Present were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk, Lisa Rechisky & Daniel Casper, Members; Brian Corrigan and Ellen Keller, Associate Members.

The meeting opened at 6:33 p.m. Oltman gave a procedural overview.

**Petition Number: Z-19-41**
Premises Affected: 10 Lockway Road
Petitioner: O’Halloran
Relief requested: special permit under Art. VIII, §3.3.5 &/or for a variance under Art. VIII, §4.1.2 to construct additions that will not meet the minimum front or rear setbacks
Members Sitting: Oltman, Faulk, Casper, Keller, Corrigan

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

**Petition Number: Z-19-42**
Premises Affected: 32 Westwind Road
Petitioner: Plante & Swanger
Relief requested: special permit under Art. VIII, §3.3.5 &/or for a variance under Art. VIII, §4.1.2 to construct additions that will not meet the minimum side setbacks
Members Sitting: Oltman, Faulk, Casper, Keller, Corrigan

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

**Petition Number: Z-19-43**
Premises Affected: 375 South Main Street
Petitioner: Fergus & Machold
Relief requested: variance from Art. VIII, §4.2.4 to install an in ground swimming pool in the front yard area that will not meet the minimum front or side setbacks
Members Sitting: Oltman, Faulk, Casper, Rechisky, Keller

This is a continued deliberation to vote on the draft findings and conditions. Oltman noted the administrative secretary’s revisions. The Board agreed to incorporate them into the draft decision. There being no other changes to the draft findings and conditions, Rechisky made a motion to approve the draft decision as written. Casper seconded the motion & the Board voted unanimously to approve the decision as written.
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**Petition Number: Z-19-33**  
**Premises Affected:** 429 South Main Street  
**Petitioner:** Andover Village Associates  
**Relief requested:** modifications of Decisions 3710 & 3762 to remove or modify certain conditions & for variances from Art. VIII, §3.1.3.C.12.a & 5.1.4.C.12.a to convert retail space to sit-down restaurant, expand hours of operation & to rent space within the existing building  
**Members Sitting:** Oltman, McDonough, Faulk, Casper, Rechisky

This is a continued deliberation to vote on the draft findings and conditions. Oltman noted that during the second hearing parking was discussed & the Inspector’s memo answered the Board’s question regarding parking. The Board agreed to deny the variance from Section 5.1.4.C.12.a as moot and to grant the variance from Section 3.1.3.C.12.a with conditions and to grant the requested modifications of Decision #3710. There being no other changes to the draft findings and conditions, Keller made a motion to approve the draft decision as written. Rechisky seconded the motion & the Board voted unanimously to approve the decision as written.

**Petition Number: Z-19-57**  
**Premises Affected:** 233 Lowell Street  
**Petitioner:** Andover Animal Hospital  
**Relief requested:** for a special permit under Art., VIII §3.1.3.B.5 &/or for variance from Art. VIII, §3.1.3.C.15 and to modify Decisions 1723 & Z-16-59 to remove certain conditions so that the animal hospital may operate indefinitely  
**Members Sitting:** Oltman, McDonough, Faulk, Casper, Rechisky

Attorney Mark Johnson represented Diane Tower, owner of Andover Animal Hospital, who was also present. Johnson submitted a signed petition in support of the requested relief. He gave an overview of the evolution of Andover Animal Hospital, having started as an owner occupied and operated business by virtue of Decision #321 dated 3/12/56. One of the conditions restricted the transfer of ownership outside of the family. Since Mrs. Tower’s children do not wish to own or operate the business, the requested modification is to remove the family-owner restriction. Johnson explained that many of the 50+ employees, some present at the hearing, have been employed by the hospital for extended periods of time and that the size and nature of the business has expanded with changes in technology and non-human client base over the years. He submitted an overview of the conditions including a comparison of other animal hospitals in the area that are not family-owned. Diane Tower gave an overview of the evolution of the business and her wish to convert the residential portions of the structure for the use of the animal hospital business to provide better services. Johnson clarified that the proposed condition would allow the business to be sold to a veterinary hospital. Several members of the public spoke on the requested modifications. Charles Urban, 249 Lowell St., voiced concern over removing the ownership restriction since the animal hospital is located in a residential neighborhood and the residential district should continue to be protected. Sarah Pearson, 30 Derry St., No. Andover spoke in favor noting that it is a critical part of the community. Evelyn Peters, a long term employee, spoke in support. There being no other questions or comments from the Board or the public, Oltman asked whether the Board wished to conduct a site visit. There being no desire to conduct a site visit, McDonough made a motion to waive the site view and to close the hearing. Casper seconded the motion the Board voted unanimously to waive a site view & close the hearing. The Board then proceeded to deliberate. In deliberation the Board considered the fact that the business was allowed to operate by prior decision(s) for a limited amount of time by the resident owner/operator within a residential district. Some were in favor of removing the requested conditions while others preferred that the owner return later when/if the business is sold in the future. While the Board noted that another business in a residential district was restricted to local ownership, they would be willing to soften the conditions on this one, but not to open it to any type of ownership without specifying a specific individual. The Board recognizes that this day was inevitable, but the request is a bit premature. The requirement for resident-owner operation, while understandable, is not necessarily hereditary. The Board is not able to rezone a property but must maintain the residential character of the neighborhood. The Board discussed a revised modification of Condition #9 to
remove the language “as long as at least one member of the Tower family…located.” Keeping “as long as at least one licensed veterinarian is employed.” The Board agreed that keeping Condition #10 that requires the applicant to return to the ZBA to transfer title. Also considered by the Board was the amount of time that the business could continue operation upon death of the petition, as outlined in Condition #10 in Decision 1082 (not to exceed 3 years). In Condition #11, the Board contemplated adding ‘in the event of the death of Diane Tower, the petition is not barred from returning to request relief from the ZBA. Casper pointed out that Section 9.7.2 details that there must be a finding that the situation has specifically and materially changed. Oltman read the amended modifications and the addition of condition #11 as well as denial of the variance. McDonough made a motion to approve the modifications as amended by the Board and to approve the addition of Condition #11 and to deny the variance. Casper seconded the motion and the Board voted unanimously to approve the modifications as amended, to add Condition #11 and to deny the variance as moot. McDonough made a motion to continue deliberation to the next regular meeting for the purpose of drafting a decision. Casper seconded the motion and the Board voted unanimously to continue deliberation to the next regular meeting. Rechisky volunteered to draft the decision.

