

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

The meeting opened at 7:00 p.m.

Petition No.: 3921

Premises affected: 28 Park Street

Petitioner: JETICO

Members: Anderson, McDonough, Jeton, Brown

At the 3/3/11 meeting, the Board expressed concern about setting an undesirable precedent if they were to grant a variance. Mr. Pierre had requested time to discuss parking requirements & alternatives with the Inspector of Buildings & the Planning Division (e.g. regarding the possibility of applying for some form of relief other than a variance for a reduction in off-street parking requirements). This is a continued public hearing on the request for a variance from the off-street parking requirements only. Mr. Pierre summarized his discussion with the Inspector of Buildings & the Planning Division staff in which it had been determined that further relief related to off-street parking is not required. Mr. Pierre requested to withdraw the request for a variance without prejudice. The Board voted 4-0, with Mr. Matey absent, to allow the withdrawal without prejudice.

Petition No.: 3923 & 3904

Premises affected: 311 Lowell Street

Petitioner: New Cingular

Members: McDonough, Brown, Jeton, Baime, Boness

There was a request to continue the hearing without discussion to 5/5/11. McDonough made a motion to continue to 5/5/11 without discussion. Baime seconded the motion & the Board voted unanimously to continue to 5/5/11 without discussion.

Petition No.: 3912

Premises affected: 204 Andover St

Petitioner: T-Mobile

Members: McDonough, Jeton, Brown, Matey, Baime

This is a continued deliberation to review the draft decision as written by Attorney Slaga. In regards to the requested variance, section 4.1.3.3.a exempts from the height limitations certain ornamental features, such as cupolas. Finding that the proposed cupola is an ornamental feature & exempt from the height limitations of §4.1.2, as set forth in §4.1.3.3.a, & may be built by right, the Board voted unanimously to deny the request for a variance from §4.1.2 as moot. With regard to the request for a special permit under §6.1, based on the evidence & testimony presented during the public hearings, the Board finds a coverage gap does exist, as supported by the Town's peer review consultant. The Board further finds that the application conforms to the requirements of §6.1 of the Zoning Bylaw. The proposed cupola installation is well set back from Andover Street & is relatively far away from any residential structures. Based on the proposed installation's location & design, the Board finds that it would not adversely affect the character or appearance of the neighborhood. Accordingly, the ZBA votes unanimously to grant T-Mobile's application for a special permit under Article VIII, §6.1 and 3.1.3.F.15 of the Zoning Bylaw, subject to the following conditions:

1. The design of the proposed cupola shall be approved by the Ballardvale Historic District Commission (BVHDC) prior to construction.
2. All construction shall be in substantial conformance with the plans and specifications submitted by T-Mobile with its application to this Board, which are incorporated into this decision by

reference. Should the BVHDC require changes to the proposed installation that deviate substantially from the submitted plans and specifications, such changes shall be submitted to this Board for review prior to construction.

3. Adequate access shall be provided from within the building to provide for the servicing of the facility and maintenance of the cupola.
4. The lease between T-Mobile, and its successors, shall provide for the on-going maintenance and preservation of the cupola both during and after the term of the lease.
5. If, at any time, the transmissions of communications of either voice or data shall interfere with public safety communications, all operations shall cease immediately.

Petition No.: 3922

Premises affected: 5 River Park Terrace

Petitioner: Ferris

Members: Anderson, McDonough, Brown, Boness, Baime

The applicants represented themselves seeking a variance &/or a special permit for the continued existence of a contractor's yard & to park commercial-type vehicles on the premises. Mr. Ferris submitted a packet to the Board including photographs of property. Board Members Anderson, Brown, Boness, & Baime indicated that they'd driven by to view the property individually prior to the public hearing. Mr. Ferris summarized how they came to file & appear before the Board; due to neighbors' complaints about their landscaping/contracting business, which started operating from home 4 years ago due to financial obstacles. Their home is on a secluded, dead-end street. Ferris submitted several letters of support from neighbors. Their lot is larger than those of several abutters & they've made efforts to obscure the equipment from view, including a temporary garage that collapsed over the winter. Employees come & go during the morning & afternoon hours, traffic volume is low & employees drive at decreased speeds. The Board examined the photos & asked about further plans to screen the equipment on site. Brown pointed out that equipment is being stored off of the Ferris' property on the private way. P. J. Snyder, 30 High Vale Lane, spoke in support. Attorney David Bernardin, 21 Central St., Andover, spoke on behalf of his clients, Richard & Diana Davison, 7 River Park Terrace, who are in opposition due to the increased commercial use of the property & employees parking in the private way. Bernardin submitted photos of large trucks & equipment stored by the Ferrises. As direct abutters the increased commercial use of the property has a negative impact, including employees parking on the private way impeding traffic, as well as increased dust & noise. The business use derogates from the intent & purpose of the bylaw; the lot is not exclusively in residential use. They suggested use of the Ferris' lot at 41 Lowell Junction Rd to store the equipment. The Ferrises feel that the Davisons' complaints have ensued due to a private land dispute between them. Anderson also suggested use of the lot at 41 Lowell Junction Rd. Mrs. Ferris stated that it is not suited for the storage or operation of the business. The Board voted unanimously to waive a site view & to close the public hearing. The Board proceeded to deliberate.

