



# MANCHESTER-BY-THE-SEA

## ZONING BOARD OF APPEALS

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

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### MINUTES

#### ZONING BOARD OF APPEALS

#### Hybrid Meeting July 19, 2023

**Members Present:** Sarah Mellish (Chair), Kathryn Howe, John Binieris, Brian Sollosy, Jim Diedrich, and Sean Zahn

**Members Not Present:** All current members were present.

**Select Board Member Present:** Susan Philbrick

Ms. Mellish called the meeting to order at 7:01 p.m. and stated that the meeting was a Hybrid meeting on Zoom with members of the Board, Applicants, and Public in Town Hall, Room 5. Ms. Mellish introduced herself and Board members present.

#### New Applications

Ms. Mellish opened the Public Hearing for the Application of **Ford Properties, Inc.** on behalf of **Richard Dackert** for a Special Permit under Sections 10.1 and 12.5 of the Zoning By-Law, and/or other relief as may be necessary, to excavate and construct a new single-family residence at **9 Crooked Lane**, Assessor's Map No. 32, Lot No. 102 in District A, filed with the Town Clerk on June 20, 2023.

Uses regulated under 10.1.3 which apply to this application:

- 10.1.3.1 Dumping, filling, or placing of soil or other substance as landfill or surfacing the land with any type of impervious materials; excavation, or removing of natural resource deposits
- 10.1.3.2 Erection or construction of new buildings

Mr. Ford thanked the Board for hearing the application and stated the following:

- The site is a vacant lot originally approved by the Planning Board in the mid 1980's.
- The building site is complicated.
- The Conservation Commission has provided an Order of Conditions.
- He has an approved curb cut from DPW and approval for tree removal.
- The site was disturbed about 25 years ago and the footprint of the house is defined.
- There are two deed restrictions, the house needs to be set back 90 feet from the road and the house must be 160 feet from the wetlands.

- The back of the lot is regulated by the Conservation Commission and is flat ledge and according to Mr. Ford kind of attractive.
- The driveway will be constructed at an average grade of 6% while some of the driveways on Crooked Lane are at a 10% grade. There will be an infiltration trench by the driveway. Mr. Ford noted that infiltration is not easy and there will be an infiltration system in front of the ledge. Additionally, there will be a landscaped lawn in front of the house with additional infiltration.

Mr. Binieris asked about the leeching field. Mr. Ford replied he believes at some point a septic system was proposed and the permeable material along the driveway goes down 4 feet. The house will be on Town water and sewer. Ms. Mellish clarified that the role of the ZBA is to confirm the proposed drainage systems are adequate.

Ms. Mellish asked how much earth and rock will be removed during construction. Mr. Ford stated it is likely 100 cubic yards of earth and rock primarily removed for the driveway may be an additional 30 cubic yards. Mr. Binieris asked about a basement. Mr. Ford stated that the right-hand side of the house would have a full basement, but the left-hand side of the house would have no basement and that side is all ledges.

Ms. Mellish asked about the driveway drainage and expressed concern regarding whether the proposed drainage will keep water off Crooked Lane. Mr. Ford replied the infiltrating trench will catch much of the water and move it to the swale on the side of the road. Mr. Zahn agreed that given the pitch of the driveway water will go into the swale. Following additional discussion Mr. Ford agreed to abide by the plan submitted. Ms. Howe requested that the plan be improved if possible.

