

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

The meeting opened at 7:20 p.m.

Petition No.: 3910

Premises affected: 400 South Main Street

Petitioner: Andover School of Montessori

Members: Anderson, McDonough, Jeton, Matey and Baime

Attorney Mark Johnson represented the petitioners. Petitioners have requested to withdraw without prejudice their application in order to redesign and work with abutters. Johnson asked the Board if the petitioner should appear before the DRB before coming back to the ZBA. Anderson explained that it is not the Board's policy, it is voluntary. McDonough made a motion to allow the withdrawal without prejudice. Matey seconded the motion and the Board voted unanimously to allow the withdrawal without prejudice.

Petition No.: 3918

Premises affected: 1 Shaw Drive

Petitioner: Schwartz

Members: Anderson, McDonough, Brown, Baime, Matey

Attorney Mark Johnson represented Peter & Shirley Schwartz, also present at the hearing. They wish to modify Decision No. 3895 to allow the recording of the Historic Preservation restriction as required. Anderson noted that the two agenda items appear to be related to 1 Shaw Drive (the application & the Massachusetts Historic Commission denial). Johnson will address both. Preservation Chair Hermann had asked for the latter to be placed on the agenda as a discussion item. Johnson gave a background on the granting of the dimensional special permit for historic preservation by the ZBA & the MHC denial. He explained that the change of location for the historic structure seemed to be the main reason for the MHC denial, however it wasn't clear, while Section 7.9 of the Zoning Bylaw was specifically created expecting the historic structure to be moved. Anderson noted that the Town would have demolished the historic house in its original location. Johnson suggested that an alternative to the bylaw restriction for preservation in perpetuity could be a renewable term restriction held by the Town under MGL ch. 181, sec.26. The proposed restriction he submitted is in accordance with ch. 181, sec. 26 & in perpetuity. Abutters asked for clarification on the MHC basis for denial. Johnson explained it was more over concern for altering the historic structure. Mike Glinn, 16 Shaw Dr., added that reasons included the change of location, as well as the additions & alterations to the historic house. Anderson confirmed that one of six requirements is the State's approval of the preservation restriction. Anderson & Johnson clarified the zoning bylaw criteria for a dimensional special permit for historic preservation, MHC concerns, & that the project has Andover Preservation Commission support. The Board discussed the unusual variance request from documentary requirements. Johnson argued that the bylaw requires the MHC approval, but due to the denial, the Town could hold the restriction. Johnson noted that the Preservation Commission has submitted a warrant article for local preservation restriction approval. There was some discussion about setting precedent, whether or not other municipalities have such bylaws, and why the bylaw requires MHC approval. This type of bylaw is unusual, but was adopted at Town Meeting to preserve historic buildings, and the relocation of historic structures was anticipated when it was drafted and adopted. Brown asked if the protections & restrictions are the same endorsing method between the MHC restriction and a Town held restriction. Johnson confirmed that

