



# MANCHESTER-BY-THE-SEA

## ZONING BOARD OF APPEALS

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

Telephone (978) 526-1410

### MINUTES

#### ZONING BOARD OF APPEALS

#### Virtual On-line Meeting January 19, 2022

**Members Present Online:** Sarah Mellish (Chairperson), John Binieris, James Mitchell, James Diedrich, Brian Sollosy, and Kathryn Howe

**Members Not Present:** Sean Zahn

Ms. Mellish called the meeting to order at 7:12 p.m. and stated the meeting was being recorded for accuracy in minutes.

#### CONTINUED APPLICATION

*Ms. Mellish moved to accept the request of the Applicant to withdraw without prejudice the application of **Timothy McDonald**, for a Variance under Section 7.4.6 of the Zoning By-Law and or other relief as may be necessary to divide one lot into three. All three lots will be larger than the minimum lot size of 22,500 square feet, two of the three lots proposed meet the 150' minimum frontage, the third lot has 139.35' of frontage at **1 Spy Rock Hill Road**, Assessor's Map 140, Lot No. 32 in District A filed with the Town Clerk on November 17, 2021 will be withdrawn without prejudice. Mr. Diedrich seconded the motion. The motion passed unanimously by roll call vote.*

#### NEW APPLICATIONS

Ms. Mellish opened the public hearing for the application of **Eduardo Vivanco** 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 raise the existing nonconforming single family residence, formerly a WWII military tower and barracks, on a nonconforming lot and replace it with a conforming single family residence on a nonconforming lot at **14 Coolidge Point**, Assessor's Map No. 3, Lot No. 11 in District E, filed with the Town Clerk on December 16, 2021.

Letter of support from an abutter, Camilla P. Blackman of 12 Coolidge Point received on January 11, 2022.

Mr. Vivanco stated the home was given to the Navy during World War II and the current structure including the tower is higher than By-Laws allow by 20 feet and close to the lot line. Additionally, the house does not comply with the By-Law setbacks. Mr. Vivanco is proposing razing the house and constructing a house designed to be safer, more beautiful and in compliance with the By-Law. Mr. Mitchell missed the site visit and asked if the new house would comply with setbacks. Ms. Mellish stated the new residence will not encroach in the setback. Mr. Sollosy asked if the structure had any historical significance. Mr. Vivanco stated he was familiar with the history of the structure, and it was part of Boston Harbor fire security system and used to triangulate locations of fire. Mr. Mellish stated the tower is not aesthetically pleasing and asked if the anyone in the public would like to speak.

Jeff and Cindy Burbank, 35 Coolidge Point – Mr. Burbank stated he supports the tower coming down and being replaced by a beautiful home.

*Ms. Mellish moved to close the public hearing and approve the application of Eduardo Vivanco 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 raze the existing nonconforming single family residence and WWII military tower on a nonconforming lot and replace it with a single family residence which conforms with all setback requirements and height restrictions at 14 Coolidge Point, Assessor's Map No. 3, Lot No. 11 in District E, filed with the Town Clerk on December 16, 2021, based on a finding the proposed project is in harmony with the purpose and intent of the By-Law, will not be more detrimental or injurious to the neighborhood than the existing nonconforming structure and all requirements and conditions under Section 7.5.2 of the Zoning By-Law for the grant of a Special Permit have been met, based on the condition that the construction of the residential structure proceeds in accordance with the following plans/drawings designed by Eduardo Vivanco, dated December, 2021:*

*Plans and Elevations: D1 Site Plan Proposed New Residence, D2 Elevations Proposed New Residence Mr. Mitchell seconded the motion.*

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

Ms. Mellish opened the public hearing for the application of **Thomas & Nancy Laughlin and Ann Marie Gavin** for a Special Permit under Sections 4.6.2, 6.1.2 and 7.5.2 of the Zoning By-Law and or other relief as may be necessary to construct an Accessory Dwelling Unit at **11 Lincoln Avenue**, Assessor's Map No. 41, Lot No. 79 in District B, filed with the Town Clerk on December 15, 2021. The Applicants are the buyers of the property and have submitted the Application with the assent, on December 18, 2021, of the property owner, Carmin Azzarano, Manager, McDonough Mountain, LLC.

