

Present were: Anderson (Chair); McDonough (Clerk); Jeton, Batchelder & Brown (Members); Baime, Ranalli & Matey (Associate Members).

The meeting opened at 7:00 p.m.

Petition No.: 3822

Premises affected: 10 Bailey Rd

Petitioner: Butt

Members: Anderson, Batchelder, Brown, Baime, Ranalli

A letter dated August 19, 2009 from petitioner's Attorney, Mark Johnson, requested to withdraw without prejudice the request for a variance to construct a single family dwelling that would not meet minimum setback requirements. Brown made a motion to allow the withdrawal without prejudice. Baime seconded the motion & the Board voted unanimously to allow the withdrawal without prejudice.

Petition No.: 3854

Premises affected: 8 Fosters Pond Road

Petitioner: Butler

Members: Anderson, Jeton, Baime, Ranalli, Matey

Attorney Glenn Butler represented the petitioner's request to extend the variance to construct a new single family dwelling most recently granted under Decision No. 3801. The original variance was granted in Feb. '06, extended in May '07 and regranted in Sept. '08. They have Conservation Commission approval. There were some concerns about the existing house being vacant since 2005, construction equipment being stored on the lot and whether the new house will be built if the variance is extended. Matey made a motion to close the public hearing. Baime seconded the motion and the Board voted unanimously to close the hearing. The Board then proceeded to deliberate. Baime made a motion to grant a six-month extension of Decision No. 3801 with the same conditions. Jeton seconded the motion & the Board voted unanimously to grant a six-month extension. Ranalli will write the decision.

Petition No.: 3847

Premises affected: 11 Rolling Ridge Rd

Petitioner: Meshnick / Roth

Members: Jeton, Batchelder, Brown, Ranalli, Baime

The Board conducted a site visit at 6 p.m. on 9/3/09. Following the site visit the Board attended the Regular Meeting at 7 p.m. The petitioners were present. No other members of the public made their presence known regarding this case. Ranalli made a motion to close the public hearing. Batchelder seconded the motion & the Board voted unanimously to close the hearing. The Board then proceeded to deliberate. Jeton reminded the Board that Petitioners have requested a variance &/or special permit to connect the existing house to the existing garage, which would render the house & garage non-conforming. Jeton added that all other houses on the street have such a connection and the immediate abutter has a wooded buffer and their garages are the nearest structures to the common boundary. Batchelder noted that she visited the site independently on Monday, 9/1/09, and made the same observations, adding that the existing house & garage are very close to each other. Jeton suggested relief can be granted under a special permit. Brown emphasized the 2001 decision in which the deck was approved by variance (Dec. No. 3086). Prior to it the garage was conforming, but the deck addition rendered the garage non-conforming. He noted that a

variance does not establish a pre-existing non-conforming structure and does not make it eligible for a special permit; therefore the connection can only be done by an additional variance. The hardship relates to the two septic systems, angle of the side yard and topographical / soil conditions that limit alternate locations. Brown made a motion to grant a variance. Batchelder seconded the motion & the Board voted (5-0) to grant a variance. Brown will write the decision.

