



MANCHESTER-BY-THE-SEA

ZONING BOARD OF APPEALS

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

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MINUTES

ZONING BOARD OF APPEALS (ZBA)

Virtual Meeting March 24, 2021

Members Present: Sarah Mellish (Chairperson), Brian Sollosy, James Diedrich and Sean Zahn were present.

Members Not Present: Kathryn Howe, James Mitchell and John Binieris

Ms. Mellish called the meeting to order at 7:01 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

Modified 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 three (3) 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.

Mr. Chareas has requested to withdraw the application 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 three (3) 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.

There was no Board discussion on the application withdrawal.

Ms. Mellish moved to approve the applicant's request to withdraw without prejudice the application for a Special Permit, Mr. Diedrich seconded the motion. The motion passed unanimously with a roll call vote: Mr. Sollosy, Mr. Diedrich, Mr. Zahn and Ms. Mellish voting yes.

Ms. Mellish stated the Board had a full docket this evening and requested applicants and property owners limit their statements to 10 minutes.

Continued 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.

Ms. Mellish stated the Applicant had submitted a revised plot plan and Ms. Mellish had forwarded the plan to the Board. Ms. Mellish asked the Applicant to explain the changes. Mr. Athanas explained there were three primary changes. The Variance requested for the side setback was 15 feet from the corner of the property line, the lot coverage by structure and the impervious material on the driveway has been corrected.

Mr. Athanas is requesting to build a modest addition given his property is surrounded by wetlands and the proposed structure is the only location for additional space. There were no concerns expressed by the Conservation Commission after plans were submitted for the construction of a French drain which cuts across the driveway. Mr. Athanas stated the neighbors appear satisfied runoff is accounted for.

Mr. Athanas is requesting a Variance for an addition based on the current plot plan. The impervious surface has been reduced by 400 square feet as described in the drawing provided last week to conform with coverage by structures and impervious surfaces. A 65-foot drain was proposed to run parallel along the driveway as depicted in the drawing, but Mr. Logue, the abutter at 142 Summer Street suggested moving the drain to turn 90 degrees and run under the driveway so the runoff will be directed to the far side of the driveway, rather than onto his property. Mr. Athanas indicated he thought Mr. Logue's suggestion was a good one and they will be revising the site plan to reflect the repositioning of the drain to cross under the driveway, rather than running parallel to it and will drain into an existing leaching chamber in line with the buffer. An additional leaching chamber will be added, if necessary.

Mr. Diedrich requested revised drawings and an engineer's analysis of the adequacy of the drainage. Mr. Athanas hoped with the concept presented, a decision could be made this evening.

Discussion was open to the public.

Mr. Logue, 142 Summer Street – Mr. Logue is happy with the effort made and supports the Conservation Commission recommendation.

Ms. Mellish asked the Board is they were satisfied and would vote to approve this evening or continue to the next meeting. Mr. Sollosy indicated he was satisfied the Applicant had worked with his neighbors and could vote this evening. Mr. Zahn indicated he agreed with Mr. Diedrich and was not in a position to vote without viewing revised drawings. Ms. Mellish was in favor of continuing the Application to the next meeting. Mr. Athanas agreed to continue the Application to the ZBA meeting to be held on April 28, 2021.

Drawing/plans incorporated: Site Plan prepared by EPS Associates LLC, dated 3/1/21.

Ms. Mellish moved to continue the Variance requested under section 5.4 of the Zoning By-Law with regard to side setback, lot coverage by structure, and lot coverage by imperious 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. Diedrich seconded the motion. The motion passed unanimously with Mr. Sollosy, Mr. Diedrich, Mr. Zahn and Ms. Mellish voting yes by roll call vote.

PUBLIC HEARING – NEW APPLICATIONS

Application of **Lisa Martinez and Chris Williams** for an Appeal of an Administrative Decision by the Building Inspector, dated January 13, 2021, regarding **48 Central Street**, Assessor's Map No, 44, Lot No. 19 in District G, filed with the Town Clerk on February 11, 2021.