Ms. Laughlin stated there are three people buying the home she and her husband and her sister. Ms. Laughlin described the property as a large house on 1.3 acres. They are proposing renovating the bottom floor to create a separate living area with no change to the footprint of the house. She believes the proposed changes will enhance the property. Ms. Mellish stated at the site visit it was determined there was adequate parking for four cars and asked Ms. Laughlin to

outline the proposed changes. Ms. Laughlin stated plans called for reconfiguring siding on the front to allow for additional light in the house and there would be changes to the entrance. Mr. Sollosy, Mr. Diedrich, Mr. Mitchell, Mr. Binieris and Mr. Howe had no additional questions and were good.

### Public Comment

Ms. Stock, 17 Lincoln Avenue – stated she was surprised to receive the ZBA letter indicating Lincoln Avenue is a small street and is getting smaller with cars and traffic increasing and stated the parking at the top of the driveway was only adequate for three cars. Ms. Stock also expressed concern for the property if the new owners moved out and the house became an Airbnb. Ms. Mellish stated the request if for an ADU and the owner needs to be on site. Ms. Mellish noted the property meets all the requirements for an ADU, the lot size is twice the required lot size for the District and will be owner occupied. The new owners are investing a lot to live there, and it will be a home for the three owners of the property. Ms. Mellish added the Board had heard Ms. Stock's concerns.

Maureen McCarthy, owner of 90 School Street – Ms. McCarthy stated the change is not detrimental and supports multiple family homes and changes in the By-Laws to allow for more multiple family homes in Town. Ms. Mellish clarified that this is not a two-family home it is an ADU that complies with the By-Law.

Christine Delisio, 6 Lincoln Avenue – Ms. Delisio asked if the ZBA was keeping a running list of ADU's approved noting all ADU's require a Special Permit. Ms. Mellish replied the ZBA was not responsible for enforcement and that is the role of the Building Inspector. Ms. Delisio added she was concerned about traffic stating it was not fair for the residents. Ms. Mellish stated the cars will be parked at the top of the driveway and there is turn around space. Ms. Delisio stated there is no place for visitors to park and parking was not clearly delineated on the plans. Ms. Mellish stated there is ample parking available and pictures were included with the application.

Ruth Sones, 14 Lincoln Avenue – Ms. Sones was concerned the property was being sold and there was no way to supervise an in-law apartment and does not understand why it was being allowed. Ms. Mellish stated the ZBA grants Special Permits in accordance with the Zoning By-Laws, and it is the obligation of the Board is to follow the By-Law. Ms. Howe added the ZBA is not a policing authority if there is a complaint around a permit that goes to the Building Inspector.

Peter Kinch, 15 Lincoln Avenue – Mr. Kinch asked if there was a setback requirement for parking. Ms. Mellish stated there is no setback requirement, however, the proposed parking on the property is 5 feet from the property line.

Matt Gibbs, 9 Lincoln Avenue – Mr. Gibbs stated he had spoken with the new owners and a house this size could easily support a family of six with multiple cars. The new owners have the best intentions and will take into consideration the neighbors. He supports the application.

### Board Comment

Mr. Binieris agreed with Mr. Gibbs that a single-family home with teenage kids going in and out would be a bigger issue around traffic, cars, and parking. He supports the application stating there is plenty of parking. Mr. Mitchell stated concerns have been adequately expressed and supports the application. Ms. Howe stated she appreciates the neighbors concern and requested additional detail and a defined parking plan.

Mr. Diedrich stated the applicants meet the requirements of the Zoning By-Law and there are limited structures in Town available for ADU's. Mr. Diedrich added he had driven up the driveway during the site visit and left at the end of the visit and there was no problem going up, turning around, and coming back down the driveway.

Ms. Mellish stated a member of the Board has requested additional information on parking and asked if the applicant would like a continuation to provide more information. Ms. Laughlin stated the plan was to close next week but she would be happy to provide a parking plan from the architect. Ms. Mellish stated the Board will vote and requested Ms. Laughlin provide a parking plan within the week as a condition of the vote.