Petition No.: 3851

Premises affected: 47 Rattlesnake Hill Rd

Petitioner: Entegra Development

Members: Jeton, Batchelder, Brown, Ranalli, Baime

This is a continued hearing. Brian Salazar, of Entegra, gave an overview of what they've done since the last meeting: obtained Preservation Commission approval for demolition of both the house & barn, submitted a structural engineer's report, and conducted a title search (lot created by ANR in '92/'93, prior to subdivision control laws). Jeton pointed out that the Town Planner's stamp on the ANR plan specifically states that the lot is not buildable. Salazar maintained the variance request. Jeton explained that they'd need two variances: one for the undersized lot & the other to maintain the barn in a non-conforming location. The Board viewed the property individually since the last meeting. Batchelder made a motion to close the public hearing. Baime seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. The Board discussed the issue of the side setback on the barn and that this is not a buildable lot. The lot has sufficient frontage, is level, has no wetlands, and is located in a neighborhood of various sized lots; therefore it is not unusual. Batchelder felt it is buildable; only lacking 1/10 of an acre and it would not be detrimental, but would increase the character of the neighborhood. Brown agreed, but voiced concern over setting a precedent with ANR plans creating non-conforming lots. Jeton reminded the Board it is standard procedure to stamp such plans as 'non-buildable' and 'not in compliance with zoning'. The Board discussed the lack of hardship for a variance related to soil conditions, shape or topography. Batchelder made a motion to deny the requested variance. Jeton asked the Petitioners if they wished to withdraw without prejudice. Salazar requested to withdraw without prejudice. Batchelder made a motion to allow the withdrawal without prejudice. Baime seconded the motion and the Board voted (5-0) to allow the withdrawal without prejudice. Petitioners will submit a letter to the Board.

Petition No.: 3855

Premises affected: 3 Wabanaki Way

Petitioner: Fish

Members: Anderson, Batchelder, Brown, Ranalli, Matey

Murray Fish represented himself in his request for a special permit under 3.1.3.F.4 for a family dwelling unit to be occupied by his mother-in-law. The addition over the garage would include a wet bar, sink & full bathroom. They are currently constructing the addition under a building permit and were sent to the ZBA for the special permit. There is no change in the house's footprint & the addition meets setbacks. It is connected to the main house and does not have a cooking area. Anderson reminded the Board that a family dwelling unit is to be occupied by a family member requiring care by reason of age &/or disability. Brown made a motion to close the hearing. Ranalli seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate. Brown made a motion to grant a special permit for 5 years. Batchelder seconded the motion & the Board voted (5-0) to grant the special permit for 5 years. Batchelder will write the decision.

Petition No.: 3856

Premises affected: 103 Haggetts Pond Rd

Petitioner: Clark

Members: Anderson, McDonough, Jeton, Batchelder, Brown, Baime, Ranalli & Matey

Jeffrey & Lisa Clark, property owners, represented themselves in their request for a variance from 4.1.2 &/or a special permit under 3.3.5 to construct a front porch that will not meet the minimum front setback. The 8 yr. old septic system is located in the front yard & has a retaining wall that creates a 13" step that is difficult for their disabled daughter to safely navigate between the existing landing & septic wall. The proposed porch will be 8'x26', however the plan submitted doesn't depict the proposed setback. The Board requested that the required certified plot plan be submitted for the October meeting. Additionally, the Board requested a confirmation from the Board of Health that they can build so close to the septic system and the front setbacks for the abutting properties within 200'. Matey requested scaled construction drawings & Brown suggested pictures showing topographical conditions would be helpful. Brown made a motion to continue the hearing to the October meeting. Batchelder seconded the motion & the Board voted unanimously to continue to the October meeting.

Petition No.: 3852

Premises affected: 8 Cassimere Street

Petitioner: Candiano

Members: Anderson, McDonough, Jeton, Batchelder, Brown, Baime, Ranalli & Matey

Robert Bowen, builder for Petitioner, was present. He requested that the Board not open the public hearing but continue it to the October meeting since the applicant was not present. Brown made a motion to extend the opening of the public hearing to October with the condition that the applicant extends the time to consider the application. Batchelder seconded the motion & the Board voted unanimously to continue the opening to October with condition.

