

Zoning Board of Appeals Minutes
June 8, 2021

RECEIVED
TOWN CLERKS OFFICE

MEETING HELD VIRTUALLY USING GOTOWEBINAR PLATFORM

Present: Elisabeth Garber-Miller, Chair; Darlene Pruitt, Clerk; Eric Coimbra, Matthew Cummings, Philip Shannon; Associate Members Ryan Maxwell and Matthew List

The chair read the following notice:

Whereas both the Federal Centers for Disease Control and Prevention and the Massachusetts Department of Public Health have advised residents to take extra measures to put distance between themselves and other people to further reduce the risk of being exposed to COVID-19, Governor Baker has issued an order suspending certain provisions of the Open Meeting Law, Massachusetts General Law c. 30A, §20.

In order to satisfy the Open Meeting Law requirements, today's Town of Mansfield Zoning Board of Appeals meeting will available for to public via GoToWebinar and Mansfield Cable. The instructions for joining via GoToWebinar are in the Meeting Notice on the Town's Website at www.mansfieldma.com and then clicking on today's date on the calendar.

1. Zoning Board of Appeals Meeting called to order at 7:15 p.m.

2. Variance Public Hearing – Front Yard Setback – 21 Coral Street – Thibault

The chair read the public hearing notice on the application of Melissa Thibault for a Variance from Zoning By-Law Section 230-4.2.A, Front Yard Setback, for the construction of a porch with a 22.6-foot front yard setback where 30 feet is required at 21 Coral Street (Assessor's Map 23 Parcel 260) in the Residential 2 (R2) zone.

The following documents were introduced at the public hearing:

- Copy of public hearing notice, which ran in the [Mansfield] *Journal-News Independent* on May 21, 2021 and May 28, 2021;
- Application for Variance, filed with the Town Clerk's Office on May 5, 2021;
- "Zoning Board Plan 21 Coral Street" dated April 25, 2021, prepared by Hutchins-Trowbridge Associates, Inc.

Homeowner Melissa Thibault explained the proposal to remove the existing front steps and add a 10'x6' front porch to the house, which was built in 2006.

Board Comment

Mr. Cummings asked what the current setback is; Mr. Thibault explained the existing porch ends at the 30-foot setback. He said most of the houses on their street are closer to the street.

Ms. Garber-Miller asked what the hardship is. Ms. Thibault said their family of four love their street and neighborhood, and enjoy sitting together on the front steps, but do not all fit. She said the front of the house gets the morning sun, and the deck off the back is in shade most of the day.

The board discussed the fact that the plan does not show the existing front yard setback. Mr. Maxwell said the required setback is 30 feet and it appears the existing front steps are within that setback. Mr. List noted entrance steps can project three fit into the setback.

Mr. Shannon said he does not think this would be more detrimental than the existing situation, but said he thinks it should be a variance. Ms. Garber-Miller said there is no hardship to the soil, shape or topography, but the proposed change appears to be *de minimus*.

Public Comment

The chair read the following statement:

It is important to us that you have a platform for your questions and comments during this meeting, therefore to ask questions or make a public comment during tonight's virtual meeting you must have registered and joined the meeting via GoToWebinar where you now have the ability to submit your question or comments through the questions option in your control panel, or you can use the raise your hand option to be allowed to speak.

*For those who have joined the meeting via telephone who would like to ask a question or make a comment, you are now welcome to unmute your phone. We ask that you only have your phone unmuted while you are asking your question. Please mute when you are no longer live. You can unmute your phone by pushing *6. Please then state your name and address, and when acknowledged by the Chairperson you can then state your question or comment. When you are done with your comment please mute your phone again by pushing *6.*

As with any public hearing we ask you to be respectful of the Board members and the other residents who are making their comments by patiently and quietly waiting your turn. Thank you.

Melissa Patricio, Coral Street, said she supports the application and said the neighbors spend a lot of time together in the Thibault's yard.

Ralph Dibona, 27 Coral Street, said he supports the front porch addition, not only for the family's benefit, but because the porch will give the house some depth and character.

Mr. Correira asked if other members would like the plan revised; Mr. Cummings said he doesn't think so. Ms. Garber-Miller said her concern was that the plan doesn't show the existing front yard setback, so it is unclear whether the property is currently conforming or not. However, she said the plan shows what will be there, which is the information the board needs.

Mr. Thibault thanked the board for its consideration and said even with the variance, there will still be a significant setback from the porch to the street.