*Ms. Mellish moved to close the public hearing and approve the application of Thomas & Nancy Laughlin and Ann Marie Gavin ("Buyers") with assent of Carmin Azzarano, Manager, McDonough Mountain, LLC ("Seller") for a Special Permit under Sections 4.6.2, 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to construct an Accessory Dwelling Unit within the footprint of the existing residential structure on the lower level at 11 Lincoln Avenue, Assessor's Map No. 41, Lot No. 79 in District B, filed with the Town Clerk on December 15, 2021, based on a finding the proposed Accessory Dwelling Unit is in harmony with the purpose and intent of the By-Law, will not be more detrimental or injurious to the neighborhood than the existing dwelling unit and all requirements and conditions under Sections 4.6.2 and 7.5.2 of the Zoning By-Law for the grant of a Special Permit have been met, based on the condition that the Accessory Dwelling Unit is constructed within the footprint of the existing structure on the lower level, does not exceed 35% of the combined gross area of the principal and accessory dwelling unit, an owner of the property shall occupy either the principal dwelling or the accessory dwelling unit and the Accessory Dwelling Unit shall be constructed in a manner similar to SK-1 proposed apartment floor plan, with the understanding the actual floor plan may be adjusted to meet engineering or design needs, with the additional condition that the Applicant submit an architect's drawing depicting the required four parking space. Ms. Howe seconded the motion.*

Mr. Binieris will write the Decision and Mr. Sollosy will review.

Ms. Mellish opened the public hearing for the application of **Matthew and Pamela Gibbs** for a Special Permit under Sections 4.1.9, 6.1.2 and 7.5.2 of the Zoning By-Law and or other relief as may be necessary to create family living quarters for a live-in caretaker, an employee of the property owner, for their disabled daughter to be located in the existing residence above the garage and partially above existing living space at **9 Lincoln Avenue**, Assessor's Map No. 41, Lot No. 77 in District B, filed with the Town Clerk on December 20, 2021.

Ms. Mellish stated this application is not an ADU and lot size is not a factor. She added the application could be considered as a reasonable accommodation under the Fair Housing Act, or it could be considered under 4.1.9 of the By-Law Ms. Mellish added in fall of 2020 ZBA approved plans for the family and their 10-year-old special needs daughter allowing the home to be built to accommodate her needs. Mr. Gibbs stated he and his wife are in their fifties and would like to have someone to live with us as a full-time care giver to support the long-term needs of their daughter. They indicated appropriate residential placements are not available for a person with their daughter's needs. It is their intent to address the unique challenges they face and have had the help of Brian Stein in developing the plan for their home to make the accommodations needed.

Ms. Mellish asked if the Board had any questions. Ms. Sollosy stated he was satisfied that either the Fair Housing Act or the live-in caretaker provision of the Zoning By-Law provided for the exception. Mr. Binieris stated he was good with the application and anticipated the request when the house was completed. Mr. Mitchell agreed with Mr. Binieris and Mr. Sollosy stating the proposed plan is reasonable and compassionate. Ms. Howe stated she supports the plan under the By-Law.

#### Public Comment

Sheila Doherty, 7 Lincoln Avenue – Ms. Doherty stated she is the neighbor most impacted by the proposed egress for the new unit as she lives close to the proposed entrance and exit for the caregiver. Her living area is adjacent to the exit and entrance, and it is right below a bedroom. She is supportive of the proposal if the entrance and exit is used for emergencies only. Ms. Doherty also asked if the Special Permit was deed restricted for the proposed purpose only, the Special Permit does not tie into the properties deed.

Mr. Gibbs stated the caregiver will be there to provide for the needs of his daughter and most often will come and go through the front door. However, when that person is not working, they will likely use the direct entrance to their living space.

Ms. Doherty stated the proposed entrance and exit impacts her privacy and she is asking for some consideration.

Mr. Mitchell stated the building code requires two means of egress. Mr. Stein supported Mr. Mitchell's statement adding there needs to be an egress to the outside. Mr. Binieris stated he has no issue with the side door and suggested landscaping. Mr. Gibbs added he planned for green scaping.

Ms. Mellish stated she would consider the application under Section 4.1.9 of the By-Law which would limit its use to an employee of the property owner residing on the premises.

*Ms. Mellish moved to close the public hearing and approve the application of Matthew and Pamela Gibbs for a Special Permit under Sections 4.1.9, 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to provide family living quarters for a live-in caretaker for their disabled daughter at 9 Lincoln Avenue, Assessor's Map No. 41, Lot No. 77 in District B,*

*filed with the Town Clerk on December 20, 2021, based on a finding the proposed project is in harmony with the purpose and intent of the By-Law, will not be more detrimental or injurious to the neighborhood than the existing dwelling unit and all requirements and conditions under Section 7.5.2 of the Zoning By-Law for the grant of a Special Permit have been met, based on the condition that the family living quarters are for an employee of the property owner who resides on the property. Mr. Binieris seconded the motion. The motion passed unanimously by roll call vote.*

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

## CONTINUED APPLICATIONS

Ms. Mellish opened the continued public hearing on the application of **Mike Cronin** for a Special Permit under Sections 4.1.10(f), 6.1.2 and 7.5.2 of the Zoning By-Law and or other relief as may be necessary to replace an existing sports court with a larger 41' x 63' sport court with a sport court surface tile at **151 Bridge Street**, Assessor's Map No. 26, Lot No. 33 in District C, filed with the Town Clerk on July 15, 2021.

