



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 21, 2023

Members Present: Sarah Mellish (Chair), Kathryn Howe, John Binieris, Brian Sollosy, James Mitchell, Jim Diedrich, and Sean Zahn

Members Not Present: All members present.

Ms. Mellish called the meeting to order at 7:01 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 **Todd Paratore, TJP Design Group LLC** on behalf of **Susan King** for a Variance under Sections 12.4.6 and 12.5.2 of the Zoning By-Law and to open the continued public hearing 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 replacement of an existing detached garage and build a new attached garage such that the new garage will be moved south by 4' to increase the distance from the rear lot line to 1' and west 4' to increase the distance to the side setback to 5' 4", thereby increasing the footprint by 1' 6" in width and 3' 6" in length at **4 North Street**, Assessor's Map No. 51, Lot No. 21 in District D, the application for a variance was filed with the Town Clerk on May 24, 2023 and the application for a special permit was filed with the Town Clerk on March 28, 202

Mr. Paratore stated that he had moved the garage forward and attached the proposed garage to the house; that move slightly increased the encroachment into the rear setback by less than a foot. Additionally, his application for hardship mentions lot size limitations and the age of the homeowner and her request to access the garage directly from the house. Mr. Paratore indicated the current garage is in disrepair and does not accommodate a full-size car. He added that the application for a variance moved the garage forward and slightly to the left allowing for direct access into the house. Ms. Mellish confirmed that the only way to have direct access to the house was to connect the garage.

Ms. Mellish asked if any member of the public wished to be heard.

Mr. Gates, 2 Desmond Ave. stated that he disputed the survey as presented, adding it was incomprehensible to him that this was allowable. Ms. Mellish stated that she had reviewed an ANR filing at the Registry of Deeds from 1976 and the measurements from the current survey matched the measurements on file with the Registry exactly. She suggested that if Mr. Gates wants to dispute this matter further he will need to do that in Land Court his questions cannot be addressed during the current ZBA hearing.

Ms. Gates, 2 Desmond Ave. added her understanding of the current situation stating that she had records that show the land is not as represented on the survey. Ms. Howe stated that she understands the issues are frustrating, but the ZBA does not have the power to change what is on file with the Registry.

*Ms. Mellish moved to close Public Hearing and approve the Application of **Todd Paratore, TJP Design Group, LLC** on behalf of Susan King for a Variance to replace the existing detached garage with an attached garage based on the determination that a Variance is required, not a Special Permit, since setback requirements are greater for an attached garage than those for the existing detached garage, based on the finding that owing to circumstances related to the shape of the lot especially affecting such land but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the By-Law would involve substantial hardship by not allowing a garage large enough to house a vehicle and with insufficient space to allow an exterior door egress from the garage it would involve substantial hardship if the garage is not directly attached to the existing mudroom for direct egress from the garage into the mudroom at **4 North Street**, Assessor's Map No. 51, Lot No. 21 in District D, filed with the Town Clerk on May 24, 2023, based on the following conditions:*

- *The new garage footprint will be moved four feet south to increase the distance to the rear lot from .93 feet line to one foot.*
- *The new garage footprint will be moved four feet west to decrease the distance from the side setback from 6.84 feet to 5.25 feet.*
- *The footprint of the garage may increase 1.5 feet in width and 3.5 feet in length for an overall dimension of 15' 6" x 23' sufficient to accommodate a single vehicle.*
- *The proposed garage shall be located as depicted on the Proposed Site Plan provided by Jay Jorosz dated 5-19-23.*
- *The proposed garage shall be constructed substantially as depicted on the plans prepared by TJP Design Group, LLC, dated 5-19-23: A110 Proposed Floor Plan, A210 Proposed South Elevation, and A220 Proposed East, North and West Elevations.*

Mr. Mitchell seconded the motion. The motion passed unanimously.

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

Ms. Mellish opened the public hearing for the Application of **Brian Stein, BDS Design Inc.** on behalf of **Joseph & Elyse Campanelli** for a Special Permit under Sections 10.1, 12.5 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to raise the existing nonconforming structure in the flood zone 1', add additional levels for additional living space and adjusting the footprint which will result in it encroaching an additional .1' into the west side setback and adding a deck which will encroach an additional .4' into the setback at **4 Butlers**

Avenue, Assessor's Map No. 1, Lot No. 33 in District B, filed with the Town Clerk on May 15, 2023.