Petition Number: Z-19-62  
Premises Affected: 83 Pine Street  
Petitioner: Braude  
Relief requested: special permit under Art., VIII §3.3.5 &/or for variance from Art. VIII, §4.1.2 to remove a portion of the house to construct a 1-story addition at the rear that will not meet the minimum side yard depth requirement  
Members Sitting: Oltman, McDonough, Faulk, Casper, Rechisky

David Brown, designer at 31 Glenwood Rd., Andover, represented the Braude’s, who were also present. Brown gave an overview of the current conditions as well as the proposed addition. The proposed single story rear addition would not meet the minimum side yard depth requirement. The Braude’s are preparing their house for future single floor living as they wish to age in place. The lot is one of the smallest on the street, being only 40’ wide. The house is 30’ wide and located askew on the lot. They use a shared driveway. Brown noted that earliest recorded deed was from 1935 when Pine Street was a private way. The existing side setback is 2.3’ and 5.3’ at the closest points. The addition will be slightly further away from the side lot line, but will not meet the minimum 15’ side setback. It will be screened from the street and will not be detrimental. Brown addressed the music lessons that Mrs. Braude conducts at home. Judy Braude explained that she is a professional flutist and has taught flute for 43 years. Due to her age, 75 yrs., she is winding down. She has 5 paying students and another whom she helps one hour per week. In total, she teaches 4.5 hours per week in the early afternoons. In addition to her private students, she teaches for the Andover Public Schools, the Reading Community School for the Arts and in Boston. In light of the abutter’s letter against the addition focusing on the proposed use, the Board considered whether the residential character of the neighborhood will be changed. Brown pointed out that the Inspector of Buildings’ letter allows Mrs. Braude to teach at home & that there will be no change in the character of the neighborhood. Emily Frisch, 79 Pine St., voiced concern over the proximity of the addition to the lot line and its size. Brown submitted a proposed condition agreeing that if there are any fence repairs needed as a result of the construction, the Braude’s will repair it to its prior condition prior to the start of construction. The setback between the fence and the house is 3’. The Board considered whether the addition could be further away from the lot line. Brown explained that there is no alternative to push it further away. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and close the hearing. Faulk seconded the motion & the Board voted unanimously to waive the site view & close the hearing. The Board then proceeded to deliberate. The Board discussed that they can’t regulate interior use / home businesses, but only the size and impact of the construction. Some were amenable to the proposal, some were unsure. There have been similar additions and it was the general consensus of the Board that this is a pre-existing, non-conforming structure and the proposed addition does not increase the non-conformity. There are no apparent alternatives and is consistent with the neighborhood. The Board discussed screening noting that the existing fence provides screening. There being no other discussion, Casper made a
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motion to approve the special permit with the standard conditions. Keller seconded the motion and the Board voted unanimously to approve the special permit with conditions. Rechisky made a motion to continue deliberation to the next regular meeting for the purpose of drafting a decision. Casper seconded the motion & the Board voted unanimously to continue deliberation. Casper volunteered to draft the findings and conditions of approval. Brown offered to send his addendum to the application for the file.

