



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 June 26, 2024

Members Present: Sarah Mellish (Chair), Kathryn Howe, Sean Zahn, Robert Scott, Jim Diedrich, and Brian Sollosy.

Member Not Present: John Binieris

Staff Present: Marc Resnick, Director of Land Management and Gail Hunter, ZBA Admin.

Select/Planning Board Members: No Select Board or Planning Board members were present.

Ms. Mellish called the meeting to order at 7:00 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 the Board members.

Ms. Mellish stated that during the May 15, 2024 meeting Mr. Binieris was present and Mr. Diedrich was not, Mr. Binieris is not available this evening. Mr. Diedrich has watched the recording of the meeting and will be voting on the continued applications this evening. Ms. Mellish stated she will be speaking as a resident on the 9 Bennett Street application and will be recusing herself from the Public Hearing, Ms. Howe will Chair the hearing on 9 Bennett Street.

Additionally, Mr. Sollosy will recuse himself from voting on the 21 Union Street application.

Continued Applications

Ms. Howe opened the continued Public Hearing for the Application of **Jill M. Rynkowski Doyle and Timothy P. Doyle** for a Special Permit under Sections 5.4, 7.2 and 12.5 of the Zoning By-Law, and/or other relief as may be necessary, to decrease the current encroachment into the front setback and extend the current encroachment into the east side setback and a Variance under Sections 5.4 and 12.3.3 of the Zoning By-Law, and/or other relief as may be necessary, for an encroachment into the west side setback, excess coverage by structures and excess total coverage by structures and impervious surfaces at 9 Bennett Street, Assessor's Map No. 28, Lot No. 10 in District A, filed with the Town Clerk on April 22 2024.

Mr. Doyle spoke to the application both his Attorney and Architect were on Zoom. Mr. Doyle stated that Mr. Heney had spoken to the topographical challenges on the lot and asked the Board if there were additional questions about the hardships presented by the lot. There were no questions from the Board.

Mr. Doyle outlined the feedback from the Board and addressed three areas. The proposed structure was over in permissible lot coverage by structure and lot coverage by structure and impervious surface. Screen porch was too large and too close to the neighbor's fence. The Board also requested the applicant consider modifying the concrete driveway and change or eliminate the bulkhead on the side of the house.

Mr. Doyle stated that the house was made smaller, and the depth of the garage was reduced. Additionally, the screened porch was reduced by 6 feet going from 10 feet by 20 feet to 10 feet by 14 feet. The porch will be built on piers not a slab to address concerns expressed around trees during construction. Finally, the driveway will be 25% pervious to assist in the amount of runoff from the driveway. The bulkhead has been removed and is now proposed to be a walkout on the right side of the house.

The proposed house is now 4 feet back from where it was originally proposed which allows for less blocking of light to the neighbors at 7 Bennett Street. The impervious surface is less than 30% and there is no front porch. The Board had no questions and acknowledged the efforts to address concerns from previous meeting. Mr. Bosworth, the Architect went through in detail the adjustments made to

Public Comment

Tim Gates, 2 Desmond Ave. – Mr. Gates asked if the property was within 200 feet of the harbor adding if the property is within 200 feet of the harbor the application would need to go to Con Com. Mr. Gates commented on the size of the house and asked about the elevation of the house. The Board had difficulty understanding Mr. Gates' question and comments. Ms. Howe did state that the interior of the space was not under the jurisdiction of the Board.

Katarina Gates, 2 Desmond Ave. – Ms. Gates complimented the design of the house.

Sarah Mellish, 11 Bennett Street – Ms. Mellish acknowledged that the applicant has decreased the size of the proposed house, adding that the homes on Bennett Street date back to the 1700's and are very close together. Ms. Mellish supports the variance that allows for construction in the side setback close to her property. Noting that her house is 30 feet higher than the property at 9 Bennett Street.

Kurt Svetaka, 7 Bennett Street – Mr. Svetaka stated that he appreciated the Board's work around the changes to the size of the house. He expressed concern about construction and the trees on his property and will work with Mr. Doyle around the preservation of his trees.

Ms. Howe moved to close the Public Hearing and have the Board move into deliberations with respect to the Application. Mr. Sollosy seconded the motion. The motion passed 5-0.

