

The meeting opened at 7:30 a.m.

Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Oltman, & Wilson (Associate Members).

Petition No.: Z-14-106

Premises affected: 290 Lowell Street

Petitioner: O'Brien Homes

Relief Requested: Variances 4.1.2, 7.9.4.2, 7.9.4.3.b & Special Permit 7.9 &/or 3.3.5 to subdivide a lot with an historic home into 2, both lots will be undersized & the historic home does not meet the minimum front setback

Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Oltman & Wilson (Associate Members).

This is a deliberation only meeting. Attorney Mark Johnson, of Johnson & Borenstein, 12 Chestnut St., Andover, was present along with the owner & petitioner. The public hearing was closed on 11/6/14.

The Board evaluated the application following the procedure set out in a document titled "Art. VIII, §7.9: Dimensional Special Permit – Historic Preservation - A Guide to the Board's Decision-Making Process" prepared by David Brown in July, 2014. Brown requested that all motions be phrased so that an affirmative vote would be in favor of granting relief and a negative vote would be against granting relief.

The Board unanimously agreed that the application as submitted conforms to the specific requirements of §7.9.7. The Board next considered whether the proposal meets the specific Standards and Regulations set forth in §7.9.4. The Board discussed at length whether the proposal meets the lot area and frontage requirement of §7.9.4.2 and §7.9.4.3. Brown stated his belief that the bylaw as written requires new lots not containing a historic structure to meet the underlying dimensional requirements of §4.1.2, and that this position has been supported by Town Counsel. Magenheim, Oltman & McDonough generally agreed, with McDonough stating that Town Counsel's opinion carried much weight for her. Wilson disagreed, stating that in her reading of the by-law new lots need only meet the reduced standard of §7.9.4.2 & §7.9.4.3. On a motion to find that the proposal meets the Standards & Regulations of §7.9.4, the vote was (1-4), with Wilson voting in favor. The motion fails.

The Board next considered the requests for variances from the standards of §7.9.4. Brown stated his opinion that the hardship is self-created, not related to the soil conditions, shape or topography of the land; the conditions are not unique or unusual to the neighborhood. The lot conforms to the current zoning standards, except for the land taking for the widening of Lovejoy Road. He believes that the statutory requirements for a hardship have not been met.

Oltman & Magenheim agreed with Brown. Wilson stated her support for the project commenting in regards to the taking that decreased the lot size & that a property owner shouldn't be penalized for this reason. McDonough agreed with the majority Board.

Magenheim made a motion to grant a variance from Art. VIII, §7.9.4.2 to allow Lot A to be created with less than 15,000 sq. ft. as required by 7.9.4.2. Wilson seconded the motion & the Board voted 1-4 (Wilson in favor). The motion fails.

Wilson made a motion to grant a variance from dimensional requirements for Lot B from Art. VIII, §§7.9.4.2, 7.9.4.3.b & 4.1.2. Oltman seconded the motion & the Board voted (1-4) (Wilson in favor). The motion fails.

Magenheim made a motion to make the required findings for a dimensional special permit for historic preservation and to grant a special permit under Art. VIII, §7.9. Wilson seconded the motion & the Board voted (1-4) (Wilson in favor, Brown, Magenheim, McDonough & Oltman opposed) on the motion to grant the special permit. The motion fails.

None of the motions having passed with four affirmative votes, the requested relief was denied. Brown will write the decision.

There being no other business of the Board, McDonough made a motion to adjourn the meeting. Magenheim seconded the motion & the Board voted unanimously to adjourn the meeting at 8:28 a.m.