Brian Stein, BDS Design, introduced the project stating the house is an existing non-conforming house in the flood zone. The original garage was converted into living space. The house is a split level with a level above the garage. The objective of the project is to raise the living space to a flood zone elevation of 14, convert the garage back into a garage and add a level to the existing house. The garage and mechanic room (crawl space) is one level with an entry level a half level above the garage the upper levels are living space, a primary suite and two additional bedrooms. The proposed house will be 2,500 sq. ft. with a deck off the back and stairs down to access the backyard. The existing non-conformity is on the north side of the house where the house is twisted off the property line and into the setback.

The proposed design is adding a level on each portion of the house increasing the roof line by 15.5 feet on the left side and 11 feet on the street side. All elevations were shown on the screen in the meeting room.

Mr. Stein stated that the abutter at 6 Butler Ave. was concerned about shadows cast over their property. Mr. Stein stated that in the winter there was a more significant impact but in the summer the shadows cast were significantly less.

Ms. Mellish asked why Mr. Stein was proposing going up instead of back given the size of the lot. Mr. Stein stated that going back would encroach into the 50' no build buffer for wetlands and the septic in the back. Ms. Mellish also asked that Mr. Stein speak to how this qualifies for 2.5 stories and not 3 stories. Mr. Stein stated that given the structure is under the height restriction even with dormers it is not 3 stories. Ms. Mellish asked if the walls in the garage were 4' below the level, Mr. Stein replied they are not. Ms. Mellish also asked if the wall on the third floor were 4' high, Mr. Stein replied at some parts they are 4' high. Ms. Mellish concluded that the house looks like three stories.

Mr. Stein stated that the objective was to take the entire footprint of the home into consideration and the calculation is a percentage of the footprint over the entire home. Ms. Mellish reiterated that the home cannot exceed 2.5 stories as defined in the By-Law. Ms. Howe read the definition of a house story from the By-Law. Ms. Mellish indicated that the Board would require additional information and specifically requested the definition of a half story and how it applies, along with calculations for all proposed sections of the proposed house.

Mr. Stein agreed to get that information for the Board.

Mr. Mitchell complimented Brian on his shadow study completed at the request of the neighbor. Mr. Mitchell stated that the additional shadows will likely not have a significant impact.

Ms. Mellish asked if any member of the public wished to be heard on this Application?

Mr. and Ms. Acari, 6 Butler Ave. Mr. Acari expressed concern about shadows being cast over their primary living space. Ms. Acari mentioned the health of their plants and light being eliminated from their kitchen and dining areas, both area where they spend significant time.

Philip Keating, 1 Butler Ave. Mr. Keating suggested that the shadow modeling be done with the addition of trees noting that trees also cast shadows.

John O'Hara, 9 Butler Ave. agreed with Mr. Keating adding that the proposed house will improve the neighborhood.

Josh Kaplan, 17 Butler Ave. stated that the construction of the new home will increase the value of everyone's property on Butler Ave.

*At the request of the Applicant Ms. Mellish moved to continue the Special Hearing to July 19, 2023 at 7:00 pm and extend the period for writing the decision to October 19, 2023 for the Application of **Brian Stein, BDS Design, Inc** on behalf of **Joseph & Elyse Campanelli** for a Special Permit under Sections 7.2, 12.5 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to raise the existing nonconforming structure in the flood zone 1', add additional levels for additional living space and adjust the footprint resulting in a slightly greater encroachment into the side setback at **4 Butler Avenue**, Assessor's Map No.1, Lot No. 33 in District B, filed with the Town Clerk on May 15, 2023. Mr. Mitchell seconded the motion, the motion passed unanimously.*

Ms. Mellish opened the public hearing for the Application of **Brian Stein, BDS Design Inc.** on behalf of **Nicole & Christopher Day** for a Special Permit under Sections 4.2E5, 2.0 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to install a 10' x 15' Soake prefabricated pool, raised a couple of feet above grade with a locking cover and fence installed between the driveway and patio and along the property line at **117 School Street**, Assessor's Map No. 40, Lot No. 2 in District A, filed with the Town Clerk on May 15, 2023.

