

Selectmen's Conference Room, 3<sup>rd</sup> Floor, Town Offices, 36 Bartlet Street, Andover

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

The meeting opened at 7:00 p.m.

The Board elected Anderson as Chair and McDonough as Clerk.

Petition No.: 3803

Premises affected: 0 & 86 River St, 15R Charlotte Dr

Petitioner: Taylor Cove

Members: Anderson, McDonough, Brown, Batchelder, Baime

There was a request to continue the deliberation to 4/9/10 at 8:30 a.m. with a back-up date of 4/10/10 at 8 a.m. Brown made a motion to continue to 4/9/10. Batchelder seconded the motion & the Board voted (5-0) to continue the deliberation to 4/9/10.

Petition No.: 3866

Premises affected: 33 High St

Petitioner: Ahern

Members: Anderson, McDonough, Jeton, Brown, Boness

There was a request to withdraw the application without prejudice. Brown made a motion to withdraw the application without prejudice. McDonough seconded the motion & the Board voted (5-0) to withdraw without prejudice.

Petition No.: 3869

Premises affected: 199-209 N. Main St.

Petitioner: Guys of Andover, LLC

Members: Anderson, Jeton, Brown, Baime, Boness

David Mackwell of Kelly Engineering Group, Inc. represented Guys of Andover, LLC ("Applicant") seeking a Special Permit under Article VIII, §3.1.3.C.12.a for Grassfield's restaurant to continue its operation as a sit-down restaurant within a Mixed Use District & to expand 2,000 sq ft into a portion of the existing building. Grassfield's has been operating at this location since 1986. It occupies 4,500 sq. ft of the 9,264 sq. ft. building. The current seating capacity is 164 seats; 61 seats would be added for a total of 225. All of the parking within the plaza is considered to be 'shared' by means of the lease agreements. There are currently two other restaurants in the Plaza. The Applicant is also requesting a Variance from Article VIII, §5.1.4 due to the fact that the Shawsheen Plaza has less than the number of minimum parking stalls required by the Andover Zoning By-Laws. Kelly Engineering prepared an existing conditions site plan depicting the existing 560 parking spaces. Based on the current mix of uses on-site; restaurant, bank & retail, a total number of 584 parking spaces are required. The proposed 2000 sf expansion of the restaurant would increase the required number of parking spaces by 26 parking stalls to a total of 610 spaces. Kelly Engineering performed a traffic study in which they concluded there is more than ample parking to accommodate the increased parking demand created by the restaurant expansion. Due to some additional modifications required by Public Safety Officer Charles Edgerly, the total number of spaces that would be provided at the plaza after the proposed restaurant expansion would be 556 spaces; 54 spaces less than the 610 required spaces. A site plan dated 03/09/10 was submitted reflecting the proposed improvements to address the concerns of Officer Edgerly. Grassfield's owner, Mark Mimos, indicated the expansion is necessary to better serve their customers. No one else appeared to speak either for or against the petition. The Board voted

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unanimously to waive a viewing of the premises and to close the public hearing. The Chair designated associate members Baime & Boness to sit on for this case, and the Board proceeded to deliberate.

The Board voted unanimously to grant a Special Permit under Article VIII, §3.1.3.C.12.a to allow the Applicant to operate a sit-down restaurant where the principal activity is the service or sale of food or drink for consumption on premises and a variance from Article VIII §5.1.4 to allow fewer than the required number of off-street parking spaces, subject to the following conditions:

- (1) The Special Permit is granted to the Applicant, Guys of Andover, LLC and Old Andover Restaurants, Inc. (d/b/a Grassfield's).
- (2) The Special Permit shall lapse upon termination or expiration of the lease affecting the premises, including any applicable extensions.
- (3) The Special Permit shall be limited to a family style sit-down restaurant with no live entertainment.
- (4) The total square footage of the restaurant shall not exceed 6,500 s.f.
- (5) The number of seats within the restaurant shall not exceed 225.
- (6) Shawsheen Plaza will maintain a minimum of 556 spaces for the current use configuration.
- (7) Improvements to the parking area shall be made in conformance with the plans prepared Kelly Engineering, titled "Shawsheen Plaza", dated 05/06/10.
- (8) All proposed curbed islands within the parking area shall be landscaped and properly maintained.
- (9) Parking stalls within the entire parking area of the Shawsheen Plaza shall be repainted.
- (10) The surface of the parking lot will be inspected and any potholes repaired.

The Board notes that no relief was requested and none is granted, regarding signage for the proposed business.

