

Present were: Anderson (Chair), McDonough (Clerk), Jeton, Baime, Ranalli, Boness, Matey

Petition No: 3834
Premises: 11 High Street
Petitioner: Silva
Map: 38 Lot: 115
Zoning District: SRA

David Silva, owner, represented himself in his request for a variance from Section 4.2.4 (?) to construct an in ground swimming pool that would not meet the minimum setback requirements. He noted that his property is surrounded by businesses (Palmer's Restaurant & One Elm Square office condos) that provide unsightly dumpsters and parking lots in his rear yard. The proposed edge of pool would be seven inches (7") from the rear lot line. The lot is undersized as to area and frontage. Mr. Silva has spoken with one of his neighbors. The Board discussed/suggested moving the pool further from the lot lines. Silva agreed to try to do this, as it would only affect the proposed patio area. Anderson noted that a 7" variance is improbable and recommended revising the proposal with his designer. Silva agreed to continue to the May 2009 meeting & to submit a letter requesting the continuance. Jeton made a motion to continue the hearing to the next meeting. Baime seconded the motion & the Board voted unanimously (Anderson, McDonough, Jeton, Baime, Boness, Matey) to continue the hearing to the May meeting.

Petition No: 3828
Premises: 26 Shawsheen Road
Petitioner: Williams
Map: Lot:
Zoning District: SR

Shawn Williams represented himself in his request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct an attached 1 ½ story garage that will not meet the minimum setback requirements. Williams explained that the second floor would be an exercise room. He submitted photos of the area for the proposed attached garage. Anderson noted the proposed 13.5' side setback and the 19.64' rear setback. Jeton noted that this is a corner lot. Williams added that the driveway is on Cuba Street & the house faces Cuba Street. Kristen Howard, 3 Cuba St., direct abutter, brought up a survey conflict on the side lot line shared by her & the petitioner's property. She did not have a survey of her own lot with her, but the Board discussed the alleged lot line discrepancy. It appears that the proposed side setback would be affected by the location of the side lot line. Although the parties agree on the proposed garage, the Board voiced concern over legal issues if there is a lot line dispute & granting of a variance. Both houses were built in the mid to late 1800's and the rock wall has been shown as the dividing lot line for many years. Anderson noted that depending on the true location of the lot line, the variance would be either for a 4' setback or 3.5'. He noted that the hardship is related to topography. The Board can close the hearing, discuss it further, view the property and/or continue the hearing in order to receive an accurate plot plan (depicting the new wall, no shed & a clarified setback/lot line). Jeton suggested that a variance could be granted based on specific dimensions of the addition & it being attached to the house,

making the lot line dispute moot. The Board will individually view the property. McDonough made a motion to continue the hearing to May. Baime seconded the motion and continue the hearing to 5/7/09.

Petition No: 3829

Premises: 31 Glenwood Rd

Petitioner: Brown/Fleming

Map: Lot:

Zoning District: SR

Members: Anderson, McDonough, Jeton, Boness, Baime, Ranalli, Matey

Anderson disclosed that one of the applicants, David Brown, is a Member of the Zoning Board of Appeals & will not be participating in the public hearings before the Board tonight. Patricia Fleming represented herself & her husband, Mr. Brown, in their request to construct additions & alterations that have been previously approved, with the original approval having also been extended. The extension expired in January. Conservation Commission has issued the Order of Conditions. The proposed additions conform to setbacks, however the lot lacks area & frontage, which is typical of the Foster's Pond area of Town. Fleming explained that the hardship is that without zoning relief, no improvements or additions can be made to the house. Anderson inquired if the current proposal is identical to the proposal of Decision No. 3796 (approved 8/5/08) & that the approval lapsed due to the winter weather. Fleming confirmed this. Anderson noted that the statute allows one 6-month extension; therefore this would be a new variance. Jeton asked if there had been any change with the neighbors. There have been no changes or problems. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted unanimously to close the hearing. Ranalli & Matey will sit off the remainder of the case. The Board then proceeded to deliberate the case. Anderson asked for a motion to approve. Jeton asked for a point of clarification on why the law allows only one extension. Anderson explained that the statute considers a variance a more significant form of relief. Therefore, a petitioner needs to start over to be sure the basis to grant a variance still exists. McDonough made a motion to approve the request variance. Jeton seconded the motion. Anderson added that it be granted as set forth in Decision No. 3796. The Board voted unanimously to grant the variance. McDonough will write the decision.