Ms. Garber-Miller closed the public hearing.

3. Variance Public Hearing – Sign – 65 Copeland Drive – Poyant Signs

The chair read the public hearing notice on the application of Poyant Signs on behalf of CGMA Mansfield LLC for a Variance from Zoning By-Law Section 230-4.7 (2), Freestanding Signs, allow a 63.92 square foot, 20-foot tall freestanding sign where a maximum of 32 square foot, 15-foot high freestanding sign is allowed at 65 Copeland Drive (Assessor's Map 21, Parcel 110) in the Business 4 (B4) zone.

The following documents were introduced at the public hearing:

- Copy of public hearing notice, which ran in the [Mansfield] *Journal-News Independent* on April 23, 2021 and April 30, 2021;

- Application for Variance, filed with the Town Clerk's Office on March 30, 2021;
- "Proposed Sign Location 65 Copeland Drive" plan dated June 24, 2019, prepared by DePrete Engineering;
- Sheets 1B.1 and 1B.2 of sign renderings "Carpionato Properties 65 Copeland Dr. Mansfield, MA 02048" sign renderings dated February 15, 2021, prepared by Dion Signs.

Attorney Jack Jacobi, Coogan Smith; Dave Taglianetti, Carpionato Group; Jeff Carter, Poyant Signs

Attorney Jacobi explained the plan for a new sign at the former Benny's site, where there will be four tenants. He said the by-law allows one sign with 16 square foot per side. He said the proposed sign would be consistent with other signs on the street and noted each of the four tenant panels is under 16 square feet, so would comply with the by-law if this was a single-tenant building.

Board Comment

Mr. Correira asked why it is necessary for the property owner's name to be on the sign. Attorney Jacobi said the owner puts that on all of its building signs, but said he would understand if the board wanted that portion removed.

Mr. List said 20 feet seems taller than other signs in the area. Attorney Jacobi said they think this is an appropriate size, but would take the board's direction on a lower sign.

Ms. Garber-Miller said this site is wide open and has a wide frontage, so the sign will be very visible. She said she doesn't think traffic travels so fast in this area that drivers will be unable to see the sign. She said she understands the tenants all need their own panels, but said the proposed sign is twice as large as what is allowed. She said she thinks too much signage can actually undercut the message. Attorney Jacobi said each tenant panel is about 14 square feet, which is about as small as can be read from the street.

Attorney Jacobi said they would not object to the board lowering the sign from 20 feet to 15 feet. Mr. Carter said lowering the sign to 15 feet would result in a lower center of the sign, and they would only be able to maintain about five feet from the bottom of the sign to the ground, which could become a visibility issue for drivers. He said he does a lot of work for this developer, and tenants want to be seen from the street.

Mr. Correira said the owner's name on the bottom is advertising and suggested talking with the applicant about making some adjustments.

Mr. List said this zone, B4, has been discussed and updated recently, and he would be concerned about granting a variance for such a prominent building in the zone.

Attorney Jacobi suggested taking the "Carpionato" off the bottom of the sign, which would reduce its size by 19-20 inches at the bottom. Mr. Carter said they could reduce the height about four feet, to 16 feet, which will allow trucks entering and exiting the site to have visibility.

Ms. Garber-Miller asked if the sign island at the entrance will remain; Mr. Carter said that will stay the same.

Ms. Garber-Miller said she would like to see a modified proposal with a reduction in the overall size of the sign and a reduction in the sign's height to 16 feet. Ms. Pruitt agreed.

Attorney Jacobi requested the public hearing be continued.

Motion: To continue the public hearing to July 20, 2021 at 7:30 p.m. (Cummings-Pruitt)

Shannon – Opposed

Correira-In favor

Cummings –In favor

Pruitt – In favor

Garber-Miller – In favor

Four (4) in favor. One (1) opposed. Zero (0) abstentions. PASSES

4. Variance Public Hearing continued – Front Yard Setback – 21 Coral Street – Thibault

The board discussed whether this should be a finding or a variance. Consensus was that since the existing setback is not shown on the plan, it should be a variance.

