

Present were: Anderson (Chair); McDonough (Clerk); Jeton (Member); Baime, Boness, Matey and Ranalli (Associate Members). Member Brown arrived late, in time for the continued hearings.

The meeting opened at 7:08 p.m.

Petition No.: 3882
Premises affected: 43 River Road
Petitioner: T-Mobile
Members: Baime, McDonough, Ranalli, Matey, Jeton, Boness

Anderson recused himself from the hearing. Baime made a motion to continue the public hearing to the September 9, 2010 meeting because only three of five Board members were present for the continued public hearing for a proposed monopole. McDonough seconded the motion and the Board voted unanimously to continue the hearing to September 9, 2010.

Petition No.: 3895
Premises affected: 1 Shaw Drive
Petitioner: Schwarz
Members: Anderson, Baime, McDonough, Ranalli, Matey, Jeton, Boness

McDonough made a motion to continue the continued public hearing to September 9, 2010 because the meeting notice did not list the continued public hearing as required under the new Open Meeting Law. Jeton seconded the motion and the Board voted unanimously to continue the hearing to September 9, 2010.

Petition No.: 3897
Premises affected: 2 Elm Square
Petitioner: Bin 28 Wine Bar
Members: Anderson, Ranalli, Baime, Boness, Matey
Recused: Jeton

Matthew Morello, owner of Bin 28, represented himself in his request for a variance from Sections 5.2.4 &/or 5.2.9.1 &/or 5.2.9.5 for the continued existence of multiple signs. Member Jeton disclosed that Mr. Morello was a subcontractor to her employer (Phillips Academy). No one objected to her participation, but Jeton recused herself the case. Morello explained that the window signs do not conform to the requirement that they be transparent and the total number exceeds the maximum allowed. He has been before the Design Review Board (DRB), which approved of the design and not the location or quantity in a letter dated August 2, 2010. Morello explained that the window signs provide some screening for customers sitting in the four large windows. The door signs provide direction to customers. Inspector of Buildings Kaija Gilmore commented on the importance of signs on this historic building and spoke in support of the existing signs. Gilmore stated that the zoning issue is the transparency and not the number of signs. Morello informed the Board that there are six signs (one /window) plus the 4 door signs. There were no public comments or questions. The Board waived a site view. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted unanimously to close the public hearing. The Board then proceeded to deliberate.

Anderson reminded the Board that a variance runs with the land and that other businesses have been dealt with strictly regarding signage. Baime asked if the door signs exclude the business name, is it a sign. Anderson stated that there is no need to enforce the directional signs on the doors if the business name does not appear on the doors. The Board felt

the signs fit the character of the building. Ranalli made a motion to grant a variance for the existing six window signs subject to the condition that the size, shape, letter dimensions, and color be as depicted in the application as they are displayed in the windows now. The door signs are not included in this variance. It must be determined whether the door signs are directional or if they require a permit. Boness seconded the motion. Baime added that the variance be conditioned on the existing signs. The Board voted (4-1) (Anderson opposed) to grant the variance for the window signs with condition. Ranalli will write the decision.

Petition No.: 3898**Premises affected: 82 Elm Street****Petitioner: Walsh****Members: Anderson, Baime, Matey, Boness, Ranalli**

Michael Walsh represented himself in his request to construct a 10'x17' deck where a covered porch once stood. The lot has an area of 6,000 sq. ft. and is located on the corner of Carmel Road. A temporary stair was installed for egress. The covered porch was demolished two months ago. The proposed deck will be slightly larger than the porch. Anderson pointed out that the plot plan doesn't depict the proposed setbacks. He suggested, if approved, it could be with the condition that the deck be constructed between the existing bulkhead and edge of house. Walsh said the proposed setback would be 29' to the rear. Anderson noted that the front setback applies to both Elm St. & Carmel Rd and the house already encroaches into the setback with the proposed deck further encroaching. The Walsh's have spoken with their neighbors. Mr. Walsh stated the side setback to the house is 12.5'. The house was built in 1922. The Board discussed the proposed setback, the minimized representation of the deck on the plan submitted and the encroachment into the rear setback. Walsh offered to comply with the 30' rear setback. Anderson suggested a condition of approval that a certified plot plan depicting the 30' rear setback & the side setback be submitted. The Board waived a site view. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted unanimously to close the hearing. Ranalli sat off the remainder of the case. The Board then proceeded to deliberate.

