



# MANCHESTER-BY-THE-SEA

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## ZONING BOARD OF APPEALS

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

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### MINUTES

#### ZONING BOARD OF APPEALS (ZBA)

#### Virtual Meeting May 26, 2021

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

Member Not Present: James Mitchell

Ms. Mellish called the meeting to order at 7:03 p.m. Ms. Mellish indicated the meeting was a virtual meeting per order of the Governor and explained the hearing procedures.

#### PUBLIC HEARING – CONTINUED APPLICATION

Five (5) Applications of **Binnabah, LLC (Jeffrey Karpowich)** for Special Permits 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 structures on non-conforming lots in accordance with the plans submitted with the applications filed with the Town Clerk on December 16, 2020 at the following locations:

**1 Sandpiper Lane**, Assessor's Map No 1, Lot No 65 in District G

**3 Sandpiper Lane**, Assessor's Map No 1, Lot No 66 in District G

**5 Sandpiper Lane**, Assessor's Map No 1, Lot No 67 in District G

**7 Sandpiper Lane**, Assessor's Map No 1, Lot No 71 in District G

**9 Sandpiper Lane**, Assessor's Map No 1, Lot No 70 in District G

Ms. Mellish stated during the previous meeting the Board had requested the Applicant provide additional documentation for Surf Village abutters regarding the height of the proposed buildings at Sandpiper Lane.

Mr. Brown, attorney for Mr. Karpowich, stated he had been in contact with Mr. Adam Costa, attorney representing Surf Village abutters, who are requesting additional information. Mr. Brown met with Mr. Costa at the site and is respectfully requesting a continuance to the June 30, 2021 meeting to provide additional information and for discussion with abutters.

*Ms. Mellish moved to approve the continuance of Sandpiper Lane Applications to June 30, 2021, Ms. Howe seconded the motion. The motion passed unanimously.*

## **PUBLIC HEARING – NEW APPLICATIONS**

Application of **Timothy and Shoshana Collins** for a Variance under Section 7.4.6 of the Zoning By-Law and/or other relief as may be necessary, to split their residential lot into two residential lots at **10 Forest Lane**, Assessors Map No. 37, Lot No. 19 In District A, filed with the Town Clerk on April 27, 2021.

Mr. Collins stated he was seeking relief from the frontage requirement for creating a new residential lot at 10 Forest Lane. He is proposing splitting the current 1.7 acre residential lot in Zone A into two residential lots: 10 Forest Lane would be a new buildable 0.5 acre lot meeting all zoning requirements, while 8 Forest Lane would be a 1.2 acre lot meeting all zoning requirement except the 150' frontage requirement.

The current home was bought in 2015 after being empty for five years, the house needed complete renovation. The building was gutted and transformed from the worst house on the street to one of the best. Mr. Collins stated he needed to improve the garage and move the driveway so it has a gentler slope, it is currently too steep. The lot is naturally divided into upper yard and lower yards with a 10' grade separating the two. Additionally, there is a grove of trees visually separating the two areas. The upper yard is not useful to Mr. Collins and his family and this area is what would become the new buildable lot. It already looks and feels like a separate lot.

The land is surrounded by forest and wetlands and abutted on the south by a 10 acre lot with a pond and one house on Mill Street. On the west there are 4 acres of wetlands. The lot feels much bigger and can easily accommodate a second house.

Mr. Collins cited four hardships, the first is the shape of the lot it is large but narrow and deep, which makes it impossible to divided in conformance with the frontage requirement of Zone A. The second he was unable to purchase the needed frontage from his abutting neighbor, who owns 10 acres of mostly undeveloped land, but she is not interested in selling. Third the land is divided into two levels with the grade of the upper level substantially higher than the lower level. As a result, it is difficult to get a vehicle up the slope in snowy and icy conditions. The fourth hardship, four of the 15 houses on the street do not have the required frontage. Neighbors across the street recently received relief from ZBA for the same request (lack of frontage). They now have a beautiful home on their lot and we would like the same. Mr. Collins believes this is in keeping with the character of the neighborhood.

In conclusion Mr. Collins stated no neighbor has said this is a bad idea and most signed a letter in support of our Application.

