

Present were: Anderson (Chair); McDonough (Clerk); Jeton and Brown (Members); and Baime (Associate Member).

The meeting opened at 7:03 p.m.

Petition No.: 3910

Premises affected: 400 South Main Street

Petitioner: Andover School of Montessori

The petitioner had submitted a written request to continue the public hearing without opening to the February 3, 2011 meeting in order for the school to revise plans based on discussions with neighbors. McDonough made a motion to continue the public hearing without opening to 2/3/11. Baime seconded the motion & the Board voted (5-0) to continue the hearing to 2/3/11.

Petition No.: 3913

Premises affected: 311 Lowell Street

Petitioner: Verizon

Anderson recused himself from the case. Petitioner had requested in writing to continue the public hearing without opening to the February 3, 2011 meeting in order to be heard by a 5 member Board. Baime made a motion to continue the public hearing without opening to the 2/3/11 meeting. McDonough seconded the motion & the Board voted (4-0) to continue the hearing to the 2/3/11 meeting.

Petition No.: 3906

Premises affected: 6 Black Horse Lane

Petitioner: Robichaud

Rob Bramhall, architect, represented the petitioners' request to allow the construction of a barn, an accessory building, prior to the construction of the house. He noted that the ZBA had approved the same request 5 years ago; however his clients were unable to move forward with the project. The barn will be constructed in the spring '11 & contain approximately 3000 sq. ft. and be completed within 8 months. Construction on the house will begin in fall '11 and contain approximately 15-20,000 sq. ft. Bramhall agreed to the condition of approval, as in the last decision, that if the house weren't built, the barn would become the principle dwelling on the lot or be torn down. The only changes to the current proposal are that the house may be a bit smaller. The existing house will be used as an office while the barn is under construction. Brown pointed out that if the house remains on the lot while the barn is being constructed, the house is the principle structure. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Previously the Board approved the request with condition. Brown made a motion to approve the request with the condition that if the new house is not built within two years, the barn must be razed, or the existing house must be razed such that the barn becomes the principle dwelling on the lot. Baime seconded the motion & the Board voted (5-0) to approve the request with condition. Jeton will write the decision.

Petition No.: 3911

Premises affected: 34, 36, 38 Dale Street

Petitioner: Holmes/Richards

Tyler Richards & Donna Holmes waived the reading of the public hearing notice in this continued public hearing. Richards gave an overview of the information on the financial impact of a 2 family compared to a 3 family as requested by the Board at the December meeting. Generally the 2-family option is much less economically viable overall. Essentially eliminating the 3rd unit

changes the project's viability significantly. There were no changes to the plans; only neater conceptual plans were submitted with the financial data. There were no further questions from the Board or the public. Tyler noted that the parking spaces, as proposed, are the most feasible. The Board waived a site view. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Anderson clarified for the Board that the relief requested includes:

Variance/special permit to demolish a portion of the existing structure & to add/alter it in a manner that will not meet the minimum setback requirements. Additionally, the request is for a variance from the use regulations for the multi-family use & off-street parking requirements. He emphasized that the petitioners are trying to rehabilitate & improve a very dilapidated building and that the size/shape of the lot, as well as the location of the house on the lot present hardships. Anderson asked the Board's sense of whether they wanted to go forward with discussion of the case. The Board discussed whether it would be a variance or special permit & that previous petitioners proposed to raze the entire structure to rebuild it while the current proposal maintains a significant portion of the existing structure. McDonough feels that since there is no change in use or footprint, if the issues of parking & crowding can be addressed, she would consider voting in favor. Anderson suggested that a condition regarding off street parking could be placed on an approval limiting each unit to have no more than the number of cars that could be parked in the spaces, however it would be difficult to enforce. Brown pointed out that the bylaw requires a minimum number of spaces (4). He voiced concern over density. Anderson agreed with McDonough that it is a dilapidated building in an industrial area with challenging environmental circumstances & that the petitioners want to improve it. He is favorably inclined. The Board discussed the option of requiring it be owner-occupied, the fact that the issues of concern already exist & that the current proposal is a good solution. Anderson noted that the plans are not up to par to tie an approval to & asked the Board for a sense subject to architectural plans & parking layout plans to reference in an approval to be submitted prior to a final vote. The Board also discussed the lack of a certified plot plan to tie an approval to ensuring the footprint remains the same. Anderson asked for a motion to approve a variance/special permit to authorize the project in the application and documents subject to the following:

1. a certified plot plan showing all offsets shall be submitted.
2. the structure shall not exceed the existing footprint.
3. the height shall not exceed a standard 2-family at #38 Dale St.
4. there shall be no increase in height for #34 & 36 Dale St.
5. parking shall be dimensioned on the certified plot plan.
6. Each unit's occupants shall not have & park vehicles any greater than the number of spaces for each unit.