Ms. Mellish stated Mr. Cronin had provided a survey and the new court will be conforming with all setbacks. Mr. Cronin will remove all asphalt and put in stone dust beneath the new tiles. The final size of the court will be 41' x 63' with basketball hoops. Additionally, he will add hedges to block the view and noise and limit hours of operation from 9:00 a.m. to 8:00 p.m. The court is to be used by Mr. Cronin's son and friends only. Mr. Mitchell confirmed that Mr. Cronin will meet the proposed conditions. The Board agreed with the proposal.

Ms. Kathleen Heyer, attorney for Mr. and Mrs. Beauvais at 153 Bridge Street stated she had received and reviewed the planned court and is concerned the clinics will continue. The basketball court has a serious impact on her clients and their life. It is detrimental to the neighborhood and impacts not only close neighbors but nearby neighbors as well.

Ms. Cronin stated he is happy to answer any questions of the Board and he will comply with provisions of the Board. There will be no clinics held on the court.

Mr. Beauvais, 153 Bridge Street – Mr. Beauvais stated he and his wife are retired senior citizens and the Cronin's basketball court is located close to their bedroom and by their back yard deck. The loud noises from the basketballs hitting the court and raised voices is the reason for opposition to the court in the neighborhood. Mr. Cronin slowly increased the use of the court, and it has been advertised on Facebook and is referred to as "Cronin's Court". It appears that Mr. Cronin has disregarded all guidelines set by the ZBA. The court is now three times the size originally approved by the ZBA. When I look out, I see training equipment and a professional set up. Mr. Beauvais would like the court to be the original 1,334 square feet with an 8-foot fence and landscaping. Mr. Beauvais indicated there is more room on the opposite side of the Cronin property and suggested moving the court.

Ms. Beauvais, 153 Bridge Street – Ms. Beauvais assured the Board that the court was more like a Town Court and clinics were being held at the court. She indicated children were dropped off

and she could hear instructions given to children. She and her husband reached out to Mike and asked if he had a building permit for the changes he was making to the court. There was no building permit. She stated the expansion of the court has impacted my life. I would like my home to be a peaceful retreat where I can sit on my deck and read. I believe I am entitled to that. A large basketball court with multiple hoops is not part of that life.

### Board Comment

Mr. Mitchell stated he heard the impassioned plea from the neighbors about the use and size of the court which sounds like a commercial venture. He suggested other alternatives to expansion and is inclined to reject the application and ask that the original conditions be restored in light of the neighbor's concerns.

Mr. Binieris stated he could not support any commercial use of the court and is concerned that if the court was expanded that would happen. He would approve the court as it was approved in 2012. Mr. Sollosy agreed with Mr. Binieris stating the court expansion would be more injurious to the neighborhood. Ms. Howe is struggling with the court as proposed and suggested better restrictions and planting of shrubs and additional greenery. She is concerned for the abutters and that the court maybe an ongoing problem.

Mr. Cronin asked if the standard was more injurious than why was the court originally permitted and how could a larger court be more injurious. Ms. Mellish stated the success of the application maybe in doubt adding four of five members need to be in favor and that seems to be in doubt. Ms. Mellish asked if Mr. Cronin would like to withdraw without prejudice or continue and rethink location.

Mr. Cronin was not interested in withdrawing or considering a different location. He agreed to comply with all conditions and to no commercial use.

*Ms. Mellish moved to approve the application of Mike Cronin for a Special Permit under Sections 4.1.10(f), 6.1.2 and 7.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to replace an existing sports court with a larger court measuring 41' x 63' and install a new sport court surface tile at 151 Bridge Street, Assessor's Map No. 26, Lot No. 33 in District C, filed with the Town Clerk on July 15, 2021, based on a finding the larger sport court is in harmony with the purpose and intent of the By-Law, will not be more detrimental or injurious to the neighborhood than the existing sports court and all requirements and conditions under Section 7.5.2 of the Zoning By-Law for the grant of a Special Permit have been met, based on the condition that the sport court is located in accordance with the Plan of Land prepared by Jarosz Land Surveying, dated 12-7-2021 and the enlarged Worksheet Scale 1"=8' subject to the following conditions:*