Petition No.: 3853

Premises affected: 3 Black Horse Ln

Petitioner: Baldassari

Members: Anderson, Jeton, Batchelder, Brown, Ranalli & Matey

Jack Sullivan, engineer, represented Mr. & Mrs. Baldassari who were also present. Petitioners wish to construct an in-ground pool 15' from the side lot line, where 30' is required in the SRC District. Hardship was presented as wetlands on the other side of the lot, a detention basin on the lot to the rear, and the driveway limiting alternative locations. Three letters of support were submitted from 6, 7 & 8 Black Horse Lane. Mr. Sullivan added that the steep slope at the rear of the lot requires a retaining wall for the pool to be built. The Board noted the odd shape of the lot with the septic system in the middle. Alternatives were discussed, including moving or eliminating the proposed cabana so the pool would conform. Sullivan argued that a bay window on the rear of the house also minimizes alternatives. The Board asked for the Inspector of Buildings opinion as to whether the proposed 15' setback is to a side or a rear lot line. Kaija Gilmore, Inspector of Buildings, explained that anything beyond the rear wall of the house is considered rear. Mrs. Baldassari stated that the open cabana is for shielding her from the sun due to her medical condition. Arthur Brussard, 40 Rocky Hill Rd. and owner of 1 Black Horse Lane, spoke against the petition. Brussard stated his concern about increased flooding issues in the neighborhood. He also voiced opposition over the footings for the proposed pool, which he believes would be on his lot, as well as the proposed waterfall. Sullivan informed the Board that the retaining wall will be constructed 6" within the lot line and that drainage will be handled on site. He also noted that Conservation Commission has ordered a drainage peer review, which is incomplete at this time. The Petitioners will appear before Conservation again. The Board discussed whether the proposed waterfall and slide are part of the pool. While the Board felt that since water flows through it, it is part of the pool, the pool company representative considered it an accessory or landscape feature. The Board waived a site view. Batchelder made a motion to close the public hearing. Baime seconded the motion & the Board voted unanimously to close the hearing. McDonough & Baime sat off the remainder. The Board then proceeded to deliberate. Anderson noted that a variance is required from the side setback. The severity of the variance

depends on whether they determine the setback to be from the pool or the waterfall. From the pool it would be 15', where 30' is required. From the waterfall & equipment it would be 2'. The lot is unusually shaped; there are wetlands which constitute soil conditions & topography. Therefore the hardship could be on shape & wetlands. There are pre-existing water conditions and both ZBA & Conservation relief are required. Anderson concluded by stating that the detriment to the neighborhood outweighs the pool and that he is not in favor of granting a variance. Batchelder & Brown agreed. Brown felt the pool can be built to conform. Batchelder noted that the bylaw setback requirement includes in the minimum setback equipment & paraphernalia. Anderson explained to the Petitioners that they could withdraw without prejudice. Sullivan requested to withdraw the petition without prejudice. Batchelder made a motion to allow the withdrawal without prejudice. Matey seconded the motion & the Board voted (5-0) to allow the withdrawal without prejudice.

Petition No.: 3849

Premises affected: 412 High Plain Rd.

Petitioner: Ristuccia Holdings

Members: Jeton, Batchelder, Brown, Ranalli, Matey, McDonough

Batchelder made a motion to re-open deliberation. Matey seconded the motion & the Board voted (5-0) to re-open the deliberation. Jeton stated that the re-opened deliberation is to discuss conditions in order to make the Dimensional Special Permit clear. Brown noted that the By Law requires conditions including for replacement of the historic structure. But this wouldn't apply if the deal falls apart or the subdivision of land for new structures without moving an historic structure. Jeton suggested the conditions should consider worst case scenario so that the historic structure is not lost. The Board discussed logistics of when the subdivision should take place (prior to a house being moved/renovated/converted), what is allowed in cases of catastrophic damage / whether the owner may rebuild, linking lot creation to restoration, permit sequencing, & triggering event for issuance of Cert. of Occupancy. Jeton asked for Anderson's advice. He stated that except for a catastrophic event, no structure shall be built if, during renovation it is determined that it cannot be rehabilitated & shall remerge with the original lot, an ANR must be filed before a building permit can be issued, and a percentage of rehabilitation determined by the Board must be completed before the other building can be sold. The Board also discussed the possible need for approval from other Boards/Committees/Town Departments as well as the aesthetics regarding restoration with a change of use (i.e. barn to dwelling). The Board suggested making the nature of the modification a condition of approval. Brown noted that no plans regarding the conversion were submitted & that they should be submitted for approval by Preservation Commission as a condition of approval. The Board emphasized that Preservation Commission needs to review/approve the Preservation Restriction. The Board agreed on the following conditions: Conservation Commission & Board of Health approval is required prior to the issuance of a building permit; architectural plans must be attached to the Preservation Restriction for approval by the Board and Town Counsel; if during rehabilitation the structure is deemed unsalvageable, no sale of the other lot is to occur, except for a catastrophic event, no structure can be built on the lot & the lots would merge, or if the building cannot be saved, no sale shall occur; and no pre-existing condition of the building shall be considered a catastrophic event. Anderson suggested keeping deliberations open to draft the decision in case more discussion is needed.

