

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

The meeting opened at 7 p.m.

Petition No.: 3862

Premises affected: 13 Maple Ave

Petitioner: Winters

Members: Anderson, Brown, Baime, Boness, Matey

James Winters represented himself in his request to construct a two story addition in place of an existing single story 3-season porch, neither of which meets the minimum rear setback. The Preservation Commission has reviewed the proposal and ruled that there is no impact because it is not visible from the street. Petitioner has not spoken with his neighbors and no one present voiced any comments or questions on the proposal. The house was built in 1892 with additions in 1920-40's. The Board discussed the need to tie the decision, if approved, to formal plans. A contractor has looked at the job & will prepare the drawings. The rear stairs' proposed setback would be less than the 26.5' depicted on the plot plan, but no closer than the existing rear wall. The Board waived a site view. Baime made a motion to close the public hearing. Boness seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate.

Brown noted that the original house predates the zoning by law and made a motion to find that the proposed addition as represented will not be more detrimental and to grant a special permit as presented and to deny the variance as moot. Boness seconded the motion & the Board voted (5-0) to grant the special permit. Boness will write the decision.

Petition No.: 3863

Premises affected: 86 Elm Street

Petitioner: Oldaker

Members: Anderson, McDonough, Brown, Batchelder, Matey

Dave & Margie Oldaker were represented by Joanna Reck, architect. They wish to construct a deck that would not meet minimum rear setback requirements. There is an existing stone landing where the deck would be built. Reck noted that the lot is long & narrow. Anderson asked if they have a double lot, held in common ownership. They do. The house was built in 1922 +/- . They have spoken with the neighbors, none of whom voiced opposition. One letter of support was submitted. The petitioners & their representative argued that the hardship is related to the shape of the lot. The Board discussed the deck height and alternative conforming locations. The existing house is conforming and therefore a special permit is not possible. There were no comments or questions from the public. Anderson explained the option of withdrawing without prejudice. McDonough made a motion to close the public hearing. Batchelder seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate.

McDonough expressed her support of the variance because it is at the rear and low to the ground. Batchelder added that the location of the house on the double lot forces the proposed location and a 26.22' rear setback is a minor encroachment. Matey & Brown did not agree with the hardship argument. Batchelder quoted section 9.2.2.2 related to soil condition, shape, topography, or structures noting that the proposed location is sensible. Brown reminded the Board that they had denied a pergola encroaching into rear setback on Shipman Rd. McDonough made a motion to approve the variance with the condition that it is in accordance with the plans submitted. Batchelder seconded the motion & the Board voted 4-1 (Brown opposed) to grant the variance with conditions. Batchelder will write the decision.

Petition No.: 3864

Premises affected: 10 Bailey Rd

Petitioner: Butt

Members: Anderson, McDonough, Brown, Batchelder, Baime, Boness, Matey

Attorney Mark Johnson represented Paul Butt. Also present was the project engineer, Steve Stapinski. Johnson submitted an Order of Conditions from the Conservation Commission that Butt received for the construction of the proposed non-conforming single-family dwelling. Stapinski gave an overview of the project: the Form A lot was created approximately 6 years ago and is located in the Watershed Protection Overlay District. Over a 3 year period, the wetland delineation has moved, covering more of the lot. Stapinski emphasized that other houses in the development have 15' side setbacks and therefore the current proposal will not derogate. The septic plan has been approved by the Board of Health, subject to Conservation Commission approval. Seven weeks ago a peer review delineation of the wetlands was completed. The lot slopes up away from the street with the septic system in the front yard, which is typical of the area. Stapinski confirmed that the wetlands could move closer to the house. The Board questioned when the Form A plan was created and whether the Petitioner filed the Form A. Stapinski believes that Mr. Butt did file the Form A and has owned the lot approximately 5 years. Johnson informed the Board that Mr. Butt subdivided & developed the adjacent parcels starting in 2001. The Board discussed whether Mr. Butt created the hardship when he subdivided the land as well as protecting future owners from wetlands. Stapinski felt the wetlands probably wouldn't expand, but could flood Bailey Road. Brown requested house plans, as required for filing. Johnson will submit them. The Board will view the premises on Saturday, November 7, 2009 at 8 a.m. Anderson stated that he will view the site separately if he is unable to attend at the scheduled time. Anderson asked for: 1) architectural plans, 2) a proof plan sketching a conforming house, 3) the ANR plan, and 4) why they do not need WPOD relief. Matey also stated that he may need to view the site individually. Brown made a motion to continue the public hearing to the December meeting. McDonough seconded the motion and the Board voted (7-0) to continue the hearing to the December meeting.

Petition No.: 3861

Premises affected: 15 Locke St

Petitioner: MRBS LLC

Members: Anderson, McDonough, Brown, Batchelder, Baime, Boness, Matey

Attorney Mark Johnson represented the Petitioners, Michael Ristuccia & Brian Schwing, who were present. Also present was Local Building Inspector Christopher Clemente. Johnson gave an overview of what has occurred at the site (what previously existed, what was demolished, what is planned). He submitted a letter dated 11/4/09 from Rob Bramhall, the original architect, stating that he been hired by the current owner to get the job back on track. Also submitted were floor plans. Johnson recognized that the proposed construction must match the elevation drawings. The Board asked for an explanation as to why half the house was demolished and why the Stop Work Orders were not honored. Mike Ristuccia explained that the orders were sent to Locke Street and once received they were obeyed. His structural engineer felt that the garage floor was unsafe/inadequate to use for the proposed living space and therefore they removed garage walls to remove the slab floor. The Board asked several questions about the history of the previous owner, the most recent transfer of ownership and if bought on speculation. It was purchased from the previous owner with intent to construct previously approved plans to build for a customer of Ristuccia's, who was present. However, the plans submitted for the building permit were different than the ZBA approved, except that the footprint was the same, as well as some additional dormers. Ristuccia admitted that when he set out to build under the permit, he knew that he'd demolish approximately 50% of the existing house. A combined partial demolition & building permit were issued. Ristuccia explained what would remain out of the demolished structure (1<sup>st</sup> floor to top of walls). Raphael Brickman, buyer, informed the Board of how he & his wife came to buy the house & contract with Ristuccia. He asked what issues need to be resolved. He admitted that they expected a completely different house (new construction) other than what was on the lot. Kaija Gilmore, Inspector of Buildings, gave an overview of the Stop Work Order issuance: ordered fencing to decrease hazard, non-compliance with the ZBA decision and Robert Douglas, Conservation Director, voiced concern due to proximity to wetlands. Brickman had spoken with Mr. Douglas who indicated there was no issue. Bramhall pointed out that Conservation approval was issued under the prior decision. Anderson disclosed that his son plays soccer with Mr. Bramhall's

son. No one objected to his participation. Anderson inquired if Bramhall expected the house to be demolished when he drew the original plans. Bramhall was uncertain, since a full gutting of the house would have been necessary to determine the structural integrity. If that became necessary, he would have consulted with the Inspector and return to the ZBA before proceeding. Ristuccia explained that he didn't understand that removing walls was an issue & that Bramhall only recently became involved with him. The Board pointed out that the decision specifically stated "continued existence of the existing structure and for a second floor addition." The Board discussed what was salvageable of what remains and whether the prospective occupants would have torn it down entirely if there was no zoning issue. Bramhall stated they would have. Also discussed was the difference in price between modifying the existing structure and tearing it down to build new. Bramhall felt it would cost 25% more to save the house. Anderson outlined three options:

- 1) the law was violated, the building has been condemned & all variances are null & void
- 2) tear down the existing, build a new house as soon as possible meeting setbacks equal to the variance or greater
- 3) take what remains and complete construction according to the plans

Anderson asked Attorney Johnson, Mr. Ristuccia & Mr. Bramhall to determine how much money Ristuccia will donate to preservation so he minimizes his profit. The Board will take up the matter for five minutes at the end of the meeting. Brown asked Town Counsel Urbelis if relief is needed for the current setbacks since a 1960's variance was granted to subdivide & create the lot with insufficient area, presuming the house would conform to setbacks. Then in 2008 relief was granted for the non-conforming setback & expansion of the existing house. Urbelis will read the decisions in detail before answering emphasizing that the outcome depends on the Board's decision on the current application. The Board then proceeded with other cases.

At the end of the meeting the Board reconvened the public hearing on 15 Locke Street. Anderson asked for a constructive way to get to 'yes'. Ristuccia stated that the roof has to come down, but no more of the first floor, with all work supervised by Bramhall. Local Building Inspector Christopher Clemente requested that Bramhall and a licensed builder be on the job site. Brian Schwing, Ristuccia's business partner, stated that he has a Construction Supervisor's License and will be on the job with Bramhall supervising in consultation with their engineer and the Inspector of Buildings. If necessary, they'll return to the ZBA. Brown asked for plans with dimensions, dates and names on them. Anderson asked for a proposal amenable to all parties involved. Ristuccia asked for a continuance to Nov. 18, 2009. Brown made a motion to continue to 11/18/09 at 6:30 p.m. McDonough seconded the motion & the Board voted (5-0) to continue the hearing to 11/18/09 at 6:30 p.m.

Anderson recused himself from the following petition.

Petition No.: 3860

Premises affected: 311 Lowell St

Petitioner: Clearwire LLC

Members: McDonough, Brown, Batchelder, Baime, Boness, Matey

McDonough served as Acting Chair for the public hearing.

David Torres, of Goodman Networks, the Boston representative of Clearwire, presented the application to collocate 6 antennas, including 3 new antennas & swap out one existing antenna for their 4G network on the existing Sprint tower. They also propose to install an equipment cabinet on the existing platform. They will remove one per side; configured with 4 per side. The new antennas will be the same size as the existing. Boness pointed out that no structural analysis was submitted. Torres explained that it was done internally to determine if the monopole is structurally viable. The antennas are for a new and upcoming, rather than an existing network. They are seeking new locations to minimize coverage gaps for the line of sight data technology (above trees). Torres explained that it is voice over internet. Batchelder sat off the remainder of the hearing. Mick Mueck, Charlotte Drive, asked about the additional power output radiating. Torres stated that it is negligible and within the FCC regulations. Boness asked if this was for cumulative output. Torres stated that it is not cumulative. Boness pointed out that if more

providers collocate, then the overall site may exceed the threshold. Torres argued that the FCC wouldn't license carriers in order to maintain the threshold. RF Engineer, Philip Leif, added that the FCC monitors the radiation output. Town Counsel Thomas Urbelis reminded the Board that they can require an RF engineer peer review at the applicant's expense. The Board felt that a peer review wasn't necessary. Boness voiced concern over the radiation pattern & the lack of screening / plantings as required in the original decision. Additionally, some antennas are not painted to match. Torres offered to speak with the owners. Brown suggested adding screening as a condition of approval to mitigate the visual impact of the new equipment shelter. Baime made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate the case.

Baime made a motion to allow the swapping of equipment. Brown added with conditions. Boness suggested ordering the plantings and amended the motion to include a condition that the painting be non-reflective and that plantings be added as a buffer. The Board voted (5-0) with conditions to approve the special permit. Boness will write the decision.

#### Discussion Item

Attorney Carl Gehring, representing Verizon, appeared to ask the Board's opinion on whether zoning relief is required by formal application to swap some existing antennas previously approved and installed at 23 Main Street under a formal application. He noted that the bylaw does not specify antenna model and therefore this swap of antennas does not constitute a modification of a decision and there will be no additional equipment. He characterized the swap as network maintenance. Town Counsel Attorney Thomas Urbelis asked Gehring if the type of device was specified previously. It was not. Urbelis advised the Board that they can make a motion whether or not it requires a new filing. The Board asked about replacement of failed panel antennas, frequency of new panels and models & sizes specified on approved plans. Kaija Gilmore, Inspector of Buildings, stated that the Board must require specifications & that this is not ordinary maintenance in her opinion. Batchelder & Boness felt that Gehring should come back to the Board formally, while Brown, McDonough & Baime felt that they could swap the antennas without a formal filing. Urbelis recommended that the original plans & specifications be shown to Gilmore in order to compare them with the proposed changes.

#### Scheduling of special meeting for Taylor Cove 40B (Anderson, Brown, Baime, Batchelder, McDonough)

Anderson announced that a special meeting regarding Taylor Cove will be held on 11/18/09 at 7 p.m., location to be determined. At the meeting, Town Peer Consultant for Traffic Ken Cram will respond to Dermot Kelly's recent letter, the traffic experts & neighbor Tom Bonderuk will compile conditions for a safe project, and the Board will submit their top three issues. Anderson asked the neighbors to also list their top concerns for the 11/18/09 meeting. Brown made a motion to continue the meeting to Wednesday, 11/18/09 at 7 p.m. at location to be determined. Baime seconded the motion and the Board voted (5-0) to continue the meeting to 11/18/09 at 7 p.m.

#### The Board then resumed the public hearing on 15 Locke Street (#3861)

There being no other business of the Board, the meeting adjourned at 10:20 p.m.