

**Zoning Board of Appeals
Town of Great Barrington**

Minutes of the Tuesday, February 23, 2021, 7:30 PM meeting

The meeting was held via Zoom Video/Telephone Conference as stated in the agenda.

Chair Majdalany called the meeting to order at 7:30 and called the roll:

Members Present:

Chair Ron Majdalany, Carolyn Ivory, Stephen McAlister, Madonna Meagher, Michael Wise, and alternate member John Katz.

Absent: none

Also Present: Assistant Town Manager Christopher Rembold

Public Hearing

73 Castle Hill Avenue

Chair Majdalany opened the Public Hearing for the Special Permit application from Frank Leonard Mirchin and Ruthanne Mirchin, for the expansion of a nonconforming structure at 73 Castle Hill Avenue, Great Barrington, filed in accordance with Section 5.3, 5.5, and 10.4 of the zoning bylaw. The existing home is nonconforming to the north side line; applicants propose a 640 square foot addition and swimming pool on the south side. The Board made a site visit at 4:00 PM this afternoon.

The hearing was advertised in the Berkshire Eagle on January 26 and February 2, 2021 and notice was sent to abutters.

Attorney David Shrair spoke for the applicants and introduced architect David Potter of Green River Architecture and landscape architect Craig Okerstrom-Lang of Okerstrom-Lang Landscape Architecture. He said the house is nonconforming to the north side line. He said it is shown on a 1904 map and so it clearly preexists the town's zoning bylaw. He said the proposal is for an addition on the southwest corner of the existing house and a pool in the existing yard. He said the meets all zoning requirements, but it required a special permit under 5.5 because it is a more than 25% change.

Potter described the existing conditions, showing the setbacks and lot coverage calculations. He described the proposed addition, showing the location on the site, and elevation views.

Okerstrom-Lang described the pool and landscaping. He said constructing access will be through the front southeast corner of the lot, and when the project is over they will replace the hedge screening there. He said landscape screening on the south property line will remain and will be supplemented with more landscaping there, and on the west (rear) property line, in keeping with the planning board's recommendation. He spoke with the abutter to the north about removal of some trees that they share. He mentioned the location of the pool pump and mechanicals as shown on the plans, and said that the pump is proposed to be hidden by landscaping and/or sound insulating fence.

Chair Majdalany asked Board members for comments.

Meagher read a statement into the record. She said the proposed addition is far too big and is out of scale for the neighborhood. The 25% threshold should be the limit of expansion. She is very opposed to this.

Shrair responded saying that the proposal is actually conforming to the bylaw in all aspects, and there are five positive letters from neighbors, submitted for the record. He said the resulting lot coverage will also meet the zoning and is not too large on this lot, which is almost a double lot.

McAlister said he did not agree with Meagher. He thinks the scale is not out of character with the neighborhood.

Chair Majdalany asked for comments from other boards. Rembold said the Conservation Commission and Board of Health both determined that they have no jurisdiction on this application. The Planning Board and Selectboard have made favorable recommendations on this application. In its recommendation, the Planning Board recommended screening along the western property line and shifting of the parking to allow more landscaping along that line.

Chair Majdalany asked for public comment.

John Lewis of 10 Sumner Street, a direct abutter, had questions about snow and ice, sound proofing for the pool pump, and lighting. Okerstrom-Lang described the landscaping around the south and west property lines. He said the pump will not run all the time, and it will be screened to minimize noise impacts. He described the snow plowing and said snow will not impact neighbors. He said he had answered questions about these items from the Mr. Rembold via email earlier today (submitted for the record).

Anna Clark of 59 Castle Hill Avenue, a direct abutter, had questions about runoff and drainage. Okerstrom-Lang said the drywells are located to collect runoff on the property. He said the pool will be drained periodically into the street stormwater system. He said there is a letter in the application from professional engineer Don Chester reviewed the plans and determined there will be no impact on abutting properties.

Motion: Wise moved to close the public hearing

Second: McAlister seconded.

Vote: Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Majdalany-aye (passed 5-0). The public hearing was closed at 8:02 PM.

Chair Majdalany asked the members if the structure was legally preexisting nonconforming. All agreed it clearly predates the zoning bylaw.

Chair Majdalany asked the members if they thought the proposal is substantially more detrimental than the existing structure to the neighborhood. Meagher reiterated her position that she feels it is more detrimental. Ivory felt it fits in well and the owners are accommodating the concerns of neighbors. Wise said he at first thought it might be too large, but based on the area he no longer feels it is out of context. McAlister agreed.

