

7:00 p.m. meeting opened. The Hall, 2<sup>nd</sup> floor, Memorial Hall Library, Elm Square.

Present were: Anderson, Jeton, McDonough, Batchelder, Baime

Petition No: 3792

Petitioner: Mulvaney

Premises Affected: 15 Locke St.

Present were: Anderson, Jeton, McDonough, Baime, Baime

Attorney Andrew Caffrey represented the petitioner's request for a special permit under section 3.3.5 to construct additions/alterations that will not meet the front right side setback. Patricia Lineman, petitioner's daughter & Trustee, was also present. The existing non-conforming setback is 14'; therefore the second story addition will not meet the minimum 15' side setback. A variance was granted in 1960 to subdivide the lot from a larger one that now fronts on School St. Anderson pointed out that the non-conforming setback is not labeled on the plot plan. They have spoken with the neighbors & none expressed opposition. The board waived a site view. Jeton made a motion to close the hearing. Batchelder seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Batchelder expressed concern with the lack of detail on the plot plan & commented that the drawings need to be accurate. Anderson suggested conditioning an approval on the submission of a revised plot plan of the front right side of the structure. Batchelder added that it should also refer to the elevations. Jeton made a motion to approve the special permit with the conditions stated by Anderson & Batchelder. McDonough seconded the motion. Batchelder questioned if a special permit was possible since it was built in 1960. Jeton reminded the Board that the property was subject of a previous variance for lot size. Batchelder added that setbacks weren't mentioned in the variance. Jeton made a motion to re-open the hearing to discuss it further with the petitioner's attorney. Batchelder seconded the motion & the Board voted (5-0) to reopen the hearing. Caffrey argued that the statute grandfathers the non-conforming setback due to its existence beyond 10 years & that it is not detrimental, therefore a special permit could be granted. Anderson expressed his uncertainty procedurally about granting a special permit. Caffrey stated that it is a lawful non-conforming structure existing beyond 10 years without enforcement. Anderson suggested deliberating on the special permit request &/or the Board can continue to advertize for a variance. Caffrey asked the Board to proceed with the special permit request. McDonough made a motion to close the public hearing. Jeton seconded the motion & the Board voted (5-0) to close the hearing. Anderson noted that the addition is a vertical extension of the non-conformity & asked for a motion to approve the special permit. There was no motion to approve the special permit. Anderson asked for a motion to deny the special permit. McDonough made a motion to deny the special permit. Batchelder seconded the motion & the Board voted (5-0) to deny the special permit. Anderson will write the decision.

Petition No: 3793

Petitioner: Alexander

Premises Affected: 92 Gould Road

Present were: Anderson, Jeton, McDonough, Baime, Batchelder

Robert Emlak, contractor, represented the petitioners' request to construct a ½ story with dormers to their ranch house (built in 1955) that will not meet the front setback minimum of 50'. The existing house, & proposed addition, will be 40.7' from the front lot line at its closest (on the front left corner of the house). They have spoken with abutters & none expressed opposition. The lot is over 1-acre in area & there are no wetlands in the area to their knowledge. The Board waived a site view. McDonough made a motion to close the hearing. Batchelder seconded the motion & the Board voted (5-0) to close the hearing. Jeton made a motion to grant a

variance. Batchelder seconded the motion & the Board voted (5-0) to grant a variance. McDonough will write the decision.

