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

Meeting February 28, 2018

Members Present: Michael Sullivan (Chairman), James Diedrich, Bridget Murray, Sarah Mellish, and John Binieris.

Members Not Present: Laura Tenny.

Mr. Michael Sullivan, the Chairman, called the Meeting of the Manchester-by-the-Sea Zoning Board of Appeals ("ZBA") to Order at 7:07 p.m. Mr. Sullivan introduced the Board 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.

Mr. Sullivan explained the standard ZBA meeting procedures to the applicants and to the public.

ADMINISTRATIVE MATTERS

Proposed Wetlands Bylaw Change to be Presented by Conservation Commission

Chairman Steve Gang: Chairman Steve Gang and Commissioner Sara Oseasohn gave a presentation to the ZBA entitled Why and How to Protect Manchester's Unspoiled Wetland Scenery. Mr. Gang stated what is specifically being proposed is to add "Unspoiled Wetland Scenery" to the list of what is protected in and around our wetlands. This proposal represents a year's work by a Conservation Commission Subcommittee, who looked at this need and compared it to the experience of other towns in Massachusetts. This proposal will be presented at the April 2018 Town Meeting to amend Manchester's Bylaw on Wetlands (Article 17, Section 1.1).

Ms. Oseasohn stated that the Conservation Commission is responsible for protecting wildlife habitats, drainage, and water supply. Mr. Gang explained that the Conservation Commission purpose is to balance the rights of our neighbors (private property owners) with the protection of our resources. We try to generally take a long-term view, so if a property owner plants specimen trees on the edge of the coastal bank, fast-forward 25-30 years the root systems of some of those trees will be destructive to the bank—some trees will hold the bank together, and others will push out sea walls. The Conservation Commission is advised by environmental experts on matters, and applications that come before the Conservation Commission are sometimes asked to mitigate their proposed projects, but rarely deny an application.

Document Produced: Information Packet—Why and How to Protect Manchester's Unspoiled Wetland Scenery (7 pages, with color photos).

Review and Approval of the January 24, 2018 Minutes: Mr. Sullivan made a motion to approve the January 24, 2018 minutes, as written. Mr. Diedrich seconded the motion.
Vote: Mr. Sullivan, Mr. Diedrich, Ms. Murray, Ms. Mellish, and Mr. Binieris voted unanimously in favor of approving the minutes.

NEW APPLICATION

Mr. Sullivan introduced the application of Tidewood LLC, for a Special Permit under Sections 6.1.2, 4.1.10(f), 7.5.2, 4.7, and 4.9 (Water Resources Overlay Protection District) of the Zoning By-Law, and/or other relief as may be necessary, to construct a natural swimming pool and a new two-story, two-car garage attached addition with a second floor in-law apartment, at 301 Summer St., Assessor’s Map 906, Lot 96, District E, filed with the Town Clerk on January 29, 2018.

Mr. Scott Borgerson introduced himself as the home owner/applicant and stated that he is here tonight to seek approval from the ZBA, then with the Trust and his neighbors, and he is aware of the Shelving Rock Trust Deed and that it is Shelving Rock Trust's 150th anniversary of this historic property. Mr. Borgerson explained as follows: We hired Windover Construction to update/renovate the interior of the house to bring it up to the electrical code, replacing a few windows, but no other major change to the exterior of the house. The house has an electricity shortage, so I consulted with National Grid, and it would cost $250,000-$500,000 trenching project to run a new power line from the street through the estate, which would be too costly and disruptive. The other alternative would be to install black tile solar panels on the roof, which produces electricity that it stored in a battery in the garage, which would also provide space for an electrical vehicle. The second story of the proposed garage would be a living space for my mother.