**Petition Number: Z-19-63**  
Premises Affected: 19 Glenmeadow Road  
Petitioner: Braude  
Relief requested: variance from Art. VIII, §4.2.4 to install a swimming pool in the front yard area.  
Members Sitting: Oltman, McDonough, Faulk, Casper, Rechisky

Attorney Mark Johnson represented the petitioners, who were also present. Johnson reviewed the proposed above ground pool project explaining that the house is situated on a corner lot at the intersection of Glen Meadow Rd and Talbot Rd. The proposed pool location is partially in front yard area. The location is near an existing rear deck and egress from the house. The Board discussed the existing tree buffer along Glenmeadow Road, which will remain, and the installation of a 6’ fence to add increased screening. The proposed 27’ round above ground pool will also be screened from the nearest abutter with an existing fence. Mrs. Harrington indicated that no trees will be removed from the property for the pool installation. There being no other questions or comments from the Board or public, Keller made a motion to waive a site view & to close the public hearing. Casper seconded the motion & the Board voted unanimously to waive the view and close the hearing. The Board then proceeded to deliberate. Casper made a motion to approve a variance from Section 4.2.4 with the usual conditions. Faulk seconded the motion & the Board voted unanimously to approve the variance with conditions. Faulk made a motion to continue the public hearing for the purpose of drafting the findings and conditions. Casper seconded the motion & the Board voted unanimously to continue the deliberation. McDonough volunteered to draft the decision.

**Petition Number: Z-19-64**  
Premises Affected: 7 Heather Drive  
Petitioner: SAI  
Relief requested: special permits under Art., VIII §3.3.5 &/or3.3.7 &/or for a variance from Art. VIII, §4.1.2 to raze an existing single family dwelling and construct a new one on a lot that lacks the minimum required area.  
Members Sitting: Oltman, McDonough, Faulk, Casper, Rechisky

Attorney Mark Johnson represented the petitioner. Also present were Pat Nysten and Tony Miller, both of SAI. Johnson gave an overview of the property, which is part of the Heather Acres subdivision and is developed by a house constructed in 1952. In 2015, the ZBA granted a special permit to 1 Heather Drive for a new house to be built on a lot that lacks area and did not conform to the setbacks, just as is proposed at #7. Faulk mentioned the Brookline case (Bellalta v. Zoning Board of Appeals of Brookline) that found that no special permit was needed since the proposed structure conforms (or is more in conformity than the existing). Johnson informed the Board that he had spoken with the Inspector of Buildings who now agrees on this interpretation. Johnson feels that a special permit is not necessary. The Board discussed the Bellalta case as it relates to this application and if the proposed house is allowed as a matter of right. There was no debate that the proposed house is less non-conforming. Some Board members feel it is allowed as a matter of right. Town Counsel Attorney Urbelis agreed with the Inspector of Buildings in that the case does not apply since the proposed house is greater in size than the existing structure and therefore requires a special permit. The Board discussed the change in total square footage between the existing and proposed houses and whether the proposed house will fit in with the neighborhood. Johnson submitted a comparison of the square footage of houses on the street. Louise Hart, 11 Heather Drive, pointed out that the majority of the houses are ranches, except 2. She voiced no objection. Michael Villalba, 6 Heather Drive, commented that the proposed house is not in keeping with the neighborhood
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& the street is a narrow private way. He asked the Board to place a condition that the vehicles associated with the project be kept on the lot, if approved. Irvin Heifetz, 3 Heather Drive, voiced concern over the size of the proposed house. Nysten noted that the size and massing of other houses in the area were taken into consideration to make it compatible. Haifus argued that larger houses on nearby streets are not relevant. Johnson & Nysten pointed out that the proposed house conforms to all setbacks. Louise Hart suggested keeping the proposed house in line with the existing abutting houses. There being no other questions or comments from the Board, Faulk made a motion to waive the site view & to close the public hearing. McDonough seconded the motion & the Board voted unanimously to waive a site view & to close the hearing. The Board then proceeded to deliberate. Casper informed the Board that the Zoning Bylaw Review Committee is considering a future revision regarding such cases. In the meantime, Casper feels that a special permit is appropriate. The Board agreed adding that the footprint size is substantially the same, it conforms to setbacks, effort was made to design it to fit the character of the neighborhood, and other houses in the area have greater massing. Casper made a motion to approve a special permit under Section 3.3.5. McDonough seconded the motion & the Board voted unanimously to grant the special permit. McDonough made a motion to continue the deliberation to the next regular meeting in order to draft findings and conditions. Casper seconded the motion & the Board voted unanimously to continue the deliberation. Faulk volunteered to draft the decision.

Approval of Minutes

Minutes of 5/2/19 - There being no changes to the draft minutes, Keller made a motion to approve the minutes as drafted. Corrigan seconded the motion & the Board voted unanimously to approve the minutes as drafted. Casper left the remainder of the meeting.