Chair Majdalany asked for a clear statement that it is not more detrimental: Ivory-agreed, McAlister-agreed, Meagher-does not agree, Wise- agreed, and Majdalany- agreed

Board members then discussed the six special permit criteria of Section 10.4:

1. All agreed improved property will help meet social, economic, and community needs.
2. All agreed there would be no traffic flow or parking safety issues, and McAlister added it's adding more off-street parking which could be an improvement.

3. All agreed it is on public water and sewer; there are adequate utilities and other public services.
4. Four members agreed it will enhance the neighborhood character. Meagher disagreed.
5. All agreed provisions are taken to protect the natural environment.
6. All agreed it will improve the tax base without detrimental impacts on town services.

Motion: McAlister moved to grant the special permit based on the application and presentation

Second: Ivory seconded

Vote: Ivory-aye, McAlister-aye, Meagher-no, Wise-aye, and Majdalany-aye (passed 4-1).

The special permit was granted.

Public Hearing **17 Mahaiwe Street**

At approximately 8:05 PM, Chair Majdalany opened the Public Hearing for the Special Permit application from 17 Mahaiwe Group LLC, c/o Brian Hazelton, Great Barrington, MA for the expansion of a nonconforming barn at 17 Mahaiwe Street, Great Barrington, filed in accordance with Section 5.3 and 10.4 of the zoning bylaw. The Board made a site visit at 4:30 PM.

The hearing was advertised in the Berkshire Eagle on January 26 and February 2, 2021 and notice was sent to abutters.

Attorney Dennis Egan spoke for the Applicant. He introduced professional engineer Brent White of White Engineering and the Applicant/Owner Brian Hazelton.

Egan said the application seeks from the ZBA a Special Permit per section 5.3 of the Zoning Bylaw in order to change an existing nonconforming structure at 17 Mahaiwe Street, which is the two-story barn that is nonconforming to the rear setback line. He said the changes to the barn include a tool storage area on the northwest corner, an office and bathroom addition on the northeast corner, and a patio/pavilion on the east side. All the changes will comply with dimensional requirements governing lot area, width, setbacks, height, and lot coverage. He said all the additions are one-story.

Egan said the structure is legally preexisting nonconforming. It is shown on Sanborn Fire Insurance Maps from the 1920s, predating the Great Barrington zoning bylaw.

Egan read each of the findings he included in the application for each of the six special permit criteria.

Egan mentioned that last night on February 22 the Selectboard granted two special permits for this site. One to establish a contractor's yard as part of a mixed-use of the site, and one for development in the water quality district. He said the Selectboard imposed, and the applicant agreed to, many conditions on the contractor's yard use.

Chair Majdalany asked Board members for comments.

Wise asked if the proposed large shed running along the western setback line was part of this application. Egan said no, as that structure will meet all zoning requirements.

Wise asked if personal property tax will be assessed on equipment. Egan said heavy equipment will not be on site, but smaller tools and trailers will be.

McAlister asked if the Selectboard special permit will run with the land or not. Egan said no, it is specific to this Owner.

Rembold read the Selectboard's special permit conditions into the record and showed them on screen. Those conditions are:

1. The contractor's yard use shall be limited to the current Owner / Applicant, as follows: The contractor's yard shall be permitted only for the activities of the business known as Wood to Stone, or its successor names, and only as long as Brian Hazelton is both the sole proprietor of the business and a resident of the home on premises.
2. The contractor's yard activities limited to storage, client meetings, and storage of wheeled equipment limited elsewhere, shall be confined to the barn, new shed, and parking area of the property.
3. No heavy machinery shall be stored on site.
4. No fabrication of stone or carpentry projects shall occur on site.
5. The barn and proposed shed shall be used as an office and dry storage only.
6. No major construction vehicles such as dump trucks, excavators, skid steers, and the trailers associated with these machines, shall be stored on site. The only business related vehicles that may be continually on site are not more than four domestic sized vehicles including, for example, a pickup truck not larger than an F250, a passenger vehicle used for estimating trips, and a service minivan.
7. No trailers, enclosed or otherwise, larger than 6' x 8' shall be stored on site.
8. Employees, other than the resident Owner of the contractor's yard, shall not arrive on site earlier than 8:30 AM. No contractor's yard vehicles or equipment may be moved earlier than 8:30 AM or later than 5:30 PM, or on weekends.
9. The above conditions may be modified by the Selectboard only through a new special permit.
10. These conditions do not apply to the materials, trucks or deliveries associated with the proposed or future permitted building and site improvements.