Petition No.: 3835

Premises affected: 150, 168, 174 Holt Rd.

Petitioner: Marshall / St. Pierre

Members: Anderson, Jeton, Batchelder, Brown, Ranalli & Matey

Attorney Mark Johnson represented the Petitioners in this continued public hearing. He gave a brief overview of the process to date: hearing opened in April, continued to October for Conservation Commission consideration. Conservation prefers a conveyance in fee of the land the Petitioners have offered. Anderson read into the record a Sept. 3, 2009 memo from

Conservation Director, Robert Douglas, which confirms Johnson's stated re: conveyance in fee. Anderson also reminded the Board that this is not a public hearing, but nonbinding discussion for a conceptual view. William McLeod, project engineer, reviewed the conceptual plan for the proposed house and driveway, which depicts a smaller house than previously proposed. The proposed setbacks would be 30' front & 20' side. The land to be conveyed would be lots 41 + 42 and no subdivision plan would be required. Johnson added that variances would be necessary for the front & side setbacks, as well as upland area fulfillment, as well as Conservation approval. Anderson noted that a variance is needed for lot area. Some of the Board voiced their openness for the proposal that would benefit the public & wouldn't be a detriment. Jeton commented that there would be a lot of enforcement orders on a marginal piece of land that doesn't need a house. Maryann Marshall reminded the Board that they were approved for a larger house. Johnson explained that a variance was granted in January 2007. Anderson asked the Board to indicate their favor for project. Anderson, Matey & Baime expressed their favor. Ranalli, Jeton & McDonough expressed their skepticism.

Petition No.: 3803

Premises affected: 0 + 86 River St., 15R Charlotte Drive

Petitioner: Taylor Cove

Members: Anderson, Batchelder, Baime, McDonough, Brown

Attorney Donald Borenstein waived the reading of the public hearing notice. Town Counsel Thomas Urbelis gave an overview of the process to date: the ZBA denied the comp. permit due to the 10-acre minimum for cluster + using 2.68-acres in Taylor Cove that is part of the Charlotte Drive subdivision; the applicant appealed the denial to the HAC & filed a motion for summary decision. Despite including an affidavit from Daniel Casper, Esq., former ZBA Chair, who has been involved in over 3,000 real estate transactions, stating that allowing the use of the 2.68-acres from Charlotte Drive in Taylor Cove would cloud the titles of Charlotte Drive land owners & the marketability of titles; the hearing officer granted the motion to overturn the ZBA's decision & remanded it to the ZBA for a comprehensive review of the merits. The Board cannot appeal until it has considered the project in full; a decision is rendered & considered by the HAC hearing officer. If the project is approved by the ZBA, any party can file against the Board & the developer regarding marketability of title. If it is approved with conditions or denied, the Petitioner can go back to the HAC.