McDonough made a motion that it is the sense of the Board of the preceding proposed approval with conditions. Baime seconded the motion. The Board discussed to whom the requested plans would be submitted. The Board voted (4-1) (Brown opposed) that it is the sense of the Board that it would be approved. Anderson asked how long it would take to obtain the requested documents. Tyler indicated that it would be six weeks. Anderson asked for an extension until March 15 plus one month to file the written decision. Anderson asked for a motion to re-open the public hearing to accept the additional documents & to review them in a public hearing, as well as to ask any questions of the petitioners. Brown made a motion to re-open the public hearing & continue it to the March meeting. McDonough seconded the motion & the Board voted (5-0) to re-open the public hearing & continue it to the March meeting. Petitioners agreed to the requested extension for the record.

Petitioner No.: 3915

Premises affected: 43 High Street

Petitioner: Huynh / Phan

Attorney Donna Silva, of 11 High Street, represented the petitioners in their request for a special permit under Section 7.6.2 to convert the existing barn to a second dwelling unit on the lot. The lot is located in the SRA district & the house & barn were built in 1860. Silva gave an overview of the proposal:

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- existing 2-story barn & house are located on an 8,000 sq. ft. lot
- proposal is to convert existing barn workshop into a 3 bedroom dwelling unit
- the only visible changes will include installation of doors/windows
- petitioners met with Fire Dept. regarding parking (were told it is ample)
- the barn is set back 150' from the street
- the driveway is 19' wide, deemed adequate by Fire Dept.
- petitioners purchased the house in 2004 as a sfd w/in law unit
- petitioners wish to move the 2nd unit to the barn from the house

Anderson asked how many bedrooms exist in the in-law unit. Silva was unsure. Anderson suggested it does not contain 3 bedrooms, as proposed for barn unit. Jeton asked if permission for the existing 2nd unit was granted as an in-law or 2nd dwelling unit. Silva was unsure, pointing out that other multi-families exist in the neighborhood with minimal impact. Petitioners have not spoken with the neighbors the location of the other multi-families was uncertain. Brown asked how this proposal qualifies for a special permit under section 7.6.2 (converting a structure with no dwelling unit in it into a dwelling unit). Silva stated that the public notice is wrong, that the application asks for relief from section 7.6.3. Anderson clarified the difference between 7.6.2 & 7.6.3, asking if it was appropriate under either, or if the request is for a variance for two dwelling units on one lot? Silva stated her belief that a special permit to change the use would cover it. Several neighbors spoke in opposition to the proposal citing concern over parking, density, encroachment into setbacks if converted, and the precedent of converting a barn into a dwelling unit. A neighborhood petition, as well as several letters of opposition was submitted to the Board. Anderson explained that the Board has to consider the test of a special permit (IF it is not detrimental to the neighborhood). The Board has heard the neighborhood's concerns. Anderson explained that the Board can close the public hearing & vote or petitioners can withdraw without prejudice. Silva asked to withdraw without prejudice. McDonough made a motion to allow the request to withdraw without prejudice. Brown seconded the motion & the Board voted (5-0) to grant the request to withdraw without prejudice.

Petitioner No.: 3914

Premises affected: 23 Flint Circle

Petitioner: Linzer

Eric & Pamela Linzer represented themselves & their request for a variance &/or special permit to construct a second floor addition that will not meet the front minimum setback by encroaching 5'. The house was constructed in 1955. Other houses in the neighborhood are similar ranch-style homes with similar setbacks. Petitioners, when questioned, were uncertain as to the exact date of construction. Anderson explained that prior to March 21, 1955 the minimum front setback was 30'. Petitioners stated that there are other houses in the neighborhood with second stories. Tom Callahan, 24 Flint Circle, stated that his house is a cape & he does not object to the Linzer's proposal. Kevin Cormier, rear abutter at 66 Carmel Rd., voice his support. The Board discussed the frontage; 115' required, 75' existing & that if the lot existed prior to 3/21/55 it would conform to the 75' requirement at the time. The Board assumed that it is a lawful pre-existing non-conforming lot & house and waived a site view. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Brown made a motion to find that the lot/house were conforming at the time of construction (therefore pre-existing non-conforming) and that the proposed 2nd story addition will increase the non-conformity in volume and will not be detrimental to the character of the neighborhood or town and to grant a special permit in conformance with the plans submitted with the application. Brown also made a motion to deny the variance as moot. McDonough seconded the motion. Anderson added the condition that the proposed addition is constructed within the footprint of the existing structure and that the addition only is as close to the front lot line as the existing structure. Brown & McDonough moved & seconded the amended motion. The Board voted (5-0) to grant the special permit with condition. Brown will write the decision.

Minutes

11/16/10 – Brown amended the 3rd last line regarding 72 Salem St. to read “in favor of denying the variance’. Jeton made a motion to approve the 11/16/10 minutes with Brown’s amendment & the 12/2/10 minutes. Brown seconded the motion & the Board voted (5-0) to approve the 11/16/10 amended minutes & 12/2/10.

Other Zoning Related Matters

Anderson informed the Board that the Massachusetts Historical Commission did not accept the preservation restriction for 1 Shaw Drive and therefore the Petitioners will reappear before the Board.

Anderson recused himself and left for the remainder of the meeting.