Mr. Orestes Brown, Attorney for Applicants respectfully requests that the ZBA overturn the decision of the Manchester-by-the-Sea Building Inspector, dated January 13, 2021, which is attached as Exhibit A. As set forth in the letter to the Building Inspector, dated December 21, 2020, attached as Exhibit B. Massachusetts law makes clear that the Special Permit governing 48 Central Street is to be strictly construed against the Hawley's and applicants are entitled to enforcement of the Special permit.

The Special Permit with the approved revised plans are attached as Exhibit C. The Minutes of the ZBA meeting on June 26, 2019 are also attached as Exhibit D. The Special Permit specifically requires the replacement of the existing paved area with lawn area in accordance with the approved revised plans that were incorporated into and therefore are a condition of the Special Permit. The Building Inspector's refusal to enforce the Special Permit is in error.

Mr. Orlando stated in his letter dated January 1, 2021 to Attorney Buchanan regarding zoning enforcement for the Hawley property at 48 Central Street that the property was granted a Special Permit from the ZBA to alter a non-conforming structure and convert the structure to a single-family home. The ZBA review and approval was specifically related to the alteration of the structure. While there were grass areas and landscaping depicted on the site plan, the ZBA did not specifically identify those items to be done as a condition of their approval. The Zoning Board does not regulate the landscaping of a single-family home. While the ZBA may have discussed the landscaping, they did not choose to require it as a specific condition to the Special Permit to alter the building. There is, therefore, no requirement for the applicant to strictly conform to the plantings shown on the site plan nor would there be a requirement for the ZBA to approve changes in walkways, plantings or landscaping materials going forward. For these reasons, your request to order the installation of lawn areas and landscaping is denied.

Mr. Mark Glovsky, Attorney for the Hawley's stated Mr. Brown's insistence on strict compliance as related to site location include all sorts of things not included in the ZBA Special Permit decision. He believes Mr. Orlando was correct is defining what was included and denying the appeal.

Ms. Mellish raised a few points with respect to depictions included in the site plan which were not matters before the ZBA such as the front stoop and building height. The original application included a request for an attached garage, but that was subsequently removed and the only matter before the ZBA was a special permit for the 9.5 foot bump out. Although the Board discussed the landscaping, it was not included as a condition of the Special Permit. The garage situation was discussed and although an attached garage was not likely to be approved, the Applicant would not need ZBA approval to build a conforming detached garage. The detached garage and landscaping within the coastal buffer zone plan was submitted to the Conservation Commission whose denial based on the local By-Law is being litigated. Mr. Zahn stated he had reviewed the minutes and agreed the landscaping was discussed. Mr. Sollosy agreed with Mr. Zahn and felt the negotiations included the landscaping and should be required, even if it was not made an express condition of the special permit and if Mr. Hawley agreed to add landscaping and remove impervious material he should be required to do it. Mr. Diedrich agreed with the Building Inspector's decision and expressed concern this appeal was frivolous and premature.

Ms. Mellish stated she is concerned the landscaping is in the coastal buffer zone that is under the jurisdiction of the Conservation Commission, not the ZBA.

Mr. Brown believes it is within the jurisdiction of the Board to require a certain percentage since the non-pervious area is over 70%. Strict compliance would be to return to lawn in the area. The neighbors are relying on the total plan. Mr. Brown stated he believes the plans need to be addressed and it is a condition of the ZBA.

Ms. Mellish opened the hearing to the public. Mr. Mike Storella spoke supporting the Applicants since he felt the expectation was set that the landscaping would be completed.

Since there were only four members of the Board present, requiring a unanimous decision which did not appear to exist, Ms. Mellish asked Mr. Brown if the Applicant would like to continue the Application to the next ZBA meeting on April 28, 2021. Mr. Brown agreed to continue to Application. Mr. Diedrich did not support a continuance as he felt we had spent more than enough time on this property.