Petition No.: 3878

Premises affected: 3 Iron Gate Dr

Petitioner: Fosse

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

Arthur & Donna Fosse were represented by Attorney Mark Sullivan for a special permit to construct an L-shaped addition on the northeast side of the hose to be used as a Family Dwelling Unit. The addition will be 27.4' wide by 27.7' long on the southeast side & 37.7' on the northwest, according to a plot plan prepared by Land Engineering & Environmental Services, Inc. dated 3/8/10. The Applicant did not submit renderings. The unit is to be occupied by Mrs. Fosse's mother, Martha Sullivan. A letter from David C. Pickul, M.D., Ms. Sullivan was submitted with the application. The neighbors have been made aware of the proposed addition & have no objection. No one appeared to speak for or against the Applicant's proposal. The Board voted to waive the view, close the public hearing, and deliberate.

A Family Dwelling Unit is defined in the By-law as "Use of a room or rooms in a detached one-family dwelling or accessory building as a dwelling by relatives (by reason of birth or marriage) where there is need by reason of illness, disability or age requiring extended care or supervision of the relative. This use shall be subject to reasonable conditions & the requirement for renewable time periods not exceeding five years." The Family Dwelling Unit may be allowed with the following conditions: (1) the permit is granted for a term of five (5) years & may be renewed at that time; and (2) the Family Dwelling Unit may be occupied only by a relative of the owner by reason of birth or marriage. The Board of Appeals voted unanimously to grant a special permit under §3.1.3.F.4 of the By-law to allow the Applicant to construct and occupy an addition to be used as a Family Dwelling Unit in substantial conformity with the Plot Plan. Members voting FOR the decision: Anderson, Baime, Boness, Brown, & Jeton. Baime will write the decision.

Petition No.: 3879

Premises affected: 150, 168, 172 Holt Rd

Petitioner: Marshall / St. Pierre

Members: Anderson, McDonough, Jeton, Brown, Baime

Attorney Mark B. Johnson represented the Petitioners, Mary Marshall & Kenneth St. Pierre. The trapezoidal parcel consists of 80,591 sq. ft. (1.8501 acres) with 465.28 feet of frontage along Holt Rd with a depth ranging from 160' along the northerly boundary to 210' along the southerly boundary depicted on a Plan of Land prepared for Mary A. Marshall and Kenneth St. Pierre by Andover Consultants, Inc. dated April 12, 2010 (the "Plan"), which was the revised plan presented to the Board showing an "Open Space" area. The parcel is a composite of three historical lots shown on Andover Assessor's Map No. 43 as Lots 41, 42 and 43. It is immediately adjacent to and north of the Petitioners' residence. Covered by extensive wooded wetland, a portion of the parcel consists of upland. The largest contiguous portion of upland is situated in the southwest corner of the parcel. The presence of the wetlands, the no disturb zone, and the no structure zone severely limit the potential buildable area of the lot. Therefore, the Petitioners seek a dimensional variance to construct a single family home 10' closer to Holt Rd than would otherwise be allowed in the SRB District. Johnson indicated that without a variance, the parcel would be "rendered valueless." Numerous neighbors appeared in opposition concerned about the potential adverse effects from the proposed the single-family home. The Applicant believed that the lots had been combined for zoning purposes into one lot, but the combined 3 lots were entitled to protection from changes in the lot area definition requirement of the Bylaw such that the requirement of contiguous upland does not have to be met. In the alternative the application seeks a variance from such requirement to allow the construction of one dwelling in accordance with the plans submitted. A title history of the lots was presented to the Board in support of this position. A revised plan, referred to above, shows an area in which the wetland portion of the lots could either have a conservation restriction imposed or have the lot area conveyed to the Conservation Commission or a non-profit. A number of neighbors indicated that the Applicant had previously been granted a variance by this Board in Decision No. 3673 & the Applicant purchased the property knowing that it needed variances. The Board noted that it had previously granted a variance to Ms Lange & that a recent Appeals Court case, Paul G. LAMB & another vs. ZONING BOARD OF APPEALS OF TAUNTON. 09-P-1023 (2010) held that knowledge of the need for zoning relief alone is not a sufficient reason for the Board to find that there is no hardship. Neighbors voiced concern as to public access to the Open Space area as shown on the Plan, concerns as to potential effects from drainage & storm water, and concerns regarding the siting of the new home within the front and side yard setbacks. The Board voted to close the public hearing & deliberate.

