

MINUTES OF THE BOARD OF APPEALS  
TOWN OF ANDOVER, MASSACHUSETTS

Memorial Hall Library, Elm Sq., Andover

May 3, 2007

**APPROVED AT 6-12-07 MEETING**

There were present: Anderson, McDonough, Batchelder, Reilly, Jeton and Bevacqua. Meeting opened at 8:03 pm.

PETITION NO. 3685

PETITIONER: Putnam Investments

PREMISES AFFECTED: 7 Shattuck Road

MEMBERS: Anderson, McDonough, Batchelder, Reilly and Bevacqua  
Jeton was recused.

This is a continued public hearing. Brian Powers and John Hollywood represented Putnam Investments. Putnam Investments seeks to modify the height of the existing sign on the property's frontage on the westerly side of Interstate Route 93. The existing sign is 6 feet high and the Petitioner would like to increase it by 15 feet to make it visible from Route 93. The sign is a modest, simple sign, which is not in view of any residential property. The increase in size would not cause any traffic hazard. The vegetation has grown so high that it blocks the view of the sign.

Anderson asked if MA Highway would allow cutting of the vegetation for the sign to be visible. MA Highway does not prune the vegetation and has not been willing to accommodate any request to do so.

Larry Bruce – 25 Chandler Road- MA Highway does not cut trees in front of a private company. There is no hardship for Putnam Investments to require a variance.

Kaija Gilmore, Building Inspector-the sign allowed by ZBA due to the foundation pre-existing the sign. Putnam cannot cut the vegetation in front of the sign because it is state owned land.

Anderson asked what the maximum height of a sign was under the by-law: 6 feet above grade and 10 feet from the property line.

Michael Frishman inquired if this was in compliance with the Highway Beautification Act? What about the safety of the drivers on Route 93?

Putnam Investments has no frontage on Route 93. Illuminated signs are allowed and the sign is 95 feet in total footage, less than allowed.

McDonough made a Motion to close the public hearing. Reilly seconded the Motion and the Board voted unanimously (5-0) to close the public hearing. The Board then proceeded to deliberate.

McDonough stated the Petitioner had a right to have a visible sign and believes the variance is moot. It is not unreasonable to think that vegetation would grow. The sign faces the highway, not any residential areas.

Reilly stated there were expectations for MA Highway to keep the area in front of the sign clear when the original decision was made by the ZBA. Raising the sign now is not intrusive. Batchelder disagrees with allowing the height increase because other businesses will want to do the same along Route 93. She would deny the variance. Anderson explained the hardship has been established by the reduced visibility, but the potential danger to the community is greater than the hardship. McDonough stated that Putnam Investments has large frontage on Route 93. There are 24 possible businesses along Route 93. Putnam deserves signage consideration because of its presence in the community.

Bevacqua made a Motion to approve the increase of the height of the sign to 15 feet. McDonough seconded the Motion. Three Board members approved the Motion and 2 denied. Batchelder will write the decision.

PETITION NO. 3703

PETITIONER: Andover Community Trust

PREMISES AFFECTED: 94 Cheever Circle

MEMBERS: Anderson, McDonough, Reilly, Jeton and Bevacqua  
Batchelder was recused.

Board member Bevacqua worked with Mr. Pearson as a general contractor 11 or 12 years ago. The Petitioner agreed this was not a problem.

This is a public hearing for a request for a comprehensive permit for the construction of a single family, 3-bedroom affordable home. John Pearson and Susan Stodt represented the Petitioner. This is a local initiative program for a friendly 40B project. The lot is 10,000 square feet. The Town will be asked to waive connection fees and building permit fees. The house will be 2 stories with 1600 square feet of living space, garage under, front porch, driveway and deck. The minimum lot size is 15,00 square feet; therefore, a waiver for the lot size will be required. The setbacks are in compliance, and there is 100-foot frontage on the street, however the frontage requirement is 115 feet. Most lots in this neighborhood are 100x100.

Bevacqua inquired about the grading. There will be a full story retaining wall. This house will be compatible with the other houses in the neighborhood. There is a 99-year lease, which will be in the deed as a restriction. Bevacqua asked if this was the same lot that came before the ZBA 10 years ago. It came before the Board in 1997. Anderson asked if the selection process for the owner of the house would allow it to be someone local. There are guidelines in place that need to be followed. The applicants are given more points for working or having children already in the school system during the selection process.

The Andover Housing Commission voted unanimously to approve the single-family home.