*Ms. Howe moved to approve the application of **Jill M. Rynkowski Doyle and Timothy P. Doyle** for a **Special Permit** under Sections 5.4, 7.2, 12.5 of the Zoning By-Law, and/or other relief as may be necessary, to allow the razing of an existing nonconforming two-family residence which encroaches into the east side setback approximately 19 feet and into the front setback over 5 feet and construction of a new single-family residence which encroaches approximately 12 feet into the east side setback and encroaches approximately 4 feet into the front setback at 9 Bennett Street, Assessor's Map No. 28, Lot No. 10 in District A, filed with the Town Clerk on April 22, 2024, based on a finding that the proposed use is in harmony with the purpose and intent of the By-Law, the proposed new residence which encroaches into the side and front setbacks will not be substantially more detrimental or injurious to the neighborhood in which it is located than the existing nonconforming structure which will be razed and all 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 residential structure is located as depicted on the Zoning Board of Appeals Plan prepared by North Shore Survey Corporation dated June 13, 2024.*
- *The residential structure is built substantially in accordance with the following plans prepared by Bosworth Architect LLC dated June 16, 2024:*
 - *A1, A2 & A3 Proposed Floor Plans*
 - *A4 & A5 Proposed Elevations*

Mr. Diedrich seconded the motion. The motion passed 5-0.

*Ms. Howe further moved that relief for excess coverage by structures and total coverage by structures and impervious surfaces is not required since they now conform based on the documents dated June 13, 2024 and June 16, 2024 and move to approve the Application of **Jill M. Rynkowski Doyle and Timothy P. Doyle** for a **Variance** under Sections 5.4 and 12.3.3 of the Zoning By-Law, and/or other relief as may be necessary, to construct a single-family residence which encroaches into the west side setback approximately 6 feet, based on a finding that owing to circumstances relating to the shape and topography of the land, especially affecting such land and structure but not generally affecting 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, to the Applicants, 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 following conditions:*

- *The residential structure is constructed in accordance will all plans listed above under the conditions for the issuance of the Special Permit and the lot coverage requirements for District A are met.*
- *The existing shed will be removed.*

Mr. Diedrich seconded the motion the motion passed 5-0.

Mr. Zahn will write the Decision and Mr. Diedrich will review.

Ms. Mellish opened the continued Public Hearing for the Application of **James Gaddis** for a **Special Permit** under Sections 5.4, 7.2 and 12.5 of the Zoning By-Law, and/or other relief as may be necessary, to extend the current encroachment into the setbacks and a **Variance** under Sections 5.4 and 12.3.3 of the Zoning By-Law, and/or other relief as may be necessary, for

excess coverage by structures and excess total coverage by structures and impervious surfaces at **35 School Street** , Assessor's Map No. 51, Lot No. 5 in District D1, filed with the Town Clerk on March 21, 2024.

Ms. Hobson, Designer for the project presented the new design. Ms. Hobson stated that the Board had concerns about the size of the structure and lot coverage. To address the concerns the garage for each of the proposed units has been eliminated and 4 open parking spaces with pervious surface will be located to the left side of the building within the existing curb cut. Additionally, a small storage shed has been added to the back of the building. The proposed structure is in scale with the neighborhood. The length of the building has been decreased, as was the living space for each of the units. Rear setback is 5 feet off the lot line. There is a retaining wall along School Street which will remain in place. The proposed building cover 38.2% of the lot and impervious surface 45.4% where 50% is allowed.

Public Comment

Gayle Masiero, 7 Brook Street – Ms. Masiero asked if a sidewalk would remain in front of the proposed parking for four cars. Ms. Hobson indicated that there would be space for the sidewalk.

Katarina Gates, 2 Desmond Avenue – Ms. Gates stated she and her husband were the only abutters and that she had no problem if developers followed the rules and regulations. This is a nonconforming lot, and the proposed structure will impact their view.

Sarah Graves, 6 Summer Street – Ms. Graves indicated that traffic on Brook Street was a concern especially with the school at the end of the street.

Tim Gates, 2 Desmond Avenue – Mr. Gates indicated that the new structure would be in violation of the setback regulations. He stated that the mass of the building would be a health hazard and suggested that the builder use the current foundation. He pushed that the Zoning By-Law was being violated.

Ms. Mellish stated that the Board needed to follow the Zoning By-Law, and the proposed building was not encroaching any further than the current structure.

Mr. Gates also indicated he believes that the building will require Con Com approval.

Daniel Deoreo, 6 Brook Street – Mr. Deoreo stated that the existing house is a single family and new construction should conform within the existing space. He does not believe that there is sufficient parking for four cars in the proposed space. He also pointed out that Brook Street is a cut through for fire trucks and that will be an additional hazard.