- *All existing asphalt shall be removed and replaced with a stone dust base*
- *The sports court shall be relocated to avoid encroachment into the setbacks*
- *The sports court shall have a surface of Sport Court Outdoor Sport Game PB over a stone dust surface*
- *No stone dust shall exist outside of the court perimeter*
- *No lights are allowed*

- *Any basketball hoops, their bases, and any posts for nets shall be within the perimeter of the 41' x 63' sports court*
- *Hours of operation shall be limited to between 9:00 am to 8:00 pm*
- *The sports court shall be for recreational use only and no clinics shall be held (either paid or unpaid)*
- *An eight (8) foot high evergreen hedge shall be placed along the two sides abutting neighbors to screen the view and muffle the noise.*

*Mr. Mitchell seconded the motion. The motion passed with Mr. Sollosy, Mr. Binieris, Ms. Howe, and Ms. Mellish voting yes. Mr. Mitchell voted no.*

Mr. Sollosy will write the Decision and Ms. Howe will review.

Ms. Mellish opened the continued public hearing on **34 Tappan, LLC, Todd Waller, Manager**, 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 for the renovation to an existing 2 ½ story storage building to 4 residential units and renovation of an existing 1 ½ story garage for a 4-car garage at **34 Tappan Street**, Assessor's Map No. 15, Lot No. 04 in District A filed with the Town Clerk on September 29, 2021.

Ms. Mellish stated the last meeting on this application ended with the Chair seeking advice of Town Counsel on the request to change a non-conforming use to a different non-conforming use. She has had that conversation and changing one non-conforming use to another non-conforming use is not a provision in the Town's By-Law. According to section 7.4.6 of the By-Law the Zoning Board of Appeals cannot approve a new non-conforming use as that change would require a variance and the ZBA is not authorized to approve a use variance.

Ms. Howe stated she concurred about the Board not being allowed to approve a use variance and pointed out zoning recodification is coming, and it may be wise for the applicant to withdraw without prejudice and reapply if new zoning allows for multi-family dwellings. Ms. Mellish stated Towns with Commuter Rail stations may need to comply with State regulations by the end of the year to continue to receive State funding and the application might be allowed in the future.

Mr. Vetere, Attorney representing landowners on Sea Street agreed that the By-Law interpretation around single family use is current and a new use must conform with the current Zoning By-Law.

Mr. Diedrich stated he believes the proposed project would be an asset to the Town. Unfortunately, he agrees with Ms. Mellish and Town Counsel that the Board does not have the authority under the Zoning By-Law to approve it. He supports withdrawing without prejudice and suggests the State might permit the project with the Commuter Rail changes coming.



Adam Zaiger, 21 Union Street – Mr. Zaiger disagrees with Ms. Mellish and Town Counsel and believes a pre-existing non-conforming use can be changed to a different non-conforming use suggesting the issue is not clear in the By-Law and has been overturned in Appellate Court.

Mr. Lake, Attorney for the applicant disagrees, however requested the application be withdrawn without prejudice.

*Ms. Mellish moved to close the public hearing and to approve the Applicant's request to Withdraw without Prejudice the application of 34 Tappan LLC 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 renovate the existing 2 ½ story nonconforming storage building into four residential units and an existing 1 ½ story nonconforming garage into a four car garage, resulting in a change of use from moving and storage to multi-family residential at 34 Tappan Street, Assessor's Map No. 15, Lot No. in the District A, filed with the Town Clerk on September 29, 2021, Mr. Mitchell seconded the motion. The motion passed with Mr. Mitchell, Mr. Diedrich, Mr. Binieris, Ms. Howe, and Ms. Mellish voting yes and Mr. Sollosy voted no.*

#### **ADMINISTRATIVE MATTERS**

- Review and approval of meeting minutes – minutes will be approved at the next meeting.
- Status of Decisions – Decisions are current.
- Any other administrative matters that could not reasonably have been anticipated in advance of the required 49-hour posting.

Ms. Mellish stated she is working on the Zoning Board of Appeals report for Town Meeting and noted the Board had 64% more applications in 2021 than in 2020 with an additional 40+ applications continued. Ms. Mellish reminded the Board there was a scheduled 40B meeting next week with an environmental deadline for the Environmental report on January 17, 2022.

*Ms. Mellish moved to adjourn the meeting; Mr. Mitchell seconded the motion. The motion passed unanimously by roll call vote.*