The Board determined that the 12,000 square foot lot owned by the Ferrises has most of the land situated behind the house. However, the photos submitted clearly show the equipment & vehicles being stored on land that they do not own. The Board cannot grant relief for activities taking place off of the subject lot & the request for the continued operation of the contractor's yard & storage of commercial type vehicles/equipment does not meet the hardship criteria. The Board found that the character of the surrounding neighborhood is adversely impacted & is not in harmony with the purpose or intent of the bylaw or with the neighborhood. The Board concluded that granting relief would be detrimental to the character of the neighborhood. The Board unanimously voted to deny the variance & special permit for the continued operation of the contractor's yard & for parking or keeping of commercial type vehicles on the premises. It was suggested by the Chair that the

Petitioners devise a plan to remove the equipment. Members voting TO DENY the variance and special permit: Anderson, McDonough, Brown, Boness, Baime. Baime will write the decision.

Petition No.: 3924

Premises affected: 57 North Street

Petitioner: Andover Community Trust (ACT)

Members: Anderson, McDonough, Jeton, Brown, Boness

John Pearson, President of Andover Community Trust (ACT), and Susan Stott, ACT's volunteer Executive Director, presented the application for a Comprehensive Permit to construct one single-family affordable dwelling on the vacant lot with an area of approximately 15,964 sq. ft. & 74.87' of frontage in the SRC Zoning District. The site is bounded on the north & south by single-family house lots of similar dimensions & to the east by the Northfield Commons complex, a 40B development under construction. The proposed 3-bedroom single-family dwelling would contain approximately 1,600 sq. ft. of living area with a one-car garage underneath. The plan entitled "Proposed Affordable Housing, 57 North Street, Andover, Mass." prepared by Pennoni Associates, Inc., dated April 26, 2010 depicts the proposed 24' x 34' dwelling & is depicted on floor plans & elevation drawings prepared by Alan Carroll, dated 8/18/04. Both the Andover Housing Partnership Committee & the Andover Board of Selectmen support the project. Massachusetts Department of Housing & Community Development issued a site approval letter. ACT met on site with the neighbors in November 2010. The immediate abutter to the site attended the Andover Board of Selectmen meeting & voiced no objection. He requested a fence between the two properties, which ACT will install. The lot does not conform to frontage & area requirements for the SRC zoning district. The new home will be set back 15' from the northerly property line & 26' from the southerly property line, both less than the 30' required. ACT's P&S agreement with David Murray provides that North Street Construction, LLC will build the permanently affordable home, with the closing to occur when construction is complete. No formal traffic or drainage studies were required, nor were any peer consultants retained for review of the proposal due the very small size of the proposed development. The results of inter-departmental review on 3/29/11, are summarized in a memorandum to the Board from Barbara Burke, the Town's Zoning Administrative Secretary dated 4/7/11. No major concerns regarding the project were raised. Conservation Director Robert Douglas noted that the permit for 57 North Street is valid for two more years. Public Health Director Thomas Carbone had submitted a memo dated 2/23/11 regarding 57 North Street, asking that the Andover Board of Health Rules and Regulations for the Design, Construction, and Use of Sanitary Sewer not be waived.

ACT will retain ownership of the land while the dwelling would be sold to an income-eligible buyer with a land-lease agreement. The home will be affordable in perpetuity under the ground lease, covenants & restrictions imposed by ACT. The home will be available for sale to persons whose annual income does not exceed 80% of the median area income as established by the U.S. Department of Housing and Urban Development. No one else appeared at the public hearing to speak either for or against the proposal. The Board waived a viewing of the premises & voted to close the public hearing. The Board deliberated the matter.

