Present were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk, Lisa Rechisky, and Daniel Casper, Members; Denise Bordonaro, David Guerette and Michael Novaria, Associate Members.

The meeting opened at 6:33 p.m.

**Petition Number: Z-19-166**  
Premises Affected: 27 Main Street  
Petitioner: Touchdown  
Relief requested: variances from Art. VIII, §§5.2.5, 5.2.6 & 5.2.9 to erect a freestanding, externally illuminated sign that exceeds the maximum allowed area within 200’ of a residential district  
Members Sitting: Oltman, McDonough, Faulk, Casper, Rechisky  
Alternates: Novaria, Bordonaro, Guerette

The Board received an extension of time to act on the petition as well as a request to continue the public hearing without discussion to the next regular monthly meeting. McDonough made a motion to continue the hearing without discussion. Faulk seconded the motion & the Board voted unanimously to continue the hearing without discussion to the next regular monthly meeting.

**Petition Number: Z-19-164**  
Premises Affected: 7 Yale Road  
Petitioner: Nash  
Relief requested: Special Permit under Art. VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to construct an addition that will not meet the minimum front yard depth requirement  
Members Sitting: Oltman, McDonough, Faulk, Casper, Rechisky  
Alternates: Novaria, Bordonaro, Guerette

This is a continued deliberation to review and vote on the draft findings and conditions. There being no changes to the decision as drafted, Casper made a motion to approve the decision as written. Faulk seconded the motion & the Board voted unanimously to approve the decision as written.

**Petition Number: Z-19-165**  
Premises Affected: 3 Gray Road  
Petitioner: Urquhart  
Relief requested: Dimensional Special Permit for Historic Preservation under Art. VIII, §7.9 to subdivide a lot with an historic dwelling on it  
Members Sitting: Oltman, McDonough, Faulk, Casper, Rechisky  
Alternates: Novaria, Bordonaro, Guerette

This is a continued deliberation to vote on the draft findings and conditions. Bordonaro suggested removing condition #1 regarding consent since the requirement has been satisfied. The Board agreed. She asked if condition #14 regarding ‘no certificate of occupancy for the existing house’ is applicable. Faulk noted that the
second sentence in the condition is protective. Oltman suggested that the Board either delete the first sentence or keep it. The Board agreed to delete the sentence regarding a Certificate of Occupancy for the existing house. There being no other discussion, McDonough made a motion to approve the draft decision as amended. Casper seconded the motion and the Board voted unanimously to approve the draft decision as amended.

**Petition Number:** Z-20-10  
**Premises Affected:** 18 William Street  
**Petitioner:** Arzeno  
**Relief requested:** Variances from Art. VIII, §§4.1.2 &/or 7.9.4.3 and for a Dimensional Special Permit for Historic Preservation under Art. VIII, § 7.9 to subdivide a lot & to move the existing garage to a location that will not meet the minimum yard depth requirements.  
**Members Sitting:** Oltman, McDonough, Casper, Faulk, Rechisky  
**Alternates:** Novaria, Keller

