

The Hall, 2<sup>nd</sup> Floor, Memorial Hall Library, Elm Square

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

The meeting opened at 7:05 p.m.

**Petition No: 3957**  
**Premises affected: 400 South Main Street**  
**Petitioner: Andover School of Montessori**  
**Members: Brown, Jeton, Baime, & Ranalli (Boness absent)**

Only three board members who sat on the original hearing were present for the continued hearing. Ranalli made a motion to continue the hearing to 1/5/12. Jeton seconded the motion & the Board voted 3-0 to continue the hearing to 1/5/12.

McDonough & Baime arrived at 7:11 p.m.

**Petition No: 3932**  
**Premises affected: 70 N. Main Street**  
**Petitioner: Jeffco**  
**Members: McDonough, Brown, Batchelder, Ranalli, Baime**

Attorney Don Borenstein represented the applicant, Doug Ahern, who was also present. Project Engineer Bill McLeod reviewed the changes to the plans, Board of Health violations / condemnation & Assessor's records as evidence of the multi-family use. The building dates back to 1820 with 4-units as early as 1957. The existing structure predates zoning and encroaches onto the public way. Borenstein reviewed the changes from the previously presented plan. McLeod informed the Board that the volume of the existing structure is 45,287 cu. ft. & the proposed structure would have a volume of 44,532 cu. ft.; both calculations exclude the basement. The finished floor area would be 3800 sq. ft. plus 769 sq. ft. in the basement. Borenstein reviewed the requested relief: variance with hardship being that the legal, pre-existing, non-conforming structure encroaches into the right of way on a small lot; the building is out of code, on a corner lot that slopes to the rear. The proposed building is to the same scale, will meet code and conform to some setbacks & is consistent with the neighborhood. The variance would allow a 10' north side setback. Borenstein submitted the Board of Health's condemnation order to the Chair. There being no other questions or comments from the Board or the public, McDonough made a motion to waive the site view & close the public hearing. Batchelder seconded the motion & the Board voted (5-0) to waive the site view & close the hearing. The Board then proceeded to deliberate.

The Board is satisfied that they received the previously requested information, that a hardship exists and that the proposed reconstruction is an improvement over the existing condemned multi-family building. Brown suggested that a special permit under 3.3.7 could be granted since the proposed volume is less than the existing & the setbacks will be greater than the existing. The variance for the 10' setback on the north side could be granted under 4.1.2; however he felt that a hardship was not demonstrated. Batchelder made a motion to grant the special permit under 3.3.7 finding that the proposed structure will not be detrimental and with the condition that shall be constructed in conformance with the plans & specifications submitted to the Board. Baime seconded the motion & the Board voted (5-0) to grant the special permit with conditions. McDonough made a motion to grant a variance from 4.1.2 for the 10' north side setback. Batchelder seconded the motion & the Board voted (4-1) (Brown opposed). Ranalli will write the decision.

**Petition No: 3965****Premises affected: 21 Stevens Street****Petitioner: Jeffco****Members: McDonough, Brown, Batchelder, Baime, Ranalli**

Doug Ahern, applicant residing at 16 Bridle Path Rd., Andover, represented himself. He wishes to raze an existing single family dwelling in the SRC district & to construct a new one on a lot that lacks the minimum contiguous upland area. The proposed house would have an area of 2100 sq. ft. The existing house has approximately 15-1600 sq. ft. Ahern noted that he will appear before the Conservation Commission and will have to replace the septic system. Requested relief is for a variance with the hardship relating to soil conditions (80% of the lot is wetlands), corner lot & sloping topography. It is in keeping with the neighborhood. The Board discussed discrepancies between the application & plans, concern over wetlands & buffer zones & the zoning bylaw requirement for 100% contiguous uplands. Ahern explained that the proposed footprint is smaller than the existing & his belief that the lot was grandfathered regarding uplands. The Board would like input from Conservation regarding the wetlands prior to taking a vote. McDonough made a motion to continue the public hearing to 2/2/12. Baime seconded the motion & the Board voted (5-0) to continue to 2/2/12. Ahern will submit a written grant of an extension.

**Petition No: 3963****Premises affected: 24 Enfield Dr****Petitioner: Kowalski****Members: McDonough, Brown, Jeton, Baime, Ranalli**

Dan Kowalski represented himself & his wife in their request for a special permit under 3.1.3.F.4 for a family dwelling unit to be occupied by Mrs. Kowalski's mother. They had constructed an addition one year ago & want to convert it into living space for her. They have spoken with abutters whom voiced support. A letter from Mrs. Kowalski's mother's physician is part of the application. It was emphasized that after the unit is no longer needed for this family member; the stove/kitchen must be removed. Brown explained that the special permit is granted for 5 years and can be renewed upon application to the ZBA. McDonough made a motion to waive a site view & close the hearing. Baime seconded the motion & the Board voted unanimously to waive the view & close the hearing. The Board then proceeded to deliberate.

Baime made a motion to grant the special permit under 3.1.3.F.4 with the condition that the unit must be occupied by family and that there is a 5-year limit, renewable upon application. McDonough seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Jeton will write the decision.

**Petition No: 3961****Premises affected: 2 Elm Sq.****Petitioner: Sprint Spectrum****Members: McDonough, Brown, Jeton, Baime, Ranalli**

Eric Kallio, representative for Sprint Spectrum, requested a special permit under 6.1 to add an equipment shelter & to replace 6 antennas, add 9 radio head units on the rooftop. The antennas are 6' high & will be mounted at the same elevation. Kallio explained that the technology has changed & will improve service. McDonough made a motion to approve the special permit. Jeton proposed the condition that a structural analysis be submitted. Brown asked for it to include wind & snow loading. Baime added that the installation be in conformance with the plans & specifications submitted. Jeton seconded the motion as amended & the Board voted (5-0) to grant the special permit. Jeton will write the decision.