Attorney Don Borenstein, Applicant Todd Wacome, Traffic Engineer Dermot Kelly, & Civil Engineer Bill McLeod were present. Also present on behalf of the Town was Ken Cram, Traffic Engineer. Bill McLeod explained that the road, drainage, detention pond, & utilities were previously approved as Victoria Place by Conservation Commission. The site will be serviced by Town-built sewer along an easement & the water main will be looped to connect to Charlotte Drive. Pedestrian access at the end of the cul-de-sac will also connect to Charlotte Drive.

Ken Cram, traffic consultant for the Town, presented his peer review of the traffic report dated 9/17/08 by Dermot Kelly. Cram commented that: 1) Kelly did no further analysis of counts or include speed data for safety assessment, 2) the floating car method was not used, 32-38 mph = general range while the posted speed limit is 25 mph, 3) no crash analysis was included (Cram found 5 reported crashes), 4) no 5-year plan was considered & a small subdivision on Lowell Jct. Rd. wasn't considered, 5) trip generation was not determined, 7) no build conditions were included, and 8) no capacity analysis was included. Cram stated the Level of Service as 'C' (average). Cram's recommendations included:

- 1) 30' radius at intersection
- 2) Warning signs
- 3) Clearing shrubbery along River Street
- 4) Install sidewalk along River Street or terminate it within the project limits
- 5) Increase the road slope at the entrance to increase drainage

- 6) Have Fire Dept. review plans to ensure apparatus maneuvering

Kelley stated that the following issues were not overlooked, as Cram suggested, due to the project's small size: level of service, traffic distance, 5-year plan, and accident analysis. Cram agreed. Kelley will provide his response in writing, including:

- 1) Site distance of 85th percentile was a typographical error. It is 50th.
- 2) The study was conducted in Sept. 2008. Since then a new TIAS was issued in Nov. 2008.
- 3) The volume of traffic does not affect the site distance.
- 4) He will speak with DPW Director Jack Petkus regarding the sidewalk.
- 5) He will speak with project engineer, Bill McLeod, regarding road slope.
- 6) He will speak with Fire Prevention regarding the turn-around.

The following issues were discussed with the ZBA, Mr. Cram, the applicant's team, and the public: sidewalks, safe sight distances for this site/road, density of vehicles used for trip generation, and parking demand. Anderson listed the issues from the prior meeting: density, design issues/streetscape/lay-out/architectural, buffering to neighbors, access to 'back quads' / conservation land, emergency vehicle access, site amenities, and on-site open space/useable amenities/how it connects to other areas.

Francis Wheeler, 4 Hillcrest Rd, spoke on behalf of the Romigs, 78 River St., voicing their concern for potential cutting into the steep slope along River St. that their house sits atop and lack of pedestrian safety on River Street.

The Board will conduct a site view in September, the time and date will be posted at the Town Offices and the Town website.

Brown made a motion to continue the public hearing until October 1, 2009. McDonough noted that she will not be present.

Batchelder seconded the motion. Attorney Borenstein agreed to continue with a 4-member Board as long as McDonough listens to the recording of the October hearing and signs the Mullen affidavit.

Petition No.: 3740

Premises affected: 69 North St

Petitioner: Northfield Commons

Members: Anderson, McDonough, Jeton, Brown

Attorney John Smolak represented the applicants, who lost financing from the original lender and have obtained new financing from a new lender. He is asking the Board to re-endorse the ANR plan and make a finding of insubstantial change regarding the change in financing. They hope to close financing in early October. McDonough made a motion to find that the change in financing is an insubstantial change. Brown seconded the motion & the Board voted (4-0) to make a finding of insubstantial change. Anderson noted that the ANR has been resigned & redated by the engineer and that it is the same plan. McDonough made a motion to re-endorse the ANR. Jeton seconded the motion & the Board voted (4-0) to re-endorse the ANR.

McDonough made a motion to approve the minutes of July 2, 2009, July 14, 2009 & August 6, 2009. Brown seconded the motion adding that they be approved with the revisions he submitted to the secretary. The Board voted (4-0) to approve the minutes as revised by Brown.

The Board adjourned at 10:35 p.m.