2021 – Patrick and Julie Riordan, 21 Boardman Ave.

February 14, 2021 – Robin Falzone, 73 Harbor Street

February 14, 2021 – Amy Snodgrass, 69 Harbor Street

February 15, 2021 – Susana Thompson, 0 Harbor Street

February 15, 2021 – Miles Allen, 12 Jersey Lane

February 16, 2021 – Bartlett Geer, 15 Boardman Ave.

February 16, 2021 – Philio Cushing, 16 Harbor Street

February 16, 2021 – Robert Thompson, 0 Harbor Street

February 17, 2021 – R. Bruce Journey, 8 Tuck's Point Road

The application was opened for public comment.

Mr. Blau, 25 Harbor Street – Mr. Blau stated he was a former Chairman of the Planning Board and was familiar with Town By-Laws. He believes the request for a special permit is based on someone not doing their homework and preparing adequate documents. The plan is flimsy and based on verbal assertions. He is uncomfortable with the preparation and presentation for the proposed changes.

Additionally, Mr. Blau indicated he received the revised plans by email today and no one has had adequate time to review. Town Hall is closed and it is difficult to get better information. Mr. Blau would like to see the special permit for a variance denied. He also stated he believes the 6 parking space rule relates to a different part of Town and neighbors are not obligated to accept 6 parking spaces. The Inn is grandfathered and stating improvements will make the Inn better is a different argument. He added high end units with no outside space is unrealistic.

Ms. Mellish stated this is not a request for a Variance, as the Inn was grandfathered as a non-conforming use and change of use requires a Special Permit. The ZBA cannot approve a Variance for a change of use.

Mike Chapman, 131 Bridge Street – Mr. Chapman stated the proposed entrance and exit from the property is on the crosswalk where Harbor Street ends and there is no where for pedestrians to continue and walk up Harbor Street. Additionally, there have been accidents on his property one car flipped and another mowed down the fence. The additional traffic is not going to help with an already dangerous intersection.

Mr. Chareas believes going from 6 units to 3 units will satisfy the parking question. He very much wants to complete the project and with the parking question mitigated to 4 at the top of the lot and 4 at the bottom it makes the situation better.

Miles Allen, 12 Jersey Lane – Mr. Allen asked if the proposed change is for condos or rentals. He indicated if units are 3 bedroom rentals and each unit has 2 parking spaces there are no spaces available for guests and on street parking is not allowed. Ms. Mellish pointed out that 2 parking spaces per unit are not required under the By-Law.

Lisa Wilson, 122 Bridge Street – Ms. Wilson pointed out the building could be an Inn and restaurant and that would magnify the problem with guests walking up and down Harbor Street. Ms. Wilson stated the Applicant listened to the neighbors' information and understands the safety issues and is taking steps to rectify the problems. Safety at the intersection of Harbor Street and Route 127 is a separate issue. The Applicant is willing to collaborate and has limited parking to 2 spaces per unit in the proposed lease agreement.

Donna Naugler, 29 Harbor Street – Ms. Naugler understands the dangerous intersection, neighborhood/zoning and non-conforming use to a different non-conforming use and agrees with 7.5.2 harmonious Zone E. It is up to the ZBA, Planning Board and Town to make sure the special permit complies. It is quite simple. Ms. Mellish stated two thirds of properties in Town are non-conforming and cannot be penalized, it is part of zoning.

Tory Morton, 128 Bridge Street – Ms. Morton stated everyone wanted the Inn renovated and it has been an experience to hear from everyone and she understands the neighbors points.

Ms. Mellish replied the Board will go through the points raised piece by piece and address the issue of traffic. It has been overwhelming to have all the information that has been presented and the information will be reviewed methodically.

Mr. Thompson would like the property to be reduced to a single-family home.

Mr. Skates, 4 Boardman Ave. – Mr. Skates is concerned about safety. The Town proposed straightening the intersection and removing the island but that change has not happened.

Cynthia Ruis, 31 Harbor Street – Ms. Ruis asked about the number of guest parking spaces. Mr. Chareas, stated he would put provisions in place for guests and tenants would understand it was necessary for them to comply with their leases. Mr. Chareas reiterated there would be 4 parking spaces in the front and 4 parking spaces at the back of the building and he will provide screening between his property and the immediate abutters.

Alex Ruis, 31 Harbor Street – Mr. Ruis stated you can tell this is an emotive topic and the intersection of Harbor Street and Route 127 is a sketchy intersection. Every neighbor is telling the ZBA that this is a flawed intersection and the intersection needs to be reconfigured. If the intersection was changed it might make for a safe project.

Devereux Barker, 138 Bridge Street – Mr. Barker stated he was in the insurance business and fire safety is a concern for the Inn. There is no sprinkler system in the building and the building is not hard wired with an alarm. Converting it to 3 units will mean it is not required to have a sprinkler system. Mr. Barker believes the building is a fire waiting to happen especially with 2 to 3 kitchens. He believes the Old Corner Inn is a hazard.

Ms. Mellish asked if the Applicant's Counsel would like to request a continuance.

Mr. Chareas would like to prepare detailed floor plans and come back before the Board with a parking plan for the upper and lower areas. Also detailed layout of entrance and exit with additional screening for abutters. Ms. Howe asked for additional information for snow removal, refuse, storage and parking by the red carriage house.

Ms. Mellish moved to continue the application to March 24, 2021, and the deadline to provide the decision to the Town Clerk as June 30, 2021, Mr. Binieris seconded the motion. The motion passed unanimously.

Ms. Mellish asked if Board members had an opportunity to review minutes. The Board had reviewed minutes but requested holding the January 2021 minutes for further review.

Ms. Mellish moved to approve minutes for October 2020, November 2020 and December 2020, Mr. Mitchell seconded the motion. The motion passed unanimously.

Ms. Mellish stated an appeal had been filed regarding the administrative decision regarding 48 Central Street and plantings. The decision stated the structure was to be built to plans with complete landscaping, 48 Central is on the agenda for March 24, 2021.

Ms. Mellish moved to adjourn the meeting, Mr. Mitchell seconded the motion. The motion passed unanimously.