

Selectmen's Conference Room, 3rd Floor, Town Offices, 36 Bartlet Street, Andover

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

The meeting opened at 7:00 p.m.

Petition No.: 3886

Premises affected: 5 Arrowood Ln

Petitioner: Chen / Zhao

Members: Anderson, Boness, Brown, Baime

This is a continued public hearing. There was a request to continue the hearing to July pending a 5-member board. The Board voted unanimously to continue to July.

Petition No.: 3869

Premises affected: 199-209 N. Main St.

Petitioner: Guys of Andover, LLC

Members: Anderson, Boness, Brown, Baime

This is a continued public hearing. There was a request to continue the hearing to July pending a 5-member board. The Board voted unanimously to continue to July.

Petition No.: 3883

Premises affected: 33 High St

Petitioner: Ahern

Members: Anderson, McDonough, Brown, Baime

There was a request to withdraw without prejudice. The Board voted unanimously to withdraw without prejudice.

Petition No.: 3891

Premises affected: 42 Summer St

Petitioner: Rutter / Gully

Members: Anderson, McDonough, Brown, Ranalli, Baime

Jacqueline Rutter & Andrew P. Gully represented themselves for a special permit to create a Family Dwelling Unit, as defined in Article VIII, §10. There will be no change or enlargement of the footprint of the dwelling; rather the unit will be created within the existing home by hanging two doors to close passageways leading to the proposed dwelling unit. There will be no change to the outside of the home. No additional parking is needed. A Certified Foundation Plan prepared by Scott L. Giles R.L.S (the "Plot Plan") was provided, as well as a drawing of the interior improvements & a letter from Lawrence G. Kidd, M.D. regarding the Applicant's mother, Dorthea Rutter, and her ongoing health issues. No one appeared to speak for or against the Applicant's proposal. The Board voted to waive the view, close the public hearing & deliberate.

The Board found that there were sufficient compelling reasons to allow the interior improvements to create a Family Dwelling Unit & that the special permit could be granted without substantial detriment to the public good & without substantially derogating from the intent & purpose of the By-law. The proposed unit will not be detrimental to the established or future character of the neighborhood. The Board of Appeals voted unanimously to grant a special permit under §3.1.3.F.4 of the Bylaw to allow the Applicant to use a portion of the premises as a Family Dwelling Unit, with the following conditions:

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1. The permit is granted for a period of five (5) years and is renewable at that time upon application to this Board.
2. The Family Dwelling Unit shall be occupied only by a relative (by reason of birth or marriage) of the Applicant. Baime will write the decision.

Petition No.: 3892

Premises affected: 87 Salem St

Petitioner: Zavrl

Members: Anderson, McDonough, Brown, Baime, Ranalli

Attorney Mark Johnson represented the petitioners as a Party Aggrieved, for review of a decision made by the Inspector of Buildings regarding the definition of a front yard, or for variances from §4.1.1, §4.1.2 & §4.2.1 and/or for a special permit under §3.3.5. The Applicants' single-family home is in the SRB District, has an area of 15,008 sq. ft. with 100' of frontage on Salem St. They intend to combine a second parcel of land directly behind their lot, which has an area of 16,441 sq. ft. with 100' of frontage on Appletree Ln. The lots, held in common ownership prior to the Zavrl's purchase in 2006, extend continuously between the two streets. They intend to raze the existing detached garage & to replace it with a new garage & pergola, located on essentially the same footprint as the existing garage, 5' from the side property line. The Inspector of Buildings declined to issue a building permit for the garage, determining that the proposed garage wouldn't comply as it would encroach within the side yard setback, based on the Inspector's finding that §4.2.2 of the Zoning Bylaw would not apply in this circumstance because the combining of the abutting parcels fronting on Appletree Ln & Salem St would, in essence, turn the back yard of the existing structure into front yard. The Zavrls' disagree with this & feel that the front yard should be interpreted to result in the front yard of the property being only that area between the existing dwelling & Salem St. In addition, Johnson contends that the definition of "Lot Frontage" supports this interpretation. In the alternative, the Zavrl's are requesting either a special permit or a variance. Kate Jessup, of Red Apple Renovations, explained the design of the proposed garage, pointing out that the garage itself would be smaller than the existing & that the entire structure including the pergola would occupy the same footprint as the existing garage. Kaija Gilmore, Andover Inspector of Buildings, explained her reasons for her determination. Dan Hatch, of 83 Salem St, stated no objections. No one else spoke either for or against the proposal. The Board voted unanimously to waive a site view, closed the public hearing & proceeded to deliberate the matter.