Mr. Chris Brown and Mr. Kurt Stavdal from Architecture Studio Inc. introduced themselves, and Mr. Brown explained the proposed project involves creating a driveway, constructing the garage space with a connector to the house, to allow easy access to the existing garage space, so that turnarounds are comfortable. The proposed garage will have a low-ridge line, but ridge line will be a couple of feet higher than the existing garage, to allow adequate, per code required head room for the in-law apartment on the second floor, which will have dormer windows within the eaves, so it will not look like a second house. All the setback requirements will be met. The proposed natural pool will be constructed within the rocks, and surrounded by a 4 ft. black chain-link fence.

Ms. Mellish asked how they will be conforming with Section 4.6.2(g), with respect to accessory dwelling uses, pertaining to the square-footage of the in-law apartment—the requirement being not greater than 10%, and it appears that the total square footage of the proposed addition is greater than 10%. Mr. Brown replied that the in-law apartment will be 818 sq. ft., including the staircase. Ms. Murray pointed out that the question is, is the 10% the entire proposed addition or only the floor space of the new accessory dwelling. Mr. Sullivan reviewed the by-law and stated that any additions made shall not increase the floor area or volume by more than 10%. The existing square footage is 6,770 sq. ft., proposing 8,611 sq. ft., an increase of 1,841, which would be greater than 10%.

Mr. Sullivan stated that this application is not in a Section 4.7 district, and the Special Permit granting authority under Section 4.9 of this by-law shall be the Planning Board, and
suggested that the applicant contact the Planning Board clerk for further information. The ZBA has to address Section 6.1.2 (non-conforming structure on a lot that is too small), Section 4.1.10(f) for the swimming pool, and Section 7.5.2 and Section 4.6.2 (accessory dwelling).

Mr. Robert C. McCann introduced himself as the attorney representing Shelving Rock Trust, and distributed documents, maps, and photos for review. Mr. McCann explained as follows: Mr. Borgerson contacted the Trust about making changes to this house (known as the Phippin House) in 2016, which were reviewed and approved, and Mr. Charles Shurcliff, a Trustee of the Shelving Rock Trust, sent a letter to Mr. Borgerson regarding the approval of the changes. The restrictions of the Deed are intended to ensure that the look and external character of the house, so that this historic house may endure undiminished, while at the same time providing leeway for the owners to make small scale adjustments. Mr. Borgerson was advised that the house could not be increased by more than 200 sq. ft., and said increase had already been done by the previous owners (the Barkers) in 2012, so any increase is no longer permitted in accordance with the Deed restrictions. It would have been more appropriate for Mr. Borgerson to approach the Trustees first, instead of the ZBA, to come up with a plan that would work for the Trustees and Mr. Borgerson, because there is language in the Deed that states that "approval will not be unreasonable," and the Trustees are willing to work with the owners of the property. There has not been any communication with Mr. Borgerson since 2016, until we received the ZBA's Notice of Public Hearing.

Mr. McCann referred to a map and explained that all the houses, buildings and land, with the exception of Mr. Borgerson's house, is owned by Shelving Rock Trust. The Phippin House was brought over by a barge from Salem and put onto the property closer to the ocean that the other homes and has been a significant piece of the Sharksmouth property. It is a significant area that needs to be preserved, not just the building but also the vegetation. Mr. McCann gave the ZBA members and audience a brief history of the property, accompanied by photos.

Mr. McCann asked the ZBA to focus attention on Section 4.6.2 regarding the 10% rule and adequate sewage disposal. The old septic system on this property failed, and Mr. Barker requested and received permission to put in a new leach field off the site and on to the Trust property in 2012, and an easement was granted. I am questioning whether or not the existing septic system is sufficient to support the addition of the in-law apartment, because the leach field cannot be changed or increased to cover that. The 10% rule should apply to the entire addition, not just the in-law apartment, which would be 28% of the existing structure.

Mr. McCann suggested that the front yard setback be revised on the plan. The plan should be corrected to reflect the proper front yard and street frontage to be sure that the setbacks are met.