Ms. Mellish requested the following be entered into the ZBA record in support of the Application of Timothy and Shoshanah Collins: Residents at 7, 9, 11, 14, 12, 18 and 22 Forest

Lane, 14 Loading Place Road, 28 Mill Street, 4 Sky Top Lane, 24 Lincoln Street, 6 Friend Street expressed their support and Ms. Mellish also received an email from Mr. Shea, 50 Bridge Street in support of the application.

Mr. Diedrich indicated he was likely not needed for the vote, however, he did have a question. The plot plan submitted does not show the entire lot it only shows the proposed new lot, not the lot being cut off. He believes it is important to require a survey if the application is approve. Ms. Mellish agreed an official survey will be required.

Ms. Howe asked how the driveway would have access to the street once the lot is split. Ms. Mellish referred Ms. Howe to Exhibit B indicating the new driveway is the dotted line.

Ms. Mellish expressed concern with granting a Variance in order to split a lot that does not need to be split. Indicating the Town is its wisdom required 150 foot frontage. Non-conforming lots were grandfathered in and this request nullifies or derogates the intention or purpose of the By-Law. She continued I do not see the hardship but see a desire not a need to split the lot.

Mr. Binieris stated it is a large lot surrounded by lawn and 10 acres of woods and wetlands. Additionally, splitting the lot would not be detrimental to the neighborhood and would in fact be in-line with the neighborhood. The hardship is the almost two acres of lawn on the plateau. Mr. Sollosy agrees with Mr. Binieris and pointed out the Applicant had attempted to purchase frontage from the neighbor and been turned down. Mr. Sollosy believes the Applicant has met the criteria.

Ms. Howe stated she generally agrees the Applicant has demonstrated a good faith effort to acquire frontage and she sees the hardship in maintaining and expense required by the land not used by the Applicant. She is in support of the application. Mr. Zahn recognizes a certain amount of hardship and is in favor.

*Ms. Mellish moved to approve the application of Timothy and Shoshanah Collins for a Variance under Section 7.4.6 of the Zoning By-Law, and/or other relief as may be necessary to split their residential lot at 10 Forest Lane, Assessor's Map No. 37, Lot No.19 in District A, filed with the Town Clerk on April 27, 2021, into two residential lots, whereby the new lot will be conforming, but the existing conforming lot will become non-conforming due to the lack of frontage, containing 50.34' where 150' is required. Based on a finding that owing to circumstances relating to shape and topography of land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise and that the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-Law, based on the condition a survey certified by an engineer consistent with proposed site plan submitted with the application as Exhibit B is provided to the ZBA.*

*Ms. Howe seconded the motion. The motion passed unanimously by roll call vote.*

Mr. Binieris will write the Decision and Mr. Sollosy will review.

Application of **Alan & Leigh Scharfe** for a Special Permit under Sections, 4.1.10(f), 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to construct a deck and spa (placed on an existing patio), at **21R Bennett Street**, Assessor's Map No. 28, Lot No.14 in District A, filed with the Town Clerk on April 20, 2021.

Ms. Mellish stated Mr. Binieris is a direct abutter of Alan & Leigh Scharfe and he will be recusing himself from the discussion and decision related to their application. Ms. Mellish is an abutter of an abutter and can see the front of the Scharfe's home but not the back of the property where the project will occur and will participate in the discussion and decision to be the fifth member, with the consent of the Applicant's. The Applicant's agreed.

Mr. Scharfe stated his home currently has a simple stone patio in the back and he plans to renovate and put in a 15' x 9' swim/spa and build a deck around it 2' to 3' above the current deck but on the exact footprint. The plans also call to raise the fencing around the pool with a gate off the patio at the top of the stairs.

Ms. Howe asked if there were plans for a retractable pool cover and if the planned gate was self-latching. Mr. Scharfe replied yes, the gate, fencing and pool cover will be built to code. Ms. Mellish confirmed the fence would be 42 inches high to meet code.

Ms. Mellish opened the hearing to the public. Mr. David Gosnell, 2 Forster Road an abutter on the backside of the Scharfe's and a 31 year resident of Manchester had a question about fencing and expressed concern about noise and the fact that the Scharfe's property looks down onto his property. He understands that the fence will be around the deck and pool but asked if a fence could go around the Scharfe's property.

Mr. Scharfe stated he had planted a full line of trees on the property line when he moved into the house and the trees were reaching maturity and filling in and he believes the trees block the view. Mr. Gosnell stated the trees are not functioning to block the view. He suggested a privacy fence. Ms. Mellish stated the challenge with this project is it is 4' above grade level and a privacy fence built to meet the need would be higher than code. Mr. Scharfe stated the white fence will be moved up 4' and it will block the view of the deck.