Petition No: 3794

Petitioner: Ross

Premises Affected: 105 Sunset Rock Rd

Present were: Anderson, Jeton, McDonough, Baime, Batchelder

Attorney Andrew Caffrey represented the petitioner's request for an addition to a house located on the corner of Alderbrook Rd & Sunset Rock Rd. Caffrey argued that the section of Sunset Rock Rd. on which the house fronts doesn't meet the bylaw's definition of 'way' because it is not laid out or developed. He read the definition of front setback & way, emphasizing that the Planning Board had not approved this section of Sunset Rock. He also submitted an index of Town roads from the Town Clerk, who can't certify that it is accepted. It is uncertain if this is the case for all of Sunset Rock Rd. Jeton said that one of four ways to define a way is if it's public (on a plan) & this one is public, although it may not be accepted. Caffrey argued that it is not public because it cannot be used. Jeton stated that this is in the arena of paper streets. Batchelder noted that the section of Sunset Rock in question is wooded. Anderson asked if this section could be improved within the layout. Caffrey stated it could be. Anderson asked if they could get a building permit using Sunset Rock as the frontage. Caffrey stated they could. Anderson asked if, absent paving, etc., is it not a way. Caffrey answered that it couldn't meet Town standards. Ownership is uncertain. Anderson asked if the derelict fee statute apply. Caffrey believes it does. Kaija Gilmore, Inspector of Buildings, commented that it is a way, albeit unimproved & the proposed setback to the way is non-conforming, but it is for the ZBA to decide. Batchelder read into the record a letter from John Hamilton, 1 Countryside Way, in support. Anderson asked for a hardship argument. Caffrey stated that the shape & topography of the lot are a hardship & asked for an expedited decision. Batchelder made a motion to close the hearing. Jeton seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Anderson asked that if Sunset Rock Road is considered a way, is there sufficient hardship for a variance. McDonough made a motion to grant a variance. Batchelder seconded the motion & the Board voted (5-0) to grant a variance. Baime will write the decision.

Petition No: 3795

Petitioner: Ahern

Premises Affected: 5 Maple Court

Present were: Anderson, Jeton, McDonough, Baime, Batchelder

Doug Ahern, 4 Maple Ave., represented himself in his request for a variance from 4.1.2 &/or a special permit under 3.3.5 &/or 3.3.7 to raze the existing house & build a new single family dwelling on a non-conforming lot as to area & frontage. Neither the existing nor the proposed houses meet the minimum setbacks. Ahern submitted photos of a similar project he built on Andover Street where the lot & house do not conform stating that his project would be similar. The Board discussed the existing vs. proposed footprints & setbacks. Ahern has spoken with the Preservation Commission because the existing house was built circa 1893. The house is in rough shape with some rot, has small rooms & hasn't been occupied for 1-1 ½ years. A resident of 7 Maple Court voiced concern over potential damage to the road, noise from work & children's safety during construction. Ahern promised to repair the road to its existing condition or improve it. McDonough asked if any fill would be brought in. Ahern stated that it would be at the same elevation. Steve Bennet, 9 Maple Ct., spoke in favor. McDonough made a motion to close the hearing. Batchelder seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Baime noted that the non-conformity would not be increased. McDonough suggested writing something into the decision to protect the neighbors if

there were a change in elevations. The Board discussed whether it could be done by special permit or variance. Anderson stated that a special permit could be issued because it is not extending further into the side/front setbacks. Jeton stated preference for a variance with the size & habitability of the lot as the hardship. McDonough made a motion to approve with the conditions that the proposed structure be substantially as on the plan & not extend any more into the setbacks, that no fill be imported to change the elevation of the lot or structure, that any damage to the road or abutting properties be repaired prior to issuance of a C/O. Batchelder seconded the motion & the Board voted (5-0) to approve it. Jeton will write the decision.

Petition No: 3797

Petitioner: Hoang Realty Trust

Premises Affected: 560 S. Main St.

Present were: Anderson, McDonough, Jeton, Batchelder, Baime

Attorney Mark Johnson represented the petitioners. There have been two decisions, the second of which allowed the replacement of the existing sign (#3586 = variance issued in 12/06). The variance had conditions: the redesigned sign be constructed per the plans submitted, use the existing support posts/structure, no increase in height, & electrical feeds were to be underground. They are requesting an extension or modification or new relief. The only difference from the prior approval is the face of the sign has a new design. Johnson offered to present a proposed decision. Anderson agreed. Batchelder asked if the wall-mounted sign was part of the prior decision. It was not. Anderson noted that they are entitled to a sign. Johnson explained that since it is in SRC District, they need zoning relief. Anderson asked the petitioners to meet with DRB. Jeton cautioned the Board that review of both signs is not within DRB's jurisdiction. Anderson asked for their review & if no further changes, no further action from the Board is necessary. Anderson authorized Johnson to speak with DRB member(s) if possible. McDonough made a motion to close the hearing. Batchelder seconded the motion & the Board voted (5-0) to close the hearing. McDonough made a motion to approve the variances for the sign + to use Johnson's draft decision. Batchelder seconded the motion & the Board (5-0) to approve the variances & use Johnson's draft. Batchelder will review the draft & finalize a written decision.

