

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:30 p.m.

CITY COUNCIL CHAMBERS

April 25, 2006

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Steven Berg, Alain Jousse, Bob Marchewka, and Arthur Parrott
Alternate Duncan MacCallum

EXCUSED: Nate Holloway

ALSO PRESENT: Lucy Tillman, Chief Planner

Chairman LeBlanc called the meeting of the Board of Adjustment to order at 7:30 p.m.

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**I. PUBLIC HEARINGS**

5) Petition of **Society for the Protection of Forests, owners**, for property located at **400 Little Harbour Road** wherein the following are requested: 1) a Special Exception as allowed in Article II, Section 10-206(29) to allow the following: a) a live in caretaker, b) periodic events, and c) office space for the property owner, and 2) a Variance from Article II, Section 10-206 to allow 3,500± sf of offices for a marine research facility in a former apartment, associated educational programs, and with other existing residential apartments to remain. Said property is shown on Assessor Plan 203 as Lot 8 and lies within the rural district. Case # 4-6

Mr. Berg stated that he is a real estate appraiser and is familiar with the Society for the Protection of Forests. He has previously worked with the Society, and his work was directly related to the building uses of the apartments. He wanted to state for the record that he has worked with the Society before and that if anyone has any concerns about his relationship to the property to speak at that time.

**SPEAKING IN FAVOR OF THE PETITION**

Attorney Peter Loughlin, on behalf of the Society, stated that the cottage on the property was constructed as a summer home for the owners at the end of the 19<sup>th</sup> century. It is one of the best preserved summer homes from that time period. Before the owners left the property, they expressed a desire to protect the land from industrialization and development. A condition of the sale of the land was to raise the summer home within two years of the owner's death (whom died in 2004). That was amended so that the Society could find a compatible use with stipulations for the area. The Society and the Shoals Marine Lab (associated with Cornell University as well as the University of New Hampshire) wish to provide land and sea based educational opportunities at the Creek Farm, a public outreach program, protect and provide public access to the open space and to the tidal waters, and

preserve, protect and utilize the historic creek farm cottage. The reason for the request is due to the special circumstance of a historic home owned by a nonprofit agency, which allows a live-in caretaker, periodic events as well as office space. The conditions for the variance need to be met in order for this to be approved. These include that: there be no hazard to the adjacent public, no detriment to property values in the vicinity, or change in the essential characteristics of the area including residential neighborhoods, businesses or industrial districts on account of the location or scale of buildings and other structures. These issues will not be a problem. Site review may be revisited in the future to accommodate a larger flow of people; mainly to provide adequate parking. There will be no creation of a traffic hazard, and there will be low intensity public use of the property. When being used for public gatherings, the size of the party is to 25 people. There will be no excessive use of public services, and no significant storm water runoff to adjacent city streets. All of the conditions for special exceptions have been verified. The denial of the proposal would result in hardship. The variance complies with the allowed use of the land. The general purpose of the ordinance is to separate residential uses. This will not injure the public or private rights of the public, and substantial justice would be done.

Mr. MacCallum asked if the Society for the Protection of New Hampshire Forests was the record owner of the property.

Attorney Loughlin stated that they are the owners and that they have been for the past 5 years.

Mr. MacCallum inquired why the previous owner wished to raze the building.

Attorney Loughlin responded that the previous owner wanted the building preserved.

Mr. MacCallum asked if Attorney Loughlin represented the previous owner at that time.

Attorney Loughlin stated that he had worked with the owner on a Conservation Easement.

Chairman LeBlanc asked if the caretaker would be the employer or an employee of the Society for the Protection of New Hampshire Forests.

Attorney Loughlin stated that the caretaker would be an employee of Shoals Marine Lab or the Society. Legally, the Society would act as the caregiver and the 'employee' caregiver would have no official capacity.

Mr. Parrott asked if the new construction plans would remain within the existing footprint of the two buildings already there.

Attorney Loughlin replied that they would. There are also no additional expansions anticipated.

Chairman LeBlanc asked if weddings would be taking place on the property.

Paul Doscher, Vice President of Land Conservation at the Society for the Protection of New Hampshire Forests, stated that the green lawns on the property are part of the conservation easement,

and that commercial use is prohibited. Citizens may use the land for passive recreation. It cannot be rented and the lease will prohibit subletting.

Chairman LeBlanc asked Mr. Doscher to define what a 'periodic event' would be.

Mr. Doscher replied that events could be fieldtrips, tours of the buildings, Shoals tours or student orientation for programs.