Michael Gates, 31 School Street – Mr. Gates suggested that there should be no exemptions for developers in the By-Law. The 10-foot setback should be in place and the 5-foot setback is in violation of the Zoning By-Law. He added that the Board is creating a traffic problem for future owners and that the relief being granted is creating a hardship for his parents. Ms. Mellish explained that there was no hardship for Special Permits that was a requirement for a Variance.

Mr. Gates stated that the new structure was creating a visual obstruction in the neighborhood.

Ms. Mellish moved to close the Public Hearing and enter into deliberations on the Application. Mr. Diedrich seconded the motion. The motion passed 5-0.

The Board discussed the issue around backing out of a parking space in a residential neighborhood. Ms. Mellish pointed out that there were no regulations around backing out in a residential neighborhood. Mr. Sollosy suggested that the additional cars may be consider more detrimental to the neighborhood.

Ms. Howe indicated that she agreed with some of the neighbors but there was nothing the Board could do to address their concerns. Mr. Diedrich spoke to the fact that we live in a small community and growth is part of the change taking place is desirable small towns. He lives on Pine Street and the speeding trucks in the morning is a problem.

Ms. Howe suggested a condition limiting short term rentals. Ms. Mellish asked Mr. Gaddis if he would agree to no short-term rentals. He indicated that he would have no problem with that being a condition on his project.

*Ms. Mellish moved that relief under a Variance for excess lot coverage by structures and total lot coverage by structures and impervious surfaces is not required based on the revised plans filed with the Town Clerk on June 10, 2024, and moved to APPROVE the Application of **James Gaddis** for a **Special Permit** under Sections 5.4, 7.2, 12.5 of the Zoning By-Law, and/or other relief as may be necessary, to allow the razing of an existing single-family residence which encroaches into the south side setback over 9 feet and both front setbacks over 5 feet and construction of a new two-family residence which encroaches into the south side setback 5' and encroaches into the front northwest corner setback 5' at **35 School Street**, Assessor's Map No. 51, Lot No. 5 in District D1, filed with the Town Clerk on March 21, 2024, based on a finding that the proposed use is in harmony with the purpose and intent of the By-Law, the proposed new residence which encroaches into the side and front setbacks will not be substantially more detrimental or injurious to the neighborhood in which it is located than the existing nonconforming structure which will be razed and all 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 residential structure and parking in the driveway are located as depicted on the Zoning Board of Appeals Plan prepared by North Shore Survey Corporation dated March 14, 2024, as revised on 5/30/24.*
- *The residential structure is built substantially in accordance with the following plans prepared by Taproot Design Inc dated 03/14/24, as revised 06/01/24:*
 - *A-1 & A-2 Proposed Floor Plans*
 - *A-3 & A-4 Proposed Elevations*
- *No short-term rentals under the Town of Manchester or Commonwealth of Massachusetts definitions will be permitted on the property.*

Ms. Howe seconded the motion. The motion passed 4-1.

*Ms. Mellish further moved that relief under a Variance for excess lot coverage by structures and total lot coverage by structures and impervious surfaces is not required based on the revised plans filed with the Town Clerk on June 10, 2024, and moved to APPROVE the application of **James Gaddis** for a **Variance** under Sections 6.0 and 12.3.3 of the Zoning By-Law, and/or other relief as may be necessary, to allow parking for four cars in the driveway within the five foot parking side setback, based on a finding that owing to circumstances relating to the shape of the land and structure but not generally affecting the zoning district in which it is located, a literal enforcement of the provisions of the By-Law would involve substantial hardship, financial or otherwise, to the Applicant, and that the desired 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 following conditions:*

- *The driveway parking area consists of a pervious surface.*
- *The parking area is located as depicted on the Zoning Board of Appeals Plan prepared by North Shore Survey Corporation dated March 14, 2024, revised on 5/30/24.*

Mr. Zahn seconded the motion. The motion passed 4-1.

Ms. Mellish will write the Decision and Mr. Diedrich will review.

New Applications

Ms. Mellish stated that the applicant for 16 Loading Place Road has requested a continuance to the July 16, 2024 meeting.