The unanimous sense of the Board was that both the existing & the proposed garage should be considered to be in the rear yard because they are behind the house. Furthermore, a careful reading & interpretation of the Bylaw supports the Board's initial "common sense" interpretation. Thus, the front, rear & side yards, are determined by the placement & orientation of the building on the lot. In most cases this is obvious. In this case, one must look to the orientation of the building & the manner in which it addresses the street. The front of the house & therefore the front yard is the area facing Salem St. The locations of the rear & side yards follow from the definitions in §10, & are implicitly derived from the location of the front yard. Section 4.2.2 regulates the placement of accessory buildings such as garages; under this section a garage could be located anywhere within the rear yard so long as it is at least 5' from any property line. Section 4.1.3.2.e provides in part that, "In the case of lots abutting on more than one way, the minimum front yard depth requirement shall be applicable to each such way, but such lots shall be required to have the minimum frontage on only one such way." The Board finds that this requirement trumps the provisions of §4.2.2 with respect to the placement of an accessory structure on a lot abutting more than one way. The Board finds that the front yard at 87 Salem St is that portion of the property between the front of the house facing Salem St & the property line along Salem St, the rear yard is that portion between the opposite side of the house & the rear lot line (which happens to run along Appletree Lane), & the side yards are the portions of land between the front & rear yards. The Board votes unanimously to overturn the decision of the Inspector of Buildings. The Board further denies the requests for a variance or special permit as moot. Members voting FOR the decision: Anderson, McDonough, Brown, Ranalli, Baime. Brown will write the decision.

Petition No.: 3889

Premises affected: 21 Greybirch Rd

Petitioner: Loder

Members: Anderson, Boness, Ranalli, Brown, Baime

Robert Lemons represented his wife & himself seeking to renew a special permit for an existing Family Dwelling Unit. No changes to the structure either to the exterior or the interior are proposed. The previous special permit for the family dwelling unit was granted in Decision #2900, 5/6/99 & renewed in Decision #3429 on 7/8/04. Decision #3429 expired on 7/8/09. The previous permits were approved based on the full time assistance required by Mrs. Lemons' parents. Mrs. Lemons' father has passed away, but her mother continues to need full-time assistance. Mark Johnson, a neighbor, spoke in favor of the proposal. No other neighbors came forward to speak on the petition. The Board voted to waive a viewing of the premises & to close the public hearing. The Board then proceeded to deliberate the proposal.

The circumstances noted in previous decisions continued to apply & the continued use will not be unreasonably detrimental to the established or future character of the neighborhood & such use can be allowed without derogation from the intent or purpose of the By Law. The Board voted unanimously to grant the special permit requested for a period of five years, at the end of which the permit might be renewed if the need still exists. The Board further agreed that if the need for the family dwelling unit no longer exists prior to the expiration of the special permit said unit would be dismantled. Members voting FOR the decision: Anderson, Brown, Ranalli, Baime, Boness. Ranalli will write the decision.

Petition No.: 3887

Premises affected: 12 Fosters Pond Rd

Petitioner: Barber

Members: Anderson, McDonough, Ranalli, Matey, Baime

Member Brown recused himself from the public hearing. Attorney Mark Johnson represented the petitioners' request for Variances from Article VIII, §4.1.2, 4.1.3.2.c, 4.2.2 &/or a Special Permit under Article VIII, §3.3.5 to partially demolish an existing dwelling & construct a new dwelling on the existing foundation, that will not meet minimum dimensional requirements on a lot that lacks frontage as defined by the Bylaw. The existing dwelling was constructed about 1945 on a .77-acre lot. Therefore the dwelling is a pre-existing non-conforming premise. The proposed dwelling will expand the footprint of the structure on the premises. No one else spoke on the petition, either in advocacy or in opposition. The Board voted to waive a site view, closed the public hearing & deliberated.

