



# MANCHESTER-BY-THE-SEA

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PLANNING BOARD • TOWN HALL  
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## MINUTES OF THE PLANNING BOARD

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January 31, 2022 6:30p.m. Virtual Meeting

Join Zoom Meeting, Meeting: ID 851 2727 6050 Passcode 54490

**MEMBERS PRESENT:** Ron Mastrogiacomo, Chair, Sarah Creighton, Chris Olney, Mary Foley, Gary Gilbert, Laura Tenny and Christine Delisio

**MEMBERS NOT PRESENT:**

**STAFF PRESENT:** Town Planner, Sue Brown and Planning Board Clerk, Sharon George

**GUESTS:** Mark Bobrowski

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The Meeting was called to order by Mr. Mastrogiacomo at 6:30 PM who turned the meeting over to Vice Chair Ms. Creighton to discuss zoning. Ms. Creighton reminded all that this meeting is not a Public Hearing on proposed zoning changes, though one would be forthcoming.

**Discussion and Vote of Bobrowski contract and proposal:**

Ms. Creighton said she was in contact with Mr. Bobrowski. He advised he would give the Board 25 hours which includes attending tonight, two public hearings and town meeting.

**MOTION:** It was moved and seconded by Roll Call vote 5 in favor 2 opposed (Delisio/Foley) to approve the contract for Mark Bobrowski in the amount of \$6,500 to cover two public hearings and Town Meeting.

Ms. Foley said she has concerns about the first contract and said the objectives were not met. She does not feel comfortable signing a second contract.

Ms. Creighton asked Ms. Foley if she would like to discuss the first contract. Ms. Foley stated she would need a redline document.

**MOTION** It was moved and seconded to require a redlined version of the draft bylaws and a subsequent document that explains what changed and why, voted by Roll Call 1 in favor (Foley) 6 opposed to amend the contract for Mr. Bobrowski with a redline version and other work at this time. (Motion Fails)

Discussion ensued with Ms. Delisio saying she also felt that Mr. Bobrowski did not fill the objectives of the contract. Ms. Creighton stated Mr. Bobrowski gave the Board many extra hours of work.

### **Discussion and vote language for public hearing:**

Ms. Creighton acknowledged receipt of correspondence from Kurt Svetka and from Ms. Iovanni regarding proposed Zoning Changes.

### **LCD Changes:**

Ms. Creighton stated all we are doing is getting things ready for the public hearing.

Laboratory: Ms. Foley said if we open this use to all areas, we could have a handful of these.

Mr. Olney stated it is not allowing laboratories by right in the LCD, they are by special permit and the Board has discretion. Ms. Foley said it is hard to deny a special permit if an applicant meets all the identified requirements. Mr. Olney said it is very easy to deny a special permit.

Ms. Tenny asked if Town Counsel gave any opinion on whether the change would be spot zoning. The other question is the issue of water resources east of School and west of Pine Streets. Mr. Olney said the area off Pine St is a more resource sensitive.

Ms. Creighton asked if there were any objections to the new language for 4.4.6. No objection. Ms. Brown stated this may be exclusionary and we should discuss this with Town Counsel. Ms. Creighton agreed with sending it to Town Counsel.

Ms. Creighton said Section 5.5 refers to height requirements. The Board asked Mark Glovsky to recommend appropriate heights for the use. Ms. Foley said there are different heights in the bylaw. Mr. Glovsky recommended no structure can exceed 55' with higher limitation to include solar panels, or other mechanical appurtenances. Mr. Gilbert suggested 15' above roof height for mechanical appurtenances.

Ms. Foley noted this is changing what we have now which only refers to chimneys and spires. She expressed concerns about solar panels extending an additional 10' above the allowed height.

Following a discussion, the Board agreed generally that the Board is seeking changes to allow additional height for commercial in the LCD and not to changes to heights in residential districts.

Ms. Foley stated that the proposed bylaw deletes all of 5.7.1. Ms. Brown stated she does not know why we want to limit it to 5 acres. Ms. Gilbert stated 5 acres is a very large lot size. He feels all of 5.7.1 should be deleted.