*At the request of the Applicant, Ms. Mellish moved to CONTINUE the Public Hearing to July 17, 2024 at 7:00 pm for the Application of **Luc Verbist** for a **Special Permit** under Sections 5.3, 6.3, 7.2, and 12.5 of the Zoning By-Law to add 1,087 sq. ft. to existing floor area by first floor addition and second floor dormers, raise the roof ridge and height of the entire structure to approximately 33 ft. 22.5 inches, and add two second floor dormers on the portion of the structure that lies within the 20' side setback at 16 Loading Place Road, Assessor's Map 37, Lot 49, in District A filed with Town Clerk on May 13, 2024 be continued to July 16, 2024. Mr. Scott seconded the motion. The motion passed 5- 0.*

Ms. Mellish opened the Public Hearing for the Application of **Adam & Cynthia Zaiger** for a modification/new Special Permit under Sections 5.0, 7.2 and 12.5 of the Zoning By-Law, and/or other relief as may be necessary, add dormers to a previously approved Special Permit and Variances under Sections 4.3, 6.1, 6.3, and 12.3.3 of the Zoning By-law, and/or other relief as may be necessary, to allow parking in the setback and allow a residence in an accessory structure to be occupied by persons who are not employees of the Property Owner at 21 Union Street , Assessor's Map No. 45, Lot No. 12 in District G, filed with the Town Clerk on April 23, 2024.

Mr. Zaiger presented the Application explaining he was granted a Special Permit by the Zoning Board of Appeals (ZBA) on February 10, 2022, to renovate the accessory barn to include family living quarters for an employee of the owner-occupant of the property. He has since determined that since the roof needs to be reconstructed it makes financial sense to add a dormer to the previously approved design. In addition, due to the change of use he believes he needs a

Variance to allow parking in his driveway which is in the five-foot parking setback. He explained the single car garage in the five-foot setback will remain and there is plenty of room for the two additional required spaces. The real estate office in the home is very small and is not open to clients as Ms. Zaiger has separate space on Elm Street. He is also seeking a Variance to allow the residence in the accessory structure to be occupied by persons who are not employees of the Property Owner, explaining his home is surrounded by commercial buildings and there is no impact on the neighborhood based on whether the occupants are employees of the property owner or not employees, as the use would be the same. He explained that he cannot obtain financing for the renovation if accessory structure cannot be rented at market rate without any restriction on the occupants.

Mr. Zaiger responded to questions from members of the Board including the use of real estate office and its impact on the parking requirements, the Special Permit issued on February 10, 2022, expired after two years, so this request would require a new Special Permit, not a modification of the one previously granted. The Board also asked how he could justify requesting a variance for occupancy by persons not employed by the property owner when that change to the By-Law was brought before Special Town Meeting on November 13, 2023, and the By-Law amendment was not approved by the voters.

No members of the public asked to be recognized to speak with respect to the Application.

The Board discussed the Application and their concerns. First, they agreed that since the previously issued Special Permit has expired the addition of a dormer cannot be a modification of the previously issued Special Permit but must be a new Special Permit and agreed the dormer is a reasonable change and will reissue the original Special Permit with that change. The Board also discussed the existing single car garage in the barn as a viable space and the driveway has sufficient space for the additional required parking spaces. Since the garage and the driveway abut a bank allowing parking in the five-foot setback will not be a substantial detriment to the public good and can be granted without derogating from the intent or purpose of the By-Law. The Board agreed it would be a substantial hardship to not allow parking in the existing garage space in the barn and in the driveway since there is no alternative space without demolishing the barn.

The Board had a lengthy discussion regarding the request for occupancy by persons not employed by the property owner. The Board agreed with the Applicant that the impact to the neighborhood is not substantially different based on whether the occupants are employees of the property owner or are not employees and that since we need more housing options in Town, they disagree with the outcome of the vote at Special Town Meeting on November 13, 2023. However, to issue a Variance for this request which is the same By-Law amendment rejected by the voters would be contrary to the purpose and intent of the By-Law, so as much as they would like to grant the Variance, they feel the Variance request does not satisfy that standard. Based on the Board's discussion, the Applicant agreed to Withdraw Without Prejudice the portion of the Application requesting a Variance for occupancy by persons not employed by the property owner.

Ms. Mellish moved to close the Public Hearing and approve the Application of **Adam & Cynthia Zaiger** for a new (since the previous Special Permit expired without commencing construction it cannot be modified) **Special Permit** under Sections 5.0, 7.2, 12.5 of the Zoning By-Law, and/or other relief as may be necessary, to renovate, including the addition of a dormer to an existing nonconforming accessory barn into family living quarters for an employee of the owner-occupied property at 21 Union Street, Assessor's Map No. 45, Lot No. 12 in District G, filed with the Town Clerk on April 23, 2024, based on a finding that the proposed use is in harmony with the purpose and intent of the By-Law, the proposed renovation into a residence will not be substantially more detrimental or injurious to the neighborhood in which it is located than the existing nonconforming structure which will be razed and all 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 renovations are completed substantially as depicted in Exhibit A of the Application:
 - Elevations
 - New second floor layout plan
 - A1.0 Proposed Floor Plans prepared by Breuker Design LLC dated July 14, 2016, revised 7/22/26, excluding the second-floor portion which was modified as depicted in "New second floor layout plan" above
- Occupation of the residence is restricted to employees of the owner-occupied property owner.
- Sufficient off-street parking is provided pursuant to Section 6 of the Zoning By-Law
- Total coverage by structures and impervious surfaces shall not exceed 70%.