By a vote of 4-1 (Brown opposed), the Board voted to grant a variance from the requirements of Article VIII, § 4.1.2 to allow construction of a single family dwelling that will not meet dimensional requirements as to front setback and, to the extent necessary, side setback subject to the following conditions:

- (a) The Petitioner shall submit to the Planning Board an Approval Not Required Plan that shall combine the three historical lots shown on Andover Assessor's Map No. 43 as Lots 41, 42 and 43 into a single lot for zoning purposes (the "Combined Lot"). Upon recording of this decision and/or upon endorsement of that ANR Plan, whichever is earlier, the Combined Lot shall not be further subdivided or reduced in frontage or area whether by another ANR Plan or otherwise.
- (b) One single-family dwelling may be situated on the Combined Lot substantially in accordance with the plan submitted to the Board entitled Plan of Land in Andover, Mass, prepared by Andover Consultants, Inc, dated April 12, 2010.
- (c) Prior to applying for any building permit for the single-family dwelling, the Petitioner shall record a perpetual conservation restriction on the rear portion of the Combined Lot constituting approximately 47,959 square feet shown as "Open Space" on the Plan (collectively the "CR Land"), substantially in the

form of the MA Executive Office of Environmental Affairs' model conservation restriction, with such changes as are approved by Town Counsel and the Applicant's attorney, restricting the CR Land in perpetuity and exclusively for conservation purposes without public access thereto, the Grantee of said restriction being the Andover Conservation Commission or its designee.

(d) No part of the single-family dwelling or any accessory structure on the Combined Lot shall be closer than 30 feet to the front lot line or 15 to the side lot line. The single-family dwelling and any accessory structure shall otherwise conform to the dimensional requirements of the Andover Bylaw now in effect with respect to the SRB District.

(e) Prior to applying for any building permit for the single-family dwelling, the Petitioner shall consult with the Town of Andover's Design Advisory Group (a/k/a the Design Review Board) ("DRB") for constructive suggestions as to how to minimize any alleged aesthetic impact of the proposed house and related improvements on the Holt Road streetscape and on neighboring properties. Such consultation shall occur at an open public meeting of the DRB. The Petitioner shall at least 14 days in advance of the DRB meeting mail written notice of the time, place and subject matter of the meeting to the parties in interest who received notice of the petition for the variance. The Petitioner is free to accept or reject the suggestions of the DRB; however, the Petitioner shall demonstrate to the Building Inspector that such consultation has occurred before a building permit shall be issued.

(f) This decision pertains to the zoning issues only and is not to be considered advisory to or binding on the Conservation Commission in making its determination under the Wetlands Protection Act and/or Bylaw.

(g) The Board finds that the request for a variance from the upland requirement of the Lot Area is moot as the 3 lots are grandfathered from the requirement of contiguous uplands.

Anderson will write the decision.

Petition No.: 3880

Premises affected: 9 Elm St

Petitioner: Circle G, LLC

Members: Anderson, McDonough, Jeton, Brown, Boness

Alternate: Baime

Attorney Timothy Hatch represented the applicant, Stephen Giordano of Circle G, LLC, who is seeking a special permit under Article VIII, §3.1.3.C.12.b to operate a Subway Restaurant in the space formerly known as Raspberries Eatery, located inside the Andover Spa. This food service establishment will include take-out, or fast food, as defined in Article VIII, §10 of the Andover Zoning Bylaw. Hatch indicated that, as depicted on plans submitted by the Applicant, the food service space will be reconfigured to accommodate the change in operations & the 16-seat dining area will remain, only in a different configuration. The proposed hours of operation are from 7 AM to 10 PM. Deliveries are typically made between 8-9 AM or in the evening. Delivery trucks for the building typically stop in front of the abutting property to minimize traffic issues. There will be one conforming exterior sign. Hatch provided the Board with a consent letter from the property owner, Gustav H. Yunggebauer, for the Applicant to seek the special permit. No one else appeared at the hearing to speak either for or against the application. The Board voted to waive the view, closed the public hearing & proceeded to deliberate. The Chair designated Ms. Baime to serve as an alternate for this case.

The Board found that there are the proposal is similar to previous take-out food service establishments in the same location under special permits. The Board finds that relief may be granted without substantial detriment to the public good & without substantially derogating from the intent and purpose of the By-law. The Board finds that the proposed use will not be detrimental to the established of future character of the neighborhood. The Board voted unanimously to

grant a special permit under Article VIII, §3.1.3.C.12.b of the Zoning Bylaw to allow the Applicant to operate a food establishment for consumption of food on or off premises, subject to the following conditions:

1. The permit is granted to the Applicant, Circle G LLC, for a term of five (5) years and may be renewed at that time upon application to this Board.
2. The special permit may be transferred to a new owner upon sale of the business within that time
3. The total floor area devoted to the food service operation shall be in conformance with the plans submitted t the Board
4. The hours of operation shall be limited to7:00 A.M. to 10:00 P.M.
5. Trash and recycling receptacles shall be installed per the plans submitted.

The Board notes that no relief was requested and none is granted, regarding signage for the proposed business. Brown will write the decision.

There being no other business of the Board, the Board voted unanimously to adjourn the meeting.