Boness suggested if the 30' rear setback to the north property line is maintained, then the non-conformity of the house wouldn't be increased. Anderson pointed out it would then become a special permit rather than a variance. McDonough made a motion to grant a special permit and deny the variance as moot with the condition that the applicant submit a certified plot plan depicting the proposed deck no closer than 30' to the rear lot line and no closer to the side lot line than the current house and no closer to Carmel Road than the northerly edge of the existing bulkhead. Baime seconded the motion & the Board voted unanimously to grant the special permit with condition and to deny the variance as moot. Jeton will write the decision.

Petition No.: 3876**Premises affected: 39-47 High Plain Road****Petitioner: Gibson****Members: Anderson, McDonough, Ranalli, Baime, Matey**

Attorney Mark Johnson represented Scott Gibson, who was also present at this continued public hearing. Johnson summarized the project: the Planning Board reviewed the proposed 3-lot subdivision. The plan was slightly reconfigured (the lot line between lots 1 + 2 was changed to comply with Planning Rules & Regulations). Johnson submitted a color coded plan illustrating the 18' wide road build out. He noted that Fire Prevention Lt. Pomerleau submitted an e-mail accepting the 18' width. The perceived setback (22') from the edge of pavement to the existing barn will be greater than the lay-out (14'). The Planning Board is not requiring Gibson to build a fully engineered cul-de-sac. Johnson reminded the Board that the request is for two variances: one for the front setback of the barn and the dwelling on Lot 1; the other for the front setback for an existing porch on Lot 3. Lot 2 complies with the dimensional

requirements. The latest subdivision plan has a condition of variance approval or removal of the barn & porch. Johnson added that at the last meeting Karen Herman, Preservation Commission Chair, spoke in favor. Her letter was submitted with the packet. Anderson asked for public comments/questions.

Inspector of Buildings, Kaija Gilmore, spoke in support of the petition. Robert Slasas, 53 High Plain Rd., abutter to the west of the proposed Lots 1 + 2, spoke against the project emphasizing that it is out of character & that it will invade the privacy of his back yard. Johnson reminded the Board that the barn could be removed & a fully built road with a traditional subdivision could be constructed. However this is not his desire & thus the reason for the current petition. Anderson suggested a site visit, particularly to see the view from the abutter's back yard. He asked for the proposed house elevations. Johnson explained that none have been submitted since the Planning Board deals with Lot 2 & the ZBA is authorized to consider the variance requests. Anderson argued that the ZBA can consider the density & effect on the neighborhood & possibly the right to restrict the size of the house on the proposed back lot. Johnson disagreed, but does feel the ZBA can place a preservation restriction on Lot 1, but not encumber the other lots with restrictions (Lot 2). That is Planning Board's jurisdiction. Anderson clarified that the creation of Lot 2 creates non-conformities on Lots 1 + 3 and that relief is being requested for Lots 1 + 3, not Lot 2. Boness asked if Conservation Commission review is necessary. Mr. Gibson explained that he had spoken with and did a site visit with Conservation Agent Linda Cleary, as well. No Conservation filing is required because the project is not within the 100' buffer zone. Anderson asked the Board if they wanted to conduct a site visit. The Board decided not to do a site visit. Boness sat off the remainder of the hearing (he was not present during the initial hearing on June 3. Ranalli made a motion to close the public hearing. Baime seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate.

The Board discussed the requested variances, one would allow the existing porch to remain and the other would allow the existing barn to remain after construction of the subdivision/roadway. Anderson reiterated that the Petitioner can construct the subdivision by right if he were to remove the non-conforming structures; however the chief justification for the variance lies with the preservation of the barn and the proximity of the existing houses to the proposed road. Anderson proposed a motion to grant a variance for the barn with the condition of a preservation restriction that the barn be maintained in historic condition and that the variance for the barn is void if it is removed and may not be replaced with another structure. He also proposed to deny the variances for the dwellings on Lots 1 + 3 due to the self-created hardships (construction of the subdivision road). McDonough moved the motion and Baime seconded it. The Board voted (5-0) to grant the variance for the barn with conditions and to deny the variances for the existing houses. Baime will write the decision.

Petition No.: 3869

Premises affected: 199-209 N. Main St.

Petitioner: Guys of Andover

Members: Anderson, Baime, Brown, Jeton, Boness

This is a continued public hearing, the hearing was originally opened on December 3, 2009 and was continued on April 1, 2010.

David Mackwell of Kelly Engineering Group, Inc. represented the Applicant to expand Grassfield's restaurant into a portion of the existing building. This sit down restaurant, operating since 1986, currently occupies 4,500 sf of the 9,264 sf building. The proposed 2,000 sf expansion would add 61 seats for a total of 225. All of the parking within the plaza is 'shared' by means of the lease agreements. The requested Special Permit §3.1.3.C.12.a is to continue operation as a sit-down restaurant within a mixed-use zone. No record of a previous Special Permit for Grassfield's could be located. The Applicant is also requesting a Variance from §5.1.4 because the Plaza has less than the minimum required parking stalls. Kelly's existing conditions site plan depicts the existing 560 parking spaces. Based on the current mix of uses, a total

number of 584 parking spaces are required. The proposed restaurant expansion would increase the required number of parking spaces by 26 to a total of 610. Kelly's traffic study concluded that there is more than ample parking to accommodate the increased parking demand. 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. The number of spaces being provided would be 54 spaces less than the 610 spaces required. Kelly Engineering met with Public Safety Officer Edgerly to discuss potential modifications that could be made to improve vehicular/pedestrian movement throughout the site. A site plan dated 03/09/10 was submitted in response.

The Board discussed current conditions & maintenance of the parking area, particularly the asphalt & the striping. The Applicant indicated that the current ground leases prohibit them from maintaining the parking areas and that only the lease holders may maintain these areas. Grassfield's owner, Mark Mimos, argued the expansion is necessary to better serve customers. No one else appeared to speak either for or against the petition. The Board voted unanimously to waive a site view & to close the public hearing. The Chair designated associate members Baime & Boness to sit on for this case, & the Board proceeded to deliberate.

The Board found that the expansion is an appropriate use & the proposed expansion will not be unreasonably detrimental to the established or future character of the neighborhood & Town & that granting a Special Permit would be in harmony with the intent & general purpose of the By-Law. The Board also finds that with the appropriate improvements made to the parking configuration, that sufficient parking & maneuvering will be provided to accommodate the proposed mix of uses. The Board voted unanimously to grant a Special Permit under Article VIII, §3.1.3.C.12.a & 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: the Special Permit is granted to the Applicant, Guys of Andover, LLC and Old Andover Restaurants, Inc. (d/b/a Grassfield's); the Special Permit shall lapse upon termination or expiration of the lease affecting the premises, including any applicable extensions; the Special Permit shall be limited to a family style sit-down restaurant with no live entertainment; the total square footage of the restaurant shall not exceed 6,500 s.f.; the number of seats within the restaurant shall not exceed 225; Shawsheen Plaza will maintain a minimum of 556 spaces for the current use configuration; improvements to the parking area shall be made in conformance with the plans prepared Kelly Engineering, titled "Shawsheen Plaza", dated 05/06/10; all proposed curbed islands within the parking area shall be landscaped and properly maintained; parking stalls within the entire parking area of the Shawsheen Plaza shall be repainted; 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.: 3886

Premises affected: 5 Arrowood Lane

Petitioner: Chen/Zhao

Members: Anderson, McDonough, Brown, Jeton, Baime

This is a continued public hearing; the hearing was opened on May 6, 2010. Attorney Mark Johnson, petitioners' representative, waived the reading of the public notice and reviewed the changes to the plan based on two meetings held with abutters. He stated that, due to the lot being part of a Special Development Plan, they do not need to meet current zoning. Anderson noted that while at the last meeting, many abutters were present, this time there are few. Johnson stated that some abutters were satisfied with the plan. Bill McLeod, Andover Consultants, gave an overview of the changes, noting that they compared the front setback of the proposed house to the abutting houses/lots and moved the proposed house further back an additional 15', as well as narrowing the proposed dwelling; approximately 100 sq ft was removed from the area of the house. Also submitted was a "Landscape Buffer Plan" prepared by Huntress Associates, Inc., depicting proposed plantings along the southerly property line adjacent to the house. Attorney Jason

Panos represented the Weiss' continued opposition due to the severe impact the new house would have. A view of the property was waived. The Board closed the public hearing and deliberated.

Since the ZBA doesn't issue advisory opinions, no action was taken on the request for a ruling on whether or not a building permit is required for this proposal. The Board voted (5-0) to deny the variance from Section 3.3.5 of the Bylaw, finding that the applicants were presenting a self-imposed hardship, and that no hardship owing to the soil conditions, shape or topography of the land exists on this lot where a single family home has existed since 1964. With respect to the request for a Special Permit under §3.3.7, the Board carefully considered the criteria set forth in §9.4.2 of the Zoning Bylaw. The Board found that, given the height, scale & overall size of the proposed house in a neighborhood of substantially smaller, one-story houses, the proposal would be substantially more detrimental to the established and future character of the neighborhood than the existing structure and that it fails to satisfy the special permit criteria in §9.4.2.4 (neighborhood character) and §9.4.2.5 (impacts on the natural environment, including....aesthetics). Accordingly, the Board voted unanimously to deny a special permit under Section 3.3.7 of the Andover Zoning Bylaw. Jeton will write the decision.

Petition No.: 3896

Premises affected: 434 S. Main St.

Petitioner: Ahern

Members: Anderson, Brown, Ranalli, Baime, Matey

This is a continued public hearing; the public hearing was opened on July 15, 2010. Attorney Johnson submitted a letter from Andover Consultants, Inc. including the front setback distances for 430, 432, 438 and 438 South Main Street, the average of which is 25.43'. Based on this, the proposed house would be in conformity with §4.1.3.d of the Zoning Bylaw according to Johnson. No other evidence was heard & the Board voted to close the public hearing & deliberate the merits of the petition.

In deliberation, the Board considered the size of the proposed dwelling and its impact on the character of the neighborhood. Other properties in the neighborhood have been the subject of demolition and replacement with larger structures, and other nearby houses have also been considerably expanded. Accordingly, and in consideration of the criteria set forth in §9.4.2 of the Zoning Bylaw, the Board finds that that the proposed demolition and replacement of the existing house will not be substantially more detrimental to the established or future character of the neighborhood than is the existing house. The proposed house would conform to the provisions of §4.1.3.d and thus will conform to all current minimum setback requirements. With respect to the existing garage, the Board finds that it is a pre-existing, nonconforming structure that complies with the minimum front yard requirement (under §4.1.3.d) and the side yard requirement of 15' at the time it was built, and thus may be allowed to remain. The Board voted unanimously to grant a Special Permit under Article VIII, §3.3.7 to allow the demolition of the existing house and its replacement with a larger structure, subject to the condition that the replacement dwelling shall be sited as shown on the submitted plot plan (Andover Consultants, Inc., dated July 13, 2010) and shall be constructed in substantial conformity with the floor plans and elevations (untitled and undated) as submitted to the Board. Relief having been granted by Special Permit, the request for a Variance under §4.1.2 is denied as moot. Members voting FOR the decision: Anderson, Brown, Ranalli, Baime, Matey. Brown will write the decision.