they are. Anderson noted a letter from Town Counsel regarding the bylaw amendment adding that he was unsure of a case allowing perpetuity, but others allowed a restriction for 30 years. Johnson informed the Board that he had sent Town Counsel a case, included in the packet that was reviewed by Attorney Carol McGravey. In an email to Johnson McGravey indicated the draft was acceptable. Johnson added that there are findings in case law regarding restrictions held by a government body. Peter Schwartz gave a status update on the project: foundations have been poured at 1 Shaw Drive and the house at 16 Pearson Street is ready to be moved. Anderson asked what the Petitioners would do if the Board didn't grant the requested relief. Johnson stated that they were unsure if it would kill the project since waiting for Town Meeting also requires waiting for the Attorney General's approval of any changes to the bylaw, which could take six months. Schwartz added that they do not want the project to die. Several abutters asked if the State has denied other projects in Andover. This is the first to be denied, while the State has approved other similar projects involving moving an historic. Brown made a motion to close the public hearing. Matey seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Brown asked to deal with the variance from section 7.9.6.5 request first. He feels the net result is the same & that the proposed solution is reasonable. Matey is also not opposed to using variance language to modify the statutory requirements. McDonough feels that the requirement for MHC approval is in essence another review of the project's worth. Anderson reminded the Board that during the first round of public hearings this was an important issue discussed at length, however the restriction issue is different. The MHC is approving/denying the restriction, not the project. Anderson added that he is undecided, or of two minds, because the zoning bylaw requires the MHC approval of the restriction, Town Meeting can amend the bylaw, but to grant a variance is another issue. Whether or not Town Meeting approves a change in the bylaw, the restriction would be the same only with a different statutory citation. Baime agreed commenting that to second guess the intent of the bylaw defeats the purpose. Anderson added that it is not an application requirement that the variance is requested for, but a substantive requirement for approval. It is challenging to find a hardship for this particular requirement. Anderson asked for a motion to approve the variance and modification of Decision No. 3895 to allow the historic preservation restriction as approved by Town Counsel and not the MHC. Brown move the motion as dictated by Anderson and Matey seconded the motion. The Board discussed whether a variance or modification would affect the title at resale concluding that the grant of a variance or modification plus the previously granted special permit authorizing the project would protect the title. The Board noted the MHC's suggestion to amend the bylaw so as not to require MHC approval of the preservation restriction. Brown & Matey pointed out MHC's consideration of the loss of the historic context by changing locations of the historic house despite the bylaw being written to allow such a change of context. McDonough voiced her opposition to the variance. Baime felt it's best to let Town Meeting decide whether or not to change the bylaw. Anderson agreed. The Board then proceeded to vote (2-3) (Brown & Matey in favor, McDonough, Anderson, Baime against) approving the variance and modification. Anderson will write the decision.

Petition No.: 3803

Premises affected: 0 + 86 River St

Petitioner: Taylor Cove – Notice of Project Change

Members: Anderson, McDonough, Brown, Baime, Matey, Jeton

Chair Anderson disclosed that he has gotten to know the applicant since the original public hearings and decision. No one objected to his participation this evening. Attorney Don Borenstein represented the

petitioner's request for a project change, specifically the relocation of a portion of the water main. Anderson noted that he, Baime, Brown, & McDonough sat on the original case. Borenstein summarized the background highlighting the condition of the comprehensive permit for a pedestrian walkway to Charlotte Drive as depicted on the original plan dated February 3, 2010 and the revised plan dated June 10, 2010. The water line was not allowed to be located underneath the walkway. Since then, however, they have been asked to relocate the water line and place it under the walkway. The Board asked what site work has been completed to date, whether or not the walkway has been excavated. Borenstein was unsure as to what exactly has been completed. He noted that due to the relocation of the water main under the walkway, there will be less clearing and earth work. Baime referred to an email from the Dandages, of Charlotte Drive, voicing concern & urging the Board to relocate the pathway. Baime asked if any corrective action is necessary at this point. Borenstein was unsure. Anderson asked for comments. There were none. He asked Jeton to sit off the remainder of the case and asked for a motion to find that the Notice for Project Change is an insubstantial change for the water main depicted on the plan dated 2/13/10. Baime made the motion as dictated by Anderson and Brown seconded the motion. The Board voted (5-0) to find that the Notice of Project Change is insubstantial. Anderson asked Borenstein to draft a recordable memo. Borenstein agreed.

#### Minutes

1/6/11 – Brown noted that the changes he emailed to the secretary on page 2, line 10 had been incorporated into the minutes of 1/6/11 (...“forward [*with*] discussion [*of*] the case.” McDonough made a motion to approve the 1/6/11 minutes as amended by Brown. Baime seconded the motion & the Board voted (6-0) to approve the 1/6/11 minutes as amended by Brown.

Anderson left the remainder of the meeting at 8:22 p.m.