Ms. Mellish moved to continue to April 28, 2021 the application of Lisa Martinez and Chris Williams for an Appeal of an Administrative Decision by the Building Inspector, dated January 13, 2021, regarding 48 Central Street, Assessor's Map No, 44, Lot No. 19 in District G, filed with the Town Clerk on February 11, 2021. Mr. Diedrich seconded the motion. The motion passed with a majority 3 – 1 vote with Mr. Sollosy, Mr. Zahn and Ms. Mellish voting yes and Mr. Diedrich voting no by roll call vote.

Application of **Amy Hunt** 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, for installation of a gunite swimming pool, at **35 Foster Road**, Assessor's Map No. 29, Lot No.14 in District C, filed with the Town Clerk on February 9, 2021.

Ms. Hunt indicated there will be an 8-foot paver walkway surrounding the pool. Additionally, there will be a two-tiered retaining wall to support the sloped landscape. Beyond

this, the entire pool will be surrounded by 4-foot high fencing, attaching to the house, running the perimeter of the pool/yard and reattaching on the other side of the house. The two doors from the house exiting to the pool will have alarm notifications installed when opened. Also, there will be new low-level lighting installed in the retaining walls.

Ms. Mellish asked if there were questions from Board members. There were no questions. Ms. Mellish asked if there were comments or questions from the public. There were no comments or questions from the public.

Ms. Mellish moved to approve the Application of Amy Hunt 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, for installation of a Gunite swimming pool, at 35 Foster Road, Assessor's Map No. 29, Lot No.14 in District C, filed with the Town Clerk o February 9, 2021. Based on a finding that the proposed use and structure is in harmony with the purpose and intent of this By-Law, will not be detrimental or injurious to the neighborhood in which it is located and that all requirements and conditions for the grant of the Special Permit have been satisfied, based on the condition the pool is constructed in accordance with the Plot Plan created by Kane Land Surveyors dated April 6, 2015 and further provided the fence is at least four feet high and meets the state building code requirements for pool enclosures and that only low level lighting is utilized. Mr. Sollosy seconded the motion. The motion passed unanimously with Mr. Sollosy, Mr. Diedrichl, Mr. Zahn and Ms. Mellish voting yes by roll call vote.

Mr. Sollosy will write the decision. Ms. Mellish will review it. Ms. Mellish stated it takes a couple of months for the decision to be filed with the Town Clerk and there is a 20-day appeal period after the filing with the Town Clerk.

Application of **Pete and Patricia Michaels** for a Special Permit under Sections 6.1.2, 7.5.2 and 4.1.10(f) of the Zoning By-Law and/or relief as may be necessary, to install a 7x13 Soake pool (61 inches deep, 18 inches above ground) clad in stone, at **161 Bridge Street**, Assessor's Map No. 26, Lot No. 39 in District C, filed with the Town Clerk on February 24, 2021.

The Mitchell's propose installing a 7 x 13 foot Soake pool by Soake Pool of New Hampshire. The pool is 61 inches deep with 18 inches above ground, clad in stone with granite coping as a seating edge to match existing raised planters on our property. The Soake pool will have an ASTM F-1346 UL listed power locking safety cover. Additionally, we are installing a pool compliant fence and gates at three access point manufactured and installed by Walpole Outdoors, layout and description is attached to application. The Soake pool will have a minimal granite paving surround and walkway matching existing features.

The Board had no questions. No members of the public asked to speak.

Ms. Mellish moved to approve the Application of Pete and Patricia Michaels for a Special Permit under Sections 6.1.2, 7.5.2 and 4.1.10(f) of the Zoning By-Law and/or relief as may be necessary, to install a 7x13 soake pool (61 inches deep, 18 inches above ground) clad in stone, at 161 Bridge Street, Assessor's Map No. 26, Lot No. 39 in District C, filed with the Town

Clerk on February 24, 2021. Based on a finding that the proposed use is in harmony with the purpose and intent of this By-Law, will not be detrimental or injurious to the neighborhood in which it is located and that all requirements and conditions for the grant of the Special Permit have been satisfied, based on the condition that the pool is constructed in accordance with the plot plan prepared by Hancock Associates dated 1/19/2021, the fence is constructed in accordance with the Walpole Outdoors Project Layout & Installation Plan and Sales agreement dated 1/15/2021 and that only low level lighting is utilized. Mr. Diedrich seconded the motion. The motion passed unanimously with Mr. Sollosy, Mr. Diedrich, Mr. Zahn and Ms. Mellish voting yes by roll call vote.