Petition No: 3833

Premises: 16 North Main St.

Petitioner: Chan/Chen

Map: Lot:

Zoning District: GB

Members: Anderson, McDonough, Jeton, Boness, Baime, Ranalli, Matey

Ivy Chen represented herself & her partner, Kathleen Chan, co-owners of an orthodontics office at 16 N. Main Street (the Butler Bank building). They wish to install permanent windows signs & are therefore requesting a variance from Section 5.2.10.5 (temporary signs) as well as a modification of Decision No. 3700 (which prohibited any more signs). They wish to increase their business's visibility & help clients find the office more easily. They have no signs on the building, but do have their business name on the freestanding directory sign. They have been negotiating with the owner, Butler Bank, for 1.5 years. The current proposal is one of many and the one that Butler Bank has agreed to. Ms. Chen noted that their tenancy began after Decision NO. 3700 prohibited further signage. Jeton asked if Butler Bank shared

the prior decisions with them. Chen stated that they did not at the lease signing, but only when they asked for additional signage. Inspector of Buildings, Kaija Gilmore, spoke of the hardship as the prohibition of window signs in Decision No. 3700 & the owner's suggestion of the window sign. She added that the orthodontists have tried to comply & the building currently has window signs. Anderson asked if DRB has reviewed the proposed signs. Ann Constantine, DRB Chair, explained that the DRB had a split decision because some felt it wasn't the best design. Jeton gave an overview of the many hours that the ZBA & DRB spent on signage for the Butler Bank building before it was built. She is aggrieved because the owner isn't upholding the agreement regarding window signs. Jeton suggested the orthodontists add a statement to their business cards stating 'In the Butler Bank building' to help clients locate the office. Chen argued that they need to increase visibility & the proposed window signs conform & harmonious & unobtrusive. The Board waived a site view. McDonough made a motion to close the public hearing. Ranalli seconded the motion & the Board voted unanimously to close the hearing. Boness & Matey sat off of the remainder of this case. The Board then proceeded to deliberate the case. The discussion revolved around existing signage, the limitation placed on the number of signs by Decision No. 3700, the fact that the owner decided who got signage & the prohibition of window signs. McDonough made a motion to deny the requested relief. Baime seconded the motion. Anderson noted that the statutory hardship doesn't exist. The Board voted unanimously to deny the petition. Anderson suggested to Ms. Chen to find an alternative with the landlord. Jeton encouraged the Inspector to enforce the previous decision. McDonough made a motion to encourage the Inspector to enforce the previous decision related to sign violations. Jeton seconded the motion & the Board voted unanimously to encourage enforcement by the Inspector. Jeton will write the decision.

Petition No: 3831

Premises: 28 Orchard St

Petitioner: Downey

Map: 60 Lot: 15

Zoning District: SRB

Members: Anderson, McDonough, Jeton, Boness, Baime, Ranalli, Matey

Billy Foster, builder, represented Richard Downey, owner, in his variance request to construct a second story over an existing non-conforming cape, built in 1949, and to reconstruct the existing garage. Foster noted that petitioners wish to enter the garage from the front, rather than the side, & that there is ledge cropping in the rear, preventing an alternative location for the garage. They have spoken with the neighbors, none of whom expressed opposition. They have met with & obtained approval from Conservation Commission. The sewer connection is in the rear of the house because of a basement bathroom & the sewer line cracking due to blasting in the area. The Board waived a site view. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted unanimously to close the hearing. McDonough & Boness sat off the remainder of this case. Baime made a motion to grant the special permit for the second story addition & garage. Anderson added that they should include the proposed deck, although it will be conforming. Ranalli seconded the motion & the Board voted unanimously to grant the special permit. Ranalli will write the decision.