Petition No: 3798

Petitioner: Jones

Premises Affected: 373 S. Main Street

Present were: Anderson, Jeton, McDonough, Baime, Batchelder

Gina Jones represented herself & her husband in their request for a variance to construct an in-ground pool that will be located in the front yard. The lot has three front yards & is located in SRC. Mrs. Jones submitted photos of the lot to demonstrate that the pool would not be visible from the streets due to vegetation. The only abutter, the Ristuccia's, have no objection. The pool will meet all setbacks, but due to the unique nature of the lot, it will be in the front yard. The Board of Health has reviewed the plan. McDonough made a motion to close the hearing. Batchelder seconded the motion & the Board voted (5-0) to close the hearing. Anderson stated that the hardship is shape & topography & that there will be no adverse affect on the neighborhood. McDonough made a motion to approve the variance. Jeton seconded the motion & the Board voted (5-0) to grant the variance. Jeton will write the decision.

Petition No: 3799

Petitioner: New Cingular

Premises Affected: 146 Dascomb Rd

Present were: Jeton, McDonough, Baime, Batchelder

Anderson recused himself & left the room. Carmen DeMarco, representative for New Cingular, agreed to a 4-member Board. The proposal is to replace the 9 existing cellular antennas with 6 dual band antennas so both bandwidths can be used. They will also add 3 new lines of coaxial cable outside the monopole. Currently there are 12 runs of coaxial cable outside the pole. The upgrade is necessary for the network. The new antennas are 3" longer & located at the top of the tower. Baime asked if the tower will be higher & if coverage will be increased with the proposed changes. DeMarco stated that it will be 1 ½" taller & that coverage will be increased. She showed the Board coverage maps. Batchelder made a motion to close the hearing. Baime asked if there was any public comment. There was none. Baime made a motion to close the hearing. Batchelder seconded the motion & the Board voted (4-0) to close the hearing. Batchelder commented that they don't have the definite height. Jeton pointed out that they are 3" longer & that they have the specifications for the new antennas. DeMarco stated it is 1 ½" longer & submitted the specifications. Batchelder made a motion to approve the modification of Decision #2614 to replace 9 antennas with 6 + to add 3 coaxial cables. Baime seconded the motion. The Board voted (4-0) to approve the modification of Dec. #2614. Baime will write the decision.

Petition No: 3800

Petitioner: Proctor & Gamble

Premises Affected: 30 Burt Rd

Present were: Anderson, Jeton, McDonough, Baime, Batchelder

Brian Richards, project engineer / fire protection at flammable storage facility, presented the petition. On June 10, 2008, he had an informal meeting with town departments & a question regarding by-product soils came up. They can stock pile the soils on site without a permit, but if they remove greater than 30 cubic yards, they need a permit. They have met with Robert Douglas, Conservation Director. They determined that there would be no environmental impacts. The soil, which is true sand & gravel, has value. Anderson asked if it has been tested under 21E. It has not. Anderson voiced concern for potential litigation in the future if there were any environmental/health impact. Richards offered to have the soil tested. McDonough made a motion to close the hearing. Baime seconded the motion & the Board voted (5-0) to close the hearing. Anderson made a motion to approve with conditions: 1) representative samples of soil to be removed be tested for oil & other hazardous materials, the results being submitted to the Board of Health, 2) a transportation management plan be developed with Planning & Building re: exportation to minimize the impact on residential neighborhoods (routes, covered trucks), 3) the soil management plan shall require that contaminated soil be in one pile & exported to one place, clean soil will be in another. McDonough made a motion to approve with the conditions as stated. Jeton seconded the motion & the Board voted (5-0) to approve with conditions. Baime will write the decision.