Chair Majdalany asked for comments from other boards. Rembold read letters from the Planning Board, Board of Health, Conservation Commission, and Selectboard into the record.

Chair Majdalany asked for public comment.

David Soles of 29 Mahaiwe Street, a direct abutter, asked about the size of the new storage shed and its lighting, doors and windows. Egan said the shed is located in compliance with zoning. Brent White said it is 50 feet long by 16 feet wide. The doors face north towards the street. There are no lights, windows or doors on the south side.

Barbara Matz of 22 Mahaiwe Street, a direct abutter, spoke on one issue. She said the property has been a site of a lot of construction contractor activity for several years since Mr. Hazelton moved in, with little Town oversight. She also had concerns about a wood stove in the barn, and that the wood used may be toxic. She said the subject property may be large but the distance between the barn and other properties is measureable in feet. The potential toxicity and pollution on the site is a concern. She requested an independent study be done to investigate any potential pollution in the barn.

Egan said the stove is a permitted wood stove, and given that Mr. Hazelton and his family live on site with his family and children, he will not do anything harmful.

Ms. Matz requested permission to reply. Chair Majdalany said no, as the ZBA hearing is focused on the structure and the issues you are raising were really dealt with last night by the Selectboard.

Mr. Soles asked about the parking and space for gardens. White said there is still space between the parking and the property boundary.

Motion: Wise moved to close the public hearing

Second: Meagher seconded.

Vote: Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Majdalany-aye (passed 5-0). The public hearing was closed at 8:40 PM.

Chair Majdalany asked the members if the structure was legally preexisting nonconforming. All agreed it is.

Chair Majdalany asked the members if there were concerns that the proposal is substantially more detrimental than the existing structure to the neighborhood.

Wise said this board has some experience with metastasis of contractor's yards, and he is gratified that the Selectboard clearly conditioned its use. He said this is a mixed use neighborhood and the conditions will constrain it to be more like office work than a machine shop for example.

Regarding the structural changes proposed, Wise felt the changes are not more detrimental. McAlister said maybe if they were two story changes but these will not be massive. It's not uncommon to see small changes like this. So it is not more detrimental Ivory agreed. Meagher agreed.

Board members then discussed the six special permit criteria of Section 10.4:

1. In terms of meeting social, economic, and community needs, Wise said this will keep a business in town. McAlister said it reinforces the MXD zone.
2. In terms of traffic flow or parking safety issues, all agreed it would be neutral compared to the previous office uses.
3. All agreed there would be little to no change on public water and sewer utilities and other public services.
4. In terms of character and social structures, McAlister said it is in keeping with the neighborhood and the MXD zone.
5. McAlister mentioned the Board of Health raised concerns. He said there aren't significant impacts. The trees to be removed are not in good health.
6. All agreed it will be good for tax base and employment.

Motion: McAlister moved to grant the special permit based on the application and presentation

Second: Wise seconded

Vote: Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Majdalany-aye (passed 5-0).

The special permit was granted.

100 Bridge Street, 40B Comprehensive Permit Update

The Board received an update from the Community Development Corporation of South Berkshire (CDCSB) and Berkshire Housing Development Corp (BHDC) about the development, including the 45-unit Bentley Apartments, remediation of the site, and fulfillment of the conditions of the Comprehensive Permit. Allison Marchese, Executive Director of the CDC, read from the letter to the Board dated February 22, 2021, made part of this record. She said the outstanding conditions are met. The remediation work required under the MA DEP approved Remediation Implementation Plan dated 5/22/2019 has been carried out and the required completion report was submitted to MA DEP on 2/11/2021. Also, the conservation restriction for the future river front park along the Housatonic River was approved by unanimous vote of the Conservation Commission at its January meeting. She said they request the ZBA issue a letter of satisfaction of 40B conditions.

BHDC director Elton Ogden said the 45 housing units are nearly complete. They hope for Occupancy certificates in March and lease-up in April.

There were comments of congratulations and support from the ZBA members. Chair Majdalany asked Rembold to draft the letter of compliance.

Minutes:

Ivory moved to accept the draft minutes of December 15, 2020 as written. ‘

Meagher seconded.

Roll call vote: Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Majdalany-aye (passed 5-0).

Application Fees:

Rembold explained that advertising costs have increased and requested the fees be raised to \$300 in order to cover costs.

Ivory so moved.

Wise seconded.

Roll call vote: Ivory-aye, McAlister-aye, Meagher-aye, Wise-aye, and Majdalany-aye (passed 5-0).

Citizen Speak: none

Majdalany adjourned the meeting at 9:00 PM.

Respectfully submitted,


Christopher Rembold