Because the proposed dwelling will expand the footprint of the structure on the premises, relief in the form of a variance is required for construction of the proposed dwelling. The statutory hardship exists, given the location of the premises & the fact that Fosters Pond Road runs through the lot between the house & the garage. The Board voted unanimously to grant the variance requested with the following condition: construction must be in conformance with the plans submitted, entitled "Barber Residence, 12 Foster's Pond, Andover, MA" prepared by Robert Zarelli Architect, AIA, dated 2/2/10. The request for a special permit was denied as moot. McDonough will write the decision.

Petition No.: 3882

Premises affected: 43 River Rd

Petitioner: T-Mobile

Members: Brown, McDonough, Matey, Baime, Ranalli

Chairman Anderson recused himself from the vote. There was a request to continue the hearing without discussion to 8/5/10. The Board voted unanimously to continue the hearing to 8/5/10.

Petition No.: 3876

Premises affected: 39 & 47 High Plain Rd

Petitioner: Gibson

Members: Anderson, McDonough, Brown, Baime, Ranalli, Matey

Scott Gibson was represented by Attorney Mark Johnson, seeking a variance to subdivide land in order to construct a single family dwelling on a lot behind 47 High Plain Rd. In order to subdivide the property, the Applicant needs to show the Planning Board that he could build a 40' wide roadway & cul-de-sac to access the new parcel. The layout of the roadway causes the setback issue. Even though he must show that he can construct a 40' roadway, in actuality, he only plans to construct an 18' roadway without a cul-de-sac to access the rear parcel. Three variances are requested order to construct the project as proposed in the plot plan by JM Associates, 325 Main St, No. Reading, MA dated 4/21/10. The first variance would be for the house located at 47 High Plain Rd., to allow a 38.18' setback where 40' is required. The second variance needed is for a wood barn that sits behind the house at 47 High Plain Rd., to allow a 14.03' set back where 40' is required. The third variance would be for the house located at 39 High Plain Rd., which has a small porch that would encroach into the front yard minimum setback in the direction of the proposed roadway to allow a 32.63' setback where 40' is required. The house & barn located at 47 High Plain Rd are hereinafter referred to as "Lot 1", the proposed new lot is hereinafter referred to "Lot 2", the house located 39 High Plain Rd is hereafter referred to as "Lot 3" as designated on the Plot Plan. Johnson informed the Board that they will be submitting a definitive plan to the Planning Board requesting a reduction in the width of the roadway. Karen Herman, Chairman of the Preservation Commission, submitted memos dated 7/29/10 & 8/2/10, the house located at 47 High Plain Rd is listed in the Andover Historic Building Survey as a historic building. The Preservation Commission voiced their support. The Applicant would be willing to accept a preservation restriction on the house & barn. Lisa Schwarz, Senior Planner of the Planning Division, in a letter dated 5/27/10, stated that the Planning Board reviewed a Preliminary Plan of the project on 5/25/10 & supports preserving the historic home & barn in their current locations, unaltered. Several neighbors spoke at the public hearing voicing concern with the loss of privacy, the perceived change to their back yards, as well as decreased property value based on density. The Board discussed existing screening as shown in the aerial photos submitted by Attorney Johnson. Mr. Slauzis stated his preference that the barn remains. Alan Jenney of 57 High Plain Rd voiced total opposition, as did Martin Serrano of 48 High Plain Rd, based on the change to the character of the neighborhood the project would affect. Doug Cummings of 67 High St spoke in favor of the petition to preserve the house & barn, his childhood home & former Carter Dairy Farm; originally built c. 1800. The Board requested additional information in order to make a decision & continued the public hearing to the Board's July meeting. The Board requested a proposed preservation restriction & a plan depicting the house proposed on Lot 2.

Petition No.: 3890

Premises affected: 46 York St

Petitioner: Griffith Family RT

Members: Anderson, McDonough, Brown, Baime, Matey, Ranalli

No one appeared at the public hearing to represent this petition. The Board did not open the hearing but voted unanimously to continue the hearing without discussion to July.

Discussion Item: CHAPA update

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