

Present were: Brown (Chair); Magenheim (Clerk); McDonough, Boness and Bargnesi, Members; Oltman, Bordonaro, Rechisky and Wilson (Associate Members).

The meeting opened at 6:38 p.m.

Petition No.: Z-14-30

Premises affected: 64 Summer St

Petitioner: ZCR Realty Trust

Members: Brown (Chair); Magenheim (Clerk); McDonough, Boness and Bargnesi, Members; Oltman, Bordonaro, Rechisky and Wilson (Associate Members).

Petitioner's attorney had submitted a written request to continue the public hearing without opening it to the May meeting. No one was present on behalf of the petition. Bargnesi made a motion to allow the request to continue without opening the public hearing to the May meeting. McDonough seconded the motion and the Board voted unanimously to allow the continuance.

Petition No.: Z-14-15

Premises affected: 12 Tiffany Ln

Petitioner: Cavanaugh

Members: Brown (Chair); Magenheim (Clerk); McDonough, Boness, Members; Oltman, Bordonaro, Rechisky and Wilson (Associate Members).

This hearing was opened on March 6, 2014. Petitioner requested to continue the hearing to the May meeting in order to continue with the Conservation Commission process. Magenheim made a motion to continue the hearing to the May meeting. Boness seconded the motion & the Board voted unanimously to continue the hearing to the May meeting.

Petition No.: Z-14-17

Premises affected: 15 County Rd

Petitioner: South Andover Development

Members: Brown (Chair); Magenheim (Clerk); McDonough, Member; Oltman, Rechisky and Wilson (Associate Members).

Petitioner requested that the continued public hearing be further continued to the May 1, 2014 meeting. McDonough made a motion to continue the hearing to 5/1/14. Magenheim seconded the motion & the Board voted unanimously to continue the hearing to 5/1/14.

Petition No.: Z-14-9

Premises affected: 2 Elm Square

Petitioner: Musgrove, LLC

Members: Brown (Chair); Magenheim (Clerk); McDonough, Boness and Bargnesi, Members; Oltman, Bordonaro, Rechisky and Wilson (Associate Members).

Attorney Jay Eigerman represented the petitioner. The request is for variances from Art. VIII, Sections 5.2.9.3.a & b, and 5.2.6.3.b, c & d to install 8 vertical banner signs that measure 30" long by 10" wide. They are each 25 sq. ft. in area and will be installed on this historic brick 3-story building (the Musgrove Building) at the same level as the 2<sup>nd</sup> floor fenestration [top of sign will be 27' above ground level where 25' is allowed]. He noted that the owners also control the