*Ms. Mellish moved to close the Public Hearing and approve the application of **Ford Properties, Inc.** on behalf of **Richard Dackert** for a Special Permit under Sections 10.1 and 12.5.2 of the Zoning By-Law, to excavate and construct a new single-family residence in the Flood Control District at **9 Crooked Lane**, Assessor's Map No. 32, Lot No. 102 in District A, filed with the Town Clerk on June 20, 2023, based on a finding that the proposed use will not result in the creation or aggravation of flooding conditions, is in harmony with the purpose and intent of the By-Law and will not be detrimental or injurious to the neighborhood in which it is located and all factors under Section 12.5.2 of the Zoning By-Law for the grant of a Special Permit have been met, based on the following conditions:*

- *All run-off from the residence will be captured and diverted to the roof drain leaching field and an infiltration system will be installed along the driveway to capture runoff on-site as least as good as that depicted on the Site Plan prepared by Gateway Consultants, Inc., dated 7/13/23*
- *The driveway, dwelling and other components of the projects will be located substantially as depicted on the Site Plan prepared by Gateway Consultants, Inc., dated 7/13/23*

*Mr. Sollosy seconded the motion. The motion passed unanimously.*

*Mr. Sollosy will write the decision and Mr. Zahn will review it.*

Ms. Mellish opened the public hearing for the Application of **Brian Stein, BDS Design Inc.** on behalf of **Nicole & Christopher Day** for a Variance under Section 12.4.6 or a Special Permit under Sections 7.2 and 12.5.2 of the Zoning By-Law, and/or such other relief as may be necessary, to construct a new 943 square foot pool house/barn on a nonconforming lot at **117 School Street**, Assessor's Map No. 40, Lot No. 2 in District A, filed with the Town Clerk on May 15, 2023.

Ms. Mellish explained the Board needs to determine whether a Special Permit or a Variance is required. A Special Permit may be issued to change, extend, or alter an existing nonconforming structure, but a Variance is required for a new nonconformity. Since the Application is for a new accessory structure on a nonconforming lot, Ms. Mellish believes a Variance is required.

Mr. Stein introduced the project at 117 School Street to construct a 943 square foot pool house/barn next to the patio and pool approved by the Board in June. It will be a shingled gable structure which will be used as a typical pool house with a fireplace, sitting area, dining space, bar kitchen and half bath. It will be heated but will not be used as an accessory dwelling unit. Mr. Stein explained the pool house/barn meets all setback and height requirements, the lot is only slightly undersized and does not have the required frontage.

The Board discussed the new structure on a non-conforming lot and if the relief granted requires a Special Permit or a Variance for which a hardship must be demonstrated. Hardship did not appear to exist for the proposed pool house/barn. Mr. Stein proposed that the hardship is the shape of the non-conforming lot. Ms. Mellish indicated that an accessory structure could be granted under a Special Permit for a pool if the house conformed with all setbacks and there was no new non-conformity. The existing structure was built on the nonconforming lot before zoning, so it is grandfathered, but the question is whether a new accessory structure is a new nonconformity requiring a Variance or an extension of the existing structure permitting a Special Permit.

Ms. Howe stated that looking at what Town Counsel had forwarded to the Board; that the Board could decide either way. Noting the variance would require a hardship.

The Board went back and forth and finally agreed they were comfortable moving forward with a Special Permit. Ms. Mellish stated if this was an addition to the existing structure it would be allowable. Ms. Howe indicated that developing a parcel of land is unresolved in Case Law.

Ms. Mellish asked if any member of the public wished to be heard on this Application? No member of the public sought to be recognized.

*Ms. Mellish moved to close the Public Hearing and approve the application of **Brian Stein, BDS Design, Inc.** on behalf of **Nicole & Christopher Day** for a Special Permit under Sections 7.2 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to construct a new 943 square foot pool house/barn which meets all setback requirements of the District in which it is located on a lot that contains 20,020 sq. ft., where 22,500 sq. ft. is required, at **117 School Street**, Assessor's Map No. 40, Lot No. 2 in District A, filed with the Town Clerk on June 21,*

2023, based on a finding that the new pool house/barn is an extension of the nonconformity of an existing residence on a nonconforming lot, the proposed use is in harmony with the purpose and intent of the By-Law, the proposed pool house/barn with a bar kitchen, not a full kitchen, will not be more detrimental or injurious to the neighborhood in which it is located than the existing residence on a nonconforming lot and the requirements and conditions under Section 12.5.2 of the Zoning By-Law for the grant of a Special Permit have been met based on the following conditions:

- The pool house/barn is located as depicted on the Plan of Land prepared by Jarosz Land Surveying dated, May 10, 2023, and L1 Landscape Plan Option A prepared by Ulrich Landscape.
- The pool house/barn shall be constructed substantially as depicted on A1.1 Pool Barn – Floor Plan and Elevations prepared by BDS Design dated 6/15/2023.
- Total coverage by structures shall not exceed 15% and total coverage by structures and impervious surfaces shall not exceed 30%.

