



# MANCHESTER-BY-THE-SEA

## ZONING BOARD OF APPEALS

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

Telephone (978) 526-6405

### MINUTES

#### ZONING BOARD OF APPEALS

#### Hybrid Meeting May 17, 2023

**Members Present:** Sarah Mellish (Chair), Kathryn Howe, Brian Sollosy, Jim Diedrich, and James Mitchell

**Members Not Present:** John Binieris and Sean Zahn

Ms. Mellish called the meeting to order at 7:03 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 Board members present.

#### New Applications

Ms. Mellish opened the Public Hearing for the Application of **Ellen Smith** for a Special Permit under Sections 4.2.E5, 2.0 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, for the installation of a 15' x 30' gunite swimming pool with an automatic pool cover and fence at 13 Ancient County Way, Assessor's Map 13, Lot No. 11 in District A, filed with the Town Clerk on March 28, 2023.

Mr. Oakes, owner of Bay Rock Pools spoke to the application. He stated that the current coverage on the lot is 3,600 square feet and the pool would add 580 square feet for a total lot coverage of 10.5%. Mr. Oakes clarified for the Board that the property included two lots for a total lot size of 39,560 square feet. The pool will be within all setbacks, enclosed with a 4-foot fence and locking gate, all lighting will be low voltage LED lighting within the pool.

Mr. Sollosy asked for clarification of the area around the pool within the fence. Mr. Oakes stated that would be grass up to the edge of the pool. Mr. Mitchell asked if there was a diving board, there will be no diving board. Ms. Mellish asked if there were questions from the Public there were no questions from the Public regarding the application.

*Ms. Mellish moved to close the Public Hearing and approve the application of **Ellen Smith** for a Special Permit under Sections 4.2.E5, 2.0 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to install a 15' x 30' gunite swimming pool with an automatic cover, a 4' high fence with locking gates, and low voltage LED lights within the pool at 13 Ancient County*

*Way, Assessor's Map No. 13, Lot No. 11 in District A, filed with the Town Clerk on March 28, 2023, based on a finding the proposed pool is in harmony with the purpose and intent of the By-Law, will not be more detrimental or injurious to the neighborhood in which it is located and all requirements and 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 pool is located as depicted on the Site Plan prepared by EPS Associates, LLC, dated April 28, 2023.*
- *The proposed 4' fence is located as hand drawn on the Site Plan prepared by EPS Associates, LLC, dated April 28, 2023, and it conforms with the specifications of the Manchester Zoning By-Law and the Massachusetts Building Code.*
- *All lighting shall be low voltage LED contained within the pool walls.*

*Mr. Mitchell seconded the motion. The motion passed unanimously.  
Mr. Diedrich will write the Decision, Ms. Sollosy will review.*

Ms. Mellish opened the Public Hearing for the Application of **Todd Paratore, TJP Design Group LLC** on behalf of **Susan King** for a Special Permit under Sections 5.4, 7.2 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, for the reconstruction of a detached garage to connect it to the house such that it maintains the footprint on the north side and increases encroachment into the setback on the east and south sides at **4 North Street**, Assessor's Map No. 51, Lot No. 21 in District D, filed with the Town Clerk on March 28, 2023.

Mr. Paratore was online and stated that the objective of the project was to rebuild and replace the garage on a nonconforming lot. The proposal in the submitted drawing depicts moving the building forward and maintaining the rear setback while connecting the garage which is currently separated by 19 inches from the mudroom.

Ms. Mellish stated that a variance may be required because the proposal is increasing the nonconformity on the east and south side by encroaching further into the setback; while an attached garage is part of the primary structure, the setbacks are different than those for an accessory structure. The side setback in District D is 10' for primary structure and 5' for an accessory structure. Ms. Mellish noted that the existing detached garage complies, while the new larger garage complies if detached but does not comply if attached. The rear setback in District D is 10' for a primary structure and 5' for a detached accessory structure, neither existing garage nor the proposed attached garage comply.

Ms. Mellish added that possible options for a Special Permit would be to not attach the garage or change the angle, so the right side aligns more with the lot line, and the front corner is 5' from the lot line and move the garage forward a few inches to maintain the existing rear setback. Concluding, otherwise the applicant will need to apply for a Variance and prove a hardship.

The Board agreed with Ms. Mellish's assessment and recommended that Mr. Paratore apply for a Variance. Mr. Diedrich noted the applicant needs to apply for a Variance. He added that he had spoken with the homeowner and given the age of the house and size of lots in the neighborhood with the submission of accurate documentation of the project a Variance could be granted. Ms. Mellish added that the applicant would need to demonstrate function and hardship in the

application for a Variance. Ms. Mellish read from the Zoning By-Law the section related to the application requirements for meeting the standards of a Variance application.