Mr. MacCallum asked if there was a way to affirmatively limit the amount of events occurring on the property.

Attorney Loughlin stated that he listed the types of events.

Chairman LeBlanc suggested that all events be put on in conjunction with the Society and that they would be small in nature.

Attorney Loughlin stated that the examples of an event would be regattas, bird censuses and similar uses. They will be periodic and not intense.

Chairman LeBlanc stated that Attorney Loughlin detailed the special exception for events in the request that he submitted to the Board. Periodic events and displays that do not constitute a business or commercial use as an accessory use to a historic building owned and maintained by a non profit organization are acceptable.

Mr. MacCallum stated that he has no problem with the wording of the clause, but with the ambiguity of the phrase 'periodic events'. If the property fell into the hands of a renegade director, that term could be expanded to include almost everything.

Mr. LeBlanc stated that the applicant has given the Board a definition that would limit the events. If there were to be a renegade director, they would still have to conduct events within the scope of the variance.

Mr. MacCallum asked Mr. LeBlanc if he found it necessary to attach a stipulation.

Mr. LeBlanc stated that he could add it as a stipulation should they approve the variance.

Robert Najar, a neighbor to the Creek Farm property, stated that he was in favor the proposal. He stated that it will preserve the historic buildings, and protect the area from industrialization. He thinks the education programs created by the Isles of Shoals, UNH and Cornell is a service to the Portsmouth community. He asked that the scale of the periodic events be limited, because the area would be seriously impacted by large numbers of people.

Mr. Doscher stated that the Society usually keeps the number of people entering protected areas by limited the number of parking spaces. Fish and Game do the same thing with their boat access areas, which prevents excessive use by limiting the opportunity for large groups of people to be there. The small amount of parking spaces is a self-limiting factor. The Society's events will be small.

Mr. MacCallum asked what the relationship was between the Society and the owners of the property, and what the terms of the lease agreement were.

Mr. Doscher replied that the Forest Society will continue to be the fee owner of the entire property, and will implement a long term lease with Shoals Marine Lab which would allow them complete responsibility of the buildings and the immediate grounds around them. They must maintain and improve these areas for their own purposes. The historic buildings will be open to the public for touring use. If the variance is passed, the lease will be put into effect within the next three weeks.

Chairman LeBlanc asked who owns the development rights for the property.

Mr. Doshier replied that the State of New Hampshire owns the development rights.

With no one further rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Mr. Parrott made a motion to grant the special exception, with the stipulation, which was seconded by Mr. Marchewka. Mr. Parrott stated that the nature of the land and the isolation of the building prevent all events from creating a detrimental impact. The purpose to which the property is dedicated should not create any problems or infringe on any abutters or neighbors. For those reasons, it is a good example of a special exception. The request of a live-in caretaker, periodic events, and the office space for the property owner are reasonable and should be granted.

Mr. Marchewka agreed with Mr. Parrott. With the addition of the stipulation covering periodic events, everything should be covered.

Chairman LeBlanc called for a vote on the special exception with the stipulation:

- That the periodic events and displays will not constitute a business/commercial use and will be conducted as an accessory use in an historic building owned and maintained by a non-profit organization for preservation purposes. Such accessory uses to the educational uses of the property may include winter bird weekends, occasional Cornell outdoor sea kayaking, a possible regatta on Sagamore Creek, citizens' science inventory of Creek Farm on spring weekends and other events for the benefit of the local residents and the educational community.

A motion to grant the special exception was passed by a vote of 7 to 0.

Mr. Parrott made a motion to grant the variance with the same stipulations with respect to the allowed activities, which was seconded by Mr. MacCallum.

Mr. Parrott stated that the petition asked for 3500 sf. of offices for a marine research lab in a former apartment associated with education programs with other residential apartments remaining. The buildings are located on 35 acres of land, but only 5 acres are developed. This use would allow the building to be saved from demolition, which is desirable because it will bring in money with no impact on the City or abutters. It is a good match of public and private uses and good used of land. It is a use

variance that will not be contrary to the public. Zoning restrictions apply, and is zoned as a rural area. It is a reasonable request and should be granted.

Mr. MacCallum agreed with Mr. Parrott

Mr. Berg stated that there is a street in Rye that is close to the property. He stated that this should not impact or affect the residents of the street.

Chairman LeBlanc added that he believed that the use was not benign, but quite beneficial and would override any small inconvenience of granting the office space. He agrees that this variance should be granted.

A motion to grant the petition with the stipulation was passed by a vote of 7 to 0.