Mr. McCann addressed the issue of the Deed (effective until 2042) (see Deed, Pages 6 and 7 below) and its restrictions, in particular the section pertaining to Lot B, the "Phippin House" (301 Summer Street) and concluded that this proposed application does not comply with the core restrictions. The proposed project would result in a significant encroachment on the conditions and restrictions put on the Phippin House.
Because it is the intention and desire of the Grantors to preserve and maintain the existing character of the houses and grounds comprising the Sharksmouth Estate, and having in mind that the house on Lot "B" (The Hippet House) is of recognized Colonial design and construction, its core dating back to around 1700, and as such is a landmark along the Coast, Lot "B" is hereby conveyed subject to the following restrictions which are hereby imposed for the benefit of Lot "A" and the Grantors' Remaining Land as shown on said Plan and which shall be deemed to run with the land:

1. Lot "B" shall be used solely for one single family residence.

2. There shall be a forty-foot setback for all new construction (including fences) or additions to existing structures on Lot "B" from the property lines thereof and no new construction or additions to existing structures and no changes to existing woodland character (except for selective cutting contributing to the health of the natural vegetation and to the maintenance of the existing paths and utilities and ocean view) shall be made within that zone without the prior approval of the Grantors, such approval not to be unreasonably withheld.

3. No additions or reductions shall be made to the structures on Lot "B" which will result in an increase or decrease of more than two hundred (200) square feet in the floor area thereof (not including any cellar under such addition) nor shall any new construction be made in excess of
two hundred square feet, without prior approval of the
Grantors, such approval not to be unreasonably withheld.

4. There will be no substantial alteration, except as
aforesaid, to the exterior of The Phippen House, including
fenestration, roof lines, chimneys, cladding material and the
like, without the prior approval of the Grantors, such
approval not to be unreasonably withheld.

And for said consideration, the Grantors hereby agree to
hold the Remaining Land and Lot "A" subject to the following
restrictions for the benefit of Lot "B" and which shall be
deeded to run with the land:

1. Lot "A" shall be used solely for one single family
residence.

2. There shall be a forty-foot setback from the bounds
of Lot "B" for all new construction (including fences) or
additions to existing structures with respect to all of the
Grantors' Remaining Land and Lot "A" where any of the same
adjoin Lot "B", except with the prior approval of the
Grantees, such approval not to be unreasonably withheld.

3. No additions or reductions shall be made to the
structures on Lot "A" which will result in an increase or
decrease of more than two hundred (200) square feet in the
floor area thereof (not including any cellar under such
addition) nor shall any new construction be made in excess of
two hundred feet, without prior approval of the Grantees,
such approval not to be unreasonably withheld.
Zoning By-Law Criteria. The purpose and intent of the Zoning By-Law is "Maintaining and enhancing the natural and historic amenities of Manchester-by-the-Sea" and "Conserving the value of land and buildings." This property is a significantly historic property, and if you start to change these historic buildings, the values will change.

Special Permit Criteria. Mr. McCann distributed photos of the Sharksmouth property and explained that the proposed application will affect the following criteria: Impact on traffic flow and safety. Impact on neighborhood visual character, including views and vistas. Impact on wildlife habitats and other natural resources. The proposed addition will significantly impact the views and vistas of the Red House, located behind the Phippin House. Vegetation plays an important role in preserving the natural resources of the Sharksmouth property, and the proposed project will have an impact on these natural resources.

Mr. McCann stated that the Shelving Rock Trustees do not support this application. However, if Mr. Borgerson can propose a project is historically consistent and without a negative impact on the property, the Shelving Rock Trust would be happy to work with him.

Mr. Diedrich asked Mr. McCann if permission had been given to the previous owner to construct additions. Mr. Devereux Barker, the former owner of the Phippin House stated that he was granted permission to renovate the house in 1984. Mr. Sullivan stated that the Phippin House is somewhat more modernized on the water side of the house, with a glass enclosed tower and asked if permission was required for that project and given to you? Mr. Barker replied yes.