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buildings on Post Office Ave, for which some of the proposed signs will provide direction. The proposed signs are similar to banners that existing on the Barnard Building at 14 Main Street and banners that will be installed at Olde Andover Village, owned by the petitioner, at 89-91 Main St. Relief is required to exceed the maximum allowed area & height, as well as to allow the off-premise signs for the Post Office Ave tenants. Rick Harvey, of Harvey Signs, showed samples of the signs & hardware. He estimates that the Barnard Building signs are 25.5 sq. ft. and 28' at top of sign. They have met with Design Review Board (DRB). There are 4 tenants on site & 2 off-site, plus 4 more for future tenants in the Musgrove Building. Boness expressed concern for the off-premise signage for Post Office Ave. Harvey explained that the proposed signage is on the corner of the building, not on Post Office Ave. The directories are signs A & D on the submitted plan & would direct customers to those businesses that are tucked away. Boness asked stated that sign E appears to be on Post Office Ave. It is an entrance sign for the Musgrove Building. Boness commented that some of the proposed signs are for multiple tenants creating a busy streetscape while the Olde Andover Village signs advertize only one tenant. Harvey informed the Board that they had presented 4 signs to DRB which then suggested 8 signs for uniformity. The Board discussed the height of the letters & the width of the signs, suggesting that the banners on the Musgrove Building be uniform with the 24" wide banners on the Barnard Building. The Board asked for clarification on the two sets of drawings submitted & the inconsistency in the dimensions (6' or 7'). Harvey explained that the proposed dimensions are 6'x30", but the drawing with the smaller lettering does not work, and the 7' is the dimension to the outside of the sign bracket. They are asking for the larger dimensioned signs. The Board also discussed the option of installing 8 15 sq. ft. signs that are allowed by right. Eigerman pointed out that they couldn't do directories, but one sign per business by right. He reiterated the requested relief: variances from 5.2.9.3.a = for signs exceeding 9 sq. ft., 5.2.9.3.b = for the top of the sign to be a maximum of 25' above grade – proposed is 27.5', 5.2.9.3.c = not required as the signs conform to the max. 5' projection; and for special permits under 5.2.9.3.d = if a variance is granted from a, a special permit may not be needed under this section allowing up to a 15 sq. ft. sign, 5.2.6.3.b = for off premise directional signs, 5.2.6.3.c = not to exceed 25 sq. ft. and 5.2.6.3.d = if for more than 1 business, maximum 6' height. The Board then discussed whether or not the blank signs would have to return to the ZBA for relief once a tenant is chosen. Oltman reminded the Board that in previous decision, conditions have been made to limit the size of signs. Eigerman agreed that sign E can be stipulated to be consistent with the lettering on sign B, but that A & D are off site. Eigerman also agreed that on the 3 blank signs shown in the plans, they can be limited to one business per sign. Brown read the condition from the decision for Olde Andover Village special permit to control future tenants' signs to a maximum of one projecting sign per tenant. The Board further discussed their concern over the 30" sign width, the desire to make them more conforming to other banners on Main Street, placing conditions to limit the width if approved & restricting one directional sign for the Post Office Ave tenants (for increased visibility for pedestrian traffic), and the benefit of a directional sign on Elm Street for vehicular traffic going onto Post Office Ave. Harvey expressed preference for the 30" banner width being compatible with the building's architecture. Brown suggested continuing the hearing to May in order for the applicant to prepare & submit a larger scale drawing in proportion to the building with the 24" & 30" wide signs and in order for them to obtain a memorandum regarding a variance from the sign bylaw. Eigerman agreed to submit the documents & offered to draft findings for an approval prior to the May meeting. McDonough expressed concern over the size of the directory sign for Post Office Ave and the potential confusion for vehicular traffic with such a large sign. Eigerman argued that most of the pedestrian traffic comes from the direction of the Barnard Building & that pedestrians may not see a smaller sign. The Board also discussed whether the blank signs shown on the plan will be installed & the maximum number of potential tenants. The blank signs will be installed for uniformity & the number of tenants depends on the unit size, which can be reconfigured. Brown suggested continuing to May in order to see a bigger scale drawing in proportion to the building at 24" & 30" high signs and to receive a memorandum regarding the variances from the sign bylaw. Eigerman agreed & offered to draft findings. McDonough made a motion to continue the hearing to 5/1/14. Boness seconded the motion & the Board voted (9-0) to continue the hearing to 5/1/14.

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Petition No.: Z-14-24

Premises affected: 8 Rogers Brook East

Petitioner: Norton

Members: Brown (Chair); Magenheim (Clerk); McDonough, Boness and Bargnesi, Members; Oltman, Bordonaro, Rechisky and Wilson (Associate Members).

Sean & Heather Norton represented themselves in their request for a variance from Art. VIII, Section 4.1.2 &/or for a special permit under Art. VIII, Section 3.3.5 to construct a rear porch addition that will encroach into the minimum rear yard depth requirement. The lot & house are located in the SRA zoning district & 30' is the required rear yard depth. Mr. Norton explained that the layout of the lot is such that their house is exactly 30' from the rear lot line, which abuts a lot on Rogers Brook West. They spoke with that direct abutter, who voiced no concern with the proposal. There is an existing mudroom/porch that will be removed. The house was built in 1988. There is a concrete step at the bottom of the stairs currently that will potentially become a small patio off to the side of the stairs along the back of the house. The Board asked for a floor plan of the existing first floor in an attempt to determine if there are alternatives to the proposed rear porch. Mr. Norton explained the layout and the existing exit is the main reason for the location of the addition. If built elsewhere, there would be little room or it would have to be constructed behind the garage & chimney. Any other location would take up a substantial portion of the main yard space & not flow with the house. Boness pointed out the 30' utility easement that also decreases alternatives. Brown asked Inspector of Buildings Chris Clemente if the street was a cluster subdivision. Clemente was unsure but added that potential wetland issues could be nearby. Wilson noted that the proposal is in keeping with the neighborhood. McDonough made a motion to waive a site view & close the public hearing. Magenheim seconded the motion & the Board voted (9-0) to waive the view & close the hearing. The Board then proceeded to deliberate the matter. Brown designated the Regular Board (Brown, Magenheim, McDonough, Boness, Bargnesi) to sit on the case. Brown suggested that since they can't establish that the house is a legal pre-existing, non-conforming structure, a variance is necessary. McDonough & Boness reiterated that the easement contributes to the hardship in developing the lot. Bargnesi & Magenheim agreed. McDonough stated she has no objections. Brown noted his inclination to grant a variance since the proposed addition is in keeping with the neighborhood. Boness made a motion to grant a variance with the condition that it be constructed in substantial conformity with the submitted drawings & plot plan. Magenheim seconded the motion. McDonough amended the motion to include the condition that the addition cannot encroach any further into the rear yard than specified on the plot plan and to deny the special permit as not applicable because it is not a pre-existing, non-conforming structure. Magenheim seconded the original & amended motions and the Board voted (5-0) to grant the variance with conditions and deny the special permit as not applicable. Rechisky offered to help write the decision. Brown stated that he'd draft a decision with Rechisky & the Board can take a final vote at the May meeting, with an associate member filling in, in the event that a regular member will not be available.