Petitioner No.: 3912

Premises affected: 204 Andover St

Petitioner: T-Mobile

Members: McDonough (Acting Chair), Brown (Acting Clerk), Jeton, Baime

Attorney Jackie Slaga represented the Petitioner, who agreed to open the hearing with a 4-member Board with the understanding that a 5th member would exercise the Mullen Rule & join the proceedings at the next meeting. Slaga gave an overview of the proposal:

1. 204 Andover St, a historical building, is located in the IG district
2. The proposal is to construct a 25’ cupola to replicate the original structure
3. Inside the cupola will be 6 antennas
4. equipment will be located in the ground floor of the building
5. request relief is for a variance from 4.1.2 for height, special permit under 6.1 for wireless, & 3.1.3.F.15
6. proposed height after construction of cupola = 85’ (max. allowed 60’)
7. Variance from Section 4.1.3 exempts certain roof top structures from height, such as this cupola
8. Variance from Section 6.1.2 (setbacks for towers) is 3x its vertical height, but Section 6.1.10 allows the Board to deviate if it feels it is impossible to meet this requirement, which may only apply to new towers.

Slaga explained that this location is the only option to provide coverage; they have looked for alternate sites, but are limited greatly. The design is to blend into the historic character of the building. It is uncertain when the original wood cupola was removed, but photographs were used to scale the proposed replica. The antennas will be behind the arches & columns without in-fill screening. The Board discussed whether collocation would be possible inside the cupola. It would if the cupola were made larger/taller, or possibly locate some antennas inside the roof; however they are not planning on building it with space for collocation. The Board then heard from the RF Engineer, Dishant Shah. Mr. Shah explained that the proposed location would close a coverage gap & increase service (he showed the maps depicting the gap & expected coverage with the proposed installation). Brown pointed out that Section 6.1.4.2 of the bylaw where the proposal is not for collocation of if it is in a residential district, an independent RF engineer of the RF data requires a peer review. McDonough instructed the administrative secretary to set the peer review process in motion. Slaga informed the Board that they would also submit to the Ballardvale Historic District Commission (BVHDC) for review of the proposal. The location is the tallest building in the area & the antennas will be at 62’ centerline. Inspector of Buildings Kaija Gilmore commented on the memo she submitted regarding the historic nature of the structure, the need to verify the structural integrity of the roof. Jeton asked for input from BVHDC for the next meeting. The Board asked for the engineering on the existing platform, although it is a building issue rather than zoning. Slaga agreed to submit the engineering. Brown noted Town Counsel’s reminder to the Board to ensure that all requirements of the bylaw are met pursuant to the 2009 changes & asked Slaga to review Sections 6.1.3.4 through 11 & to submit any outstanding

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documentation. Baime asked for an extension for the variances. Slaga agreed to submit an extension. Brown made a motion to continue the public hearing to the February 3, 2011 meeting to receive/review the peer review, if it has been completed at that time, or to continue the hearing further if not. Baime seconded the motion & the Board voted unanimously to continue the hearing to 2/3/11.

Petitioner No.: 3916

Premises affected: 149R Haggetts Pond Rd

Petitioner: Clear Wireless LLC

Petitioner had submitted into the file prior to the public hearing a form agreeing to a 4-member Board. James George represented the Petitioner's request for a special permit to add a 5th dish. Petitioner was previously granted permission to install 4 dishes + 3 antennas, which were installed, pursuant to Decision No. 3867. Mr. George explained that Clear Wire has grown & wants to install a backhaul dish that receives & expands the bandwidth to effectively increase coverage. The 5th antenna does not propagate & is for the 4G network. It will be collocated at 310' height. Therefore he is requesting a modification of Decision No. 3867. The 5th antenna will be painted to match with non-reflective paint & complies with Section 6.1 of the bylaw. He has the structural analysis & it will be installed in accordance with the plans submitted. He noted, however, that on page A-1, there is a misprint as to the total number of dishes. The page calls out a 'total of 5 dishes installed', but it should read a 'total of 4 dishes installed at 200ft.' Additionally, above that there is a reference to a 6th dish, but it should read 5th. He would agree to a condition to correct the typographical error. Inspector of Buildings Kaija Gilmore requested an inspection schedule for the tower. Mr. George agreed to obtain that from the tower owner, Greater LA Radio. Gilmore also requested the required bond. Brown made a motion to close the public hearing. Baime seconded the motion & the Board voted (4-0) to close the public hearing. The Board then proceeded to deliberate. Brown noted that even though Petitioner's representative asked for a modification, the application & legal ad does not mention a modification. However, the findings and conditions in the previous decision are adequate to adopt. Jeton & McDonough stated that they have no issues with it. Brown made a motion to reiterate the findings in Decision No. 3867 & to grant a special permit for the 5th dish antenna as proposed subject to the same conditions in #3867. Baime seconded the motion. Jeton noted that Gilmore asked for conditions, but such things are required by the bylaw and do not need to be made a condition of approval. Gilmore has the power to enforce the bylaw. The Board then voted (4-0) to approve the special permit with conditions. Jeton will write the decision.

There was a motion to adjourn & a second. The Board voted (4-0) to adjourn the meeting at 9:35 p.m.