Attorney Mark Johnson represented the petitioners, Mrs. & Mrs. Arzeno, who were also present. The request is to divide the existing lot with the existing historic home into two lots and to move the existing garage onto the lot with the existing house. The garage would not meet the minimum yard depths requirements in the proposed location. Johnson indicated that the Arzenos intend to live in the existing house. A new house will be constructed on the new lot. The Preservation Commission has reviewed and recommend approval. Johnson submitted a history of the house as well as a list of repairs to be made. The Board discussed whether or not Sherbourne Street is a private or public way since it is unimproved in front of the proposed lot. Johnson stated that it is public. He pointed out that the historic lot meets all bylaw requirements, except for the proposed setback for the relocated garage, if the Board considers that it is not in rear yard area, and that Preservation Commission will review the proposed house for the new lot. The Board agreed that since 18 William Street is a corner lot that the proposed location of the garage would be in the side yard area & require a variance. The Board asked for the hardship relating to the proposed garage location. Johnson noted that they can keep the garage with the historic house, or keep it in its existing location and create an access easement. Steve Stapinski, Merrimack Engineering, explained that the garage can’t be closer to the historic house due to two large trees. The Board discussed reconfiguring the lot line to accommodate the garage in the rear yard. Johnson agreed that it is an option. Stapinski felt that leaving the garage in its current location is the least disruptive option. Johnson pointed out that a variance would be required for the garage if it is left in situ on the new lot since it has a non-conforming setback. Karen Herman, Preservation Commission Chair, informed the Board that while William Wood did not allow garages initially, the garage is historic in its own right. Doug Queening, 14 William St., spoke in opposition to a variance for the garage & subdivision, adding that the garage is secondary. He argued that there is no evidence that a variance is necessary to preserve the home or that it is in trouble or eminently in danger. It was never on the market and the character of the neighborhood is in jeopardy with a subdivision. He submitted a petition signed by abutters in opposition. Ann Marie Schank, 20 Sherbourne St., informed the Board that the new house behind 20 William Street doesn’t fit the neighborhood and they don’t want another house tucked behind 18 William St. Chris O’Brien, 9 Kensington St, spoke against the proposal and explained that he understands the investment to preserve the house. He asked how a variance can create a smaller lot. Oltman explained the Dimensional Special Permit for Historic Preservation (DSPHP). Gabrielle Queenin, 14 William St., understands the desire to preserve the house, but not why a new lot and house is needed. She invested a lot in her house to preserve it. Johnson reviewed the creation of the DSPHP, first passed at Town Meeting in 2003 as a tool to preserve historic houses. It requires a preservation restriction, in perpetuity, to be placed on the house. The Zoning Bylaw allows new lots in exchange for the preservation restriction, but the new lot must meet zoning. It helps fund the preservation. Mr. O’Brien asked if there is a way to guarantee that the repairs are done. Oltman stated that there is no way to guarantee it. The Board discussed whether or not Sherbourne Street will be improved. Stapinski noted that the existing paved driveway will remain and that the Planning or Building Division will determine if any improvements have to be made. Doug Cummings, 67 High St., Andover, asked Karen Herman if other historical houses are being demolished. Herman stated that they are. The Board inquired what type of restrictions can be placed on the new lot. Herman stated that the design has to
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be compatible with the neighborhood. Mrs. Queenin argued that a new home won’t fit the neighborhood and that a DSPHP is not the only way to preserve it. Diana Arzeno, future owner of 18 William St., explained that their goal is to renovate the existing house, live in it and remove the pool. The Board chose to keep the public hearing open to discuss the case. The Board was generally not in favor of moving the garage to the proposed location, but more in favor of either keeping it in its current location or a more conforming new location. There is concern over not having some idea as to the location, setbacks and massing of the proposed house and how it will impact the neighborhood, as well as whether or not Sherbourne Street needs to be developed. Access is also of concern, as well as the new lot having the minimum lot area and a garage easement. Some members felt that the proposal is not the type of project that the bylaw anticipated, especially since alternatives exist, and that no hardship exists for the garage. Bordonaro emphasized the requirement in Section 7.9.5.3 in which the Board must make a finding that destruction of the historic house is eminent. No evidence has been presented. Johnson argued that the ‘Board shall consider’ does not mean that the Board must make a finding. Bordonaro disagreed stating that the intent is to preserve those in danger of destruction. Karen Herman told the Board that this bylaw has been beneficial in preserving historic houses and that one can never know if it will be preserved by a new owner. This bylaw has placed a preservation restriction on 16 houses with 2 in the works now. Rechisky expressed favor for preserving historic homes, but is concerned over the bylaw loop holes that essentially create ‘stacked lots’ with a house in everyone’s backyard. She suggested that if the Board can limit the size of the new house and if the Board had a clearer idea of what the new house will look like, it may be ok. Oltman informed the Board that they cannot resist the size of the new house. The Board considered whether Preservation Commission can restrict the square footage of the new house, but Ms. Herman was uncertain. She clarified that Preservation Commission looks for compatibility and design. Faulk suggested consulting Town Counsel adding that the substandard access is questionable. Steve Stapinski, project engineer, stated that the Building or Planning Division decides what appropriate access is. He added that the size of the house is a function of design. Johnson reminded the Board that the bylaw specifies the requirements. Johnson informed the Board that his clients are amenable to moving the garage further to the right. Faulk inquired as to the abutters’ thoughts on the garage. Several Board members felt that leaving it in place is best. The Board asked for a plan showing the building envelope for the new lot, information regarding the street / what is a right of way vs public road, and a revised site plan to depict a potentially different location for the garage if it is not left in situ. Bordonaro noted that a letter from 76 Poor Street was received requesting that access to their land via Sherbourne Street is maintained during and after construction. There being no other questions or comments from the Board or the public, McDonough made a motion to continue the public hearing to the March meeting. Rechisky seconded the motion and the Board voted unanimously to continue the public hearing to March.