**MOTION:** It was moved and seconded to decrease the required parcel size to two acres and remove 500 feet parcel width requirement. Motion Withdrawn

**Discussion:** Mr. Glovsky said that 1-2 acres is usual. He is looking at the City of Beverly bylaw which has a 2-acre minimum. Mr. Bobrowski stated the Town should know what it wants the LCD to be in order to decide on a reasonable minimum lot size.

Board agreed to move forward language as is.

Maximum Lot Coverage by Impervious Surfaces: no objections to move forward to public meeting as is.

Reduction of Setback Requirement by up to 80%: Ms. Olney stated it is giving us options and flexibility. Ms. Foley objects to allowing an 80% reduction. Ms. Creighton reminded the board that this objective tonight it to move it to Public Hearing where it could be discussed further. Ms. Tenny said she agrees with Chris that the change allows flexibility.

Private Parking Areas no closer than 200 feet to Route 128: Ms. Tenny said her comments concern the view as a natural resource. Ms. Foley agreed with protection of the view shed. Ms. Tenny clarified this is about preserving this important asset. Mr. Glovsky noted that this is about parking areas which are less impactful to views than buildings which are allowed within 100'. The Board further discussed the need to protect viewsheds and adding language to allow exceptions only by Special Permit and to consider more fully the idea of viewsheds in the future.

Ms. Tenny suggested strengthening the special permit language. Ms. Creighton said there appears to be consensus among the Board members and asked Mr. Glovsky to offer language that captures the discussion and the Board will come back to the vote later.

### **Accessory Dwelling Units:**

Ms. Creighton began by saying the current regulations call for lot size larger than a single-family home. In Manchester this is unrealistic. Mr. Gilbert noted the bylaw was edited based on community input. It is a little more restrictive. The maximum size was reduced from 1200 sq ft to 900 sq ft based on state's definition of an ADU. He stated the new provisions would allow only 20 new units per year. Leases or term agreements would be required. Each ADU would require an additional parking space beyond what is required for the existing residence. Discussion continued regarding restrictions for ADU's.

The Board shared opinions on the Purpose Statement and General Requirements including the intent for accessibility, the requirement of owner occupancy, parking requirements, ADU certificates, ADU's by right and by Special Permits and other elements of the bylaw.

Mr. Bobrowski stated that he does not know of any reason why an owner occupancy requirement would be illegal in Massachusetts.

Regarding parking space approvals, and affidavits that go to the building department, Ms. Foley said we are putting more demands on the Building Inspector. He is part time.

ZBA will be the special Permit Granting Authority for ADU's that do not comply with bylaw requirements including detached units that would be allowed if the residence was in existence at least one year in advance of the bylaw change.

Ms. Mellish said the ZBA has been asked to eliminate ADU's provided for employees as it is seen or used as a loophole.

Ms. Creighton asked if we would like to move this to a public hearing with a draft.

The Board discussed the existence of current ADU's, noting that we don't know how many there currently are in town. An ADU is considered a year-round housing unit – as it pertains to the state's affordable housing program.

Ms. Delisio feels the bylaw will be taken advantage of.

MOTION: It was moved and seconded and voted by Roll Call 6 in favor 1 opposed (Foley) to move Accessory Dwelling Units as amended by today's discussion to public hearing.

**General Regulations:**

Ms. Creighton confirmed the proposed language on height- no change to general and residential districts and changing the height allowance in the limited commercial district to 55 feet.

MOTION: It was moved and seconded and voted by Roll Call unanimously to move Section 5.5 "Height Regulations" as modified by today's discussion to public hearing.

**Final Language Vote on Administration and Procedures:**

Ms. Creighton said this is the new article on Administrative Procedures and it is largely what Mr. Bobrowski proposed. We are leaving in the PB membership as 7 members with no alternative, the Zoning Board will remain as 5 members.

MOTION: It was moved and seconded and voted by Roll Call unanimously for a new administration section 12 and to move it to public hearing.

Ms. Foley said Planning Board members should be noted as being elected for 3-year terms to be consistent with ZBA language consistency. Ms. Foley noted 12.5.2 no longer has some language (A-G and AA- HH). Ms. Creighton said these are Mr. Bobrowski recommendations because the language is now included in and expanded on later in the section.