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6) Petition of **Mark H Wentworth Home for Chronic Invalids, owners**, for property located at **346 Pleasant Street** wherein the following are requested: 1) Variances from Article II, Section 10-206(18) and Article IV, Section 10-401(1)(c) to allow the expansion of the footprint of the existing nursing home, 2) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(1)(c) to allow: a) 46.7±% building coverage where 30% is the maximum allowed, and b) a building height of 35' 10"± where 35' is the maximum allowed; and, 3) a Variance from Article XII, Section 10-1201(3) to allow parking spaces to back out onto Melcher Street. Said property is shown on Assessor Plan 109 as Lots 10, 7, 8 and 16 and all lying within the General Residence B and Historic A districts. Case # 4-7

SPEAKING IN FAVOR OF THE PETITION

Attorney Peter Loughlin, on behalf of the Mark H. Wentworth Home, stated that the capacity of the facility is 109 beds, broken down into 69 nursing beds and 35 assisted living beds. The proposal is to renovate the existing skin of the 1985 building.

Christopher Tiernan, of JSA Architects, stated that the concept of the renovation was to try and improve the compatibility between the building and the neighboring residences and businesses. Changing the façade to make it look similar to the older, historical buildings nearby and will make it a more appropriate fit to the community. The owners also request a change to the size, shape and placement of the windows on the building, as well as add clapboards to the exterior. They wish to change the entryway of the building from a glass wall to a less modern, clapboard entryway. Also, the roof forms should be leveled so that they are consistent throughout the top of the building, instead if the disjointed roof presently there. All the renovations will be completed within the original structure of the building. The owners wish to place smaller bay windows on the building, as well as added internal egress stairs.

Mr. MacCallum asked if he was displaying elevations #3 of the package presented to the Board.

Mr. Tiernan responded that it was.

Attorney Loughlin stated that the second renovation would be to reconfigure the room layout within the buildings. The rooms in the 1927 building are small, and the owners wish to open up some rooms to make them larger. The number of rooms will be reduced from 72 to 63. There will also be a change in the allocation of the rooms from 69 nursing beds to 19 nursing beds and 35 assisted living beds to 52 assisted living beds. These changes are proposed due to the demand from the residents of the home as well as the demands of the market. The change will allow the residents to remain in the facility for a longer period of time. The effect of the proposal would also include the staff, parking demand, number of beds and number of admitted residence in order to lessen the effect on neighbors. The purpose of the proposal is to lessen the amount of people in the facility, so that specialized care could be implemented. The proposal was amended after input from neighbors. This is a benefit to the present and future residents of the home, the neighbors and abutters, and a benefit to the community in that it will help preserve and promote a viable facility for senior citizens. The owners wish to extend the footprint, and ask for a variance to allow a 375 sf. bump out on the Melcher Street side of the building. Also, they request a 400 sf. reconfiguration of the entrance that includes an additional footprint of the building. They are adding just under 1500'. They also request 46.7% building coverage where 30% is allowed, since a 1995 ordinance limited the amount of space allotted for building. The next variance is for the building height. A variance is needed to extend the height of the roof 9". The height of the roof now is 35'.

Mr. Tiernan spoke about the height differences between the old roof and the new roof line. The roof must be extended in areas to accommodate a fire stairwell. This is a significant addition that adds to the safety of the building.

Mr. Witham asked if the changes in the roof line were cosmetic or do they serve a function?

Mr. Tiernan stated that it varied from section to section. Two parts in which the roof must be raised is due to a fire stairwell, the other is to create architectural unity and make the roofline even across the top.

Mr. Witham asked if that portion was solely for aesthetic purposes.

Mr. Tiernan stated that it was.

Attorney Loughlin stated that the height variance request is not to extend the living space or create another story, but to unify the roof line across the building. The next variance requested is to allow parking spaces to back out onto Melcher Street. The proposal includes moving the pavement back toward Melcher Street. Even though the variance requests permission, it is not required that those parking in the lot back onto Melcher Street. Wentworth Properties own all the property on Melcher Street, so it will not be disturbing neighbors.

DECISION OF THE BOARD

Mr. Witham made a motion to grant the petition, which was seconded by Mr. Marchewka. Mr. Witham stated that the overall impact of the changes would be minimal. The petition is a reasonable response to the change in desires of the residents. He believes that the expansions are minimal and reasonable and in some cases, necessary. Also, since Melcher Street is a dead end, he believes that traffic will be minimal and the renovations will help to ease any traffic blockage. The speed limit

would be slow. Even though it is a large property, it has the right to exist on the lot and it is in no way contrary to the public interest. It meets requirements needed for expansion, and the use is in line with the ordinance. There is no other feasible alternative to the expansion, and the variance is consistent with the spirit of the ordinance. Public justice is done, and allows business and property to meet their current demands. There will be no diminution of property due to this, and the roof rise will only improve the look of the building.