Mr. Scharfe added the view will be at a higher angle and the view from Mr. Gosnell's house will be less. Mr. Gosnell reiterated his statement that he is concerned about privacy. Mr. Diedrich stated there is nothing in the By-Law that provides for fencing higher than 4' high. Ms. Mellish concluded the ZBA cannot do anything more. Mr. Gosnell stated he is trying to protect himself and will do something to create additional privacy.

Ms. Howe asked if there was any lighting planned for the pool. Mr. Scharfe replied there would be a couple of additional lights in the pool to light the water but no additional lights on the deck. He clarified there is a porch light which is downlighting.

*Ms. Mellish moved to approve the application of Alan & Leigh Scharfe for a Special Permit under sections 4.1.10(f), 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be*

*necessary, to construct a 4' deep, 9' x 15' spa on a 10' x 16' concrete pad and a new deck in the location of the existing patio at 21R Bennet Street, Assessor's Map No. 28, Lot No. 14 in District A, filed with the Town Clerk on April 20, 2021, based on a finding that the proposed use is in harmony with the purpose and intent of the By-Law, will not be detrimental or injurious to the neighborhood in which it is located and that all requirements and conditions for the issuance of a Special Permit under Section 7.5.2 of the Zoning By-Law have been met, subject to the following conditions:*

- *The deck contains a 42" high railing and other safety features as required under the State Building Code.*
- *The only additional lighting will be low level lighting in the pool/spa below water level.*
- *The construction proceeds in accordance with the following documents prepared by Olson Lewis and dated April 9, 2021: C1.2 Proposed Site Plan, A1.1 First Floor Plan, A1.2 Second Floor Plan, A2.0 Exterior Elevations, S1.1 First Floor Fencing Plan and A8.1 Views.*

*Mr. Zahn seconded the motion. The motion passed unanimously by roll call vote. Mr. Binieris recused himself.*

Application of **Michael & Kimberly J. Carvalho** 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 construct a new 1 ½ story accessory structure on a non-conforming lot and a Variance under Section 7.4.6 of the Zoning By-Law for excess coverage by structures and impervious surfaces, at **2 Jersey Lane**. Assessor's Map No. 26, Lot No. 32 in District C. filed with the Town Clerk on April 28, 2021.

*Ms. Mellish moved to approve the request of Michael & Kimberly J. Carvalho to withdraw their request 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 construct a new 1 ½ story accessory structure on a non-conforming lot and a Variance under Section 7.4.6 of the Zoning By-Law for excess coverage by structures and impervious surfaces, at 2 Jersey Lane, Assessor's Map No. 26, Lot No. 32 in District C. filed with the Town Clerk on April 28, 2021 without prejudice. Mr. Zahn seconded the motion. The motion passed unanimously by roll call vote.*

## **ADMINISTRATIVE MATTERS**

**ZBA Meeting Minutes:** Review and approve meeting minutes for November and December of 2020 and January 20, 2021, February 17, 2021, March 24, 2021.

Ms. Howe requested the meeting minutes be recirculated. Ms. Mellish agreed to provide the meeting minutes.

Ms. Mellish stated there is a meeting next Wednesday evening June 2, 2021 to review two applications. One applicant did not understand the ZBA process and missed the May meeting and the second application came in on-line and was not filed with the Town Clerk in time for this meeting.

Ms. Mellish indicated all 40B documents are on the Town website. The Board of Selectmen will be submitting their comments to the State Housing Authority for review by June 24, 2021 and a decision from the State Housing Authority is anticipated by late summer to early fall.

ZBA will not be submitting comments to the BOS as it is not appropriate. However, the Planning Board, Finance Committee, Conservation Commission and Affordable Housing Trust will submit their comments to the BOS for inclusion in their letter to the State Housing Authority.

Ms. Howe asked if Powder House Lane apartments were on the Subsidized Housing List. Ms. Mellish indicated they are not on the list yet but will be discussed as part of the Affordable Housing Trust comments along with the revamping of Manchester Housing Authority properties.

The Board briefly discussed terms that are expiring in 2021. Mr. Binieris has agreed to remain on the Board as has Ms. Mellish.

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