Regarding existing 7.5.2 A-G and AA-HH adequacy of utilities, water supply. Ms. Foley noted she would like those added back in and asked if the language should be consistent with proposed section 6. Mr. Bobrowski said regarding section 6 non-conformity, the correct language is in the statute. Mr. Bobrowski said there is one set of requirements for new use for new construction and one is for changes to nonconforming structures. He said they are redundant and recommends the version as shown.

**General Regulations:** Ms. Creighton noted that due to lack of time in tonight's meeting for a full discussion, she would pass over this discussion.

**Adult Entertainment:** Mr. Mastrogiacomo noted this use is only allowed within the limited commercial district. Mr. Bobrowski noted that the Town is more exposed to a lawsuit regarding Adult Entertainment establishments without regulations and district where they are allowed by Special Permit.

MOTION: It was moved and seconded to vote by Roll Call unanimously to move the adult entertainment bylaw to a public hearing.

**Non-conforming Uses:**

MOTION: It was moved and seconded and unanimously approved by Roll Call vote to move Section 7 "Nonconforming Uses" to public hearing.

Regarding the first section, Mr. Bobrowski said when zoning changes in a town, some things may be made non-conforming: uses, structures and/or lots. The Town then needs to decide how to treat non-conforming uses. Some town's tolerate non-conforming uses, others use the new zoning to try to create change.

This section also talks about when you are subject to the zoning requirements: If you have a permit prior to advertisement of the public hearing for the change, you are free from the new zoning amendment. Construction must start within one year.

Non-conforming uses: uses that were legally existing or underway when the zoning changed. The town allows two types of changes to non-conforming uses by Special Permit: 1) change or substantial extension of the non-Nonconforming use and 2) change from one non-conforming use to another non-conforming use less detrimental.

Non-conforming structures: structures that were legal when the zoning changed. The two types of changes that are allowed by Special Permit are: 1) reconstructed, changed or extended and 2) altered to provide for a different or the same purpose in a different manner

Variance required: only pertains to non-conforming structures. If the non-conformity is going to be exacerbated or a new non-conformity is going to be created, a variance is required.

The State statute calls out single and two family uses for more lenient treatment. If the proposal increases the non-conforming nature of the structure, a town may choose to create a carve out and allow a change to a non-conforming single or two family home as long as the change doesn't create a new or extend an existing non-conformity.

Ms. Creighton said this bylaw represents a pretty big change for Manchester. Mr. Bobrowski offered that the existing bylaw forces all applicants through an unnecessary gamut of regulations. The other qualification that was added to this allowance is that the living area cannot be increased by more than 100% .

Abandonment or non-use for two years – the structure or uses is no longer protected.

Tear down provision – if you want to rebuild a structure you must go through a special permit process.

Regarding a question of what the downside is of not approving this change, Mr. Bobrowski offered that the current language is more subjective. The new language offers objective criteria for determining if a change should be allowed.

Ms. Mellish – Two recent cases where existing non-conforming use wanted to change to new non-conforming use – Town Counsel said this is not allowed by a special permit.

Mr. Bobrowski said this should be allowed by Special Permit if the ZBA feels it is less detrimental.

**Residential Cluster:** Discussion to be moved to next meeting.

**Next Meeting:** Ms. Creighton said the next meeting (if needed) will be 2/8 the Tuesday after the BOS discussion of when Town Meeting would be held.

**Approval of Minutes:**

Mr. Mastrogiacomo stated the minutes were lengthy and asked Ms. George to pair them down. Ms. Creighton suggested the Board approve these and change going forward.

MOTION: It was moved and seconded to approve the minutes of November 22, 2021 as amended with the correction of \$75,000 not \$75. The motion passed.

MOTION: It was moved and seconded to approve the minutes of December 13, 2022 as amended. The motion was withdrawn. Sharon will work to shorten.

**Recording Policy:** The BOS has proposed a new policy regarding recordings. Meetings will be recorded and kept on file for three years. The BOS is asking for comments.

**Other:** Mr. Olney has offered to write an article for the Cricket. Mr. Gilbert has written a brief article regarding the LCD changes. Ms. Creighton suggested all articles should go through the Chair. Mr. Mastrogiacomo wants the Board to see any articles and be able to offer suggestions. A vote is not required.

Ms. Creighton adjourned the meeting by unanimous vote.

Respectfully submitted, Sharon George

As amended by Sue Brown

These minutes were approved by the Planning Board on July 27, 2022.