DISCUSSION ITEM
Petition Number: Z-19-118
Premises Affected: 64 Summer Street
Petitioner: Ratte
Relief requested: Party Aggrieved &/or for (a) special permits under Art. VIII, §3.3.5 &/or §3.3.7 to raze & construct a 2-family dwelling that is greater in volume than the existing 2-family dwelling

Members Sitting: Oltman, McDonough, Casper, Rechisky, Faulk

This is a discussion only regarding Condition #3 of Z-19-118 regarding the arborist’s report that was submitted. Oltman informed the Board that the ZBA retains jurisdiction and asked if any Board members wished to reopen the public hearing. Attorney Johnson, representing the Ratte’s argued that the difference between discussion and public hearing is that the intent is not to re-open the public hearing thereby opening it up to appeal. The public discussion allows the Board to monitor the project and discuss it in an open meeting. The Board asked for input from the abutter regarding the arborist’s report. Peter Singer, abutter, reminded the Board that Attorney Borenstein agreed to use someone of his recommendation. This did not occur and the recommendation differs from his own arborist’s. Casper suggested that the two arborists speak with the parties. Singer takes issues with the ‘safety zone’ for the roots, it isn’t large enough. Johnson agreed that they elected to use a different arborist. Mark Ratte was also present and the parties left the room to discuss the issues.
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Petition Number: Z-20-8
Premises Affected: 15 Westwind Rd
Petitioner: Oppenheim
Relief requested: Special Permit under Art. VIII, §3.3.5 &/or for Variance from Art. VIII, §4.1.2 to construct an addition that will not meet the minimum front or side yard depth requirements
Members Sitting: Oltman, McDonough, Novaria, Rechisky, Guerette

Ken Oppenheim represented himself. He wishes to construct a 2-car garage addition to his house built in 1950. The proposed side setback is 13’ where 15’ is required. The lot is undersized with a non-conforming front setback that conformed at the time of construction. It is a pre-existing, non-conforming structure. Oppenheim has spoken with the abutters. There was no one else present to speak on the petition. McDonough made a motion to waive the site view & to close the hearing. Rechisky seconded the motion & the Board voted unanimously to waive the view & close the hearing. In deliberation Casper made a motion to approve a special permit under Section 3.3.5 & to deny the variance from 4.1.2 as moot. Rechisky seconded the motion and the Board voted unanimously to approve a special permit and to deny the variance as moot. McDonough made a motion to continue deliberation to the March meeting. Rechisky seconded and the Board voted unanimously to continue deliberation to March. Guerette will draft the decision.

Petition Number: Z-19-154
Premises Affected: 41 Central Street
Petitioner: South Church
Relief requested: variance from Art. VIII, §5.2.8.1.B to erect a double-sided freestanding sign that will exceed the maximum allowed area
Members Sitting: Oltman, McDonough, Faulk, Bordonaro, Novaria (for Keller)

Reverend Alex Shea Will, Associate Pastor, reviewed the request to replace the existing sign. The sign’s orientation will be changed to be perpendicular to the street and it will be externally illuminated. Rev. Will submitted a revised sign design & size: 24.5 sq. ft. area to be more in keeping with the Mixed Use District. There were no comments or questions from the Board. The Board agreed that a site view is not necessary. Andy Rouse, resident at Cattle Crossing in Andover, commented that a 24.5 sq. ft. sign would be the largest on Central Street, which no hardship has been presented and the other churches on the street have smaller signs. He suggested decreasing the size and to relocate it. Doug Cummings, 67 High St., commented that bigger is not better and that it is more like an advertisement; everyone knows it is South Church. Rev. Will reviewed the lettering size (10” for readability) explaining that people still come into the church thinking that it is Christ Church and that Ballardvale United Methodist Church has a larger sign in a residential district. David Bryan, South Church Deacon, informed the Board that the size/scale is a common method to determine a sign size. Andy Rouse argued that it is a constitutional question to allow a larger sign just because the building or lot is bigger. Doug Cummings, 67 High St., argued that GPS & websites direct people to the location. Rev. Will reminded the Board that they did what was requested and the church should not be the standard bearer. Ted Harris, another South Church Deacon, explained that the rainbow symbol is critical to help newcomers unfamiliar with the church. It is part of the church’s identity & work in the community. Debra Cummings, 67 High St., argued that the issue is the bylaw is meant to protect residential abutters and is a larger sign is allowed, it sets precedent. Harris stated that they spoke with the abutters and none objected. The Board agreed that a site view is not necessary. The Board discussed hardship and variances granted to other properties on Central Street due to the high traffic. The size of the existing sign is 14 sq. ft. and 6 sq. ft. is allowed by right. Faulk made a motion to waive a site view and to close the public hearing. Novaria seconded the motion & the Board voted unanimously to waive a site view and close the hearing. In deliberation the Board discussed that the petitioner did comply with the Board’s request to redesign a smaller sign in conformance with the Mixed Use District guidelines, other church signs that exceed the maximum allowed area and were granted variances, the de minimum increase in the total area from the existing sign, and a hardship argument to justify granting a
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variance. Faulk noted that no abutters have appeared to speak against it and the constitutional argument. The Board is cognizant of setting precedent and the increasing size of signs, as well as the changes occurring along Central Street. Novaria made a motion to grant a variance from Section 5.2.8.1.b with a maximum square footage of 24.5’ per the plan dated 1-20-20. Faulk seconded the motion and the Board voted unanimously to grant the variance with conditions. Novaria made a motion to continue the deliberation to the March meeting. Faulk seconded the motion and the Board voted unanimously to continue deliberation to March. Oltman volunteered to draft the decision.