Ms. Mellish asked if any member of the public wished to speak. Ms. Gates, 2 Desmond Ave. spoke, noting that prior to anyone building on the lot the boundaries needed to be more correctly defined. She stated that the property has had issues from when it was first built on in 1984 when sold by her mother-in-law. Ms. Mellish suggested that the concerns Ms. Gates was speaking to needed to be addressed in land court not in a ZBA hearing.

Mr. Paratore stated that the property had been surveyed in February 2023 by Mr. J. Giroux, a licensed surveyor and the deed was registered.

Ms. Gates continued to speak. Ms. Mellish reiterated that the issue Ms. Gates was raising is outside the bounds of the ZBA and she needed to address her concerns in land court.

*At the request of the Applicant Ms. Mellish moved to continue the Public Hearing to June 21, 2023 at 7:00 pm, and extend the time for writing the decision to September 21, 2023, for the Application of **Todd Paratore, TJP Design Group, LLC** on behalf of Susan King for the reconstruction of a detached garage to connect to the house such that it maintains the footprint on the north side and increases encroachment into the setback on the east and south sides at **4 North Street**, Assessor's Map No. 51, Lot No. 21 in District D, filed with the Town Clerk on March 28, 2023. Mr. Diedrich seconded the motion the motion passed unanimously.*

Ms. Mellish concluded that the applicant needed to apply for a variance and discuss the property line issue with opposing attorney. Mr. Paratore agreed. Ms. Howe suggested Mr. Paratore review the guidelines for variances to confirm he was within the guidelines in his application. Ms. King signed the request for a continuance.

### **Administrative Matters**

- **Review and approval of meeting minutes**

*Mr. Diedrich moved to approve the meeting minutes for April 19, 2023, Mr. Mitchell seconded the motion. The motion passed with Ms. Mellish, Mr. Mitchell, Mr. Sollosy, and Mr. Diedrich voting affirmatively, Ms. Howe abstained.*

*Mr. Diedrich moved to correct the meeting minutes for March 15, 2023, Mr. Mitchell seconded the motion. The motion passed with Ms. Mellish, Mr. Mitchell, Mr. Sollosy, Mr. Diedrich, and Ms. Howe voting affirmatively.*

- **Status of Decisions**

Decisions are current.

- **Update on Decisions Appealed**

- 1 Dexter Lane – The appeal has been withdrawn and Town Counsel informed Ms. Mellish that the Special Permit will be allowed to lapse in two years.
- 2 Blossom Lane – An additional appeal has been filed it is 136 pages and will be reviewed by the Board at a later date.
- 40B – HAC has not yet decided on allowing additional parties to intervene. The original decision from HAC was anticipated in January 2023.
- **14 Coolidge Point –**  
The Decision filed stated that the Permit would expire in one year. The Special Permit By-Law allows for two years. The Board will discussed a modification to the Decision.

*Ms. Mellish moved to modify the Special Permit granted on April 11, 2022 under Sections 6.1.2 and 7.5.2 of the Zoning By-Law to raze 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 at 14 Coolidge Point, Assessor's Map No. 3, Lot No. 11 in District E, filed with the Town Clerk on December 16, 2021, to allow the Special Permit to lapse on April 11, 2024 (the second anniversary of date on which the Decision was filed with the Town Clerk) unless construction has commenced, based on a finding the intention of the Board was to allow the usual two year period and the Decision was inadvertently drafted to allow only one year. Mr. Diedrich seconded the motion. The motion passed unanimously.*

- Ms. Mellish informed the Board that after some research regarding fees with adjacent communities she is recommending an increase to \$500 for both Special Permits and Variances. It was noted there has been no increase in fees in 15 years and during that time ZBA assumed the cost of filing fees with the Registry resulting in a decrease in the fee for the Town from applicants.
- The ZBA application is being revised to reflect numbering changes in the Zoning By-Law. The State has extended the time for approval of Special Permits from two years to three years. The Town By-Law has not yet been updated to reflect the additional year.
- Mr. Gates recommended that ZBA applications should be on the Town website. Ms. Mellish agreed stating that applications and decisions for the ZBA has been recommended to be on the Town website and is under consideration.
- The Board discussed that 3 Board members terms were expiring. Mr. Mitchell, Mr. Diedrich and Mr. Sollosy. Mr. Diedrich will remain on the Board, Mr. Sollosy requested to move to an alternate position and Mr. Mitchell will be leaving the Board. There is one application to fill Mr. Mitchell's vacant position.
- **Any other administrative matters that could not reasonably be anticipated in advance of the required 48-hour posting.**

*Mr. Diedrich moved to adjourn the meeting; Ms. Howe seconded the motion. The motion passed unanimously.*