M.J. Powell – 31 Cheever Circle - has lived in this neighborhood since 1968 and raised 4 children here. This neighborhood is perfect for raising a family, like a community in itself, safe and caring. The houses are diverse in size, architecturally and have both renters and owners. She strongly supports the small affordable house. Linda O'Connell – Andover Affordable Housing Trust Fund – The Andover Affordable Housing Trust Fund has approved the funding for this project. Don Harding – 91 Cheever Circle – moved into his property in 1989. There have been many issues with water, which have been addressed over the years. A new home would increase the water problems. The woods act as a sound buffer for the abutters. The abutters were told this was not a buildable lot. Terri Ann McGettrick-Arpin and Mike Arpin – 90 Cheever Circle – bought their home in 1997 because the lot was not buildable. There is a vernal pool on both their property and this lot. This lot was not a gift to ACT, in fact they put in an offer to buy the lot. They have had to install a sump pump and deal with seepage due to work on the house behind them and they fear disturbing the lot next to them will only increase this problem. Stephanie Moore – 8 Cedar Road – the ZBA rejected the previous petition. Andover has met the 10% requirement for affordable housing. She is concerned about the impact on the neighborhood, drainage issues and runoff. The house should be compatible in quality and size to the houses in the neighborhood. The trees are a buffer to noise from Walnut Avenue. She is concerned with who is responsible for the site management and repairing of any damage from the construction. Susan Peck – 62 Walnut Avenue - presented a petition against the project with more than 30 signatures back in December 2006. This is the fourth or fifth proposal for this lot and this project will have the same impact as the other proposals.

There have been no issues raised by any other Board. The 10% rule for affordable housing has not been met. As of April 6, 2007 the inventory is 8.9%. 1%=220 units. The Conservation Commission determined this project is not subject to the Massachusetts Wetland Protection Act or the Andover Wetland Protection By-Law. The ornamental pool is made of concrete and is not a vernal pool.

Bill MacLeod stated that the lot was created in 1937. Most of the lots in this neighborhood have only 100 feet of frontage and 10,000 square feet. This lot is similar to the other lots in the neighborhood. Water and sewer connections will be available. The hydrology will not be affected in the neighborhood.

Susan Stodt stated that the same problems that occurred on the Heather Drive property were unique to this property. This property will have controllers.

ACT will buy the property, build the home and then sell it to the family. ACT holds the land and gives a 99-year lease. ACT holds the right of first refusal upon the sale of the property. A new 99-year lease will be given with every sale. The homeowner is responsible for the maintenance of the home and land. There is no provision for ACT to step in if the house is not maintained, just an expectation that the homeowner would do so.

Michael Fishman – 11 Central Drive-the homes built by ACT are well maintained.

Jeton recommended a site visit for Saturday, May 5<sup>th</sup> at 8:30 am with deliberation at 9:00 am. McDonough made a Motion to continue. Bevacqua seconded the motion and the Board voted unanimously (5-0) to continue.

PETITION NO. 3676

PETITIONERS: Jeffrey and Pamela Soltes

PREMISES AFFECTED: 16 Arundel Street

MEMBERS: Anderson, McDonough, Reilly, Jeton, Bevacqua and Batchelder

Petitioner requests a withdrawal.

Jeton made a Motion to withdraw without prejudice. Reilly seconded the Motion and the Board voted unanimously (6-0) to grant a withdrawal without prejudice. Anderson will write the decision.

PETITION NO. 3697

PETITIONER: Bell Atlantic Mobile

PREMISES AFFECTED: 169R Haggetts Pond Road

MEMBERS: McDonough, Reilly, Jeton, Bevacqua and Batchelder. Anderson recused himself.

Petitioner requests a withdrawal.

Jeton made a Motion to withdraw without prejudice. Batchelder seconded the motion and the Board voted unanimously (5-0) to grant a withdrawal without prejudice.

10:00 pm Bevacqua left the meeting.

PETITION NO. 3690

PETITIONER: Anthony Capone

PREMISES AFFECTED: 444 South Main Street

MEMBERS: Anderson, McDonough, Batchelder, Reilly and Jeton

Anthony Capone represented himself in his request for a variance to build a new home behind the existing home. This was continued from the last meeting so that Mr. Capone could obtain a plot plan, submit a letter stating that the existing dwelling would be torn down within two weeks of the occupancy permit being issued for the new home and obtain a letter from an engineer explaining the water runoff and other water related issues.