Motion: To grant a variance on the application of Melissa Thibault for a Variance from Zoning By-Law Section 230-4.2.A, Front Yard Setback, for the construction of a porch with a 22.6-foot front yard setback where 30 feet is required at 21 Coral Street (Assessor's Map 23 Parcel 260) in the Residential 2 (R2) zone in accordance with the "Zoning Board Plan 21 Coral Street" dated April 25, 2021, prepared by Hutchins-Trowbridge Associates, Inc. (Cummings-Shannon)

Ms. Garber-Miller said although there is no hardship, the variance would be *de minimus* because it is clear there is an existing structure extending almost the same distance into the setback.

Mr. Shannon agreed and said the front porch would enhance the neighborhood and give the house more character. Mr. Cummings said the neighboring houses are significantly closer to the street than this one.

Shannon – In favor

Correira - In favor

Cummings –In favor

Pruitt – In favor

Garber-Miller – In favor

Five (5) in favor. Zero (0) opposed. Zero (0) abstentions. PASSES

5. Appeal of Planning Board Site Plan Decision and Appeal of the Grant of the Building Permit– Hands On Montessori School – 19 Knight Way – Attorney Jason R. Talerman

The chair read the public hearing notice on an appeal filed by Attorney Jay Talerman of the Building Inspector's grant of a building permit to Hands-On Montessori School with respect to the proposed construction of a 1,200 square foot school at 19 Knight Way (Assessor's Plat 3, Parcel 51) in the Residential 1 (R1) Zone. This public hearing will run concurrently with the Zoning Board of Appeals public hearing that was opened April 20, 2021 and continued to June 8, 2021.

2021 at 7:40 p.m. on an appeal filed by Attorney Jay Talerman of the Planning Board's February 12, 2021 grant of site plan approval with respect to the proposed construction of a 1,200 square foot school at 19 Knight Way (Assessor's Plat 3, Parcel 51) in the Residential 1 (R1) Zone.

The following documents were introduced at the public hearing:

- Copy of public hearing notice, which ran in the [Mansfield] *Journal-News Independent* on May 21, 2021 and May 28, 2021;
- Appeal of Grant of Site Plan Approval and Appeal of Grant of Building Permit, filed with the Town Clerk's Office on May 13, 2021; Copy of February 12, 2021 Planning Board Site Plan Decision; Copy of April 23, 2021 Building Permit;
- Copy of July 25, 2011 "Catherine Ellsworth and Brenda Knight v. Town of Mansfield;
- June 2, 2021 letter from Denise Karlin, Commonwealth of Massachusetts Department of Early Education and Care to Emily Miller, Hands-On Montessori School

Attorney Jason Talerman, representing abutters to the proposed project, explained the appeal of the site plan and the building permit are about roughly the same issues. He said this project has been in the works for years and the smaller building, which was approved by the Planning Board, is part of a larger project.

Ms. Garber-Miller explained the only issue in front of the ZBA now is the 1,200 square foot building.

Attorney Talerman said this site is not subject to the Dover Amendment. Ms. Garber-Miller said the Court of Appeals and Land Court found it is. Attorney Talerman said in 2011, the court acted appropriately when it found this was a non-profit educational facility sufficient to carry a Dover Amendment use, but presented documents showing 2011 was the last year the Hands-On Montessori School was registered as a non-profit corporation. He said the current Hands-On Montessori School is a for-profit corporation, and said it provides some uses that fit with a "child care facility." He said the vast array of their services are for "educational" services up to sixth grade, for which they would have to be a non-profit. He said they are not entitled to relief or a building permit without providing proof that the entity that will lease or own the school is a non-profit educational corporation.

Attorney Mark Lanza said the 2011 Land Court decision is the Ellsworth case, which says the Montessori school is protected by the provisions of "educational" and "child care." He said the proposed use of the facility has always been a child care facility with some educational programs. He said the Town of Mansfield was a party to that decision and did not appeal, so the decision is binding on all boards.

Attorney Lanza presented a June 2, 2021 letter from the Department of Early Education and Care identifying Hands-On Montessori School as a "group child and care program." He said that does not require the entity to be a non-profit or to own the land it is on. He explained the definition of a child care facility and said that is what this facility will do, which brings it under the Dover Amendment. He said the Montessori School is licensed by the state to operate a child care facility.

Attorney Lanza said Attorney Talerman said he represents abutters and residents in the area and asked who those people are. He said to have standing to appeal, one would have to be an abutter, an abutter to an abutter or an abutter to an abutter within 300 feet.

Attorney Lanza said the board should require both attorneys to share information and documents with one another.