Mr. Diedrich asked if the mud room, pantry, tower, garage, and cabana were existing parts of the house when Mr. Borgerson purchased the house. Mr. Borgerson replied that it was already part of the house when he purchased it in 2015. Mr. Diedrich stated that the garage is in excess of approximately 400 sq. ft. and attached to the house. Mr. McCann stated that any changes/additions to the Phippin House was all approved by the Shelving Rock Trust.

Mr. McCann suggested the alternative of Mr. Borgerson withdrawing this application, without prejudice, meet with the Trust to review the revised plans and discuss his needs, have the architect work with Mr. Borgerson and the Trust and come up with a proposed project that works for everybody, and at that point return to the ZBA with everyone in agreement and the Trust's support.

Mr. Borgerson stated that the appreciated Mr. McCann's presentation and thanked him. Mr. Borgerson explained that he had tried to contact the Trust for nine (9) months, but couldn't make a connection. We hope to live here for a very long time and be as wonderful neighbors as the Barkers were. We went through painstaking lengths and spent a lot of money to honor the historical integrity of the home during the interior renovation project, performed by Windover. Only two (2) trees were removed, because they were dead and the state asked us to remove them, and we updated the landscaping disturbed by the construction.

Mr. Sullivan explained that we need to focus on the zoning aspect of this application, and suggested that since there is a lot of work ahead for the Trust and the Borgersons, it would make sense to withdraw this application without prejudice. This is a unique property and some of the objections to the pool, for example, are more compelling than they usually are, due to the nature.
of the property. In terms of the addition to the house, I do not see a way that the ZBA can get passed the 10% issue to grant this application, and then there is the issue of the septic system. Mr. Diedrich suggested to include documentation by a professional regarding the septic system with the next application. Mr. Sullivan, Ms. Murray, and Ms. Mellish explained the difference between a continuance and a withdrawal without prejudice.

Mr. Sullivan suggested that Mr. Borgerson return to the ZBA at a later date with a significantly modified plan. Mr. Sullivan stated that in the meantime he would consult with Town Council regarding the 10% issue.

Mr. Borgerson requested to withdraw this application, without prejudice and waive the fees for the future ZBA application.

Mr. Sullivan made a motion to allow the applicant to withdraw without prejudice and waiving the fee for a future application, the application of Tidewood LLC, for a Special Permit under Sections 6.1.2, 4.1.10(f), 4.6.2, and 7.5.2, (4.7, and 4.9 Water Resources Overlay Protection District to be addressed by the Planning Board) of the Zoning By-Law, and/or other relief as may be necessary, to construct a natural swimming pool and a new two-story, two-car garage attached addition with a second floor in-law apartment, at 301 Summer St., Assessor’s Map 906, Lot 96, District E, filed with the Town Clerk on January 29, 2018.

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


Documents Produced by Mr. Scott Borgerson and Architecture Studio Inc: Site Plan for 301 Summer St., signed and stamped by Vernon LeBlanc, prepared by Mill River Consulting, dated January 23, 2018 (1 page).


ADMINISTRATIVE MATTERS (CONTINUED)

Mr. Sullivan announced that he has been a member of the ZBA since 2012, and would like to resign from the ZBA, but would be willing to stay on for a period of time as a Clerk or an alternate. Mr. Sullivan suggested that an election be held to determine the next Chairman and Clerk and asked the members to give this issue some thought.

Mr. Diedrich stated that he will stay on through his term for the next two years. Ms. Murray, Ms. Mellish, and Mr. Binieris stated that they will stay on through their terms.

Mr. Sullivan made a motion to adjourn the meeting. Mr. Diedrich seconded the motion. Vote: Mr. Sullivan, Mr. Diedrich, Ms. Murray, Ms. Mellish, and Mr. Binieris voted unanimously in favor of adjourning the meeting.

The meeting was adjourned at 8:55 p.m.

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

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

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