Ms. Howe seconded the motion.

Ms. Mellish opened the continued public hearing for the Application of **Brian Stein, BDS Design Inc.** on behalf of **Joseph & Elyse Campanelli** for a Special Permit under Sections 10.1, 12.5 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to raise the existing nonconforming structure in the flood zone 1', add additional levels for additional living space and adjusting the footprint which will result in it encroaching an additional .1' into the west side setback and adding a deck which will encroach an additional .4' into the setback at **4 Butler Avenue**, Assessor's Map No. 1, Lot No. 33 in District B, filed with the Town Clerk on May 15, 2023.

Ms. Mellish started the discussion with Zoning By-Law definition of a story. She asked if the garage was half underground, Mr. Stein replied it is not. Ms. Mellish asked where the crawl space is, Mr. Stein replied it is to the right of the garage and half underground. Ms. Mellish confirmed that the mechanical room is above ground, and that the basement had no living space. Mr. Stein stated that with a split-level house you do not count every level as a story. He showed a depiction of the house with the levels defined by a red line. Part of what is necessitating the raising of the house is for the house to follow flood level mandates.

The Board shifted their discussion from defining levels of the proposed house to considering the reason for adding levels. Mr. Diedrich spoke to the fact that this application is a hardship because the house needed to be raised due to flooding and the wetlands. The Board agreed and Ms. Mellish asked Mr. Stein to reapply for a Variance.

Ms. Mellish determined that based on the consensus of the Board this application requires a Variance rather than a Special Permit, at the request of the Applicant Ms. Mellish moved to approve the Withdrawal without Prejudice of the Application of **Brian Stein, BDS Design, Inc** on behalf of **Joseph & Elyse Campanelli** for a Special Permit under Sections 7.2, 12.5 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to raise the existing nonconforming structure in the flood zone 1', add additional levels for additional living space and adjust the footprint resulting in a slightly greater encroachment into the side setback at **4**

**Butler Avenue**, Assessor's Map No.1, Lot No. 33 in District B, filed with the Town Clerk on May 15, 2023.

### **Administrative Matters**

#### **Review and approval of meeting minutes**

*Ms. Howe moved to approve the meeting minutes of May 17, 2023; Mr. Sollosy seconded the motion. The motion passed with Ms. Mellish, Ms. Howe, Mr. Sollosy, Mr. Zahn, and Mr. Binieris voting affirmatively.*

The Board indicated that they had not reviewed the meeting minutes for June 21, 2023. The June 21, 2023 meeting minutes were held for the August meeting.

**Status of Decisions** 4 North Street Decision is outstanding.

**40B Update:** Ms. Mellish stated that a pretrial conference had been scheduled for August 15, 2023. MECT was not approved as an intervener in the appeal but may participate on a limited basis. A 10 Citizen's Group was approved as an intervener with respect to the environmental concerns under the Local By-Law. The Group is represented by Mr. Crockett, who is on the Board of MECT. Ms. Mellish explained that different sections of law apply to the two groups; hence, the different results. Ms. Mellish stated that the timeline will be changed on the website to reflect the delay in the proceedings.

**Any other administrative matters that could not reasonably be anticipated in advance of the required 48-hour posting.** There were bi additional matters to discuss this evening.

*Mr. Zahn moved to adjourn the meeting; Mr. Sollosy seconded the motion. The motion passed unanimously.*