Petition No.: Z-14-31

Premises affected: 34 Park Street

Petitioner: Sal's Park Street Andover

Members: Brown (Chair); Magenheim (Clerk); McDonough, Boness and Bargnesi, Members; Oltman, Bordonaro, Rechisky and Wilson (Associate Members).

Joe Bevilaqua was present for Lupoli Companies, owner of subject property. They are seeking a special permit under Art. VIII, Section 3.1.3.F.8 for the placement of temporary & seasonal tables & chairs. The restaurant is located in the GB district. Bevilaqua noted the change in location for the tables & chairs from the parking area, as submitted with the application, to the sidewalk in front of the existing restaurant. Therefore, no parking spaces will be occupied by the proposed 8 tables, each with 2 seats. Boness asked what the season is for outdoor seating. Inspector of Buildings, Chris

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Clemente, explained that the season, set by the Town Clerk's office, is roughly April 1 – October 30. Bevilaqua explained that the sidewalk with the tables & chairs will leave an area 5' wide for pedestrians. There will be no canopies or umbrellas, not any additional lighting. There will be bollards along the seating area, which is accessible from outside the restaurant only. Lillian Montalto, owner of Signature Properties – a tenant in the same building, asked for confirmation that no parking spaces will be taken over by tables & chairs. Brown showed her the revised plan for seating on the sidewalk. McDonough made a motion to waive a site view & close the hearing. Boness seconded the motion & the Board voted (9-0) to waive the view & close the hearing. The Board then proceeded to deliberate. The Board agreed to set the number of tables & chairs to 8 tables & 16 chairs, as depicted on the revised plan submitted tonight. McDonough made a motion to grant a special permit under Art. VIII, Section 3.1.3.F.8 for the placement of temporary & seasonal tables & chairs on the sidewalk with a minimum of 5' of sidewalk remaining clear. Magenheim seconded the motion & the Board voted (9-0) to grant the special permit with conditions. McDonough will write the decision.

Petition No.: Z-14-32

Premises affected: 11 Woburn St

Petitioner: Frerichs

Members: Brown (Chair); Magenheim (Clerk); Boness and Bargnesi, Members; and Wilson, Associate Member.

Chair Brown announced that Member McDonough had left the room & has recused herself from this case since she has retained the petitioner's attorney representing him tonight. Attorney Don Borenstein represented Mr. Frerichs, who was present for the hearing. Also present was Kevin Cavanaugh, designer, & John Hunt, builder. The proposal is to raze & reconstruct a single family dwelling. The existing lot & structure are non-conforming. Mr. Frerichs bought the house in August 2013 to rehabilitate the 1<sup>st</sup> floor & existing detached garage, as well as to add a 2<sup>nd</sup> story to the existing house. Due to the structural status of the house, most of the structure was demolished. Brown inquired how far down the existing house was razed. Inspector of Buildings Chris Clemente informed the Board that an 8'x10' section of the original floor at the rear is all that remains; the rest was demolished to the foundation. However, the building permit was issued to raise the roof to add the 2<sup>nd</sup> story. Borenstein explained that a stop work order was issued & complied with and now they have come before the ZBA to expand the 1s floor, as well as adding a 2<sup>nd</sup> floor & attached garage. The Board discussed the current setbacks (the front meets the 40' minimum). Borenstein then reviewed the changes in area & volume of the existing & proposed structures (a table was submitted with the packet). The total original area, including the garage, was 2047 sq. ft., or 1700 without the garage. The proposed area is 3611 sq. ft. including the attic. He noted that the average area of houses in the neighborhood is 3200 sq. ft. and that this is a neighborhood in transition, in which the new house will fit well. The Board whether the house conformed to the bylaw at some point. Borenstein explained that that the house was built in 1907 on a larger lot by the Boy Scouts. Then in 1954 an Approval Not Required (ANR) plan was filed, which indicates it complied at the signing of the ANR. The taking in 1957 took a strip of land for well purposes for drinking water where the Rec Park is now located. The Assessor's Map shows a dashed line while the GIS map shows no right of way (r.o.w.). However, they intend to record a release deed to the right of way & change the lot's access via Woburn Street directly while reserving the right to access the r.o.w. He noted that the Town still uses the r.o.w. quite a bit still, especially in the summertime. Borenstein noted one change to the draft conditions for approval that he submitted in condition #2: they will *deliver*, rather than record the release deed. The Town would have to record it. Wilson made a motion to waive the site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the site view & close the hearing. The Board then proceeded to deliberate. Wilson voiced concern with the draft finding that the structure conformed to the zoning bylaw at some point in time. Brown voiced concern over the rational for a 4'x4' extension of the porch. Bargnesi agreed. Brown explained how to apply Section 3.3.7 to demolition & reconstruction: as defined by the courts, 'reconstruction' encompasses raze & build in a different location on the lot, as in this case. Magenheim noted that they wouldn't be in this situation if they had followed their original plan. Brown suggested that it can be done under Section 3.3.5 as a lawfully non-conforming