Attorney Talerman said the notion that the 2011 decision is binding on this board is misleading because it is a different project. He said the entire premise behind the grant of Dover protection in that case is not binding on the ZBA now because the premise was that the Hands-On Montessori School was, in 2011, a non-profit organization. He said in order for a prior case to be binding on future actions, the facts have to be the same.

Attorney Talerman said Attorney Lanza did not read the entire portion of the law, which includes the fact that a child care facility shall not include an educational system unless the primary use is kindergarten, nursery or related preschool services.

Attorney Talerman said the information he supplied should be supplied to Town Counsel and an opinion requested.

Ms. Garber-Miller said she read the Appeals Court decision, which references the Land Court decision. She said in both decisions, the judge found or upheld the fact that the Dover Amendment applies. Attorney Talerman said that was not part of the judgement in the second case. He said they agreed the Dover Amendment applies to the child care portion of the use. He said the use complied in 2011, but the non-profit corporation lapsed, and they got a building permit without the non-profit being reinstated.

Board Comment

Mr. Correira asked who Attorney Talerman represents. Attorney Talerman explained he represents Murawski, 15 Knight Way, Rosemark, 9 North White Pine Lane, D'Amato, 7 North White Pine Lane and Weiner, 1 North White Pine Lane.

Mr. Correira asked what the activities Attorney Talerman is stating would make this a school. Attorney Talerman said the educational uses beyond child care make it a school.

Emily Miller, Hands-On Montessori School, explained as long as 51% of the student population is under age 7, a license is required from the Department of Early Education and Care. She said she has toddlers through sixth grade, but does not have sixth graders right now. She said they have never gone over the 51% and most of their students have been kindergarten-aged or under.

Attorney Talerman said if an opinion from counsel will be sought, the discussion could be continued to a later date. Ms. Garber-Miller asked the board's opinion about getting a town counsel opinion. Mr. Maxwell said he would appreciate that feedback. Mr. Cummings said multiple judges have made decisions on this issue, but if the board members would be more comfortable with town counsel opinion, he is fine with that. Ms. Pruitt said she would be

comfortable seeking town counsel opinion.

Mr. Correira said he is concerned about the new issues being brought up at tonight's meeting. Ms. Garber-Miller said when the ZBA met in April, the issuance of the building permit was imminent and said if Attorney Talerman knew there was a legal issue that should have had an opinion from town counsel, it should have been brought up then. Attorney Talerman said he sent several emails to the Building Inspector after the April ZBA meeting saying he could not issue the building permit. He said it did not become a "ripe controversy" until the Hands-On Montessori School was issued a building permit and had not applied for non-profit status.

Ms. Garber-Miller asked about Attorney Talerman's proposed conditions. Attorney Talerman explained the following proposed conditions outlined in his April 20, 2021 letter:

- The Applicant's present proposal is just an interim facility and a substantially larger facility is proposed. Any approval should be expressly conditioned on a requirement that any further or additional construction on site must obtain site plan approval, along with other required relief.
- The Applicant is not presently organized as a non-profit educational corporation but proposes school facilities. All work on the site must cease and no work may commence until the Applicant provides proof that it has organized as a non-profit educational corporation.
- The Applicant has already commenced work within the subject easement. The easement shall be staked out by a surveyor showing the limit of work prior to any further work being completed.
- No work may commence unless and until the Applicant has any all required approvals from the Mansfield Conservation Commission and any other official or board of the Town.
- Given the residential nature of the *minor* streets in the neighborhood, a speed limit of 15mph will be adhered to on Justin Dr., Knight Way, North White Pine Ln., South White Pine Ln., Claire Ave., Hickory Terr.
- No cars shall park, queue or idle on Knight Way, Justin Dr., North White Pine Ln., South White Pine Ln., Claire Ave., Hickory Terr., Balcom St., Jewell St. No car will block resident driveways or otherwise impede ingress and egress of the homeowners. All queuing and parking for the facility shall be limited to the 19 Knight Way property itself.
- No drop-off of students will occur other than on the premises itself.
- During periods of snow fall, the Applicant may not deposit or plow snow on Knight Way or the sidewalks adjacent thereto. All snow shall be piled on site or removed from the property.
- The proposed school shall be restricted in hours of operation. No activity before 6am or after 6pm.
- The school will only operate for the 165 days per year that the applicant declared to the Planning Board would be the days of operation. The facility shall be limited to a daytime day-care facility and school, strictly as described by the Applicant.
- The Applicant has clear cut the boundary with adjacent residential properties, leaving no screening or sound barriers. An 8' fence will be installed along the property line where the existing natural buffer of old-growth trees was removed.