DISCUSSION ITEM
Petition Number: Z-19-118
Premises Affected: 64 Summer Street
Petitioner: Ratte
Relief requested: Party Aggrieved &/or for (a) special permits under Art. VIII, §3.3.5 &/or §3.3.7 to raze & construct a 2-family dwelling that is greater in volume than the existing 2-family dwelling
Members Sitting: Oltman, McDonough, Casper, Rechisky, Faulk

Attorney Johnson informed the Board that the parties reached an agreement. He will email it to the Board and Mr. Singer.

Petition Number: Z-19-160
Premises Affected: 9 Smithshire Estates
Petitioner: Smithson
Relief requested: a variance from Art. VIII, §4.2.4 to construct a pool cabana that will not meet the minimum side yard depth requirement
Members Sitting: Oltman, McDonough, Faulk, Casper, Rechisky
Alternates: Novaria, Bordonaro, Guerette

This is a continued public hearing. Beth Smithson represented herself & her husband in their request to erect a pool cabana that will not meet the minimum side setback. The pool was installed in the 1980’s by a prior owner. The proposed cabana with an enclosed storage area will moved from the corner at 7’ setback to behind the accessory building within 15’ of the lot line, not 25’. The revised location is further from the abutters’ lots. The requested relief is for the pool equipment to be located 15’ from the side lot line. Smithson informed the Board that she spoke with the Inspector of Buildings who interprets the bylaw to read that the structure is an accessory structure and therefore can be located as close as 5’ to the rear and side lot lines. Casper made a motion to waive a site view and to close the public hearing. McDonough seconded the motion and the Board voted unanimously to waive the site view and close the public hearing. In deliberation, Casper made a motion to grant a variance from Section 4.2.4 for the pool equipment to be located 15’ from the side lot line. Faulk seconded the motion and the Board voted unanimously to grant the variance. Casper made a motion to continue deliberation for the purpose of drafting a decision. Faulk seconded the motion and the Board voted unanimously to continue deliberation to the March meeting. Faulk volunteered to draft the decision.

Petition Number: Z-19-156
Premises Affected: 145 High Plain Road
Petitioner: Aalerud
Relief requested: variance from Art. VIII, §5.2.8.1.B to erect a double-sided freestanding sign that will exceed the maximum allowed area
Members Sitting: Oltman, McDonough, Faulk, Casper, Bordonaro
Alternates: Novaria

This is a technical amendment to correct the reference to a 12 month extension which should be a 24 month extension as deliberated and agreed to by the Board at the January 2, 2020 meeting. There was no discussion
and no Board member or member of the public spoke on the technical amendment. Faulk made a motion to approve the technical amendment. Casper seconded it and the Board voted unanimously to approve the technical amendment.

Minutes

Minutes of 12/5/19: There being no changes to the draft minutes of 12/5/19, Casper made a motion to approve the minutes of as drafted. Faulk seconded the motion and the Board voted unanimously to approve the minutes of 12/5/19.

The Board deferred the minutes of 1/2/20 until the next meeting.

There being no other business of the Board, Rechisky made a motion to adjourn the meeting. Bordonaro seconded the motion and the Board voted unanimously to adjourn the meeting at 8:57 pm.

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary