

Present were: Anderson (Chair); Brown (Acting Clerk); Jeton & Batchelder (Members); Baime (Associate Member).

The meeting opened at 7:07 p.m.

Petition No.: 3869

Premises affected: 199-209 N. Main St.

Petitioner: Guys of Andover

Members: Anderson, Jeton, Brown, Baime, Batchelder

There was a request to continue the hearing to 3/4/10. Brown made a motion to continue the hearing to 4/1/10. Baime seconded the motion & the Board voted (5-0) to continue.

Boness & Town Counsel Thomas J. Urbelis arrived at 7:09 p.m.

Petition No.: 3873

Premises affected: 4 Green Meadow Ln

Petitioner: Chan / Young

Members: Jeton, Brown, Boness, Baime, Batchelder

Daniel Chan represented himself & his wife, Alice Young, in their request to convert the basement to living space. Anderson explained that the house is part of a comprehensive permit. The Board discussed the restrictions prohibiting the creation of more bedrooms placed on the property by the comprehensive permit & the potential use of the space for a home based business. Mr. Chan explained that he telecommutes for his employer, AT&T. Anderson recused himself from the deliberation due his work with the telecommunication industry. There being no other questions or comments from the Board or the public, Batchelder made a motion to close the public hearing. Baime seconded the motion & the Board voted unanimously to close the hearing. Anderson designated Brown to sit as Acting Chair & Batchelder as Acting Clerk for the deliberation. Anderson then left the room. The Board proceeded to deliberate.

The Board discussed the similarity to other houses in the project, that the space would be used regardless of whether or not it is finished, that no bathroom is proposed, & restricting use of the space as bedrooms. Brown pointed out condition #3 of the comprehensive permit that the project shall be built in substantial conformance with the drawings. He suggested a condition that the basement shall be finished in substantial conformance with the layout plan submitted with the application and that no part of the basement may be used for bedrooms/sleeping space. Batchelder made a motion to approve with conditions. Boness seconded the motion & the Board voted (5-0) to approve with conditions. Batchelder will write the decision.

Petition No.: 3874

Premises affected: 22 Spring Grove Rd

Petitioner: Hoffman

Members: Anderson, Brown, Boness, Baime, Batchelder

Alternate: Jeton

Al Hoffman, owner, presented the petition for variance from 4.1.2 / 4.2.2 to construct a detached garage that will not meet the minimum side yard depth requirement. He pointed out the wetlands at the rear of the lot that restrict where he can build a garage. The Board discussed the use of the detached garage, whether or not Hoffman spoke with abutters, the location of AC & propane at the rear that restrict a more conforming orientation for the garage, and the yard sloping to the rear. The Board waived a site view. Jeton made a motion to close the hearing. Batchelder seconded the motion & the Board voted unanimously to close the hearing. Jeton sat off the deliberation. The Board deliberated.

The Board discussed the hardship related to the wetlands, alternate, conforming locations for the detached garage, & the height of the garage. Anderson pointed out alternatives: an argument finding that a hardship exists due to the soil

conditions (wetlands); or finding that a hardship does not exist due to the possible relocation of the proposed garage to a conforming location that would not require ZBA relief. Baime made a motion to grant the variance on the ground that the wetlands present a hardship related to soil conditions. Brown seconded the motion & the Board voted (4-1) to grant the variance (Boness opposed). Baime will write the decision.

Member McDonough arrived at 7:35 p.m.

Petition No.: 3877

Premises affected: 92 Lowell St

Petitioner: Cohen

Members: Anderson, Jeton, Brown, Boness, Baime

Alternates: McDonough, Batchelder

Alan & Dianne Cohen represented their request to construct a second story addition that will not meet setbacks & will not extend the footprint. They submitted two letters of support. The house was built in 1954 or 1958 approximately. Richard Buschi, 91 Lowell St., spoke in favor. There being no other questions or comments from the Board or the public, the Board waived a site view. Brown made a motion to close the hearing. Batchelder seconded the motion & the Board voted unanimously to close the hearing. McDonough & Batchelder sat off the deliberation. The Board deliberated.

The Board discussed the corner lot status and the 30' front setback at the time of construction. Brown made a motion to grant a special permit with the condition that the construction shall be in substantial conformance with the drawings & architectural plans submitted. Boness seconded the motion & the Board voted (5-0) to grant the special permit. Brown will write the decision.

Petition No.: 3875

Premises affected: 52 Porter Rd

Petitioner: Bearce

Members: Anderson, Jeton, Brown, McDonough, Batchelder

Attorney Margaret Franklin represented Catherine Bearce in her request for a special permit under 3.1.3 &/or 7.6 to convert the single family home into a two family dwelling. The house was built in 1847. The proposal is to use the front portion of the house as a 2-bedroom unit and the other (owner's) unit will have 4-bedrooms. There are no external changes & off-street parking will be met. The proposal will not be detrimental & serves public convenience. Each unit has more than the minimum 2500 sq. ft. of lot area. 5, 13 & 17 Porter Road are also multi-family dwellings. The Board discussed when various portions of the structure were built / converted to living space, and the owner's financial situation. Several residents spoke against the application. Attorney Daniel Hill, representing Linda Shea, requested a continuance due to the discrepancy of when the house was built, no certified plot plan submitted & the existing house being non-conforming as to front & side setbacks, and the need for a separate special permit application. The Board discussed Hill's suggestion that an additional special permit is required, the fact that a plot plan was submitted & whether or not the proposal fits the character of the neighborhood. Attorney Franklin argued that since no exterior changes are proposed and the use will remain residential, that it does fit the character of the neighborhood. There being no other questions or comments from the Board or the public, Brown made a motion to close the public hearing. Batchelder seconded the motion & the Board voted unanimously to close the hearing. The Board then deliberated.

Jeton made a motion to deny the special permit. The Board discussed that the existing dwelling was built prior to 1941 & therefore does not qualify for a special permit under 7.6 and that the proposal is not consistent with the neighborhood. The Board voted unanimously (5-0) to deny the requested relief. Jeton will write the decision.

Petition No.: 3866  
Premises affected: 33 High St  
Petitioner: Ahern  
Members: Anderson, McDonough, Jeton, Brown, Boness

This is a continued public hearing. Douglas Ahern, of 4 Maple Ave, was present. The proposal is now to add a 4<sup>th</sup> unit, rather than to subdivide & build a separate house. Ahern stated his willingness to place a preservation restriction on the house. He gave an overview of the new configuration of the house. No living unit will be created in the barn but it will be renovated. Several residents voiced concerns & opposition due to the high water table, density & traffic problems that will be exacerbated with this project as well as that it does not fit the character of the neighborhood. The Board discussed the barn, the possibility of creating an affordable unit, & the proposed use of the barn (garage). Ahern offered to provide engineering to mitigate run-off. The Board discussed the options & suggested that the applicant can withdraw, continue or go to vote tonight. Ahern requested that the Board continue the hearing in order for him to further investigate his option. Anderson requested an analysis from the Inspector of Buildings regarding the existing 3<sup>rd</sup> unit, the proposed preservation restriction (that shall be reviewed by Town Counsel), consideration of creating an affordable unit restriction, & a legal analysis as to whether 7.9 is applicable. Brown made a motion to continue the public hearing to 4/1/10. Jeton seconded the motion & the Board voted (5-0) to continue the hearing to 4/1/10.

Petition No.: 3803  
Premises affected: 0 & 86 River St and 15R Charlotte Dr  
Petitioner: Taylor Cove  
Members: Anderson, McDonough, Brown, Batchelder, Baime

Town Counsel Attorney Tom Urbelis was present. Anderson disclosed that Attorney Dan Hill is a former associate of his office, a candidate for State Senate and Anderson contributed to Hill's campaign. Attorney Don Borenstein, for Taylor Cove, stated that he prefers that Anderson NOT recuse himself. There was no opposition to Anderson's participation. Borenstein gave an overview of what the applicant has done since the last meeting: met with abutters at his office, submitted revised plans & revised the final waiver list. He reviewed the changes to the project as a result of the last meeting and the discussion with abutters since then. Project Engineer, Bill MacLeod, reviewed the changes to the site plan. Several abutters spoke about their discussions with Mr. Wacome. The Board discussed the topography of the site, roof heights compared to Charlotte Drive houses, the walkway linking Taylor Cove & Charlotte Dr, trees, requested waivers, & amendment of the Charlotte Drive Subdivision plan. Attorney Hill, representing 13 abutters (as listed in his letter to the Board) reviewed their concerns & requests for consideration by the ZBA: to deny the permit again for the same reason the first comp permit was denied (Parcel A), ordering a civil peer review of the design elements (especially wetland & drainage issues), the incomplete waiver list (a waiver from the entire wetland bylaw is requested without justification), and that 'infectious invalidity' does not conform to the 40B process – neither the ZBA nor the HAC has authority in this regard. Further the ZBA can't grant waivers off site (Charlotte Circle Subdivision).

Town Counsel discussed the "Rivers Wetland Act" with Attorney Hill & MacLeod. MacLeod stated that the Conservation Commission's determination is still valid, that a small section is subject to the Rivers Act & that a peer review was done by the Town's consultant. A valid Order of Conditions is in place as well from 2004, recently extended in the past year. A wetland delineation was done in 2002. Borenstein & MacLeod agreed to conform to the 2008 storm water regulations. They will file for an amendment of the Order of Conditions for one of the buildings. The current extension is until 3/5/10. Borenstein stated that they are not willing to grant another extension. Urbelis informed the Board that if they do not close the hearing tonight, it would be a form of constructive approval with conditions. The Board has 40-days from the close of hearing to file a written decision.

The Board discussed the outstanding issues that would benefit from being discussed at a continued public hearing: pro forma & sidewalk fund donation. Anderson outlined the stands that the Board can take: the original decision was correct regarding the problem with Parcel A & the denial stands or Parcel A is a non-issue / approve with conditions.

Borenstein informed the Board that Wacome is willing to extend the time to file a written decision in order to submit proposed conditions for a short discussion.

Anderson reminded the Board that the goal is to close the hearing by 4/1/10. The Board's general sense was that they rightfully denied the original application based on the issue of Parcel A. Brown wants input from Conservation regarding Victoria Place. Some Board members are amenable to work toward a solution. Borenstein emphasized that the principal issues include contribution to the sidewalk fund & the Parcel A issue. Borenstein is not willing to extend the public hearing but agrees to the following conditions: \$50,000 contribution to the sidewalk fund paid in increments, \$15,000 contribution towards the Parcel A issue and to amend the Order of Conditions with Conservation Commission and comply with current storm water regulations. McDonough made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the public hearing.

The Board discussed a deliberation meeting for 3/9/10 at 7 pm, location to be determined. McDonough made a motion to continue the deliberation to 3/9/10 at 7 pm. Batchelder seconded the motion & the Board voted (5-0) to continue the deliberation.

There being no other business of the Board, the Board voted unanimously to adjourn at 11:11 pm.