Mr. Marchewka agrees with Mr. Witham, but adds that the expansion is incidental. The architectural improvements create a less imposing structure than what currently lies there. The renovations will make it more in keeping with the neighborhood. He stated that the petition should be granted.

Mr. MacCallum stated that he will not be voting in favor of the petition because it expands the footprint of the current building. The building now, is over its 30% coverage maximum, and the proposal would double that overage. Although he agreed that the service that the Home provides is worthwhile and necessary, he believes that the Home has outgrown the property. He stated that the type of 'piecemeal' expansion that the Home seems to be requesting was condemned by the New Hampshire Supreme Court cited in Bacon v. Town of Enfield. The zoning ordinance denies this expansion, so allowing the variance would only violate that ruling. He stated that the expansion to the Home has occurred over a twenty year period, enlarging it each time. He stated that the line should be drawn at allowing yet another expansion. He will be voting against he application.

Mr. Berg stated that the placement of the Home makes it a special circumstance. Since it is in an urban instead of a rural area, it has to contend with the problems of an urban area. Since it affects Wentworth Street, Melcher Street and Pleasant Street, it has a large impact on the neighboring homes.

Mr. Witham stated that he does not see this as piece meal development, but as a multimillion dollar investment. The Home has revised and reworked several plans for renovation, showing their wish to comply with and appease neighbors and City ordinance.

Chiarman LeBlanc stated that the raised roof line in one area will be used to shield the generator that now lies visible off of Wentworth Street. Not only will this free up the area where the generator lies now, but it will also reduce noise as it will be enclosed. He stated that the petition should be granted.

Mr. Jousse stated that he agreed with Mr. Berg. The lot coverage is expanded due to the enclosed stairwell, which is necessary for safety. He stated that he will support the variance.

Mr. MacCallum stated that he does not object to the covered stairwell, but the high percentage of lot coverage expansion (roughly 30% additional coverage). He also had no problem with the raised roofs. He stated that his concern was the precedent set by approval of the variance. Approval could cause problems in the future, and he feared that the building would someday fill the entire parcel of land. He stated that he is in opposition of the motion.

A motion to grant the petition was passed by a vote of 6 to 1.



7) Petition of **Mark H. Wentworth Home for Chronic Invalids, owners**, for property located at **337 Pleasant Street** wherein a Variance from Article II, Section 10-206 is requested to allow the existing apartment building to be used for staff office space during the construction and renovations to the Mark H. Wentworth Home located at 346 Pleasant Street. Said property is shown on Assessor Plan 103 as Lot 62 and lies within the General Residence B and Historic A districts. Case # 4-8

Attorney Loughlin stated that during the construction process that Wentworth administration be allowed to use the first floor of the apartment building across the street as offices. This would displace fewer residents and have a lesser impact on the neighborhood.

Mr. Marchewka made a motion to grant the petition, which was seconded by Mr. Berg.

Mr. MacCallum reminded the Board of the stipulation that the Planning Department recommended.

Mr. Marchewka stated that the stipulation would be as follows:

- That the office use vacate the apartment building within 30 days of the issuance of the Certificate of Occupancy for the Wentworth Home renovations.

Mr. Marchewka stated that the Board does not issue temporary variances, but a variance such as this is similar to one. He believes the stipulation allows it to be granted. It is not in contrast to the public interest. It will only improve the neighborhood if completed in a timely manner. This is a reasonable use in an urban setting, since there is limited property with which to operate. Since the Home owns the property, they have the right to use it as they see fit. The variance would not injure the public or private rights of individuals. It is consistent with the spirit of the ordinance, and substantial justice is done.

Mr. Berg agreed with Mr. Marchewka. He stated that this will have little impact on the surrounding neighborhood. The impact comes from the traffic and the residents of the Home. His only concern is that the building constitutes a preexisting, nonconforming use. The applicant is not required to change uses from a residential use to a nonconforming use, because when they return the building to apartments it will again be in line with the previous use. He wanted it on the record.

Mr. MacCallum stated that the applicant concurred in the stipulation. He also stated that the reason for granting the request is basically "the lesser of two evils". The rationale is that the only other alternative was for the construction company to work on the site, creating additional noise and traffic problems. He will support the petition.