McDonough made a Motion to close the public hearing. Batchelder seconded the Motion and the Board voted unanimously (5-0) to close the public hearing. The Board then proceeded to deliberate. The new dwelling will increase the distance from the street, but will have decreased setbacks. There will not be any adverse affects on the neighborhood. Reilly asked if the dwelling could be turned to limit the non-conformity. The Petitioner does not want to turn the house as all of the houses in that neighborhood face this way. The left side setback is too close. Anderson suggested that by moving the house back from the street they have opened up more space. McDonough agreed that it benefits the neighborhood by moving the house back from the street and Batchelder agreed.

McDonough made a Motion to approve the variance. Batchelder seconded the motion and the Board voted unanimously (5-0) to approve the variance. Jeton will write the decision.

PETITION NO. 3694  
PETITIONER: Eisai Research Institute of Boston  
PREMISES AFFECTED: Four Corporate Drive  
MEMBERS: Anderson, McDonough, Reilly, Batchelder and Jeton

This request for a Variance was continued from the April 15, 2007 meeting so the Board members could view the property. The Petitioner would like to add office spaces to the existing building. The project would be 13 feet into the 100-foot buffer zone.

Jeton made a Motion to close the public hearing and approve the variance. Batchelder seconded the motion and the Board voted unanimously (5-0) to close the public hearing and approve the variance. Reilly will write the decision.

PETITION NO. 3701  
PETITIONERS: Makoto and Denise Arai  
PREMISES AFFECTED: 66 Old County Road  
MEMBERS: Anders, McDonough, Reilly, Batchelder and Jeton

The Petitioners were represented by Stephen Stuart of Blackdog Builders in their request for either a variance or a special permit for the construction of a 24x24 foot addition which includes a 2 bay garage with a bonus room above. The property is on the corner of Old County Road and Rattlesnake Road. The garage encroaches the 50-foot setback on the left and the setback on the right by 1 foot. The left side is the only choice for the garage because of the topography of the lot. The lot slopes from back to front. It would be very difficult to put the garage anywhere else.

Jeton asked if the only alternative without needing a variance for setback requirements would be to attach the garage behind the house. There is a full story grade in the back of the house. Reilly added that the hardship is the fact that this is a corner lot and the topography of the lot.

McDonough made a Motion to close the public hearing. Batchelder seconded the motion and the Board voted unanimously (5-0) to close the public hearing. The Board then proceeded to deliberate. Reilly made a Motion to approve the variance. Jeton seconded the motion and the Board voted unanimously (5-0) to approve the variance. Batchelder will write the decision.

PETITION NO. 3702  
PETITIONERS: John and Sheila McDonough  
PREMISES AFFECTED: 34 Canterbury Street  
MEMBERS: Anderson, McDonough, Reilly, Batchelder and Jeton

The Petitioners were represented by Colin Callahan in their request for a special permit for the construction of an addition. The original house was built in the 1950s and is approximately 1145 square feet. The addition will be 30x24 feet and add 1424 square footage. The setback would only be 32.5 feet where 35

feet is required. However, the side yard setback is 27 feet where only 20 feet is required. The abutter's setbacks average 28.2 feet and the abutters have no objections to this project. The new addition will be 4 feet further away.

Batchelder made a Motion to close the public hearing and issue the special permit. Reilly seconded the motion and the Board voted unanimously (5-0) to close the public hearing and issue the special permit. McDonough will write the decision.

PETITION NO. 3704 AND 3705

PETITIONERS: C.A. Investment Trust AND Boston Sports Clubs

PREMISES AFFECTED: 311 Lowell S

MEMBERS: Anderson, McDonough, Reilly, Batchelder and Jeton

Attorney Jason parsons represented C.A. Investment Trust and Attorney Robert Lavoie represented Boston Sports Club in their request for a variance for the existing entrance way signage. In November 2005 the entry monument and sign on both sides of the entrance driveway were erected. In April 2007, the ZBA voted the change in signage was not a substantial change for Rolling Green. The variance is for additional signage panels on the easterly side of the monument. The only other option would be a pylon sign on a center island. This is not safe for traffic. The monument is much safer and appropriate.

Batchelder made a Motion to close the public hearing. Reilly seconded the motion and the Board voted unanimously (5-0) to close the public hearing. The Board then proceeded to deliberate. The pylon sign is the only alternative. The monument is no detriment to the neighborhood. The Board voted unanimously (5-0) to grant the variance based on hardship.

Meeting adjourned at 10:30 pm.