

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

**Meeting October 29, 2018**

**Members Present:** Bridget Murray, (Chairman), James Diedrich (Clerk), Sarah Mellish, John Binieris, Kathryn Howe, Michael Sullivan, and James Mitchell (alternate).

**Members Not Present:** Matthew MacDonald.

Ms. Bridget Murray, the Chairman, called the Meeting of the Manchester-by-the-Sea Zoning Board of Appeals ("ZBA") to Order at 7:00 p.m. Ms. Murray introduced the ZBA members to those in attendance. It is noted that the typed minutes represent the permanent record of the Board. The format of the hearing was explained to those in attendance by the Chairman.

Ms. Murray explained the standard ZBA meeting procedures to the applicants and to the public.

Due to the fact that the 9 Washington Street applicant has requested his application to be withdrawn without prejudice, and the 1 and 3 Boardman Avenue applicant has requested that his application be continued to the November 28, 2018 ZBA meeting, Ms. Murray decided to take the applications out of order, as well as move Ms. Sue Brown's Master Plan presentation to the Administrative Matters, after the applications have been heard.

**NEW APPLICATIONS**

Ms. Murray introduced the application of **Henri Deguillebon**, 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 add alterations and additions to a non-conforming structure on a non-conforming lot, at **9 Washington Street**, Assessor's Map 46, Lot 10, District G, filed with the Town Clerk on September 26, 2018.

Ms. Murray stated that Mr. Remko Breuker, the architect representing the applicant, contacted her today to request that this application be withdrawn without prejudice, because they are not prepared at this time. The applicants may return to the ZBA at a later date.

Ms. Murray made a motion to allow the application of **Henri Deguillebon**, 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 add alterations and additions to a non-conforming structure on a non-conforming lot, at **9 Washington Street**, Assessor's Map 46, Lot 10, District G, filed with the Town Clerk on September 26, 2018, to be withdrawn without prejudice.

Mr. Diedrich seconded the motion. Vote: Ms. Murray, Mr. Diedrich, Ms. Mellish, Mr. Sullivan, Mr. Binieris, and Ms. Howe voted unanimously in favor of allowing this application to be withdrawn without prejudice.

Mr. Breuker was not present at this meeting, but signed the withdrawal form the following week.

Ms. Murray introduced the application of **Pickworth Partners LLC**, for a Variance under Section 7.4.6 of the Zoning By-Law, and/or other relief as may be necessary, to remove an existing house that is in poor condition and located on a narrow and odd shaped lot, repair the septic system, and replace the house. The applicant requests an extension of the time frame provided under Zoning Ordinance Section 6.1.4 from two years to five years, at **44 Masconomo Street**, Assessor's Map No. 18, Lot 17 District E, filed with the Town Clerk on September 26, 2018.

Attorney Philip Lake from Lake Legal LLC, 17 Hammatt Street, Ipswich, Massachusetts, introduced himself as the representative of Pickworth Partners LLC. Pickworth Partners LLC comprises the three (3) abutting land owners: the Kneisel, Waud, and Melden families "Pickworth." Pickworth is acting as a committee that decided to purchase the property, rather than leave it to chance for a developer to purchase it and build something inappropriate for the neighborhood. Pickworth decided to file an application for a Variance, instead of a Special Permit to be conservative and be certain the application is covered by the By-Laws.

Mr. Lake explained that Pickworth received late notice of the impending foreclosure of the 44 Masconomo Street property, which has been vacant for approximately six (6) years and is falling apart and in poor condition, even though the lawn and some other things have been maintained. The house sits in the middle of this long, triangular lot, with a heavily designed septic system that fits in with the support wall next to it. Pickworth purchased this property at 44 Masconomo St. ("44 Masconomo") to control its destiny. Pickworth does not have a renovation plan in place at this time, and there will be significant design work that needs to be done, and that will take a significant amount of time. The immediate plan is to get rid of the dangerous existing house, which will get rid of the liability issues, and then move forward with a design plan. The members of Pickworth travel extensively and are not on their properties year-round, which is why Pickworth is requesting an extension of time from two (2) to five (5) years.