structure with the evidence of the Assessor's record stating a 1907 construction date & the 1954 plan depicting 17,000 sq. ft. of lot area with 100' of frontage, which conformed at the time the plan was recorded. Subsequently, the Town taking reduced the lot size and then zoning bylaw changes rendered it more non-conforming. It is in keeping with the neighborhood and will not be substantially more detrimental. Brown suggested that it can be approved by a special permit under Section 3.3.5 with the conditions that it be constructed in conformance with the certified plot plan and architectural drawings submitted, as well as conformance with draft condition #3 as submitted by Borenstein to deliver to the Town the release deed. Wilson, Boness, Magenheim, and Bargnesi all agreed. Brown then volunteered to draft the decision and to continue the deliberation to next month. Bargnesi made a motion to continue the deliberation to next month. Boness seconded the motion. Brown made a motion to deny the special permit under Section 3.3.7 as not applicable. The Board voted (5-0) to continue the deliberation to next month & deny the special permit under 3.3.7 as not applicable.

Petition No.: Z-14-16

Premises affected: 97 North Street

Petitioner: Kennedy-Anderson

Members: Brown (Chair); Magenheim (Clerk); McDonough, Boness, Member; and Rechisky, Associate Member.

This is a continued public hearing. Denise Anderson represented herself. Also present was Steve Hinckley, potential buyer/builder. Anderson had submitted a survey with a footprint of a proposed house as requested at the last hearing. Brown inquired whether she spoke with Planning staff, as requested at the last hearing, regarding the possibility of creating a 1-lot subdivision. She has not. Brown reiterated the Board's concerns with finding a hardship to grant the requested variance and that the petitioner has to demonstrate that they can't legally develop the lot without zoning relief. Until such time as evidence supporting a hardship is presented demonstrating that the petitioner has attempted to develop the lot by other means, but is unable to, the Board cannot vote to grant a variance. Anderson explained that the existing driveway would serve as access to the lot. She is uncertain what the issue is. Brown explained what the Board is requesting – to demonstrate that the lot cannot be legally developed without a variance. Boness clarified that the biggest difference on how you develop the lot legally, as opposed to with a variance, is the means to accessing the lot since it has insufficient frontage under the Zoning Bylaw. Brown confirmed with Inspector of Buildings Chris Clemente that a conceptual plan is acceptable to start speaking with Planning staff. Lillian Montalto, realtor, asked for clarification over the Board's request. Boness reiterated the Board's request to speak with Planning regarding a 1-lot subdivision and to return to the ZBA with a written answer. Rechisky & Magenheim agreed. The Board cautioned the petitioner about wetlands and to check with Conservation. Brown suggested to the petitioner to give Mr. Hinckley permission to act on her behalf. Brown asked the secretary to send the petitioner an extension form to grant the Board more time to act. Rechisky made a motion to continue the public hearing to 5/1/14. Magenheim seconded the motion & the Board voted (8-0) to continue the hearing to 5/1/14.

#### Approval of Minutes

2/6/14 – McDonough made a motion to approve the minutes of 2/6/14 with Brown's revisions as submitted by email and with attachment of the list of documents received at the meeting. Rechisky seconded the motion & the Board voted (8-0) to approve the minutes as revised.

3/6/14 - McDonough made a motion to approve the minutes of 3/6/14 with Brown's revisions as submitted by email and with attachment of the list of documents received at the meeting. Magenheim seconded the motion & the Board voted (8-0) to approve the minute as revised.

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There being no other business before the Board, McDonough made a motion to adjourn the meeting. Magenheim seconded the motion and the Board voted (8-0) to adjourn the meeting. The meeting adjourned at 9:426 p.m.

List of Documents Received at the April 3, 2014 Andover Zoning Board of Appeals Meeting			
Case Number	Petitioner(s)	Site Address	Item Description
Z-14-31	Sal's Park Street Andover LLC	34 Park Street	3 photos of outdoor seating at Sal's Boston location
Z-14-32	Frerichs	11 Woburn Street	10 photos & assessor's map, zoning table comparing original & proposed structures