ACT received approval of its application for project eligibility under the Local Initiative Program from the Massachusetts Department of Housing and Community Development (DHCD) in a letter dated 3/1/11. The applicant has shown evidence of interest in the property sufficient to qualify as an applicant for a comprehensive permit, controls the site within the meaning of 760 CMR 56.04(2)(j) and 56.04(4)(g), has agreed to execute a Regulatory Agreement pursuant to the requirements of DHCD, and satisfied the jurisdictional prerequisites for eligibility to submit an application for a comprehensive permit to the Board. In the opinion of the Board, the proposed development will adequately provide for storm water drainage, sanitary sewer services & water services, and other appurtenant utilities and amenities, and will not be a threat to the public health and safety of the occupants of the dwelling, the neighborhood, or the Town. Only those documents received by the

time the hearing was closed on April 7, 2011, are considered part of the record for purposes of the Board's consideration of the application. The Board voted unanimously to grant the applicant a comprehensive permit for the development described herein, pursuant to Massachusetts General Laws, Chapter 40B and Article VIII, Section 9.2.2.4 of the Andover Zoning Bylaw, subject to the 21 conditions as detailed in the written decision as filed with the Town Clerk & recorded at the Registry of Deeds. Members voting FOR the decision: Anderson, McDonough, Jeton, Brown, Boness. Members voting AGAINST the decision: None. Brown will write the decision.

Petition No.: 3928

Premises affected: 98 Andover Street

Petitioner: Andover Community Trust (ACT)

Members: Anderson, McDonough, Jeton, Brown, Boness

Andover Community Trust, "ACT," is requesting a dimensional special permit for affordable housing to construct a single-family dwelling. Attorney Andrew Caffrey, Jr. represented ACT. The vacant parcel has approximately 26,388 sq. ft., 174' of frontage in the SRB Zoning District and is bordered by single-family houses/lots of similar dimensions. Caffrey presented the history of the parcel in support of a finding of a Party Aggrieved. In 1964 the ZBA granted a variance in Decision 691 authorizing a larger parcel to be divided into two. In April 2010 ACT purchased 98 Andover St. In February 2011 Caffrey asked the Inspector of Buildings whether the subject parcel is buildable without further action by the ZBA. The Inspector of Buildings stated that since no house was ever built on the lot, thereby not exercising the variance granted by Decision 691, the variance had lapsed & new variances would be necessary. Caffrey presented arguments supporting the validity of the previously-granted variance. ACT proposes to construct a three-bedroom single-family dwelling of approximately 1,927 sq. ft. living area with an attached one-car garage. The proposed dwelling is depicted on plans entitled "Site Plan, 98 Andover Street, Andover, Mass." prepared by Andover Consultants Inc., dated 3/9/11 and drawings by Margulies Perruzzi Architects, titled "ACT Affordable Home, 98 Andover Street, Andover MA", dated 3/10/11. The Andover Housing Partnership Committee supports the proposal. At an IDR on 3/29/11, the only comment of concern to be addressed was from the Public Safety Officer asking that an off-road parking & access plan be established during the construction. This plan is to be submitted by ACT. The lot is non-conforming as to area. The proposed front setback is 30', where 40' is required. The house is to be built by Greater Lawrence Technical School students. The dwelling would be sold to an income-eligible buyer for a price of \$175,000. The home would be affordable in perpetuity under a ground lease with a resale formula, covenants & restrictions imposed by ACT. The home would be for sale to persons whose annual income does not exceed 80% of the median area income as established by the U.S. Department of Housing and Urban Development. Two neighbors expressed concern related to the duration of the construction & the maintenance of the property following the sale of the property. No one else spoke either for or against the proposal. The Board waived a site view & voted to close the public hearing.

The Board then deliberated finding that the proposal will adequately provide for storm water drainage, sanitary sewer services and water services, and other appurtenant utilities and amenities, and will not be a threat to the public health and safety of the occupants of the dwelling, the neighborhood, or the Town. The Board finds that the proposed development meets the standards and regulations out lined in Article VIII section 7.8.3 for a dimensional special permit for affordable housing and the Board specifically makes the required findings pursuant to Article VIII section 7.8.4(1-3). In consideration of all of the foregoing, including the plans, documents and testimony given during the public hearing, the Board voted unanimously to grant the applicant a Dimensional Special Permit for Affordable Housing for the development described herein, pursuant to Article VIII, Section 7.8 of the Andover Zoning Bylaw, subject to the required conditions set forth in Article VIII, Section 7.8.5(1-3) of the Zoning Bylaw & subject to the additional conditions as agreed upon by the Board &

incorporated into the written decision which shall be recorded at the Registry of Deeds. Relief having been granted by special permit, the applicant requested permission to withdraw without prejudice the request for review of the decision of the Inspector of Buildings. The Board voted unanimously to allow the withdrawal without prejudice of the request as Party Aggrieved. Boness will write the decision.

Petition No.: 3926

Premises affected: 54 Haverhill Street

Petitioner: Howie

Members: Anderson, Jeton, Brown, Boness, Baime

Mr. Howie represented himself seeking variances under Article VIII, §5.2.8.1.B &/or §5.2.5.1 to replace the sign faces on an existing non-conforming, double-sided, internally illuminated projecting sign for his business, The Grocery Bag. He is renovating the business & changing the name to Mr. Takeout Grill & Deli. He wishes to keep the projecting sign frame & internal illumination by simply putting new faces on it. Howie submitted photos of the existing sign on the façade of the building to illustrate its location set into the hill with the projecting sign to increase visibility. The existing & proposed internally illuminated sign is 38.5"x6" and setback 17' from the street. He has been the owner/operator of the business for thirty-three and a half years, since 1977, and the sign was in place when he bought the property. The current renovation is to increase the food service aspect of the business and to increase revenue. There were no further questions or comments from the Board or the public. The Board voted unanimously to waive a site view and to close the public hearing. The Board then deliberated. The Board determined that the pre-existing sign is lawful and not detrimental to the neighborhood and that zoning relief is not necessary given the facts presented at the hearing, the placement, location and length of existence of the sign structure. The Board finds that the existing sign is a pre-existing, non-conforming sign under the Zoning Bylaw, and that Mr. Howie can change the message on the sign as a matter of right, provided that there is no change in the size or location of the sign. The Board voted unanimously that a variance is not necessary and denied the request for variances as moot. Jeton will write the decision.

Discussion Items:

1. Mass Housing Letter dated 3-31-11 re: Wild Rose Estates
2. Recused Members – Approval of Minutes
3. Other Zoning Related Matters – Town Meeting amendments to the zoning bylaw

Petition No.: 3927

Premises affected: 54 Woodland Rd

Petitioner: Peabody

Members: McDonough, Jeton, Brown, Boness, Baime

Chair Stephen Anderson recused himself from the case & left the room as he is an abutter to an abutter of the subject property. Attorney Donald Borenstein of Johnson & Borenstein, LLP, represented the Petitioners seeking Special Permits under Article VIII, §3.3.5 & §3.3.7. Petitioners, Stephen & Sally Peabody, & builder, Mark Ratté, were present. They wish to raze the existing single family dwelling & construct a new one. The lot area requirement is met, but the lot has frontage of only 115.04', where 150' is required. All of the minimum yard depth requirements will be met. The existing house is known as the 1812 Captain Wood House & is listed as a historically significant building. It is in an advanced state of deterioration & is considered to be structurally unsound. On 2/8/11, the Preservation Commission approved the demolition of the existing house & plans for a

new, cape-style dwelling, subject to conditions relating to historic documentation & the salvage of historic materials. No one else spoke at the public hearing either for or against the proposal. The Board voted to waive a site view & to close the public hearing. The Board then deliberated.

The Petitioners have requested relief under Sections 3.3.5 & 3.3.7 of the Zoning Bylaw. Section 3.3.5 sets forth conditions under which “Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed...” either by right (under certain conditions) or by special permit from this Board. Because the current proposal calls for the complete demolition of the existing structure, rather than reconstruction or alteration, the Board finds that such removal negates the grandfathering provisions of §3.3.5 & that relief cannot be granted under that section. Article VIII, §3.3.7 states, in part, that, “Any nonconforming structure may be reconstructed after a fire, explosion or other catastrophe, or after demolition, provided that such reconstruction is completed within twenty-four months after such catastrophe or demolition, and provided that the building(s) as reconstructed shall be only as great in volume or area as the original nonconforming structure unless a larger volume or area is authorized by special permit from the Board of Appeals.” Because the subject property has less than the required frontage on Woodland Road, but existed prior to the adoption of the Zoning Bylaw, the Board finds that the premises are a lawfully pre-existing, non-conforming structure. Because the proposed new dwelling is approximately 50% larger than the existing structure, a special permit is required to allow construction of the new dwelling. The evidence is clear that such demolition is warranted in this case due to the advanced deterioration of the structure. The Board finds that the proposed new dwelling will be similar in scale & style to other dwellings in the neighborhood, and will not be unreasonably detrimental to the established or future character of the neighborhood and town. The Board voted unanimously to grant a special permit under Article VIII, §3.3.7 to allow the construction of a new dwelling on the premises, subject to the following conditions:

1. The new dwelling shall be sited substantially as depicted on the submitted plot plan (Frank S. Giles II, PLS, dated March 13, 2011). The location of dwelling may be altered so as to protect existing natural features on the site, so long as the dwelling conforms to all minimum yard depth requirements of the Zoning Bylaw.
2. The dwelling shall be constructed in substantial conformity with the architectural plans and elevations submitted to the Board (Pages A1 to A4, as prepared by Sally A. DeGan, Spacecraft Architecture, dated March 9, 2011), as approved by the Andover Preservation Commission.

Members voting FOR the decision: McDonough, Jeton, Brown, Baime, Boness

There being no other business of the Board, the Board then adjourned the meeting.