Mr. Lake circulated copies of a letter (1) and two (2) e-mails in support of this application: Letter from Richard Axel Magnuson, 52 Masconomo Street, dated October 22, 2018; e-mail in support of Pickworth Partners LLC's application from Paul R. and Lauren Gudonis, 56 Masconomo Street, dated October 22, 2018; e-mail in support of Pickworth Partners LLC's application from Peggy and Ian Strachan, 40 Masconomo Street, dated October 23, 2018. In addition, all the other abutters, including George and Nancy Putnam, 36 Proctor Street have expressed support of the Pickworth application.

Ms. Mellish asked that the applicants return to the ZBA for approval of the finalized plans, and Mr. Lake agreed and added that Pickworth is requesting a provision that would provide the extension of time to allow Pickworth to work out the septic system details, get approval from the other town boards, as necessary, as well as all the permitting that will be required, create the design for the plans and then return to the ZBA with the plans for approval.

Ms. Murray summarized that once you take down the house, and if it is gone for more than two (2) years, you lose the "grandfathering" and the Special Permit ability to build on a non-conforming lot, so this will stretch out the window of time to do the project.

Mr. Diedrich stated that Variances are granted due to some sort of hardship, and asked Mr. Lake what the hardship is in this case. Mr. Lake replied that this is an odd-shaped lot to build on, and Pickworth needs sufficient time to have the lot examined and learn what issues they are going to encounter and determine what sort of structure will be appropriate to build on this lot. Mr. Diedrich explained that since Pickworth hasn't decided what will be built on this property, he has a problem granting a Variance in this case. Ms. Mellish stated that the ZBA would only be granting the Variance regarding the extension of time element. Ms. Murray stated that Pickworth will need to return to the ZBA with the actual plans for the proposed project for its approval. Ms. Murray added that the alternative would be that the house is taken down, and then the applicant returns to the ZBA in two years requesting an extension at that time. Mr. Lake explained that the Pickworth people want to do this project correctly and be realistic about how long it will actually take to plan the proposed project, but they would be willing to compromise for a four (4) year extension, instead of a five (5) year extension.

Mr. Diedrich asked Mr. Lake what encouraged Pickworth to purchase this property. Mr. Lake replied that 44 Masconomo Street is right in the middle of all the Pickworth people's properties. This property was on the market for a while, but was the subject of a divorce situation, where neither party could agree. Therefore, this property has been abandoned and poorly maintained, and it is unsafe at this point. It poses a risk to their properties. If Pickworth didn't purchase this property, it would have gone into foreclosure and that process takes approximately two (2) years. Therefore, Pickworth didn't have the time to plan a project in advance.

Ms. Murray asked if there was anyone from the public present for this application, and there were not.

Ms. Murray opened the discussion among the ZBA members. Ms. Murray stated that in this case, there are circumstances that you don't see all the time, and the fact that the existing building is falling down is a hardship, and it shouldn't remain on the property from a public safety perspective while the applicants figure out the plans.

Mr. Mitchell stated that he is a builder, and to say that the building is falling down is an overstatement—it is deteriorating and the pipes had frozen and burst, causing extensive damage, according to Mr. Melden; however, when I went inside the building didn't look like it was in any imminent danger of collapse. Mr. Lake replied that Pickworth have hired builders and the Building Inspector to evaluate the buildings, and both reports demonstrated that it would be best to take the building down, because it would take extensive repairs to renovate it.

Mr. Diedrich stated that he agrees with Mr. Mitchell. Mr. Diedrich explained that this is a very small lot in a very expensive area and wondered why these three (3) abutters didn't purchase this property and divide it among themselves. You are asking the ZBA to bend the rules for something that is undetermined and will probably require a number of Variances to build anything on it, and the whole thing is not well thought out. It is a bit of a reach to say that

it is a public safety hazard. Pickworth is asking the ZBA for five (5) years to decide what to do with this property. Mr. Lake replied that even if Pickworth decided to divide the property among themselves, it will take time to coordinate that. Whatever is decided, Pickworth will have to come back before the ZBA for approval, and the abutters will have their input as well. As you (Mr. Diedrich) has pointed out, there is mold, the ceiling of one room has come down, etc. Pickworth is not going to invest the necessary amount of money to just make repairs on what is quite an unremarkable structure. Mr. Lake concluded that Pickworth is coming before the ZBA in advance to request an extension of time to allow for the necessary amount of time to prepare and plan the proposed project. The plan is for the building to be removed as soon as possible.