Mr. Zahn seconded the motion. The motion passed 5-0.

Ms. Mellish further moved to approve the Application of **Adam & Cynthia Zaiger** for a **Variance** under Sections 6.1 and 12.3.3 of the Zoning By-Law, and/or other relief as may be necessary, to allow parking in the driveway and the garage space within the existing nonconforming barn which encroach into the five feet parking side setback, based on a finding that owing to circumstances relating to the shape of the land, especially affecting such land and structure but not generally affecting 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, to the Applicants, 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 following condition:

- A minimum of three (3) off-street parking spaces 9' x 18' must be provided.

Mr. Zahn seconded the motion. The motion passed 5-0.

At the request of the Applicant, Ms. Mellish further moved to **WITHDRAW Without Prejudice** the portion of the Application of Adam & Cynthia Zaiger requesting a Variance under Sections 4.3 and 12.3.3 of the Zoning By-Law, and /or other relief as may be necessary, to allow the renovated barn to be occupied by persons not employed by the Property Owner.

Mr. Zahn seconded the motion. The motion passed 5-0.

Ms. Mellish will write the Decision and Mr. Diedrich will review.

Ms. Mellish opened the Public Hearing for the Application of **Gary Gilbert** for a **Variance** under Sections 5.3, 5.6 and 12.3.3 of the Zoning By-Law, and/or other relief as may be necessary, to construct a 12' by 30' tool shed which will encroach into the front and side setback at 11 Magnolia Avenue , Assessor's Map No. 5, Lot No. 38 in District C, filed with the Town Clerk on May 13, 2024.

Ms. Mellish noted that the Board had received a letter in support from Mr. Swerdloff, 15 Magnolia Avenue.

Mr. Gilbert presented the Application explaining that although the lot is large, a brook runs the width of the property towards the rear resulting in wetland buffer zones greatly restricting the buildable area and contains a septic tank and leeching field with additional setback constraints. The current small shed, which did not require a building permit and will be removed encroaches further into the front setback than the proposed new shed which will be located against an existing fence on recessed piers. The land on the other side of the fence is unbuildable due to the brook and wetlands.

The Board discussed the Application and felt the Applicant demonstrated a hardship that there is no other location to place a shed on the property due to the shape and topography of the property, the brook with its wetland buffer setbacks and septic system and leeching field setback requirements. Although the proposed shed will encroach into the side setback it abuts a portion of the neighbors land that is unbuildable due to the brook running through the properties. In addition, the proposed shed will encroach one foot into the front setback, but it cannot be placed further back into the lot due to the brook running through the property.

Ms. Mellish moved to close the Public Hearing and approve the Application of Gary Gilbert for a Variance under Sections 5.3, 5.6 and 12.3.3 of the Zoning By-Law, and/or other relief as may be necessary, to construct a 12' by 30' tool shed containing a landing and ramp which encroaches into the front setback one foot and into the side setback four feet at 11 Magnolia Avenue, Assessor's Map No. 5, Lot No. 38 in District C, filed with the Town Clerk on May 13, 2024, based on a finding that the location of the proposed tool shed owing to circumstances relating to the shape and topography of the land and the requirement to meet septic system and stream buffer setback requirements, especially affecting such land and structure but not generally affecting the zoning district in which it is located, a literal enforcement of the provisions of the By-Law would involve substantial hardship, financial or otherwise, and 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 following conditions:

- *The tool shed is located as depicted on the Partial Site Plan: New, prepared by Gary Gilbert and included in the Application filed with the Town Clerk on May 13, 2024.*
- *The tool shed is constructed substantially in accordance with the Plan, Elevation, Framing Detail prepared by Gary Gilbert, dated 5.12.24.*

Mr. Scott seconded the motion. The motion passed 5-0.

Ms. Mellish will write the Decision and Mr. Zahn will review.

Administrative Matters

Meeting Minutes for January, February, and March were approved.

Ms. Mellish moved to adjourn the meeting; Mr. Zahn seconded the motion. The motion passed unanimously.