Mr. Diedrich will write the decision and Mr. Zahn will review.

Application of **5 Masconomo Street 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 enable the reduction of the area of a non-conforming lot from 60,038 square feet to 52,042 square feet and to remove and replace the existing decks and stairs, at **5 Masconomo Street**, Assessor's Map No. 15, Lot No. 43 in District E, filed with the Town Clerk on February 24, 2021.

Mr. Glovsky, Attorney for 5 Masconomo Street LLC stated the property is currently improved with a two and one-half story, single-family dwelling and a detached garage/barn. Vehicular access and egress is provided by driveways from Beach Street and Masconomo Street and will not be affected by the transfer of Parcel B to the abutter. Ample area will remain for meeting the needs of the existing use and improvements. Furthermore, Parcel B is wooded, at a lower elevation and not integral to the Property.

Mr. Glovsky noted after reduction of lot area, the buildings on the Property will continue to be well within the applicable setbacks and the remaining lot area will comfortably accommodate the customary single-family use. Additionally, as per the portion of the Assessor's Map No. 15 filed herewith, the remaining lot area of the Property will exceed that of many other properties in the immediate neighborhood.

Mr. Sollosy indicated the accessory barn did not encroach in the new lot line side setback. Ms. Mellish asked Mr. Glovsky for his opinion why we should find the removal and addition of decks and stairs regarding the decks and porch do not increase or exasperate a nonconforming structure, rather than needing to meet the higher standard of a Special Permit under Section 7.5.2. Mr. Glovsky agreed with the Building Inspector that a Special Permit is not required and by granting one, it would set precedent.

Ms. Mellish moved to approve the Application of 5 Masconomo Street, 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 enable the reduction of the area of a non-conforming lot form 60,038 square feet to 52,042 square feet creating Parcel B depicted on the Site Plan prepared by Mill River Consulting dated February 18, 2021, provided that Parcel B is merged into the 108 Beach Street lot; and a Finding pursuant to Section 6.1.2 that the removal and addition of decks and stairs depicted on plans filed with the Application will not increase or exacerbate the nonconforming nature of the existing single-family structure, at 5 Masconomo Street, Assessor's Map No. 15,

Lot No. 43 in District E, filed with the Town Clerk on February 24, 2021. Based on a finding that the proposed use is in harmony with the purpose and intent of this By-Law and will not be detrimental or injurious to the neighborhood in which it is located and that all requirements and conditions for the grant of the Special Permit have been satisfied. Mr. Diedrich seconded the motion. The motion passed unanimously with Mr. Sollosy, Mr. Diedrich, Mr. Zahn and Ms. Mellish voting yes by roll call vote.

Ms. Mellish will write the decision. Mr. Diedrich will review it.

ADMINISTRATIVE MATTERS

ZBA Meeting Minutes: Review and approval of the January 20, 2021.

Ms. Mellish noted the minutes for October 2020 to December 2020 are not yet on the web site.

State 40B Handbook: Review and Discussion – this agenda item will be passed over.

Mr. Diedrich stated there is a 40B workshop conducted by the State on April 21, 2021 and recommended participation by Board members given what may be coming before the Board. The session is a one-night session and will likely be beneficial to hear what other Boards have experienced.

Ms. Mellish confirmed the 40B applicant submits a comprehensive permit application to the State and the State will reach a decision within 60 days on whether to issue a Project Eligibility Letter. At that point the comprehensive permit application is submitted to the ZBA. Potentially as soon as mid-summer.

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