Ms. Howe asked if this property was sold, would the Variance run with the property. Ms. Murray replied that it would, including all the requirements.

Mr. Binieris stated that he is okay with approving the application.

Ms. Mellish stated that she is concerned that if the ZBA does not grant this application, we will most likely have to grant it sometime in the future.

Mr. Diedrich stated that he thinks two years is enough time to deal with building a house.

Mr. Binieris stated that he agrees that a house can be built within two (2) years, but this is a case where three families are involved, who are not at their residences full-time, who are not real estate developers or builders. This house has been vacant for a long time, in poor repair, and I see this as a safety hazard as well. From my perspective, I would rather that Pickworth takes its time to do it the right way, and if they need extra time to do this, I am fine with that.

Ms. Howe stated that she fine with approving this application.

Ms. Murray stated that she is also fine with approving this application and appreciates the fact that the applicants have thought it out in advance, and not waiting until the deadline is approaching, which has happened.

Mr. Mitchell stated that he is inclined to agree and support approving this application.

For the record, Ms. Murray read the letter and e-mails in support of the application (see Documents Produced below for details).

Ms. Murray made a motion to approve the application of **Pickworth Partners LLC**, for a Variance under Section 7.4.6 of the Zoning By-Law, and/or other relief as may be necessary, to remove an existing house that is in poor condition and located on a narrow and odd shaped lot, repair the septic system, and replace the house. The applicant requests an extension of the time frame provided under Zoning Ordinance Section 6.1.4 from two years to five years, at **44 Masconomo Street**, Assessor's Map No. 18, Lot 17, in District E, filed with the Town Clerk on September 26, 2018. Based on a finding that hardship exists in regard to the current structure, the condition and shape of the lot, and the complexity of the proposed ownership and building structure, and a finding that extending the time period is not going to be detrimental to the neighborhood.

Ms. Mellish seconded the motion. Vote: Ms. Murray, Ms. Mellish, Mr. Binieris, and Ms. Howe voted unanimously in favor of approving this application. Mr. Diedrich was opposed to approving this application.

Mr. Binieris will write this decision, and Ms. Mellish will review it.

**Documents Produced:** Mortgage Inspection Plan of 44 Masconomo Street, signed and stamped by Gail L. Smith, Registered Land Surveyor, dated July 20, 2018 (1 page). Letter in support of Pickworth Partners LLC's application to Bridget Murray, Esq., Chair from Richard Axel Magnuson, 52 Masconomo Street, dated October 22, 2018 (1 page). E-mail in support of Pickworth Partners LLC's application from Paul R. and Lauren Gudonis, 56 Masconomo Street, dated October 22, 2018 (1 page). E-mail in support of Pickworth Partners LLC's application from Peggy and Ian Strachan, 40 Masconomo Street, dated October 23, 2018, forwarded by Philip Lake on October 29, 2018 (1 page). Town of Manchester-by-the-Sea Abutters Map for 44 Masconomo Street (1 page).

### CONTINUED APPLICATION

Ms. Murray introduced the revised application of **Matthew Genta**, for an Appeal of an Administrative Decision under Section 7.4.5 and a Variance under Section 7.4.6 of the Zoning By-Law, and/or other relief as may be necessary, to appeal the Manchester Building Inspector's Decision ordering a discontinuance of current residential use, and to divide or subdivide the properties at 1 and 3 Boardman Avenue into two lots, at **1 and 3 Boardman Avenue**, Assessor's Map 24, Lot 31, District E, filed with the Town Clerk on July 25, 2018.