Attorney Caffrey will submit a draft decision for 105 Sunset Rock Road to the Board.

Anderson invited Attorney John Smolak to the podium to present his request of insubstantial change regarding Northfield Commons 40B, condition 49 of the comprehensive permit decision (#3744). Anderson asked Smolak to propose language that substitutes a performance bond or other guarantee for the \$75,000 cash as originally written in the decision. Anderson commented that it is not a substantive change; therefore there is no need to re-open, re-notice or re-advertise as for a public hearing. Smolak agreed to draft the language for the insubstantial change of condition 49. He will review the three sets of comments received on the draft decision & combine into, which will be reviewed by Anderson. The Board authorized Anderson to review & approve the final draft. Anderson noted that a blank date in the decision should read June 17, 2007. Brown questioned the change of condition 49. Anderson explained that it becomes a two part process acceptable to the Board, the subsidizing agent & the applicant, which is essentially the same as discussed in the open public hearing.

Petition No: 3785

Petitioner: Exxon Mobil

Premises Affected: 139 River Rd

Present were: Anderson, Jeton, McDonough, Baime, Brown

This is a continued public hearing (3<sup>rd</sup> meeting). Attorney Mark Johnson represented the petitioner & submitted a revised plan without the bump-out for a drive-thru window + new elevations. The current proposal does not have a car wash, bump-out or drive-thru. The building is further back, landscaping has increased & the dumpster location changed. Anthony Guba, site engineer, was also present. They are not requesting any relief for signage at this time. Anderson suggested DRB review for signage. The site engineer gave an overview of the changes, which included in part: canopy pushed back 48' from lot line, more parking at front of building, decreased impervious area. The Board discussed traffic volume, flow & safety; change in use with convenience store (Brown noted it is not a lawful pre-existing use, but was allowed by variance & denied a variance twice in 20-30 year span for same). The Board discussed hardship, which Johnson stated is the change in associated uses over the years with a gas station & Dunkin' Donuts, which have been permitted over the years. He added that any use would require a variance on this site. Anderson asked what uses are allowed in this zoning district. Johnson reminded the Board that any use would require a dimensional variance due to the minimum 100' setback from all lot lines. Anderson asked what they would do if not granted the relief. Johnson stated it would remain the same, but they want to improve it. Jeton made a motion to close the public hearing. McDonough seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Jeton voiced concern about protecting the sanctity of the ID District & that allowing this would open the door. She is not in favor. McDonough agreed adding that it would be a substantial increase / change of use & is also not in favor. Baime agreed commenting that aesthetic improvements would be good. Brown also agreed noting that a use variance is a stumbling point & the Board shouldn't rewrite the bylaw. He is not in favor & is concerned about traffic flow. Anderson asked for a motion to deny due to inconsistencies with the neighborhood & use variance. Brown made a motion to deny based on the lack of establishing a hardship. McDonough seconded the motion & the Board voted (4-1) to deny (Anderson opposed to denying it). Johnson granted the Board an extension until August 22, 2008 to file the decision. McDonough will write the decision.

Petition No: 3788

Petitioner: Andover Donuts

Premises Affected: 93 Main St

Present were: Anderson, Jeton, McDonough, Baime, Brown

Attorney Mark Johnson represented the petitioners' request to remove the condition requiring renewal every 5 years. He submitted prior decisions for similar operations in the area, most of which do not have this restriction. McDonough made a motion to close the hearing. Anderson seconded the motion & the Board voted (5-0) to close the hearing. McDonough made a motion to grant the removal of the condition requiring renewal every 5 years. Anderson seconded the motion & the Board voted (5-0) to remove the condition. Johnson will draft a decision. Brown will write the final draft.

The meeting adjourned at 9:50 p.m.