Chairman Leblanc called for a vote.

A motion to grant the petition with the stipulation was passed by a vote of 7 to 0.

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8) Petition of **Mark H. Wentworth Home for Chronic Invalids, owners**, for property off **Pleasant Street** wherein a Variance from Article II, Section 10-206 is requested to allow the vacant lots to be used to locate construction trailers in conjunction with the construction and renovations to the Mark H. Wentworth Home located at 346 Pleasant Street. Said property is shown on Assessor Plan 103 as Lots 63 and 64 and lying within the General Residence B and Historic A districts. Case # 4-9

This variance would allow the construction company to use a trailer as an office, which would lessen the impact of the neighbors on the adjacent streets. It would be a temporary provision, with a stipulation that it will be a temporary variance. They would post a bond or a letter of credit to

guarantee that they would vacate after a certain number of days. A certificate of occupancy would be issued stating that after the specified period, the trailers would vacate and the lawn would be returned to its present state. The concern of the homeowners nearby was that their homes would be the size of the parking lot, and the traffic that would be entering and exiting from the property. The owners propose that there be a 4' wide, raised granite curb island, with landscaping that would serve as a separator between incoming and outbound traffic. This would define Wentworth Street, define the parameters of the parking lot and prevent encroachment on the street. This would look like a landscaped roadway instead of a bare parking lot. This solution satisfies the homeowners. The number of parking spaces on the lot would be reduced from 33 to 26, but it still meets the requirements for the number of spaces allotted. The parking is related to the number of beds. Since the number of beds has been lessened, they would like to reduce the number of parking spaces in the lot. He then passed around a set of documents pertaining to the lot.

Mr. Witham asked if opponents of the variance had looked over the documents.

Attorney Loughlin stated that he didn't think Attorney Pelech had seen them, but anticipated his presence at the meeting and had a copy to give him. Attorney Lockland stated that the second point that was made by neighbors involved people stopping in Wentworth Street to pick up or drop off residents. The concern is that people might be stopping in the roadway to drop off relatives or patients. This prompted the addition of an off street, roundabout entrance that would alleviate traffic stops on Melcher Street. It is not contrary to the public good, or the basic zoning objective. The denial of the variance will result in hardship. It is not contrary to the spirit or intent of the objective.

Mr. MacCallum asked if they were going to reduce the number of rooms from 72 to 63, and that will consist of a reduction from 69 nursing beds to 19.

Attorney Loughlin stated that that was correct, and that all the nursing beds would be moved to the 100 level of the building, that opens into the garden with a solarium.

Mr. MacCallum asked if the number of assisted living beds was going to be reduced.

Attorney Loughlin stated that the number of assisted living beds was going to increase.

Mr. MacCallum asked for the number of beds presently being used.

Attorney Loughlin stated that there were 104 beds in the establishment now.

Mr. MacCallum asked how many beds would be used after the construction.

Attorney Loughlin stated that there would be 71 beds total after construction and renovation.

Mr. MacCallum asked how many full and part time staff are employed presently.

Mary Ellen Dunham, Executive Director Administrator for the Wentworth Home, stated that there were 105 staff employees working full and part time. When the reconstruction and renovation is complete, they will have 54 full and part time employees. She states that the Wentworth Home is responding to the demands and needs of those using the home.

Mr. MacCallum asked what the breakdown between full time and part time employees were.

Ms. Dunham stated that 60% were full time and the remaining 40% were weekend or part time employees.

Mr. MacCallum asked how many parking spaces were present now, and how many it would be reduced to after construction.

Attorney Loughlin stated that there is currently 48 parking spaces on the site plan, but that was reduced to 46 after site review. The minimum required parking spaces is 26.

Mr. MacCallum stated that neighbors complained about the parking situation and asked how many spaces were to be used after construction. He asked Attorney Loughlin to specify.

Attorney Loughlin stated that the approved spaces comply with zoning ordinances. The site plan shows 26 spaces on Melcher Street, which will not be changed. The loss of spaces come from the parking lot reconfiguration of Wentworth Street.

Mr. MacCallum asked if the 4' wide divider would eliminate any spaces.

Attorney Loughlin stated that 8 spaces would be eliminated on Wentworth Street. There are 33 spaces in the lot, 26 are usable.

Chairman LeBlanc stated that parking spaces are not included in the variance except when the back out onto the street is mentioned. It is not relevant to the variances in question.