Mr. Stein introduced the project at 117 School Street which has a driveway along the side of the house and parking under the house. Mr. and Ms. Day went before the Planning Board for a drainage system earlier this year. The driveway will be made wider with pervious pavers. The proposed Soake pool is 8' x 14' and 5 feet deep. The pool will sit 2' above grade. The pool comes with interior lighting. The pool equipment will be stored behind the proposed Pool/Barn.

Ulrich Landscape representative stated there are downward facing half lights proposed for the pathways and patios. There is a fence surrounding the full area of the back yard and a pool cover. The new fencing will connect with existing fence.

Does any member of the public wish to be heard on this Application?

Ms. Gates, 2 Desmond Ave. asked if Mr. Day was related to the Day family from Manchester. Mr. Day stated that he was not related to that family.

Ms. Mellish moved to close the Public Hearing and approve the application of **Brian Stein, BDS Design, Inc.** on behalf of **Nicole & Christopher Day** for a Special Permit under Sections 4.2E5, 2.0 and 12.5.2 of the Zoning By-Law, and/or other relief as may be necessary, to install a Soake prefabricated pool, approximately 10' x 15', raised a couple of feet above grade with a locking cover, one LED light within the pool, a pervious patio and fence between the driveway and patio and along the property line at **117 School Street**, Assessor's Map No. 40, Lot No. 2 in District A, filed with the Town Clerk on May 15, 2023, based on a finding that the proposed use is in harmony with the purpose and intent of the By-Law, the proposed pool will not be more detrimental or injurious to the neighborhood in which it is located and the 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 and patio are located as depicted on the Plan of Land prepared by Jarosz Land Surveying dated 5.10.23.
- The landscaping installed is substantially consistent with the Landscape Plan L1 Option A prepared by Ulrich Landscape and any lighting will be low voltage LED lights, including one inside the pool.
- A fence, as depicted on Landscape Plan L1 Option A prepared by Ulrich Landscape, is installed between the driveway and the patio which connects to the existing fences along the property line to conform with the Manchester-by-the-Sea Zoning By-Law and Massachusetts Building Code.
- The pool contains a locking cover.
- Total coverage by structures and impervious surfaces shall not exceed 30%.

Mr. Binieris seconded the motion. The motion passed unanimously. Ms. Mellish will write the Decision and Ms. Howe will review.

Administrative Matters

Review and approval of meeting minutes

The Board indicated that they had not reviewed the meeting minutes. The meeting minutes for May 17, 2023 were held for the June meeting.

Status of Decisions

Decisions are current.

Update on Decisions Appealed

Dexter Lane Appeal 6-21-2023

At the request of Natasha Winter of Dain Torpy Law Firm on behalf of T. Philip and Cynthia Comenos, Ms. Mellish moved to accept their request to withdraw/abandon the Special Permit granted on February 2, 2023 under Sections 6.1.2 and 7.5.2 of the Zoning By-Law to change the use of the property from a two-family to a three-family at 1 Dexter Lane, Assessor's Map No. 36, Lot No. 11 in District C, filed with the Town Clerk on October 17, 2022, based on a finding they

notified the Board that the property has been sold as a two-family use so the Special Permit is no longer needed and a Notice of Voluntary Dismissal of the Appeal of the Special Permit by CN Dexter LLC an Ronald Cardarelli was filed with the Land Court on June 12,2023.

Mr. Sollosy seconded the motion, the motion passed unanimously.

Review and vote on the three Zoning By-Law Warrant for Special Town Meeting on June 28, 2023, related to the Zoning By-Law. The Board agreed that the Warrant Articles are a reasonable accommodation and were in support.

Ms. Mellish moved that the ZBA approve the Warrant Articles proposed for the June 28, 2023 Special Town Meeting. Mr. Sollosy seconded the motion. The motion passed unanimously.

Any other administrative matters that could not reasonably been anticipated in advance of the required 48-hour posting. There were bi additional matters to discuss this evening.

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