Petition Number: Z-19-24 (already opened) & Z-19-46
Premises Affected: 161 + 163 Andover Street
Petitioner: Town of Andover
Relief requested: variance from Art. VIII, §4.1.2 to construct a fire station that will not meet the minimum yard depth requirements
Members Sitting: Oltman, McDonough, Faulk, Rechisky, Corrigan

Town Manager Andrew Flanagan reviewed the changes to the proposal since the last public hearing: the Ballardvale Fire Station Working Group was established & has met several times, the Town has worked with the owner of #5 Clark Rd & received a letter of support which is part of the record and the Ballardvale Historic District Commission (BVHDC) has approved the design. Mark Johnson, a member of the Permanent Town Building Committee, reviewed the BVHDC’s Certificate of Appropriateness that was issued last night. They are still working on the final finishes with BVHDC. The request for a variance for the rear and side setbacks still stands. A variance for the front setback is not required due to it complying with the average setback, as set forth in the Inspector of Building’s memo. Oltman asked if the plans received on 5/13/19 are the current plans. Jeff Shaw, project architect, stated that the most recently distributed plan set should be used. Faulk noted that there is no revision date on the plans. Shaw reviewed the current proposal which includes a reduced ridge height of 35’, the main gables facing Andover Street & cross gable faces Clark Rd., the side setback changed, the landscaping plan & a 6’ privacy fence along rear lot line will mitigate the rear abutter’s concerns, and a retaining wall at the rear will screen the mechanicals. The cupola requested by BVHDC will enhance the building’s stature and the rear shed roof is sunken to minimize the impact on the abutter. The geotechnical test pits confirm a high water table and water in the basement, therefore, there will be no basement in the new fire station. The Board requested hardcopies of the current plans, which Shaw will submit. They are dated 5/10/19 Rev. 2. Urbelis asked Shaw to review each plan sheet that they wish to have the Board approve. Shaw listed the plans as follow:
- Landscape drawing & plan submitted with the most recent packet,
- Site Plan dated 5/10/19 Rev 2
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- Elevations (received 5/13/19)

Johnson instructed Shaw to write the date on the landscape plan to submit for the record. Oltman will give the plans to the secretary for the official record. Johnson requested the Board’s flexibility in the types of plantings while using the landscape plan as proposed but subject to change. Urbelis confirmed with Shaw that no side yard variance is required. Shaw confirmed. The Board reiterated that the proposed 16’ front setback is greater than the 13’ average and that the variance is required for the rear setback only. The Board asked why a larger building is necessary. Andover Fire Rescue Chief Mansfield explained the need for a training room, which can and the existing fire station has not met the department’s needs for the last 50-60 years. The third bay is required due to the size of the apparatus (a 50’ long ladder truck). A reserve ambulance will be stationed here and there will be 7 dorm rooms for future growth in the number of employees staffing the station per shift. Urbelis asked Mansfield how the new station will increase public safety over and above what it does now. Mansfield explained that the additional personnel need to be housed for call back in surges and emergencies, like on September 13, 2018. Parking along Andover Street for the playground will be altered and will allow for 10 cars, including along Clark Road and in the proposed parking lot. Urbelis pointed out that the intersection of Andover Street and Clark Road will be altered to improve response time. Mansfield stated that it will improve by 39-45 seconds due to greater ability to exit to the left or right of the new station. The Board noted the reduction in height and the mitigation of the rear abutter’s concerns to her satisfaction. There being no other questions or concerns, McDonough made a motion to waive the site view and to close the public hearing. Corrigan seconded the motion and the Board voted unanimously to close the public hearing. The Board then proceeded to deliberate. McDonough, Keller, Faulk, & Rechisky voiced their support for the petition. Corrigan questioned if the variance is needed. Oltman & Faulk felt that a finding should be made that it meets the bylaw regarding average setbacks. Corrigan made a motion to grant the variance from Section 4.1.2 with the standard conditions for the rear yard setback, to make a finding and accept that the average front setback is conforming and the standard conditions regarding plans. McDonough seconded the motion & the Board voted unanimously to grant a variance from 4.1.2 with the standard conditions and to find that the front setback complies with Section 4.1.3.2.d (average setback). Rechisky made a motion to continue the deliberation to the next regular meeting for the purpose of drafting the decision. Faulk seconded the motion & the Board voted unanimously to continue deliberation. Oltman noted that Z-19-24 was extended by the petitioner until 7/11/19, but the Board will need more time, at least until 7/12/19). The administrative secretary will request an extension to file the written decision until at least 7/12/19.

There being no other business of the Board, Keller made a motion to adjourn the meeting. Faulk seconded the motion and the Board voted unanimously to adjourn the meeting at 9:31 pm.

Respectfully submitted,
Barbara Burke, Zoning Administrative Secretary