Mr. MacCallum stated that the Planning Department has recommended that they ask the Wentworth Home for their concurrence in a stipulation that the construction company vacate the building within 30 days of the issuance of the certificate of occupancy of the renovations and cease using that building as office space. He asked if that was a problem.

Attorney Loughlin stated that it would not be a problem.

Mr. MacCallum also stated that the green area used by the trailers be returned to the state in which it is presently after construction within 30 days.

Attorney Loughlin stated that the restoration will occur within 30 days of the growing season, since it is a garden area.

Davia Scherer, spoke on behalf of Polly and Bob Henkel. She read a letter from the Hinkles that stated they were contacted by the Wentworth Home to discuss the renovation and that they voices concerns about the traffic near the Home. They requested that the Home create a way to alleviate traffic stops on the street, and also find a way to differentiate Wentworth Street from the Home's parking lot so that cars in the lot do not park partially in the street and obstruct traffic. They were pleased to find that the Home included all their suggestions and address each of their concerns. The final plan will greatly improve the street and the neighborhood. The Henkel's would like to express their support for the zoning variances regarding the reconstruction of the Wentworth Home. Davia Scherer and Greg Vail, both neighbors to the Home have signed the letter as well.

Ruth Griffin, neighbor, stated that she was present to speak in favor of the petition. She stated that she approves of the Wentworth Home renovations. The changeover of nursing beds to assisted living beds gives elderly people the freedom and independence of living alone, yet allows them the care and medical monitoring that they need. She is in favor of the petition.

Attorney Pelech stated that renovated plan was formulated after concerns from neighbors were voiced. Attorney Loughlin had asked Attorney Pelech to speak about the process that occurred that produced the final plan. He stated that the letter from his clients, the neighbors, showed their approval of the plan and their wish to have the construction occur.

### **SPEAKING IN OPPOSITION OF THE PETITION**

George Hurt, abutter to the Home, is against the petition since the Home asks to expand their building size. Although the renovations to the Home are for cosmetic reasons, he does not think that it justifies the variance. He is also concerned with the use of the adjacent building for office use. He stated that the Home promised no loss of value, but Mr. Hurt believes that there will be temporary loss due to the construction.

Lee Roberts, abutter to the Home, stated that she was against the petition because of the construction. It will be noisy and disruptive to the neighboring community. She would be affected by the construction and renovation, even though she prefers that the Home be renovated to look more historical.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

Attorney Loughlin stated that the public hearing process has informed the Home that they must comply with the wishes of the neighboring community.

Mr. MacCallum asked Attorney Loughlin to explain the reason for an internal stairway.

Attorney Loughlin stated that it was for safety.

Robert Elford stated that it was strictly as a safety precaution for the elderly residents and staff. The present situation is unsafe.

George Hurt stated that he would support petitions that asked for the reduction of the size of the building, but not those that asked for expansion.

With no one further rising, the public hearing was closed.

### **DECISION OF THE BOARD**

Mr. Berg made a motion to grant the petition with the stipulation, which was seconded by Mr. Witham.

Mr. Parrott proposed an additional stipulation that the trees be unharmed during construction.

Mr. Berg stated that the Home had an arborist identify where trailers can go as to leave all the existing trees.

Mr. Witham also stated that activities should be limited from lighting and noise. He stated that he would like to add this as a stipulation. He would also like to ban use of any portable toilets on the property, and have them limited to the construction site.

Mr. Berg stated that it is necessary for the construction site to use trailers in order to complete the job. The placement of the trailers across the street will minimize interruption to the neighborhood. The Home owns the land, they are simply seeking to use it. The Home site can not accommodate the trailers as they stand, and the use variance should be granted. This does not injure the public or private rights of the individual, and the value of the surrounding properties will not diminish. Although it may be inconvenient, it will be temporary and the final product will greatly benefit the neighborhood.

Mr. Witham agreed and had nothing to add.

Chairman LeBlanc listed the following stipulations:

- That the trailers be removed and the grounds restored within 30 days of the issuance of the Certificate of Occupancy or when seasonal conditions permit.
- That the existing trees on the lot be protected by a buffer.
- That the standards in Article V of the Zoning Ordinance relating to light and noise be adhered to.
- That there be no portable toilets on the lot.
- That a performance bond be posted guaranteeing compliance with these stipulations in the amount of \$2,000.00, or the minimum required by the City.

A motion to grant the petition with the stipulations was passed by a vote of 7 to 0.

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II. ADJOURNMENT

A motion was made, seconded and passed to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Danielle Auger
Acting BOA Secretary