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**Petition No: 3962****Premises affected: 159 Summer St****Petitioner: Hare****Members: McDonough, Brown, Jeton, Baime, Ranalli**

Brown disclosed that the petitioner had previously contacted him by phone, but did not meet with him. He believes that he can act impartially. There were no objections to his participation in the hearing.

Joanna Reck, architect, represented the petitioner's request to construct additions/alterations that will not meet the minimum side setbacks (14' proposed, 15' required). The ranch-style house was built in 1955. The addition is a second story over the existing house. The front addition conforms to the 200' average setback of abutters. Florence Black, 153 Summer St., voiced concern over the second story blocking light. Mr. Hare has spoken with some neighbors. Other houses are converted ranches. There being no other questions or comments from the public or the Board, the Board waived a site view. McDonough made a motion to close the hearing. Baime seconded the motion & the Board voted (5-0) to close the hearing. The Board then deliberated.

McDonough made a motion to grant a special permit with the finding that the existing house conformed to the bylaw at the time it was built & that the proposed additions / alterations fall within the average front setback provision and will not be detrimental to the neighborhood. McDonough also made a motion to deny the variance as moot. Baime seconded the motions & the Board voted (5-0) to grant the special permit and deny the variance as moot. Brown will write the decision.

**Petition No: 3964****Premises affected: 139 River Rd****Petitioner: Andover Donuts, Inc.****Members: McDonough, Brown, Jeton, Baime, Ranalli**

Attorney Mark Johnson represented the petitioner, who wishes to convert two empty garage bays into additional fast-food restaurant space. The existing Dunkin Donuts has operated by variance in this location for 16 years. They are also in process with the Planning Board for a major non-residential special permit. DPW & Public Safety have reviewed & voiced no concerns. Board of Health will review the project. Johnson submitted a letter to Tom Carbone, Public Health Director, dated 11-17-11. The Board discussed the history of the 'mini coffee counter' as originally approved and its continual expansion without zoning relief. Johnson referred to Decision No. 2528 in which the Board found the changing nature of gas stations to include fast food restaurants such as Dunkin Donuts to be normal / typical use & granted a modification of Decision No. 748. The proposed changes will relocate the existing Dunkin Donuts within the existing building. It will still not include any seating but will include more storage space, a walk-in refrigerator, better oven, & 3-bay sink. The Board discussed the change in menu & potential increased customer based requiring more parking. Johnson stated he had spoken with Planner Jacki Byerley who determined that the parking requirement will be met if the proposed changes are approved, as outlined in her memo. The petitioner will undergo Board of Health review if approved. The Board waived a site view. Baime made a motion to close the public hearing. Ranalli seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate.

The Board discussed their concerns regarding the expanding use, that the use is allowed by variance, traffic concerns, & the deviation from the bylaw / ID zoning district where restaurants are not allowed. Baime made a motion to allow the requested modification of Decision No. 2528 to allow Dunkin Donuts to expand into the two bays with the condition that

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no further expansion of the building is allowed & that the proposed work is in conformance with the plans & specification submitted. No one seconded the motion. Jeton made a motion to deny the requested modification. Ranalli seconded the motion & the Board voted (3-2) (Brown & Baime opposed to denying it). Jeton will write the denial.

**Petition No: 3960**

**Premises affected: 6 & 9 Newport Circle**

**Petitioner: Stilkat LLC**

**Members: McDonough, Brown, Jeton, Baime, Ranalli**

Attorney Mark Johnson, Attorney Don Borenstein, Engineer Bill MacLeod, & Mr. Katsikis were present to request a variance from Art. VIII, Section 8.1.7.1 to allow the continued existence of alleged slope disturbance violation issued by the Inspector of Building's Notice of Violation from September 2011. Johnson submitted a copy of Section 8.1.7 of Art. VIII to the Board. The petitioner believes that there is no disturbance that is in violation of the bylaw. MacLeod reviewed the timeline that he sent to Conservation Commission outlining the property's history, including 12-31-08 tree cutting discovered in summer 2011. He showed a plan depicting the area where the trees were cut & the slope over 15%. The area is approximately 25'x100'. It appears more was cleared than approved by Conservation. Since the trees were cleared 3-4 years ago, vegetation has grown back. There is no definition of 'disturbance' in the bylaw. It is unsure if the topography is the same as depicted on the subdivision plan because it has not been surveyed. Jeton focused the conversation on whether or not tree cutting is considered disturbance of slope and whether the slope has been stabilized. MacLeod attests that the slopes are stable, that no work has been done since 2009 and that there is no erosion in rain storms due to the dense vegetation. Brown pointed out that the violation notice uses the word 'undisturbed' and refers to grading that has altered the slope based on plans submitted to the Building Division. No regrading was proposed in excess of 15% and the Norse Environmental findings show no evidence of regrading as evidenced by the presence of native sub-soil. The Board decided to conduct a site view & to continue public hearing. Several residents voiced concern over the removal of trees, erosion, run-off, & increased traffic noise from Route 495. The Board asked for a copy of Norse's report & to hear from the Inspector of Buildings regarding the reason for the stop work order. Four members of the Board will conduct a site view (McDonough will not be present) at 10 a.m. on 12/4/11. Johnson stated that only ZBA members are welcome to enter the property, but no others. McDonough made a motion to continue the hearing to 1/5/12. Baime seconded the motion & the Board voted (5-0) to continue the hearing to 1/5/12. Johnson agreed to grant an extension.

There being no other business of the Board, McDonough made a motion to adjourn the meeting at 10:02 p.m. Baime seconded the motion & the Board voted unanimously to adjourn the meeting.