- In order to ensure safety of children in the neighborhood, the Applicant shall coordinate drop-off and pick-up times with Mansfield public schools so that there are no conflicts with the school bus schedule. The Applicant shall allow a minimum of 15 minutes between drop-off/pick-up and the school bus schedule.
- To avoid light pollution in the neighborhood, the Applicant shall provide a lighting plan for the Town's review demonstrating that the school will be dark-sky compliant.
- Delivery trucks will be limited to the hours of 10am to 2pm.
- Trash receptacles/dumpsters will be located at least 200 feet from all abutters and shall be emptied once per week during day-time hours.

Attorney Lanza said the board should consider under what authority it would impose those conditions. He said the Planning Board had a narrow scope of review under the Dover Amendment, which does not include many of the items on that list. He said he is willing to discuss the issues with the appellants, but he does not think they are issues for the ZBA.

Attorney Talerman said he thinks the ZBA does have the authority to modify the Planning Board's conditions, including issues like access, parking, traffic and size and scope of buildings. He said this use is not Dover protected, but said the ZBA has the ability to review the conditions of a site plan, even with a Dover Amendment use. Attorney Lanza disagreed and suggested contacting town counsel.

Public Comment

It is important to us that you have a platform for your questions and comments during this meeting, therefore to ask questions or make a public comment during tonight's virtual meeting you must have registered and joined the meeting via GoToWebinar where you now have the ability to submit your question or comments through the questions option in your control panel, or you can use the raise your hand option to be allowed to speak.

*For those who have joined the meeting via telephone who would like to ask a question or make a comment, you are now welcome to unmute your phone. We ask that you only have your phone unmuted while you are asking your question. Please mute when you are no longer live. You can unmute your phone by pushing *6. Please then state your name and address, and when acknowledge by the Chairperson you can then state your question or comment. When you are done with your comment please mute your phone again by pushing *6.*

As with any public hearing we ask you to be respectful of the Board members and the other residents who are making their comments by patiently and quietly waiting your turn. Thank you.

Scott Haring, 2 Knight Way, thanked the board for allowing the discussion to continue. He said non-profit status provides special protection and said if the applicant wants to build a school under Dover Amendment protection, it has to be a real non-profit.

Rick Rosemark, 9 North White Pine Lane, said he agreed with Mr. Haring. He said there are two Hands-On Montessori corporations, one non-profit and one for-profit. He said Ms. Miller holds the corporate offices for one, and Catherine Ellsworth is listed as an officer for the other corporation. He suggested an escrow account be set up for the school. He also suggested the board look at page 7 of the Subdivision Regulations regarding the number of houses that could

be built in West Mansfield based on what the roads can handle.

Nicole Mullen, 3 Knight Way, said at the Planning Board meeting, Ms. Miller imposed some conditions herself, and Ms. Mullen said she wants to make sure those will be complied with, including no idling on Knight Way, staggered drop off and pick up times, only operating 164 days/year, only 30 students and working around the school bus schedule. Ms. Mullen said these issues are important because of the lack of sidewalks.

Motion: To continue the public hearing to July 20, 2021 (Shannon-Cummings)

Shannon – In favor

Correira- In favor

Cummings –In favor

Pruitt – In favor

Garber-Miller – In favor Five (5) in favor. Zero (0) opposed. Zero (0) abstentions. PASSES

6. Correspondence and Minutes

May 11, 2021 minutes

Motion: To approve the May 11, 2021 minutes as submitted (Pruitt-Correira)

Cummings – In favor

Shannon – In favor

Correira – In favor

Maxwell – In favor

List –In favor

Pruitt –In favor

Garber- Miller- In favor Seven (7) in favor. Zero (0) abstained. Zero (0) opposed. PASSES

4. Adjournment

Motion: To adjourn at 9:30 p.m. (List-Pruitt)

Shannon – In favor

Correira - In favor

Cummings - In favor

Pruitt – In favor

Garber-Miller –In favor

Maxwell – In favor

List – In favor Seven (7) in favor. Zero (0) opposed. Zero (0) abstentions. PASSES

Next Zoning Board of Appeals Meeting: July 20, 2021 at 7:30 p.m.



Signature of Clerk

10/19/21

Date of Approval