Attorney Orestes Brown introduced himself as the attorney representing Mr. Matthew Genta, explained that he has made substantial submissions to the ZBA and to Robin Stein, Town Counsel, at the last meeting. Ms. Stein is in the process of reviewing the case law submitted. Attorney Pinto, who represents the Two Boardman Avenue Nominee Trust, has made some admissions this week. Ms. Stein contacted me last week to ask if Mr. Genta would agree to pay for her to research and draft an opinion for the ZBA to resolve all the complex legal issues that have been presented, and we did agree to Ms. Stein's request. Ms. Stein said that she will give Attorney Pinto and me until mid-November to submit any final submissions for her to review and submit an opinion to the ZBA to resolve those issues. Pursuant to those conversations, all the parties have discussed this and are asking for a continuance to the November 28, 2018 ZBA meeting.

Mr. Donald R. Pinto, introduced himself as representing the Two Boardman Avenue Nominee Trust, and stated that he hadn't had any conversations with Town Counsel, but will take Attorney Brown at his word that that is the arrangement. I do not object to the ZBA getting all the information it needs to make a decision.

Mr. Matthew Genta expressed concern about the letter he received, stating that he has until December 31, 2018 to evict his tenants, and that time is getting close. Mr. Brown replied that he will speak to the Building Inspector.

Ms. Murray made a motion to allow the revised application of **Matthew Genta**, for an Appeal of an Administrative Decision under Section 7.4.5 and a Variance under Section 7.4.6 of the Zoning By-Law, and/or other relief as may be necessary, to appeal the Manchester Building Inspector's Decision ordering a discontinuance of current residential use, and to divide or subdivide the properties at 1 and 3 Boardman Avenue into two lots, at **1 and 3 Boardman Avenue**, Assessor's Map 24, Lot 31, District E, filed with the Town Clerk on July 25, 2018, to be continued to the November 28, 2018 ZBA meeting.

Mr. Diedrich seconded the motion. Vote: Ms. Murray, Mr. Diedrich, Ms. Mellish, Mr. Sullivan, Mr. Binieris, and Ms. Howe voted unanimously in favor of allowing this application to be continued to the November 28, 2018 ZBA meeting.

Mr. Orestes Brown signed the continuance form.

**Documents Produced:** None.

## **ADMINISTRATIVE MATTERS**

**Sue Brown, Town Planner:** The ZBA's Role in the Manchester-by-the-Sea's Master Plan.

Ms. Sue Brown distributed a copy of the draft of the Master Plan, which had been previously e-mailed to the ZBA members, and explained as follows: We have had three (3) years of public meetings, that started with the Vision and worked up to be the recommendations included in the draft Master Plan that resulted from surveys, focus group meetings, and public forums from which we have had an exceptionally good response from the public, so the public's opinion has been reflected all along. The final Master Plan public forum will be December 5, 2018 in the dining hall at the High School. Following that meeting we will incorporate recommendations, suggestions and create a final Master Plan document. The Planning Board is the Board that approves and adopts the Master Plan, which is a directional document, not a regulatory document. Once the Planning Board approves the Master Plan, it becomes the plan. It does not need to go before the Board of Selectmen.

With respect to the ZBA, the plan is to do a recodification of the Zoning By-Laws, which includes changing and updating the framework and organization of the By-Laws, including use tables and allow for easily inserting changes as they arise into the proper sections of the By-Laws. The major changes include taking away the impediments to the diversity of housing and to allow more economic development in the Limited Commercial District, but also increase downtown as well with allowing mixed-use structures.

Ms. Brown continued to explain that a consultant will have meetings with the Planning Board and Zoning Board of Appeals to discuss the intent of the By-Laws, clarify the By-Laws, remove inconsistencies, each section will have a clear purpose, and bring them up to date with the current needs of the town, in order to create effective Zoning By-Laws.

The only recent recommendation from the original draft of the Master Plan that hasn't already gone through the public sieve are the ones relating primarily to Government, including better communication, coordinating boards and committees better, as well as aligning boards and committees with departments.

Ms. Mellish and Ms. Murray pointed out that whenever an application comes before the ZBA to increase the density of a structure or go from a single-family home to a two-family home, there is serious opposition. Ms. Brown replied that there will be communication of the planned zoning changes through public forums, Town Meetings, and Board of Selectmen meetings. Ms. Brown added that the zoning changes that we are suggesting or contemplating is about increasing density. When we get to the Intent section, the question then will be where we want density and how do we protect the character that we like. We are talking about smaller houses where people can downsize into or smaller houses where people can live and start a family. Presently, larger homes are being built by right, but what if we change zoning by using floor-area ratio to keep the houses smaller and have the lots more open, instead of allowing the lots to be built up. All this needs to be communicated effectively, and once people understand the intent, they may support it. We need to separate what is right for the community as a whole, and not just let the abutters decide what is right for the community as a whole.

Mr. Diedrich attended a 40(b) training meeting in Reading recently and suggested that the ZBA get training on 40(b) as soon as possible, because once the 40(b) application is filed, the ZBA only has fifteen (15) days to begin to act on it, and 30 days to give a response. Ms. Brown agreed.

Mr. Diedrich suggested holding Town Meetings at more convenient dates and times, and provide a day care center for families with children, so that they are able to attend as well. Also, providing better communicating the information to educate the public about the items on the agendas in advance. Ms. Brown agreed.

Ms. Brown explained that a recommendation for the intent of the State Preservation By-Law as follows: The intent is to allow large estates to have a different use, if it is not chosen to continue to be used as a single-family home, but instead something like a yoga retreat, a function hall, or a multi-family home. This would only be done by Special Permit and it would be a way to preserve the landscape and keep the historically significant pieces of the property intact. A great example is Sharksmouth, the original Curtis estate, which has been doing this for many years.

Ms. Murray stated that there are a lot of inconsistencies and lack of clarity in the present Zoning By-Laws. Ms. Brown replied that this would be the first thing the consultant will do—go through the entire By-Laws and create a memorandum to the boards outlining all the inconsistencies.

Mr. Binieris suggested some sort of committee to welcome new home owners to the town and provide detailed information about their lots, zoning, etc. and be able to answer questions.

Mr. Howe stated that the ZBA has been hearing a lot about and would be great for the town to provide as a specific provision in the Zoning By-Law to address the issue and the need

for in-law suites or Au Pere dwellings. Ms. Mellish agreed and added that people want more privacy and would like to have their own kitchens in these sort of living arrangements.

The plan is also for training Boards and Committees and also communicating and coordinating better, so that we are all trying to do the same thing. Mr. Federspiel would like to hold a training session for the ZBA and Planning Board and Ms. Brown asked the ZBA members to offer some dates that they would be available.

Ms. Brown told the ZBA members to feel free to send her any questions, comments, or recommendations.

**ZBA Meeting Minutes:** Review and approval of the September 6, 2018 and September 26, 2018 minutes.

Ms. Murray made a motion to approve the September 6, 2018 meeting minutes. Mr. Diedrich seconded the motion. Ms. Murray, Mr. Diedrich, Ms. Mellish, Mr. Binieris, and Ms. Howe voted unanimously in favor of approving these minutes.

Ms. Murray made a motion to approve the September 26, 2018 ZBA meeting minutes. The ZBA members had not all reviewed these minutes. Therefore, it was decided to vote on the September 26, 2018 minutes at the November 28, 2018 ZBA meeting.

**ZBA Application Revisions:** The ZBA members decided to table this matter until the November 28, 2018 meeting.

**Adjournment:** Ms. Murray made a motion to adjourn the October 29, 2018 ZBA meeting at 8:27 p.m. Ms. Mellish seconded the motion. Vote: Ms. Murray, Mr. Diedrich, Ms. Mellish, Mr. Binieris, and Ms. Howe voted unanimously in favor of adjourning the meeting.

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

These Minutes were approved by the members of the Zoning Board of Appeals on November 28, 2018.

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