Petition No: 3832

Premises: 4 Cedar Rd

Petitioner: Linderman

Map: 20 Lot: 158

Zoning District: SRA

Members: Anderson, McDonough, Jeton, Boness, Baime, Ranalli, Matey

Linda Linderman represented her self in her request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct an addition that will not meet minimum setbacks. Her house, located on a corner lot, was built about 1935. She has spoken with her neighbors, all of whom support the proposal. She submitted pictures of the house & sloping rear yard & a letter of support. Linderman offered that she could do the project without the deck, if it would significantly affect the Boards decision to approve. Anderson noted the setback without the deck would be 29.4' on one street & 31.8' on the other. Jeton made a motion to close the public hearing. McDonough seconded the motion & the Board voted unanimously to close the hearing. Baime & Matey sat off the remainder of the hearing. The Board then proceeded to deliberate the case. Discussion included whether a variance would be appropriate without the deck; the difference in setbacks with & without the proposed deck (with deck = 29.4' to Cedar Rd, while the existing setback to both streets is 30'), the restriction on alternatives because it's a corner lot, & site distance issues on a corner lot. McDonough made a motion to allow the petitioner to remove the deck from the request. Jeton seconded the motion & the Board voted unanimously to allow the petitioner to remove the deck from the request. Linderman will submit a letter removing the deck from the request. Anderson asked for a motion to grant a variance due to topographical & corner lot as the hardships. McDonough made a motion to grant the variance. Jeton seconded the motion & the Board voted unanimously to grant the variance. Boness will write the decision.

Petition No: 3830

Premises: 310 North Main Street

Petitioner: Town of Andover

Map: Lot:

Zoning District: SR

Members: Anderson, McDonough, Jeton, Boness, Baime, Ranalli, Matey

Ihor Raniuk, Town of Andover Plant & Facilities Project Manager, represented the petition on behalf of Joe Piantedosi, Plant & Facilities Director. Also present was Chris Huntress, landscape architect. The relief requested is to erect a sign, as part of the existing fence, announcing Wood Memorial Park. The granite sign will be incorporated in to the fence, which is setback 8.8', where 10' is required. The overall size will be 24 square feet, where 10 square feet is the maximum allowed. The fence has been there since 1935 +/- . The lettering will be black painted or lettering etched into the granite. Ann Constantine, DRB Chair, stated that the DRB approved the proposed sign noting that it is a great scale for the area. Mary Lyman, Board of Selectmen Liaison, informed the Board that she has been working with Mrs. Wood on this project & voiced her support. Jeton asked for the hardship. Huntress explained that the maximum allowed (10 sq. ft.) is too small to be adequately visible & the setback is to keep the sign as part of the fence, which is historic. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted unanimously to close the hearing. Boness & McDonough sat off the remainder of the hearing. The Board then proceeded to deliberate. Anderson pointed out that the monument park is located in a 'gateway' to Town. Jeton made a motion to approve the variance. Baime seconded the motion. Matey commented that it is appropriate for the site & will increase visibility & accessibility. Jeton stated that the historic context makes it a unique proposal. Anderson added that the pre-existing fence is historically unique & only part of it will be reconstructed to accommodate the sign. Ranalli voiced support of the reduced setback due to the fence's historic

integrity. Anderson argued that there is no pre-existing sign & therefore a variance is required, adding that the size in proportion to the monument & fence is appropriate. Jeton suggested specifying in the decision the distance that exists between the signposts now where the sign will go. Baime added that the sign in relation to the overall length of the fence on North Main Street (350') is small. The Board voted unanimously to grant a variance. Baime will write the decision.

Petition No: 3835

Premises: 150, 168, 172 Holt Road

Petitioner: Marshall / St. Pierre

Map: Lots:

Zoning District: SR

Members: Anderson, McDonough, Jeton, Boness, Baime, Ranalli, Matey

Attorney Mark Johnson represented the petitioners' request to construct a single-family dwelling that would not meet minimum dimensional requirements. Also present was Bill McLeod, engineer. Johnson gave an overview of the prior approval in 2007 noting that the property sold since then, the approval lapsed & the only change in the proposal is the offer of part of the land to be transferred to the Town. The new house would be setback 30' from the front lot line & 25' from the side. Anderson pointed that the prior approval had a condition of an ANR plan being filed with no further subdivision. Johnson stated that the difference now is the conveyance of land to the Town's Conservation Commission, which could be considered a subdivision. McLeod gave a topographical overview of the land to be conveyed, depicted as lots 41 & 42. The proposed lot area is 29,895 sq. ft., which would not meet the uplands rule. It is possible to place a conservation restriction on the land. Jeton commented that the land proposed for conveyance to the Town is not contiguous & should be cared for by someone. An additional variance may be required to accomplish this. Anderson added that a fee owner can be created (conservation restriction) & the prior decision wanted the land to be combined for the reason of taking care of it. McLeod pointed out that the footprint of the currently proposed house might be slightly larger than the one approved in 2007. Cynthia Kelly, rear abutter, asked to speak. Anderson disclosed that his daughter was a classmate of Mrs. Kelly's daughter. No one voiced any opposition. Kelly commented that the prior concerns of water in basements & wild life disruption remain, & that the current owners didn't want it built when the prior owners proposed to build on the land. Anderson asked McLeod how drainage issues would affect lower elevations & neighbors' low basements. McLeod explained that the land has 'Group C' soils, which do not drain well, & there will be little change in drainage. He added that he did the engineering for the Blueberry Hill Road lots/houses and that Mrs. Kelly's has a swale thus preventing any effect on her lot. Inspector of Buildings Kaija Gilmore asked how much land lot 43 would have if lots 41 & 42 lack contiguous uplands. McLeod stated that the three lots collectively have 28,559 sq. ft. of contiguous uplands, where 30,000 sq. ft. is required. Otherwise, a variance is required for setbacks. Jeton asked why the prior decision didn't address this. Johnson stated it's a pre-existing by-law. Gilmore explained to the Board that the previous decision required the three lots be combined by filing an ANR with the Planning Division & required only Planning staff to sign off on the plan. This has not been done. Mrs. Kelly asked the Board to look at drainage. McLeod reminded the Board that Conservation Commission would send them to the ZBA for the variance & also do a thorough review of drainage. Nothing has been received from Conservation Commission on this proposal. Anderson suggested the Board continue the public hearing until May for comment from Conservation Commission. McLeod argued that a conservation filing is expensive. Anderson asked for the Board's sense. Jeton asked McLeod to point out where the 50' no build zone is on the plan & if it goes through

1/3 of the house. McLeod explained that the lots were created prior to the zoning by law & Conservation Commission can entertain proposals if the applicant if the applicant can create features (i.e. protected land). Anderson commented that the lot is marginal & was already granted a variance once for a similar project. McDonough asked if the contiguous upland is grand fathered. It is uncertain if this is grand fathered. Anderson added that the lot has a small buildable area, a small house, wetlands & uplands issues and that prior approval was for setbacks only. Baime asked if the prior owners went before Conservation. Johnson stated they did file with Conservation, but withdrew due to the Marshall's purchase of the lots. Jeton voiced her preference that Conservation makes a decision first. Anderson agreed suggesting the applicant can continue the hearing or withdraw & that he doesn't want to send them to Conservation if it's a dead ZBA case. Jeton stated her disinclination to approve. McDonough isn't in favor until Conservation Commission has commented. Ranalli would consider the variance for setbacks due to a clear hardship but is also concerned about future additions. Baime commented that the No Build Zone is halfway through the lot & a variance would be too great & out of character. Boness & Matey declined to comment. Anderson voiced skepticism but wants Conservation input, adding that this proposal would affect the streetscape. McDonough asked for public input. Marianne Marshall & Ken St. Pierre, current owners, explained that they bought the property 1.5 years ago because they felt threatened. They got bad advice from their prior engineer & spent \$200k trying to protect themselves & now the neighborhood. St. Pierre added that they are paying sewer betterments for the three 'buildable' lots & time is of the essence. Jeton asked if they have asked for an abatement. They have, to no avail. Anderson asked Johnson for a continuance of a sufficient length of time in order to go before Conservation Commission or withdraw. Johnson stepped out to speak with his clients.

While the Board took a break from the public hearing #3835, Mr. Hilbink, an abutter of 310 North Main Street (one of the previous hearings), inquired when the hearing would take place. He thought the petitioner was Chabad Lubavitch, which also has the address of 310 North Main Street. Anderson explained that that particular hearing had been closed & was by the Town of Andover.

The Board then resumed the public hearing #3835. Johnson asked for a continuance to the October 2009 meeting with the option of bringing it back before the Board earlier in order to appear before the Conservation Commission. He offered to pay to advertise for the continued hearing. Johnson will also submit a letter granting 45-days beyond the close of the public hearing for the ZBA to file a decision with the Town Clerk. McDonough made a motion to continue the hearing until October 2009, or some earlier time as requested by the petitioners. Matey seconded the motion & the Board voted unanimously to grant the continuance. Sitting on this case are Anderson, McDonough, Ranalli, Baime, Boness, Matey.

Baime made a motion to approve the minutes of March 5, 2009. Anderson seconded the motion. The Board unanimously approved the minutes of March 5, 2009.

Baime made a motion to adjourn the meeting. McDonough seconded the motion & the Board voted unanimously to adjourn the meeting at 9:56 p.m.